

McKean Borough

# ZONING ORDINANCE

No. 1-1995 with amendments through 2014



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AN ORDINANCE DIVIDING THE BOROUGH OF MCKEAN INTO VARIOUS ZONING DISTRICTS AND REGULATING THE CONSTRUCTION, ALTERATION AND USE OF BUILDINGS OR LAND WITHIN EACH SUCH DISTRICT.

BE IT HEREBY ORDAINED BY THE Borough Council of the Borough of McKean, Erie County, Pennsylvania.

ARTICLE 1 – GENERAL PROVISIONS

Section 101 TITLE

The official title of this Ordinance is “McKean Borough Zoning Ordinance.”

Section 102 EFFECTIVE DATE

The effective date of this Ordinance is December 4, 1995.

Section 103 DEFINITIONS

Certain words or terms that appear in this Ordinance are defined in Article 7.

Section 104 COMPLIANCE

No structure shall be located, erected, constructed, reconstructed, moved, altered, converted, or enlarged, nor shall any structure or land be used or be designed to be used except in full compliance with all the provisions of this Ordinance and after the lawful issuance of all permits and certificates required by this Ordinance.

Section 105 SEVERABILITY

If any provision of this Ordinance or the application of any provision to particular circumstances is held invalid, the remainder of the Ordinance or the application of such provision to other circumstances shall not be affected.

Section 106 REPEAL

Any resolution or ordinance or any part of any resolution or ordinance conflicting with the provisions of this Ordinance is hereby repealed to the extent of such conflict.

Section 107 COMMUNITY DEVELOPMENT OBJECTIVES

This Ordinance and zoning map are intended to promote, protect and facilitate the public health, safety, and morals and general welfare, to facilitate coordinated and practical community development, proper density of population, civil defense, the provisions 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 preventing the overcrowding of land, blight, danger and congestion in travel and transportation, loss of health, life or property from fire, flood, panic or other dangers. More specifically, these broad purposes are designed to clearly achieve the objectives of the McKean Borough Comprehensive Plan as adopted September 7, 1971, and the McKean Area Background Analysis and Comprehensive Plan adopted December 8, 1980. The specific objectives upon which the Comprehensive Plan and this Ordinance have been based include the following:

- 107.1 To support and encourage order and beauty in the development of McKean Borough environment for the convenience and pleasure of present citizens and future residents through sound land development practices and the provision of adequate public utilities and facilities.
- 107.2 To encourage future land development to complement a logical, harmonious and efficient pattern of future growth in the McKean Area.
- 107.3 To encourage future residential use to occur in a harmonious arrangement within compact neighborhood units.
- 107.4 To preserve strategic properties suitable for industrial development for the establishment of suitable diversified industry throughout the McKean Area.
- 107.5 To guide commercial development in such a way so as to minimize adverse influences on adjacent roads or land values; to maintain and protect existing commercial uses, and to encourage new commercial facilities to locate in functionally designed centers with safe and adequate highway access.
- 107.6 To protect property values to insure a suitable, attractive and efficient community environment.
- 107.7 To encourage development of integrated and cohesive suburban development.
- 107.8 To encourage developers to incorporate adequate public facilities and open spaces in neighborhood design.
- 107.9 To allow for low impact home occupation and child care services in residential areas.

## ARTICLE 2 – DISTRICT REGULATIONS

### Section 201 ZONING MAP

A map entitled “McKean Borough Zoning Map” is hereby adopted as part of this Ordinance. The Official Zoning Map shall be kept on file available for examination at the Borough Hall. (Amended Ord. 1-97, June 9, 1997); (Amended Ord. 1-2013, November 11, 2013)

### Section 202 ZONING DISTRICTS

The Borough is divided in the districts stated in this Ordinance and as shown by the district boundaries on the Zoning Map.

### Section 203 DISTRICT BOUNDARIES

The boundaries between districts are the centerlines of streets, alleys, streams, or such lines extended, or lines parallel thereto or concentric therewith, or property lines when proximate thereto, or may be lines otherwise indicated on the Zoning Map. When the Zoning Officer cannot definitely determine the location of a district boundary, he shall deny the application and the Board, upon appeal, shall interpret the location of the district boundary.

### Section 204 DISTRICT REGULATIONS

Permitted Uses, uses permitted as Special Exceptions, and uses permitted as Conditional Uses for each district are specified in Table 801 and the lot requirements, yard regulations and maximum height and lot coverage for structures are specified for each district in Table 802. Any use not expressly listed for a district is prohibited in that district. Uses permitted as Conditional Uses will be referred to the Planning Commission for their recommendations prior to approval or denial by Borough Council, whereas permitted uses require only normal application procedures. Uses and structures which are normally accessory to the declared permitted uses are also permitted.

## ARTICLE 3 – SUPPLEMENTARY REGULATIONS

### Section 301 NONCONFORMING USES

The following provisions shall apply to all nonconforming uses and structures (see also Section 512).

- 301.1(a) Any nonconforming use may be continued, but may not be extended or expanded or reconstructed or changed unless to a conforming use, except as may be permitted by the Board in accordance with the provisions of this Ordinance or as provided in sub-paragraph (b) and Section 512.
- 301.1(b) Any single-family residence which is a lawful nonconforming use under this Ordinance as to lot requirements, may be expanded or reconstructed for single-family residence purpose upon application to and approval of the Zoning Officer, provided the addition or reconstruction does not extend beyond the limits of the nonconforming structure in relation to the applicable lot lines.
- 301.2 Any nonconforming structure damaged by fire, flood, explosion, or other casualty, may be reconstructed and used as before if such reconstruction is performed within twelve (12) months of such casualty and if the restored structure covers no greater area and contains no greater cubic content than before such casualty. If approved by the Board, a reconstructed structure may exceed its original lot coverage and cubic content but must meet minimum yard requirements of the district in which the structure is located and must meet the off-street parking and loading requirements of this Ordinance.
- 301.3 In the event that any nonconforming use, conducted in a structure or otherwise, is abandoned or ceases for whatever reason for a period of one (1) year, such nonconforming use shall not be resumed, and any future use shall be in conformity with the provisions of this Ordinance.
- 301.4 The nonconforming use of a building may be extended throughout those parts thereof which were manifestly arranged or designed for such use at the time of adoption of this Ordinance and any amendments thereto. A nonconforming building or structure may, with the approval of the Board, be extended, enlarged or replaced but must meet the minimum yard requirements of the district within which the structure is located and must meet the off-street parking and loading requirements of this Ordinance.
- 301.5 Nothing contained herein shall require any change in the overall layout, plans, construction, size or designated use of any development, building, structure or parts thereof, for which official approval and required permits have been granted,

or, where no approvals are necessary, where construction has been legally started before the preparation and enactment of this Ordinance and any amendments thereto, and completed within a one-year period.

301.6 Any structure or portion thereof declared unsafe by a proper authority shall be restored to a safe condition, as determined by Council.

301.7 Once changed to a conforming use by the issuing of a Zoning Permit, no structure or land shall be permitted to revert to a nonconforming use.

301.8 Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, this Article shall also apply to any uses which thereby become nonconforming.

### Section 302 EXISTING LOTS OF RECORD

Any lot of record existing at the effective date of this Ordinance and held in separate ownership, different from the ownership of the adjoining lots, may be used for the erection of a structure conforming to the use regulations of the district in which it is located, even though its dimensions are less than the minimum requirements of this Ordinance, except as set forth hereafter. Where two (2) adjacent lots of record, with less than the required area and width, are held by the same owner or owners on or before the date of enactment of this Ordinance, the request for a permit shall be referred to the Board which may require replotting to fewer lots which would comply with the minimum requirements of this Ordinance.

### Section 303 APPLICATION OF YARD REGULATIONS

303.1 Lots which abut on more than one (1) street shall provide the required front yards along each street.

303.2 All structures, whether attached to the principal structures or not, and whether open or closed, including porches, carports, roof overhangs, balconies or platforms above normal grade level, shall not project into any minimum front, side or rear yard.

303.3 a wall or fence under six (6) feet in height, or higher if a retaining wall, and paved terraces, if without walls, roofs or other enclosure, may be erected within the limits of any yard. Utility sheds, used exclusively for the storage of lawn, garden and home care equipment (excluding road vehicles) will be allowed in rear yards but must maintain at least three (3) feet from side or rear lot lines. Such sheds shall not exceed fifteen (15) feet in height nor one hundred fifty (150) square feet in floor area and shall be required to obtain a building permit.

303.4 Nonresidential buildings hereafter constructed or uses hereafter established shall not be located or conducted closer to any lot line in any abutting residential districts than the distance specified in the following schedule:

<u>Use</u>	<u>Minimum Side Or Rear Yard</u>
Off-street parking spaces and access drives for Residential uses (see also 307.2(d))	20 feet
All other nonresidential uses or structures	20 feet

Section 304 TEMPORARY STRUCTURES

Temporary structures used in conjunction with construction work shall be permitted only during the period that the construction work is in progress. Permits for temporary structures shall be issued for a six-month period. Habitation within a basement before completion of the total structure is prohibited.

Section 305 HEIGHT LIMITATIONS

When the following conditions are met, height limits may be increased:

- 305.1 A building's height in excess of the height above average ground level allowed in any particular district may be permitted, provided all minimum front, side and rear yard depths are increased one (1) foot for each additional foot of height.
- 305.2 The following structures are exempt from height regulations provided they do not constitute a hazard to an established airport: television and radio towers, church spires, belfries, cooling towers, ornamental towers and spires, chimneys, elevator bulkheads, smoke stacks, conveyors, flagpoles, silos, standpipes, elevated water tanks, derricks and similar structures.

Section 306 PERFORMANCE STANDARDS

No use, land or structure in any district shall involve any element or cause any condition that may be dangerous, injurious, or noxious to any other property or persons in the Borough or surrounding area. Furthermore, every use of land or structure in any district must observe the following performance requirements:

- 306.1 Fire Protection: Fire protection and fighting equipment approved by the Board of Fire Underwriters shall be readily available when any activity involving the handling or storage of flammable or explosive materials is carried on.
- 306.2 Electrical Disturbances: No activity shall cause electrical disturbances adversely affecting radio or other equipment in the neighboring area.
- 306.3 Noise: Noise which is determined to be objectionable because of volume or frequency shall be muffled or otherwise controlled, except fire sirens and related

apparatus used solely for public purposes, which shall be exempt from this requirement. In the event the applicant and the Borough cannot agree upon the general noise limitations set for the above, the following specific standards shall apply:

Permitted Sound Level In Decibels  
As Measured along the subject property Line

<u>Octave Band Cycles Per Second</u>	<u>Residence</u>	<u>Business and Industrial Districts</u>
0 to 75	67	73
75 to 150	62	68
150 to 300	58	64
300 to 600	54	60
600 to 1,200	49	55
1,200 to 2,400	45	51
2,400 to 4,800	41	47
Over 4,800	37	43

Note: To be measured on the A-weighting scale on a sound-level meter which meets quality standards set by the American National Standards Institute.

- 306.4 Air Quality: Any use which will create smoke, odors or has the potential of air pollution will be required to demonstrate compliance with air quality standards as set by the Pennsylvania Department of Environmental Protection.
- 306.5 Glare: Lighting devices which produce objectionable direct or reflected glare on adjoining properties or thoroughfares shall not be permitted.
- 306.6 Erosion: No erosion by wind or water shall be permitted which will carry objectionable substances onto neighboring properties.
- 306.7 Water Pollution: The method for discharging wastes to public sewers, drains or watercourses shall be acceptable to and approved by the DEP.

Section 307 OFF-STREET LOADING AND PARKING

Off-street loading and parking spaces shall be provided in accordance with the specifications in this section in all districts whenever any new use is established or an existing use is enlarged.

- 307.1 Off-Street Loading: Every building which requires the receipt or distribution by vehicles other than automobiles of material or merchandise shall provide off-street loading berths in accordance with the table below:

## OFF-STREET LOADING SPACE REQUIREMENTS

<u>Use</u>	<u>First Berth</u>	<u>Second Berth</u>
Industrial:*		
Manufacturing	5,000	40,000
Warehouse	5,000	40,000
Storage	10,000	25,000
Commercial:		
Wholesale	10,000	40,000
Retail	10,000	40,000
Service Establishment	10,000	40,000
Restaurants	10,000	25,000
Office Building	10,000	100,000
Hotel	10,000	100,000
Residential:		
Apartment	25,000	100,000
Institutional:		
Schools	10,000	100,000
Hospitals	10,000	100,000
Nursing Homes	10,000	100,000
Public Buildings:		
Auditoriums	10,000	100,000
Arenas	10,000	100,000
Funeral Homes	10,000	100,000

Note: All figures are given in gross feet of floor area for each listed use.

\*Includes private public utility structures.

### 307.2 Off-Street Parking:

307.2 (a) **Size and Access:** Each off-street parking space shall have an area of not less than one hundred eighty (180) square feet, exclusive of access drives or aisles, and shall be maintained in usable shape and condition. Except in the case of dwellings, no parking area shall contain less than three (3) spaces. There shall be adequate ingress and egress to all parking spaces. Each parking area shall be designed to provide sufficient turn-around area so that vehicles are not required to back into major roads. Where a lot does not abut on a public street, private alley

or easement of access, there shall be provided an access drive leading to the parking or storage area or loading spaces. Such access drive shall not be less than ten (10) feet wide. Access to off-street parking areas shall be limited to several well-defined locations, and in no case shall there be unrestricted access along the length of a street or alley.

307.2 (b) Number of Parking Spaces Required: The number of off-street parking spaces required is set forth below. Where their use of the premises is not specifically mentioned, requirements for similar uses shall apply.

PARKING

<u>USE</u>	<u>REQUIRED PARKING SPACES</u>
1. Auto Sales and Service	1 for each 200 sq. ft. GFA
2. Service Stations	1 for each 200 sq. ft. GFA
3. Single-Family Dwelling and Duplex	2 per dwelling unit
4. Multi-Family Dwelling	2.0 per dwelling unit*
5. Mobile Home Park	2.0 per each space
6. Hotels and Motels	1 per guest room**
7. Funeral Homes and Mortuaries	15 for the first parlor 10 for each additional parlor
8. Hospital	1 per each bed**
9. Nursing Homes	1 per each 3 beds
10. Churches	1 per each 4 seats
11. Schools	1 per each teacher and staff 1 for each 4 classrooms plus 1 for each 4 high school students
12. Sports Arenas, Stadiums, Theaters, Auditoriums, Assembly Halls	1 per each 3 seats
13. Community Buildings, Social Halls, Dance Halls, Clubs and Lodges	1 space for each 50 sq. ft. of public floor area
14. Roller Rinks	1 space for each 200 sq. ft. GFA
15. Bowling Alleys	5 per alley
16. Banks and Offices	1 for each 250 sq. ft. GFA
17. Medical Office and Clinics	8 spaces per doctor
18. Dental Offices	5 spaces per doctor
19. Retail Stores	1 per each 200 sq. ft. GFA
20. Fast Food/Drive-In Restaurants	1 per each 50 GFA**
21. Furniture Stores	1 per each 400 sq. ft. GPA
22. Foot Supermarkets	1 per each 200 sq. ft. GFA
23. Trailer and Monument Sales	1 per each 2,500 sq. ft. of lot area

PARKING (Continued)

<u>USE</u>	<u>REQUIRED PARKING SPACES</u>
24. Restaurants, Taverns and Nightclubs	1 for each 2.5 patron seats
25. Swimming Pool (Public)	1 for each 2 patrons
26. Industrial and Manufacturing Establishments, Warehouses, Wholesale and Truck Terminals	1 space per employee on largest shift
27. Personal Service	1 per each 200 sq. ft. GFA
28. Day Care	1 per each 3 students
29. Public Utility Structures	1 per each 400 sq. ft. GFA

\*Multi-Family units devoted to the elderly shall only be required to provide 1 parking space per unit. Such uses must supply adequate proof they will be dedicated to elderly tenants and shall be required to follow normal parking standards if they revert to non-elderly use.

\*\*Plus one (1) space per employee and staff on major shift.

307.2(c) Location of Parking Areas: Required parking spaces shall be located on the same lot with the principal use. The Board may permit parking spaces to be located not more than four hundred (400) feet distant from the lot of the principal use if located in the same zoning district as the principal use, and if the Board finds that it is impractical to provide parking on the same lot with the principal use.

307.2(d) Screening and Landscaping: Off-street parking areas for more than five (5) vehicles, and off-street loading areas, shall be effectively screened on each side which adjoins or faces any residential district.

307.2(e) Minimum Distances and Setbacks: No off-street loading or parking area for nonresidential uses for more than five (5) vehicles shall be closer than twenty (20) feet to any adjoining property containing a dwelling, school, hospital or similar institution and shall be in accordance with Section 303.4 of this Ordinance.

307.2(f) Surfacing: With the exception of dwellings and drive-in theaters, all parking spaces shall have a paved or stoned surface, graded and properly drained to dispose of all surface water, and designed to provide for orderly and safe loading and parking.

307.2(g) Lighting: Any lighting used to illuminate off-street parking or loading areas shall be arranged so as to reflect the light away from adjoining premises in any residential district.

Section 308 PERMANENT FOUNDATIONS

Every dwelling shall be designed and constructed with a permanent foundation, except mobile homes in approved mobile home parks.

308.1 Detached structures erected after May 14, 1979 for use as a garage, storage building or structure of a like type, may be of "approved pole-type" construction.

Section 309 SIGNS

No sign shall be permitted except as herein provided:

309.1 In any district, all signs shall comply with the following general requirements:

309.1(a) They shall not be illuminated in any manner which will cause undue distraction, confusion or hazard to vehicular traffic.

309.1(b) They shall not project over any public right-of-way.

309.1(c) All signs shall be placed at least ten (10) feet back from the front lot line and in no event shall obstruct the view of traffic. At intersections, no sign shall be placed in the clear sight triangle (See Definition Section).

309.2 The following signs, and no others, shall be permitted in residential areas. No permit will be required for such signs.

309.2(a) One (1) sign no exceeding two and one-half (2.5) square feet in area will be permitted which announces the name and/or professional activity of the occupant of the premises on which said sign is located.

309.2(b) One (1) bulletin board not exceeding forty (40) square feet in area will be permitted in connection with any church, school or similar public structure.

309.2(c) One (1) temporary real estate or construction sign not exceeding eight (8) square feet in area will be permitted on property being sold, leased or developed. Such sign shall be removed within sixty (60) days when it has fulfilled its function.

309.2(d) Signs for those running for political office or those posted for political issues will be allowed. They may be up to two (2) square feet in size. No permit shall be required.

309.3 In business and industrial districts, no sign shall be permitted except herein provided.

- 309.3(a) Signs erected or maintained pursuant to and in the discharge of any law, ordinance or governmental regulation will be permitted.
- 309.3(b) One (1) sign in connection with any legal, commercial or industrial use or structure will be permitted on the premises of the business, provided such sign contains no information beyond the name, symbol, products sold and nature of the business, providing that if said commercial use or structure faces more than one (1) road, one (1) sign shall be allowed on each road frontage.
- 309.3(c) Both advertising (billboards) and business signs shall be allowed. Advertising signs will only be allowed in the industrial area.
- 309.3(d) They shall have an aggregate area not greater than ten percent (10%) of the total frontal area of the principal building on the premises. If on a corner lot, each side shall be permitted the required area. If the sign is placed on a vacant lot, a sign area of up to fifty (50) square feet shall be allowed.

Section 310 AGRICULTURE

Agriculture uses shall comply with the following:

- 310.1 No farm building other than a dwelling may be erected within three hundred (300) feet of a neighboring residential building.
- 310.2 Facilities intensively used for animal raising and care, including, but not limited to, feed lots, runs and pens, shall not be constructed within five hundred (500) feet of any neighboring residential building.
- 310.3 Roadside stands for the sale of agriculture products shall be permitted providing:
  - 310.3(a) They are erected at least fifty (50) feet back from the nearest edge of the roadway surface.
  - 310.3(b) Parking spaces are provided off the road right-of-way.

Section 311 FLOOD PLAIN REGULATIONS (amended Ordinance No. 2-2014, February 10, 2014)

311.1 Statutory Authorization

The Legislature of the Commonwealth of Pennsylvania has, by the passage of the Pennsylvania Flood Plain Management Act of 1978, delegated the responsibility to local governmental units to adopt floodplain management regulations to promote public health, safety, and the general welfare of its citizenry. Therefore, the Council of McKean Borough does hereby order as follows:

## Section 311.2 General Provisions

### (A) Intent:

The intent of the regulations contained in this Section 311 (“these Regulations”) is to:

- (1) Promote the general health, welfare, and safety of McKean Borough.
- (2) Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future.
- (3) Minimize danger to public health by protecting water supply and natural drainage.
- (4) Reduce financial burdens imposed on McKean Borough, its governmental units, and its residents, by preventing excessive development in areas subject to flooding.
- (5) Comply with federal and state floodplain management requirements.

### (B) Applicability

- (1) It shall be unlawful for any person, partnership, business or corporation to undertake, or cause to be undertaken, any construction or development anywhere within the Borough of McKean unless a Permit has been obtained from the Floodplain Administrator.
- (2) Permit shall not be required for minor repairs to existing buildings or structures.

### (C) Abrogation and Greater Restrictions

These Regulations supersede any other conflicting provisions which may be in effect in identified floodplain areas. However, any other ordinance provisions shall remain in full force and effect to the extent that those provisions are more restrictive. If there is any conflict between any of the provisions of these Regulations or the McKean Borough Zoning Ordinance (the “Ordinance”), the more restrictive shall apply.

### (D) Severability

If any section, subsection, paragraph, sentence, clause, or phrase of these Regulations shall be declared invalid for any reason whatsoever, such a decision shall not affect the remaining portions of these Regulations, which shall remain in

full force and effect, and for this purpose the provisions of these Regulations are hereby declared to be severable.

(E) Warning and Disclaimer of Liability

The degree of flood protection sought by the provisions of these Regulations is considered reasonable for regulatory purposes and is based on accepted engineering methods of study. Larger floods may occur or flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. These Regulations do not imply that areas outside any identified floodplain areas, or that land uses permitted within such areas will be free from flooding or flood damages.

These Regulations shall not create liability on the part of the Borough or any officer or employee thereof for any flood damages that result from reliance on these Regulations or any administrative decision lawfully made thereunder.

311.3 Administration

(A) Designation of the Floodplain Administrator

The Zoning Officer is hereby appointed to administer and enforce these Regulations and is referred to herein as the Floodplain Administrator. The Floodplain Administrator may: (A) Fulfill the duties and responsibilities set forth in these Regulations, (B) Delegate duties and responsibilities set forth in these Regulations to qualified technical personnel, plan examiners, inspectors, and other employees, or (C) Enter into a written agreement or written contract with another agency or private sector entity to administer specific provisions of these Regulations. Administration of any part of these Regulations by another entity shall not relieve the Borough of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program (“NFIP”) as set forth in the Code of Federal Regulations at 44 C.F.R. Section 59.22.

In the absence of a designated Floodplain Administrator, the Floodplain Administrator duties are to be fulfilled by the President of McKean Borough Council.

(B) Permits Required

A Floodplain Development Permit (a “Permit”) shall be required before any construction or development is undertaken within any area of the Borough of McKean.

(C) Duties and Responsibilities of the Floodplain Administrator

- (1) The Floodplain Administrator shall issue a Permit only after it has been determined that the proposed work to be undertaken will be in

conformance with the requirements of this and all other applicable codes and ordinances.

- (2) Prior to the issuance of any permit, the Floodplain Administrator shall review the application for the permit to determine if all other necessary government permits required by state and federal laws have been obtained, such as those required by the Pennsylvania Sewage Facilities Act (Act 1966-537, as amended); the Pennsylvania Dam Safety and Encroachments Act (Act 1978-325, as amended); the Pennsylvania Clean Streams Act (Act 1937-394, as amended); and the U.S. Clean Water Act, Section 404, 33, U.S.C. 1344. No permit shall be issued until this determination has been made.
- (3) During the construction period, the Floodplain Administrator or other authorized official shall inspect the premises to determine that the work is progressing in compliance with the information provided on the Permit application and with these Regulations all applicable municipal laws and ordinances. The Floodplain Administrator shall make as many inspections during and upon completion of the work as are necessary.
- (4) In the discharge of his/her duties, the Floodplain Administrator shall have the authority to enter any building, structure, premises or development in the identified floodplain area, upon presentation of proper credentials, at any reasonable hour to enforce the provisions of these Regulations.
- (5) In the event the Floodplain Administrator discovers that the work does not comply with the permit application, these Regulations, or any other applicable laws and ordinances, or that there has been a false statement or misrepresentation by any applicant, the Floodplain Administrator shall revoke the Permit and report such fact to the Council of McKean Borough for whatever action it considers necessary.
- (6) The Floodplain Administrator shall maintain in perpetuity all records associated with the requirements of this ordinance including, but not limited to, finished construction elevation data, permitting, inspection and enforcement.
- (7) The Floodplain Administrator is the official responsible for submitting a biennial report to the U.S. Federal Emergency Management Agency (“FEMA”) concerning community participation in the National Flood Insurance Program.
- (8) The responsibility, authority and means to implement the commitments of the Floodplain Administrator can be delegated from the person identified. However, the ultimate responsibility lies with the person identified in these Regulations as the floodplain administrator/manager.

- (9) The Floodplain Administrator shall consider the requirements of Part XIV of Title 34 of the PA Code, as amended, and the 2009 International Building Code (“IBC”) and the 2009 International Residential Code (“IRC”) or latest revisions thereof to be adopted by the Pennsylvania Legislature.

(D) Application Procedures and Requirements

- (1) Application for such a Permit shall be made, in writing, to the Floodplain Administrator on forms supplied by the Borough. Such application shall contain the following:
  - (a) Name and address of applicant.
  - (b) Name and address of owner of land on which proposed construction is to occur.
  - (c) Name and address of contractor.
  - (d) Site location including address and Erie County Tax Identification Number.
  - (e) Listing of other permits required.
  - (f) Brief description of proposed work and estimated cost, including a breakout of flood-related cost and the market value of the building before the flood damage occurred where appropriate.
  - (g) A plan of the site showing the exact size and location of the proposed construction as well as any existing buildings or structures.
- (2) If any proposed construction or development is located entirely or partially within any identified floodplain area, applicants for Permits shall provide all the necessary information in sufficient detail and clarity to enable the Floodplain Administrator to determine that:
  - (a) all such proposals are consistent with the need to minimize flood damage and conform with the requirements of this and all other applicable codes and ordinances;
  - (b) all utilities and facilities, including but not limited to sewer, gas, electrical and water systems, are located and constructed to minimize or eliminate flood damage;
  - (c) adequate drainage is provided so as to reduce exposure to flood hazards;

- (d) structures will be anchored to prevent floatation, collapse, or lateral movement;
  - (e) building materials are flood-resistant;
  - (f) appropriate practices that minimize flood damage have been used; and
  - (g) electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities have been designed and located to prevent water entry or accumulation.
- (3) The Applicant shall file the following minimum information plus any other pertinent information as may be required by the Floodplain Administrator to make the above determination:
- (a) A completed Permit Application Form.
  - (b) A plan of the entire site, clearly and legibly drawn at a scale of one (1) inch being equal to one hundred (100) feet or less, showing the following:
    - i. north arrow, scale, and date;
    - ii. topographic contour lines, if available;
    - iii. the location of all existing and proposed buildings, structures, and other improvements, including the location of any existing or proposed subdivision and development;
    - iv. the location of all existing streets, drives, and other access ways; and
    - v. the location of any existing bodies of water or watercourses, identified floodplain areas, and, if available, information pertaining to the floodway, and the flow of water including direction and velocities.
  - (c) Plans of all proposed buildings, structures and other improvements, drawn at suitable scale showing the following:
    - i. the proposed lowest floor elevation of any proposed building based upon North American Vertical Datum of 1988;
    - ii. the elevation of the base flood;
    - iii. detailed information concerning any proposed

floodproofing measures and corresponding elevations;

- iv. supplemental information as may be necessary under Part XIV of Title 34 of the PA Code, as amended, and the 2009 IBC and the 2009 IRC or latest revisions thereof to be adopted by the Pennsylvania Legislature.

(d) The following data and documentation:

- i. if available, information concerning flood depths, pressures, velocities, impact and uplift forces and other factors associated with a base flood; and Floodway Area (See Section 311.4(B)(1)) when combined with all other existing and anticipated development, will not increase the base flood elevation at any point.
- ii. documentation, certified by a registered professional engineer or architect, to show that the cumulative effect of any proposed development within an AE Area/District without floodway (See Section 311.4(B)(2)) when combined with all other existing and anticipated development, will not increase the base flood elevation more than one (1) foot at any point within McKean Borough.
- iii. a document, certified by a registered professional engineer or architect, which states that the proposed construction or development has been adequately designed to withstand the pressures, velocities, impact and uplift forces associated with the base flood.

Such statement shall include a description of the type and extent of flood proofing measures which have been incorporated into the design of the structure and/or the development.

- iv. detailed information needed to determine compliance with Section 311.5(C)(6), Storage, and Section 311.5(D), Development Which May Endanger Human Life, including:
  - aa. the amount, location and purpose of any materials or substances referred to in Sections 311.5 (C) and (D) which are intended to be used, produced, stored or otherwise maintained on site.
  - bb. description of the safeguards incorporated into the

design of the proposed structure to prevent leaks or spills of the dangerous materials or substances listed in Section 311.5 (D) during a base flood.

- v. the appropriate component of the Department of Environmental Protection's "Planning Module for Land Development."
- vi. where any excavation or grading is proposed, a plan meeting the requirements of the Department of Environmental Protection, to implement and maintain erosion and sedimentation control.

- (4) Applications for Permits shall be accompanied by a fee as established and/or revised from time to time by a Resolution of the Council of McKean Borough, payable to McKean Borough, based upon the estimated cost of the proposed construction as determined by the Floodplain Administrator.

(E) Review by County Conservation District

A copy of all applications and plans for any proposed construction or development in any identified floodplain area to be considered for approval shall be submitted by the Floodplain Administrator to the County Conservation District for review and comment prior to the issuance of a Permit. The recommendations of the Conservation District shall be considered by the Floodplain Administrator for possible incorporation into the proposed plan.

(F) Review of Application by Others

A copy of all plans and applications for any proposed construction or development in any identified floodplain area to be considered for approval may be submitted by the Floodplain Administrator to any other appropriate agencies and/or individuals (e.g. planning commission, municipal engineer, etc.) for review and comment.

(G) Changes

After the issuance of a Permit by the Floodplain Administrator, no changes of any kind shall be made to the application, permit or any of the plans, specifications or other documents submitted with the application without the written consent or approval of the Floodplain Administrator. Requests for any such change shall be in writing, and shall be submitted by the applicant to Floodplain Administrator for consideration.

(H) Placards

In addition to the Permit, the Floodplain Administrator shall issue a placard which shall be displayed on the premises during the time construction is in progress. This placard shall show the number of the Permit, the date of its issuance, and be signed by the Floodplain Administrator.

(I) Start of Construction

Work on the proposed construction or development shall begin within 180 days after the date of issuance of the Permit. Work shall also be completed within twelve (12) months after the date of issuance of the Permit or the Permit shall expire unless a time extension is granted, in writing, by the Floodplain Administrator. The issuance of a Permit does not refer to zoning approval.

The actual start of construction means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufacture home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first, alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Time extensions shall be granted only if a written request is submitted by the applicant, who sets forth sufficient and reasonable cause for the Floodplain Administrator to approve such a request and the original Permit is compliant with these Regulations and the Flood Insurance Rates Maps (“FIRM”) and Flood Insurance Study (“FIS”) in effect at the time the extension is granted.

(J) Enforcement

(1) Notices

Whenever the Floodplain Administrator or other authorized municipal representative determines that there are reasonable grounds to believe that there has been a violation of any provisions of these Regulations, the Floodplain Administrator shall give notice of such alleged violation as hereinafter provided. Such notice shall conform to Article 4 of this Ordinance and shall:

- (a) be in writing;

- (b) include a statement of the reasons for its issuance;
- (c) allow a reasonable time not to exceed a period of thirty (30) days for the performance of any act it requires;
- (d) be served upon the property owner or his agent as the case may require pursuant to Article 4 of this Ordinance;
- (e) contain an outline of remedial actions which, if taken, will effect compliance with the provisions of these Regulations.

(2) Penalties

Any person who fails to comply with any or all of the requirements or provisions of this Ordinance or who fails or refuses to comply with any notice, order of direction of the Floodplain Administrator or any other authorized employee of the Borough shall pay a fine for each day of noncompliance and/or violation to McKean Borough, of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) plus costs of prosecution, including but not limited to all attorney, engineering, and other such professional fees and costs incurred by the Borough in such prosecution. In addition to the above penalties, all other actions are hereby reserved including an action in equity for the proper enforcement of these Regulations. The imposition of a fine or penalty for any violation of, or noncompliance with these Regulations shall not excuse the violation or noncompliance or permit it to continue. All such persons shall be required to correct or remedy such violations and noncompliance within a reasonable time. Any development initiated or any structure or building constructed, reconstructed, enlarged, altered, or relocated, in noncompliance with these Regulations may be declared by the Council of McKean Borough to be a public nuisance and abatable as such. See also Article 4 of this Ordinance

(K) Appeals

- (1) Any person aggrieved by any action or decision of the Floodplain Administrator concerning the administration of the provisions of these Regulations, may appeal to the Zoning Hearing Board. Such appeal must be filed, in writing, within thirty (30) days after the decision, determination or action of the Floodplain Administrator.
- (2) Upon receipt of such appeal, the Zoning Hearing Board shall consider the appeal in accordance with this Ordinance, the Municipal Planning Code and any other applicable local ordinance.
- (3) Any person aggrieved by any decision of the Zoning Hearing Board may seek relief therefrom by appeal to court, as provided by this Ordinance and

the laws of the State including the Pennsylvania Flood Plain Management Act.

#### 311.4 Identification of Floodplain Areas

##### (A) Identification

The identified floodplain area shall be:

- (1) any areas of McKean Borough, classified as Special Flood Hazard Areas (SFHAs) in the Flood Insurance Study (FIS) and the accompanying Flood Insurance Rate Maps (FIRMs) dated February 19, 2014 and issued by FEMA or the most recent revision thereof, including all digital data developed as part of the Flood Insurance Study and,

The above referenced FIS and FIRMs, and any subsequent revisions and amendments are hereby adopted by McKean Borough and declared to be a part of these Regulations.

##### (B) Description and Special Requirements of Identified Floodplain Areas

The identified floodplain area shall consist of the following specific areas:

- (1) The Floodway Area shall be those areas identified in the FIS and the FIRM as floodway and which represent the channel of a watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without increasing the water surface elevation by more than one (1) foot at any point. This term shall also include floodway areas which have been identified in other available studies or sources of information for those Special Flood Hazard Areas where no floodway has been identified in the FIS and FIRM.
  - (a) Within any floodway area, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within McKean Borough during the occurrence of the base flood discharge.
  - (b) Within any floodway area, no new construction or development shall be allowed, unless the appropriate permit is obtained from the Department of Environmental Protection Regional Office.
- (2) The AE Area/District shall be those areas identified as an AE Zone on the FIRM included in the FIS prepared by FEMA for which base flood

elevations have been provided.

- (a) The AE Area adjacent to the floodway shall be those areas identified as an AE Zone on the FIRM included in the FIS prepared by FEMA for which base flood elevations have been provided and a floodway has been delineated.
- (b) AE Area without floodway shall be those areas identified as an AE zone on the FIRM included in the FIS prepared by FEMA for which base flood elevations have been provided but no floodway has been determined.
  - i. No permit shall be granted for any construction, development, use, or activity within any AE Area/District without floodway unless it is demonstrated that the cumulative effect of the proposed development would not, together with all other existing and anticipated development, increase the base flood elevation (“BFE”) more than one (1) foot at any point.
  - ii. No new construction or development shall be located within the area measured fifty (50) feet landward from the top-of-bank of any watercourse, unless the appropriate permit is obtained from the Department of Environmental Protection Regional Office.
- (3) The A Area/District shall be those areas identified as an A Zone on the FIRM included in the FIS prepared by FEMA and for which no base flood elevations have been provided. For these areas, elevation and floodway information from other Federal, State, or other acceptable sources shall be used when available. Where other acceptable information is not available, the base flood elevation shall be determined by using the elevation of a point on the boundary of the identified floodplain area which is nearest the construction site.

In lieu of the above, the municipality may require the applicant to determine the elevation with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the Borough.

- (4) The AO and AH Area/ District shall be those areas identified as Zones AO and AH on the FIRM and in the FIS. These areas are subject to inundation by 1-percent-annual-chance shallow flooding where average depths are

between one and three feet. In Zones AO and AH, drainage paths shall be established to guide floodwaters around and away from structures on slopes.

(C) Changes in Identification of Area

The Identified Floodplain Area may be revised or modified by Borough Council, where studies or information provided by a qualified agency or person documents the need for such revision. However, prior to any such change to the Special Flood Hazard Area, approval must be obtained from FEMA. Additionally, as soon as practicable, but not later than six (6) months after the date such information becomes available, a community shall notify FEMA of the changes to the Special Flood Hazard Area by submitting technical or scientific data. See Section 311.5(A)(2) for situations where FEMA notification is required.

(D) Boundary Disputes

Should a dispute concerning any identified floodplain boundary arise, an initial determination shall be made by McKean Borough and any party aggrieved by this decision or determination may appeal to the McKean Borough Council. The burden of proof shall be on the appellant.

(E) Jurisdictional Boundary Changes

Prior to development occurring in areas where annexation or other corporate boundary changes are proposed or have occurred, the community shall review flood hazard data affecting the lands subject to boundary changes. The Borough shall adopt and enforce floodplain regulations in areas subject to annexation or corporate boundary changes which meet or exceed those in CFR 44 60.3.

311.5 Technical Provisions

(A) General

(1) Alteration or Relocation of Watercourse

- (a) No encroachment, alteration, or improvement of any kind shall be made to any watercourse until all adjacent municipalities which may be affected by such action have been notified by the municipality, and until all required permits or approvals have first been obtained from the Department of Environmental Protection Regional Office.
- (b) No encroachment, alteration, or improvement of any kind shall be made to any watercourse unless it can be shown that the activity

will not reduce or impede the flood carrying capacity of the watercourse in any way.

- (c) In addition, FEMA and the Pennsylvania Department of Community and Economic Development, shall be notified prior to any alteration or relocation of any watercourse.

(2) When a community proposes to permit the following encroachments:

- any development that causes a rise in the base flood elevations within the floodway; or
- any development occurring in Zones A1-30 and Zone AE without a designated floodway, which will cause a rise of more than one foot in the base flood elevation; or
- alteration or relocation of a stream (including but not limited to installing culverts and bridges)

the Borough shall (as per 44 CFR Part 65.12):

- (a) apply to FEMA for conditional approval of such action prior to permitting the encroachments to occur.
- (b) Upon receipt of the Administrator's conditional approval of map change and prior to approving the proposed encroachments, a community shall provide evidence to FEMA of the adoption of floodplain management ordinances incorporating the increased base flood elevations and / or revised floodway reflecting the post-project condition.
- (c) Upon completion of the proposed encroachments, the Borough shall provide as-built certifications. FEMA will initiate a final map revision upon receipt of such certifications in accordance with 44 CFR Part 67.

- (3) Any new construction, development, uses or activities allowed within any identified floodplain area shall be undertaken in strict compliance with the provisions contained in these Regulations and any other applicable codes, ordinances and regulations.

(B) Elevation and Floodproofing Requirements

Within any Identified Floodplain Area, any new construction or substantial improvements shall be prohibited. If a variance is obtained for new construction

or substantial improvements in the Identified Floodplain Area in accordance with the criteria in Section 311.8, then the following provisions apply:

(1) Residential Structures

- (a) In AE, A1-30, and AH Zones, any new construction or substantial improvement shall have the lowest floor (including basement) elevated up to, or above, the regulatory flood elevation.
- (b) In A Zones, where there are no Base Flood Elevations specified on the FIRM, any new construction or substantial improvement shall have the lowest floor (including basement) elevated up to, or above, the regulatory flood elevation determined in accordance with Section 311.4(B)(3).
- (c) In AO Zones, any new construction or substantial improvement shall have the lowest floor (including basement) at or above the highest adjacent grade at least as high as the depth number specified on the FIRM.
- (d) The design and construction standards and specifications contained in the 2009 IBC and in the 2009 IRC or the most recent revisions thereof to be adopted by the Pennsylvania Legislature and ASCE 24 and Part XIV of Title 34 of the PA Code, as amended, shall be utilized, where they are more restrictive.

(2) Non-residential Structures

- (a) In AE, A1-30 and AH Zones, any new construction or substantial improvement of a non-residential structure shall have the lowest floor (including basement) elevated up to, or above, the regulatory flood elevation, or be designed and constructed so that the space enclosed below the regulatory flood elevation:
  - i. is floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water and,
  - ii. has structural components with the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy:
- (b) In A Zones, where there no Base Flood Elevations are specified on the FIRM, any new construction or substantial improvement shall have the lowest floor (including basement) elevated or completely floodproofed up to, or above, the regulatory flood elevation

determined in accordance with Section 311.4(B)(3).

- (c) In AO Zones, any new construction or substantial improvement shall have their lowest floor elevated or completely floodproofed above the highest adjacent grade to at least as high as the depth number specified on the FIRM.
- (d) Any non-residential structure, or part thereof, made watertight below the regulatory flood elevation shall be floodproofed in accordance with the WI or W2 space classification standards contained in the publication entitled "Flood-Proofing Regulations" published by the U.S. Army Corps of Engineers (June 1972, as amended March 1992) or with some other equivalent standard. All plans and specifications for such floodproofing shall be accompanied by a statement certified by a registered professional engineer or architect which states that the proposed design and methods of construction are in conformance with the above referenced standards.
- (d) The design and construction standards and specifications contained in the 2009 IBC and in the 2009 IRC or the most recent revisions thereof to be adopted by the Pennsylvania Legislature and ASCE 24 and Part XIV of Title 34 of the PA Code as amended, shall be utilized, where they are more restrictive.

(3) Space below the lowest floor

- (a) Fully enclosed space below the lowest floor (excluding basements) which will be used solely for the parking of a vehicle, building access, or incidental storage in an area other than a basement, shall be designed and constructed to allow for the automatic entry and exit of flood waters for the purpose of equalizing hydrostatic forces on exterior walls. The term "fully enclosed space" also includes crawl spaces.
- (b) Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria:
  - i. a minimum of two openings having a net total area of not less than one (1) square inch for every square foot of enclosed space.
  - ii. the bottom of all openings shall be no higher than one (1) foot above grade.
  - iii. openings may be equipped with screens, louvers, or other

coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(4) Historic Structures

Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined in this ordinance, must comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from Regulation requirements will be the minimum necessary to preserve the historic character and design of the structure.

(5) Accessory structures

Structures accessory to a principal building need not be elevated or floodproofed to remain dry, but shall comply, at a minimum, with the following requirements:

- (a) the structure shall not be designed or used for human habitation, but shall be limited to the parking of vehicles, or to the storage of tools, material, and equipment related to the principal use or activity.
- (b) floor area shall not exceed 200 square feet.
- (c) The structure will have a low damage potential.
- (d) The structure will be located on the site so as to cause the least obstruction to the flow of flood waters.
- (e) power lines, wiring, and outlets will be elevated to the regulatory flood elevation.
- (f) permanently affixed utility equipment and appliances such as furnaces, heaters, washers, dryers, etc. are prohibited.
- (g) sanitary facilities are prohibited.
- (h) the structure shall be adequately anchored to prevent flotation, collapse, and lateral movement and shall be designed to automatically provide for the entry and exit of floodwater for the purpose of equalizing hydrostatic forces on the walls. Designs for

meeting this requirement must either be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria:

- i. a minimum of two openings having a net total area of not less than one (1) square inch for every square foot of enclosed space.
- ii. the bottom of all openings shall be no higher than one (1) foot above grade.
- iii. openings may be equipped with screens, louvers, etc. or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

(C) Design and Construction Standards

The following minimum standards shall apply for all construction and development proposed within any identified floodplain area:

(1) Fill

Within any Identified Floodplain Area the use of fill shall be prohibited.

(2) Drainage Facilities

Storm drainage facilities shall be designed to convey the flow of storm water runoff in a safe and efficient manner. The system shall ensure proper drainage along streets, and provide positive drainage away from buildings. The system shall also be designed to prevent the discharge of excess runoff onto adjacent properties.

(3) Water and Sanitary Sewer Facilities and Systems

- (a) All new or replacement water supply and sanitary sewer facilities and systems shall be located, designed and constructed to minimize or eliminate flood damages and the infiltration of flood waters.
- (b) Sanitary sewer facilities and systems shall be designed to prevent the discharge of untreated sewage into flood waters.
- (c) No part of any on-site waste disposal system shall be located within any identified floodplain area except in strict compliance with all State and local regulations for such systems. If any such system is permitted, it shall be located so as to avoid impairment to it, or contamination from it, during a flood.

(d) The design and construction provisions of the Pennsylvania Uniform Construction Code and FEMA #348, “Protecting Building Utilities From Flood Damages” and “The International Private Sewage Disposal Code” shall be utilized.

(4) Other Utilities

All other utilities such as gas lines, electrical and telephone systems shall be located, elevated (where possible) and constructed to minimize the chance of impairment during a flood.

(5) Streets

The finished elevation of all new streets shall be no more than one (1) foot below the Regulatory Flood Elevation.

(6) Storage

All materials that are buoyant, flammable, explosive, or in times of flooding, could be injurious to human, animal, or plant life, and not listed in Section 311.5(D), Development Which May Endanger Human Life, shall be stored at or above the Regulatory Flood Elevation or floodproofed to the maximum extent possible.

(7) Placement of Buildings and Structures

All buildings and structures shall be designed, located, and constructed so as to offer the minimum obstruction to the flow of water and shall be designed to have a minimum effect upon the flow and height of flood water.

(8) Anchoring

(a) All buildings and structures shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, or lateral movement.

(b) All air ducts, large pipes, storage tanks, and other similar objects or components located below the regulatory flood elevation shall be securely anchored or affixed to prevent flotation.

(9) Floors, Walls and Ceilings

(a) Wood flooring used at or below the Regulatory Flood Elevation shall be installed to accommodate a lateral expansion of the flooring, perpendicular to the flooring grain without causing structural damage to the building.

- (b) Plywood used at or below the regulatory flood elevation shall be of a "marine" or "water-resistant" variety.
  - (c) Walls and ceilings at or below the regulatory flood elevation shall be designed and constructed of materials that are "water-resistant" and will withstand inundation.
  - (d) Windows, doors, and other components at or below the regulatory flood elevation shall be made of metal or other "water-resistant" material.
- (10) Paints and Adhesives
- (a) Paints and other finishes used at or below the regulatory flood elevation shall be of "marine" or "water-resistant" quality.
  - (b) Adhesives used at or below the regulatory flood elevation shall be of a "marine" or "water-resistant" variety.
  - (c) All wooden components (doors, trim, cabinets, etc.) used at or below the regulatory flood elevation shall be finished with a "marine" or "water-resistant" paint or other finishing material.
- (11) Electrical Components
- (a) Electrical distribution panels shall be at least three (3) feet above the base flood elevation.
  - (b) Separate electrical circuits shall serve lower levels and shall be dropped from above.
- (12) Equipment
- Water heaters, furnaces, air conditioning and ventilating units, and other electrical, mechanical or utility equipment or apparatus shall not be located below the regulatory flood elevation.
- (13) Fuel Supply Systems
- All gas and oil supply systems shall be designed to prevent the infiltration of flood waters into the system and discharges from the system into flood waters. Additional provisions shall be made for the drainage of these systems in the event that flood water infiltration occurs.
- (14) Uniform Construction Code Coordination

The Standards and Specifications contained Part XIV of Title 34 of the PA Code, as amended, and not limited to the following provisions shall apply to the above and other sections and sub-sections of this ordinance, to the extent that they are more restrictive and supplement the requirements of these Regulations.

1603, International Building Code (IBC) 2009 or the latest edition thereof to be adopted by the Pennsylvania Legislature: Secs. 801, 1202, 1403, 1605, 1612, 3402, and Appendix G.

International Residential Building Code (IRC) 2009 or the latest edition thereof to be adopted by the Pennsylvania Legislature: Secs. R104, R105, R109, R322, Appendix E, and Appendix J.

(D) Development Which May Endanger Human Life

Within any Identified Floodplain Area, any structure of the kind described in Subsection (1), below, shall be prohibited.

- (1) In accordance with the Pennsylvania Flood Plain Management Act, and the regulations adopted by the Department of Community and Economic Development as required by the Act, any new or substantially improved structure which:
  - (a) will be used for the production or storage of any of the following dangerous materials or substances; or,
  - (b) will be used for any activity requiring the maintenance of a supply of more than 550 gallons, or other comparable volume, of any of the following dangerous materials or substances on the premises; or,
  - (c) will involve the production, storage, or use of any amount of radioactive substances;

shall be subject to the provisions of this section, in addition to all other applicable provisions. The following list of materials and substances are considered dangerous to human life:

- Acetone
- Ammonia
- Benzene
- Calcium carbide
- Carbon disulfide
- Celluloid
- Hydrochloric acid
- Hydrocyanic acid

- Magnesium
- Nitric acid and oxides of nitrogen
- Petroleum products (gasoline, fuel oil, etc.)
- Phosphorus
- Potassium
- Sodium
- Sulphur and sulphur products
- Pesticides (including insecticides, fungicides, and rodenticides)
- Radioactive substances, insofar as such substances are not otherwise regulate

(E) Special Requirements for Subdivisions and Development

All subdivision proposals and development proposals containing at least 50 lots or at least 5 acres, whichever is the lesser, in Identified Floodplain Areas where base flood elevation data are not available, shall be supported by hydrologic and hydraulic engineering analyses that determine base flood elevations and floodway information. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for a Conditional Letter of Map Revision and Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant.

(F) Special Requirements for Manufactured Homes

Within any Identified Floodplain Area, manufactured homes shall be prohibited.

(G) Special Requirements for Recreational Vehicles

Within any Identified Floodplain Area recreational vehicles shall be prohibited.

311.6 Prohibited Activities

(A) General

In accordance with the administrative regulations promulgated by the Department of Community and Economic Development to implement the Pennsylvania Flood Plain Management Act, the following activities shall be prohibited within any Identified Floodplain Area:

- (1) Hospitals
- (2) Nursing homes
- (3) Jails or prisons
- (4) Residential principal structures

- (5) Commercial and Industrial principal structures
- (6) New manufactured homes parks and manufactured home subdivision, and substantial improvements thereto
- (7) Facilities necessary for emergency response, such as fire, ambulance, and police stations, civil defense preparedness buildings and facilities, emergency communications facilities, evacuation and emergency medical centers

### 311.7 Existing Structures in identified floodplain areas

#### (A) Existing Structures

The provisions of these Regulations do not require any changes or improvements to be made to lawfully existing structures. However, when an improvement is made to any existing structure, the provisions of Section B shall apply.

#### (B) Improvements

The following provisions shall apply whenever any improvement is made to an existing structure located within any Identified Floodplain Area:

- (1) No expansion or enlargement of an existing structure shall be allowed within any Floodway Area/District that would cause any increase in BFE.
- (2) No expansion or enlargement of an existing structure shall be allowed within AE Area/District without floodway that would, together with all other existing and anticipated development, increase the BFE more than one (1) foot at any point.
- (3) Any modification, alteration, reconstruction, or improvement of any kind to an existing structure to an extent or amount of fifty (50) percent or more of its market value, shall constitute a substantial improvement and shall be undertaken only in full compliance with the provisions of these Regulations.
- (4) The above activity shall also address the requirements of Part XIV of Title 34 of the PA Code, as amended, and the 2009 IBC and the 2009 IRC.
- (5) Within any Floodway Area/District (See Article 311.4(B)(1)), no new construction or development shall be allowed, unless the appropriate permit is obtained from the Department of Environmental Protection Regional Office.
- (6) Within any AE Area/District without Floodway (See Section 311.4(B)(2)), no new construction or development shall be located within the area

measured fifty (50) feet landward from the top-of-bank of any watercourse unless the appropriate permit is obtained from the Department of Environmental Protection Regional Office.

### 311.8 Variances

#### (A) General

If compliance with any of the requirements of these Regulations would result in an exceptional hardship to a prospective builder, developer or landowner, the McKean Borough Zoning Hearing Board (“ZHB”) may, upon request, grant relief from the strict application of the requirements.

#### (B) Variance Procedures and Conditions

Requests for variances shall be considered by the ZHB in accordance with the procedures contained in Section 311.3(K), Article 5 of this Ordinance and the following:

- (1) No variance shall be granted within any Identified Floodplain Area that would cause any increase in BFE. In A Area/District, BFEs are determined using the methodology in Article 311.4(B)(3).
- (2) Except for a possible modification of the regulatory flood elevation requirement involved, no variance shall be granted for any of the other requirements pertaining specifically to development regulated by Prohibited Activities (Section 311.6) or to Development Which May Endanger Human Life (Section 311.5(D)).
- (3) If granted, a variance shall involve only the least modification necessary to provide relief.
- (4) In granting any variance, the ZHB shall attach whatever reasonable conditions and safeguards it considers necessary in order to protect the public health, safety, and welfare, and to achieve the objectives of these Regulations.
- (5) Whenever a variance is granted, McKean Borough shall notify the applicant in writing that:
  - (a) The granting of the variance may result in increased premium rates for flood insurance.
  - (b) Such variances may increase the risks to life and property.

- (6) In reviewing any request for a variance, the ZHB shall consider, at a minimum, the following:
- (a) That there is good and sufficient cause.
  - (b) That failure to grant the variance would result in exceptional hardship to the applicant.
  - (c) That the granting of the variance will
    - i. neither result in an unacceptable or prohibited increase in flood heights, additional threats to public safety, or extraordinary public expense,
    - ii. nor create nuisances, cause fraud on, or victimize the public, or conflict with any other applicable state or local ordinances and regulations.
- (7) A complete record of all variance requests and related actions shall be maintained by McKean Borough. In addition, a report of all variances granted during the year shall be included in the annual report to the FEMA.

Notwithstanding any of the above, however, all structures shall be designed and constructed so as to have the capability of resisting the one-percent (1%) annual chance flood.

### 311.9 Definitions

(A) General

Unless specifically defined below, words and phrases used in these Regulations shall be interpreted so as to give these Regulations their most reasonable application.

(B) Specific Definitions

**Accessory use or structure** - a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

**Base flood** - a flood which has a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood" or one-percent (1%) annual chance flood).

**Base flood discharge** - the volume of water resulting from a Base Flood as it

passes a given location within a given time, usually expressed in cubic feet per second (cfs).

**Base flood elevation (BFE)** - the elevation shown on the Flood Insurance Rate Map (FIRM) for Zones AE, AH, A1-30 that indicates the water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year.

**Basement** - any area of the building having its floor below ground level on all sides.

**Building** - a combination of materials to form a permanent structure having walls and a roof. Included shall be all manufactured homes and trailers to be used for human habitation.

**Development** - any man-made change to improved or unimproved real estate, including but not limited to the construction, reconstruction, renovation, repair, expansion, or alteration of buildings or other structures; the placement of manufactured homes; streets, and other paving; utilities; filling, grading and excavation; mining; dredging; drilling operations; storage of equipment or materials; and the subdivision of land.

**Existing manufactured home park or subdivision** – a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

**Expansion to an existing manufactured home park or subdivision** – the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**Flood** - a temporary inundation of normally dry land areas.

**Flood Insurance Rate Map (FIRM)** - the official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to McKean Borough.

**Flood Insurance Study (FIS)** - the official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Insurance Rate Map, the Flood Boundary and Floodway Map, and the water surface elevation of the base flood.

**Floodplain area** - a relatively flat or low land area which is subject to partial or

complete inundation from an adjoining or nearby stream, river or watercourse; and/or any area subject to the unusual and rapid accumulation of surface waters from any source.

**Floodproofing** - any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents

**Floodway** - the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

**Highest Adjacent Grade:** The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**Historic structures** – any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states which have been approved by the Secretary of the Interior; or
- (4) Individually listed on a local inventory of historic places in communities with historic preservation that have been certified either:
  - (a) By an approved state program as determined by the Secretary of the Interior or
  - (b) Directly by the Secretary of the Interior in states without approved programs.

**Identified Floodplain Area** - This term is an umbrella term that includes all of the areas within which the community has selected to enforce floodplain regulations. It will always include the area identified as the Special Flood Hazard Area on the Flood Insurance Rate Maps and Flood Insurance Study, but may include additional areas identified by the Borough. See Section 311.4(A) and (B) for the specifics on what areas McKean Borough are included in the Identified Floodplain Area.

**Lowest floor** - the lowest floor of the lowest fully enclosed area (including basement). An unfinished, flood resistant partially enclosed area, used solely for parking of vehicles, building access, and incidental storage, in an area other than a basement area is not considered the lowest floor of a building, provided that such space is not designed and built so that the structure is in violation of the applicable non-elevation design requirements of these Regulations.

**Manufactured home** - a structure, transportable in one or more sections, which is built on a permanent chassis, and is designed for use with or without a permanent foundation when attached to the required utilities. The term includes park trailers, travel trailers, recreational and other similar vehicles which are placed on a site for more than 180 consecutive days.

**Manufactured home park or subdivision** – a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Minor repair** - the replacement of existing work with equivalent materials for the purpose of its routine maintenance and upkeep, but not including the cutting away of any wall, partition or portion thereof, the removal or cutting of any structural beam or bearing support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the exitway requirements; nor shall minor repairs include addition to, alteration of, replacement or relocation of any standpipe, water supply, sewer, drainage, drain leader, gas, oil, waste, vent, or similar piping, electric wiring, mechanical or other work affecting public health or general safety.

**New construction** - structures for which the start of construction commenced on or after February 15, 2014 and includes any subsequent improvements to such structures. Any construction started after September 30, 1977 and before February 15, 2014 is subject to the ordinance in effect at the time the permit was issued, provided the start of construction was within 180 days of permit issuance.

**New manufactured home park or subdivision** – a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the Borough.

**Person** - an individual, partnership, public or private association or corporation, firm, trust, estate, municipality, governmental unit, public utility or any other legal entity whatsoever, which is recognized by law as the subject of rights and duties.

**Post-FIRM Structure** - is a structure for which construction or substantial improvement occurred after December 31, 1974 or on or after the community's

initial Flood Insurance Rate Map (FIRM) dated September 30, 1977, whichever is later, and, as such, would be required to be compliant with the regulations of the National Flood Insurance Program.

**Pre-FIRM Structure** - is a structure for which construction or substantial improvement occurred on or before December 31, 1974 or before the community's initial Flood Insurance Rate Map (FIRM) September 30, 1977, whichever is later, and, as such, would not be required to be compliant with the regulations of the National Flood Insurance Program.

- (1) Recreational vehicle - a vehicle which is:
  - (a) built on a single chassis;
  - (b) not more than 400 square feet, measured at the largest horizontal projections;
  - (c) designed to be self-propelled or permanently towable by a light-duty truck,
  - (d) not designed for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**Regulatory flood elevation** - the base flood elevation (BFE) or estimated flood height as determined using simplified methods plus a freeboard safety factor of one and one-half (1 ½) feet.

**Special permit** - a special approval which is required for hospitals, nursing homes, jails, and new manufactured home parks/ subdivisions and substantial improvements to such existing parks, when such development is located in all, or a designated portion of a floodplain.

**Special flood hazard area (SFHA)** - means an area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. It is shown on the FIRM as Zone A, AO, A1-A30, AE, A99, or, AH.

**Start of construction** - includes substantial improvement and other proposed new development and means the date the Permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days after the date of the permit and shall be completed within twelve (12) months after the date of issuance of the Permit unless a time extension is granted, in writing, by the Floodplain Administrator. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufacture home on a foundation. Permanent construction does

not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**Structure** – a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

**Subdivision** - the division or re-division of a lot, tract, or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs, or devisees, transfer of ownership or building or lot development: Provided, however, that the subdivision by lease of land for agricultural purposes into parcels of more than ten acres, not involving any new street or easement of access or any residential dwelling, shall be exempted.

**Substantial damage** - damage from any cause sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty (50) percent or more of the market value of the structure before the damage occurred.

**Substantial improvement** - any reconstruction, rehabilitation, addition, or other improvement of a structure, of which the cost equals or exceeds fifty (50) percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage" regardless of the actual repair work performed. The term does not, however, include any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.

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

**Variance** - A grant of relief by the McKean Borough Zoning Hearing Board from

the terms of a floodplain management regulation.

**Violation** - means the failure of a structure or other development to be fully compliant with the McKean Township floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR §60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

### Section 312 HOME OCCUPATIONS 1

Home Occupations are divided into two categories as shown in the Definition Section. Home Occupations 1 shall conform to the following criteria:

- 312.1 The occupation must be carried on within the primary dwelling unit. Its area shall not exceed twenty-five percent (25%) of the dwelling's floor area.
- 312.2 The occupation is carried on by a member of the family residing in the dwelling, with no outside employees.
- 312.3 The occupation shall be a type which does not involve manufacturing or create any noise with few, if any, clients or customers calling and which is not noticeable by neighbors.
- 312.4 On-site retail sales, repair services or professional or personal services involving extensive client and similar uses are specifically prohibited.

### Section 312A HOME OCCUPATIONS 2

Home Occupations 2 are treated as special exceptions and must comply with the requirements of Section 515.2 et. seq. The Zoning Officer will determine whether a home occupation falls under the category of Home Occupations 1 or if it falls under the category of Home Occupations 2 requiring a special exception. The normal procedures for obtaining a special exception are to be followed in their entirety.

### Section 313 GROUP HOMES

- 313.1 Certificates must be obtained from the appropriate Federal, State and local agencies certifying that all applicable licenses, requirements and regulations have been fully satisfied.
- 313.2 To integrate these homes into the community spatial considerations are important. A spacing of five hundred feet (500) radius between such uses will integrate legitimate group homes into all residential neighborhoods.
- 313.3 Twenty-four (24) hour care givers shall be present.

Section 314 FIREHOUSES (Ord. 3-2003, October 13, 2003)

Shall be subject to Section 307.2 of the McKean Borough Zoning Ordinance regarding off-street parking as follows:

1. Firehouses shall meet the required parking spaces as set forth in 307.2(b).
2. Should the firehouse include rooms that fulfill the functions of community buildings, social halls and dance halls, the minimum required parking spaces set forth at 307.2(b) shall be met.

## ARTICLE 4 – ADMINISTRATION AND ENFORCEMENT

### Section 401 ZONING OFFICER (Ord. 1-2010, May 10, 2010)

The Borough Council shall appoint the Zoning Officer who shall administer and enforce the provisions of this Ordinance, and shall do so in accordance with the provisions of this Ordinance and of Pennsylvania Law. The Zoning Officer shall not hold an elected office within the Borough.

### Section 402 DUTIES OF THE ZONING OFFICER (Ord. 1-2010, May 10, 2010)

The Zoning Officer shall administer this Ordinance in accordance with its literal terms, and shall not have the power to permit any construction or any use or change of use which does not conform to this Ordinance. As may be required, the Zoning Officer shall make reports to the Governing Body at the close of each month's business. In addition, the Zoning Officer's duties, obligations and responsibilities include the following:

402.1        Application for Zoning Permits: The Zoning Officer shall receive applications for Zoning Permits. A Zoning Permit application shall be filed prior to the start of construction/development by a developer. The application shall describe the proposed activity in sufficient detail to determine whether or not it meets the requirements of this and other applicable Borough regulations. The proposed activity may be verified by a site visitation by the Zoning Officer or an agent designated by the governing body, prior to the issuance of the Zoning Permit. All applications for construction/development that conforms to zoning ordinances shall be approved; those not conforming to zoning ordinances shall be denied.

#### Denial of Permits:

- A.        When the Zoning Officer is not satisfied that the applicant's proposed construction/development will meet the requirements of this Ordinance, the Zoning Officer shall refuse to issue a Zoning Permit. The applicant may appeal to Zoning Officer's decision to the Zoning Hearing Board.
- B.        The permit may be denied and/or revoked because the activity may damage Borough roads, interfere with surface water flow and drainage, or cause erosion. The landowner may be permitted to file with the Borough a cash bond or bond with corporate surety in an amount approved by the Borough supervisors to assure that the landowner, his servants, agents and employees will save harmless the Borough from any expense incurred through any damage to Borough roads or to insure completion of all work pursuant to conditions of approval. If a corporate bond is offered, it shall be executed by a company authorized to do business in Pennsylvania as a corporate surety.

- 402.2 Non-Conforming Uses and Structures: The Zoning Officer shall prepare, and keep up-to-date, a register of all non-conforming uses, structures and signs.
- 402.3 Permits, Applications, Appeals and Certificates: The Zoning Officer shall issue or deny such permits or certificates as required by this Ordinance where no other body is involved; shall receive all applications for Special Exceptions, Conditional Uses, and Variances and forward the same to the appropriate body. In addition, the Zoning Officer shall receive all applications for appeals prior to forwarding the same to the Zoning Hearing Board.
- 402.4 Revocation of Permits: If it shall appear at any time, to the Zoning Officer, that the application or accompanying information is in any material respect false or misleading, or that work is being done upon the premises differing materially from that called for in the application on file with the Zoning Officer under existing laws or ordinances, the Zoning Officer may forthwith revoke the Zoning Permit, whereupon it shall be the duty of the person holding the same to surrender it and all copies thereof to the Zoning Officer.

Section 403 PERMITS AND CERTIFICATES (Ord. 1-2010, May 10, 2010)

- 403.1 Zoning Permits: An application for a Zoning Permit will be required to show compliance with this and other appropriate Borough ordinances. Applications shall contain information relative to the proposed construction and use in sufficient detail to inform the Zoning Officer of the scope and extent of the proposed development. The exact details required, including sketches, plot plans as well as the number of copies, limits and fees for such applications shall be determined by the Governing Body and provided to the applicant in outline form. If for any reason construction of a structure has not begun within twelve (12) months from the zoning permit issuance, the permit will be rendered void and a new permit shall be obtained prior to the start of construction. A Zoning Permit shall be valid for three (3) years from the date of issuance, after which time it shall become null and void. After the expiration of three (3) years, an application must be filed for another permit as though the permit had never been issued. Any unheated addition or storage building of 100 square feet or less shall not require a Zoning Permit, but must comply with all other sections of this Ordinance.
- 403.2 Temporary Structure: Any temporary structure used in conjunction with construction shall require a zoning certificate. See Section 304.
- 403.3 McKean Borough Occupancy/Use Permits:
- A. New Uses: Upon completion of the whole building or structure for which a Zoning Permit was previously issued, the owner or developer thereof shall apply for a McKean Borough Occupancy/Use Permit upon a form furnished by the Zoning Officer setting forth such facts that are required

for issuance of the permit. Occupancy/Use of the completed building or structure is expressly prohibited until an Occupancy/Use Permit has been issued by McKean Borough.

- B. Existing Uses: Any use of a building, structure and/or lot existing at the enactment date of this Ordinance shall require a McKean Borough Occupancy/Use Permit prior to any change to a different use, to insure that the new use is in compliance with the Zoning Ordinance.
- C. Conditional McKean Borough Occupancy/Use Permits may be issued by the Zoning Officer, upon approval of Borough Council, provided such applicant provides to the Borough sufficient security to insure the faithful performance of all incompleting improvements and to cover administrative, legal and engineering costs of the Borough. The amount of such security, and the duration of the conditional permits, shall be determined by the supervisors and agreed to by the applicant.

Approval by Borough Council will only be granted if proper and sufficient justification is provided by the applicant; otherwise, the request for conditional McKean Borough Occupancy/Use Permit will be denied.

Section 404 DUTIES OF THE OWNER/DEVELOPER (Ord. 1-2010, May 10, 2010)

It shall be the duty of the owner/developer to apply for and secure all permits and certificates as required by this Ordinance. Failure to secure necessary permits or certificates or failure to apply for same in a timely fashion shall be a violation of this Ordinance.

Section 405 APPEALS, VARIANCES, SPECIAL EXCEPTIONS (Ord. 1-2010, May 10, 2010)

The Zoning Officer shall receive all applications for appeals, variances, and special exceptions. Said applications shall be on forms as approved by the Governing Body for the Board, as appropriate, and shall be accompanied by a fee as set by these respective bodies. It is the intent of this Ordinance that all appeal processes should follow the Pennsylvania Municipalities Planning Code or other appropriate State law. The filing of appeals, variances and special exceptions shall be within such time limits as shall be set by the Board. These applications shall be filed by the last Monday of the month. A hearing shall be held within 60 days from the date of applicant's request, unless the applicant has agreed in writing to an extension of time.

Section 406 NOTIFICATION TO ZONING OFFICER (Ord. 1-2010, May 10, 2010)

A copy of the notice of all hearings conducted by the Zoning Hearing Board and a copy of all Conditional Use applications to the Planning Commission/Borough Council shall be sent to the Zoning Officer by first class mail.

Section 407 RAZED STRUCTURES

A permit and fee shall be required for all structures to be razed or demolished regardless of size.

Section 408 CONSTRUCTION BEFORE PERMIT ISSUANCE

An additional fee of fifty percent (50%) shall be added to the building permit fee, if construction of any structure is begun before the actual issuance of the permit.

Section 409 VIOLATIONS

409.1 Enforcement Notice: When it appears to the Borough and/or the Zoning Officer that a violation has occurred, the Zoning Officer shall send an enforcement notice. 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 the parcel, and to any other person requested, in writing, by the owner of record. The enforcement notice shall state the following:

409.1(a) The name of the owner of record and any other person against whom the Borough intends to take action.

409.1(b) The location of the property in violation.

409.1(c) The specific violation with a description of the requirements which have not been met, citing in each instance the applicable provisions of this Ordinance.

409.1(d) The date before which the steps for compliance must be commenced and the date before which the steps must be completed.

409.1(e) That the recipient of the notice has the right to appeal to the Zoning Hearing Board within a prescribed period of time in accordance with procedures set forth in this Ordinance.

409.1(f) That failure to comply with the notice within the time specified, unless extended by appeal to the Zoning Hearing Board, constitutes a violation, with possible sanctions clearly described.

409.2 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 Ordinance, the Borough, the Zoning Officer of the Borough, 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, any 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 at least thirty (3) days prior to the time the action is begun by serving a copy of the complaint on the Borough Council of McKean. No such action may be maintained until such notice has been given.

409.3 Jurisdiction: District Justices shall have initial jurisdiction over proceedings brought under this section.

409.4 Enforcement Remedies: Any person, partnership or Corporation who or which has violated or permitted the violation of the provisions of this Zoning Ordinance shall, upon being found liable therefore in a civil enforcement proceeding commenced by the Borough, pay a judgment of not more than five hundred dollars (\$500) plus all court costs, including reasonable attorney fees incurred by the Borough as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the district justice. If the defendant neither pays nor timely appeals the judgment, the Borough may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the district justice determining that there has been a violation further determine that there was a good-faith bases for the person, partnership or corporation violating this Ordinance to have believed that there was no such violation, in which event there shall be deemed to have been only one (1) such violation until the fifth (5<sup>th</sup>) day following the date of the determination of a violation continues shall constitute a separate violation by the district justice and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable attorney fees collected for the violation of Zoning Ordinances shall be paid over to the Borough. Nothing contained in this Section shall be construed or interpreted to grant any person or entity other than the Borough and its Zoning Officer the right to commence any action for enforcement pursuant to this Section.

## ARTICLE 5 – ZONING HEARING BOARD, SPECIAL EXCEPTIONS AND CONDITIONAL USES

### Section 501 CREATION

There is hereby created a Zoning Hearing Board, herein referred to as the “Board”, consisting of three (3) residents of the Borough appointed by the Borough Council pursuant to the Pennsylvania Municipalities Planning Code, as amended. Said Board shall perform all the duties, and exercise all powers prescribed by said Code and as herein further provided.

### Section 502 APPOINTMENT

The terms of office of the Board shall be 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 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, nor be a member of the Planning Commission. Council shall also appoint one (1) alternate member to the Board. The appointment, rights and duties of the alternate shall be in accordance with Article IX of the Pennsylvania Municipalities Planning Code.

### Section 503 REMOVAL OF MEMBERS

Any Board member may be removed for misfeasance or nonfeasance in office, or for other just cause, by a majority vote of Council, 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.

### Section 504 ORGANIZATION OF BOARD

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 or the taking of any action, a quorum shall not be less than the majority of all the members of the Board, but where three (3) members are disqualified to act in a particular matter, the alternate member shall be seated. 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 Section 908 of the Planning Code. The Board may make, alter and rescind rules and forms for its procedure, consistent with Borough ordinances and laws of the Commonwealth. The Board shall keep full public records of its business and shall submit a report of its activities to the Council once a year or as requested by Council.

Section 505 EXPENDITURES FOR SERVICES

Within the limits of funds appropriated by 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 from time to time by Council, but in no case shall it exceed the rate of compensation authorized to be paid to the members of Council.

Section 506 LEGAL COUNSEL

Where legal counsel is desired, an attorney, other than the Borough Solicitor, shall be used.

Section 507 HEARINGS

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

- 507.1 Notice shall be given to the public and shall conform to requirements for same contained in the Pennsylvania Municipalities Planning Code. In addition to the 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.
- 507.2 The Borough Council may prescribe reasonable fees with respect to hearings before the Zoning Hearing Board. Fees for said hearings may include compensation for the secretary and members of the Zoning Hearing Board, notice and advertising costs and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses of the Zoning Hearing Board, expenses for engineering, architectural or other technical consultants or expert witness costs required by the Board.
- 507.3 The hearing shall be held within sixty (60) days from the date of the applicant's request, unless the applicant has agreed, in writing, to an extension of time.
- 507.4 The hearings shall be conducted by the Board or the Board may appoint any member as a hearing officer. The decision, or, where no decision is called for, the findings shall be made by the Board, but the parties may waive decision or findings by the Board and accept the decision or findings of the hearing officer as final.
- 507.5 The parties to the hearing shall be the Borough, any person affected by the application who has made timely appearance of record before the Board, and any other person including civic or community organizations permitted to appear by the Board. The Board shall have power to require that all persons who wish to be considered parties enter appearances, in writing, on forms provided by the Board for that purpose.

- 507.6 The chairman or acting chairman of the Board or the hearing officer presiding shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses and documents requested by the parties.
- 507.7 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.
- 507.8 Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
- 507.9 The Board or the hearing officer, as the case may be, shall keep a stenographic record of the proceedings. The appearance fee for a stenographer shall be shared equally by the applicant and the Board. The cost of the original transcript shall be paid by the Board if the transcript is ordered by the Board or hearing officer or shall be paid by the person appealing from the decision of the Board if such appeal is made, and in either event the cost of additional copies shall be paid by the person requesting such copy or copies. In other cases the party requesting the original transcript shall bear the cost thereof.
- 507.10 The Board or the hearing officer shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, except that advice from the Board's solicitor is exempt from this restriction; shall not take notice of any communication, reports, staff memoranda, or other materials unless the parties are afforded an opportunity to contest the material so noticed; 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.
- 501.11 The Board or the hearing officer, as the case may be, shall render a written decision or, when no decision is called for, make written findings on the application within forty-five (45) days after the last hearing before the Board or hearing officer. Where application is contested or denied, each decision shall be accompanied by findings of fact and conclusions based thereon together with the reasons therefore. Conclusions based on any provisions of this Ordinance or the Planning Code, or any rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found. If the hearing is conducted by a hearing officer, and there has been no stipulation that his decision or findings are final, the Board shall make his report and recommendations available to the parties within forty-five (45) days, and the parties shall be entitled to make written representations thereon to the Board prior to final decision or entry of findings, and the Board's decision shall be entered no later than thirty (30) days after the report of the hearing officer. Where the Board fails to render the decision within the period required by this Ordinance or the Planning Code, or fails to hold the required hearing within sixty

(60) days from the date of the applicant's request for a hearing, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed, in writing or on the record, to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the Board to meet or render a decision as hereinabove provided, the Board shall give public notice of said decision within ten (10) days in the same manner as provided in Subsection 607(1) of the Pennsylvania Municipalities Planning Code. Nothing in this subsection shall prejudice the right of any party to appeal the decision to a court of competent jurisdiction.

507.12 A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to him no later than the day following its date. To all other persons who have filed their name and address with the Board no later than the last day of the hearing, the Board shall provide by mail or otherwise, a brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined.

#### Section 508 BOARD'S FUNCTIONS

508.1 Substantive challenges to the validity of any land use ordinance, except those brought before the governing body pursuant to Sections 609.1 and 916.1(a) (2) of the Planning Code.

508.2 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.

508.3 Appeals from the determination of the Zoning Officer, including, but not limited to, the granting or denial of any permit, or failure to act on the application therefore, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot.

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

508.5 Applications for variances from the terms of the Zoning Ordinance and flood hazard ordinance or such provisions within a land use ordinance, pursuant to Section 910.2 of the Planning Code.

508.6 Appeals from the Zoning Officer's determination under Section 916.2 of the Planning Code.

508.7 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 Article V or VII applications of the Planning Code.

508.8 Variations: The Board shall hear requests for variances where it is alleged that the provisions of this Ordinance inflict unnecessary hardship upon the applicant. The Board may be rule prescribe the form of application and may require preliminary application to the Zoning Officer. The Board may grant a variance provided that all of the following findings are made where relevant in a given case:

508.8(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 Ordinance in the neighborhood or district in which the property is located;

508.8(b) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this Ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;

508.8(c) That such unnecessary hardship has not been created by the applicant;

508.8(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; and

508.8(e) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the lease modification possible of the regulation in issue.

In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purpose of this Ordinance.

508.9 Special Exceptions: The Board shall hear and decide requests for Special Exceptions in accordance with the standards and criteria of this Ordinance. In granting a Special Exception, the Board may attach such reasonable conditions and safeguards, in addition to those expressed in the Ordinance, as it may deem necessary to implement the purposes of the Zoning Ordinance. The Board shall approve a Special Exception only if it meets with the following standards and criteria:

The use is compatible with adjacent uses and structures.

- 508.9(a) The use is suited to the topography and other characteristics of the site.
- 508.9(b) The use complies with all off-street parking and other provisions of this Ordinance applicable to the use requested.
- 508.9(c) In interpreting and applying the provisions of this Ordinance, the minimum requirements for the health, safety and general welfare of the Borough shall be observed.
- 508.9(d) Special Exceptions shall also comply with the criteria as set forth by Section 515.

#### Section 509 PARTIES APPELLANT BEFORE BOARD

Appeals under Section 508 and proceedings to challenge the Ordinance under Section 508 may be filed with the Board, in writing, by the landowner affected, any officer or agency of the Borough, or any person aggrieved. Requests for a variance under Section 508 may be filed with the Board by any landowner or any tenant with the permission of such landowner. (See also Section 402.4).

#### Section 510 TIME LIMITATIONS; PERSONS AGGRIEVED

No person shall be allowed to file any proceeding with the Board later than thirty (30) days after an application for development, preliminary or final, has been approved by an appropriate Borough Officer, agency or body if such proceeding is designed to secure reversal or to limit the approval in any manner unless such person alleges and proves that he had no 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. See also Section 914.1 of the Planning Code.

#### Section 511 STAY OF PROCEEDINGS

Upon filing of any proceeding referred to in Section 508 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. See also Section 915.1 of the Planning Code.

#### Section 512 NONCONFORMING USES

The Zoning Hearing Board shall have the power to authorize changes of lawful nonconforming uses as follows:

- 512.1 A nonconforming use which occupies a portion of a structure or premises may be extended within such structure or premises as they existed when the prohibitory provision took effect, but not in violation of the area and yard requirements of the districts in which such structure of premises are located.
- 512.2 The Board may impose such conditions as it deems necessary for the protection of adjacent property and the public interest. No change of nonconforming use shall entail structural alterations beyond those required by law for the purpose of safety and health.

Section 513 APPEAL FROM BOARD’S DECISION

Any person aggrieved by the decision of the Board may appeal therefrom in accordance with the Pennsylvania Municipalities Planning Code.

Section 514 CONDITIONAL USES

The Borough Council shall entertain applications for Conditional Uses as set forth herein, after recommendation thereon by the McKean Borough Planning Commission, and pursuant to the provisions of the Pennsylvania Municipalities Code, as amended. The following standards shall be met before a Conditional Use shall be approved:

- 514.1 The use is compatible with adjacent uses and structured.
- 514.2 The use is suited to the topography and other characteristics of the site.
- 514.3 The use complies with all off-street parking and other provisions of this Ordinance applicable to the use required.
- 514.4 In interpreting and applying the provisions of this Ordinance, the minimum requirements for the health, safety and general welfare of the Borough shall be observed.
- 514.5 Conditional Uses shall also comply with the criteria as set forth by Section 515.

Section 515 SPECIFIC CRITERIA FOR SPECIAL EXCEPTIONS AND CONDITIONAL USES

In addition to the general criteria found in this Article the Board or Council, as appropriate, shall apply the following specific criteria to the listed Conditional Uses or Special Exceptions:

- 515.1 Churches, Schools, Hospitals and Nursing Homes:
  - 515.1(a) Shall provide all parking and loading/unloading requirements as required by this Ordinance.

- 515.1(b) Shall be located on a paved public street with a minimum cartway width of twenty (20) feet.
- 515.1(c) The design and landscaping shall be compatible with, and preserve the character of adjoining residential uses.
- 515.1(d) All parking and recreation/play areas which abut residential uses shall provide screen planting.
- 515.1(e) Any outdoor lighting shall be designed to prevent glare to adjoining properties.
- 515.1(f) Such uses shall have, and present, all needed local, county, State or Federal permits, or applications for needed permits. If needed permits are in the application stages, the final approval for same shall be a Condition prior to final approval.
- 515.1(g) Hospitals shall provide lots of at least two (2) acres.
- 515.2 Home Occupations: Home occupations are a potential intrusion upon residential areas and as such must meet all the requirements listed in this section:
- 515.2(a) Parking: In addition to providing the required parking spaces for residents of the dwelling units, off-street parking must be provided for employees and customers in accordance with the criteria set forth by this Ordinance.
- 515.2(b) Employees: No more than one (1) outside employee, other than a family member, shall participate or work in the home occupation.
- 515.2(c) Restrictions: No home Occupation which would cause undue noise, traffic or other intrusion upon the neighborhood shall be allowed. Among the activities specifically excluded shall be kennels, veterinary offices, restaurants, small motor repair, automotive repair, automobile body work and similar undertakings.
- 515.2(d) Home occupations may include, but are not limited to, art studios, music studios (limited to one (1) student at a time), professional services, and beauty shops.
- 515.2(e) The nature of the home occupation shall not change the outward characteristics of the home as a residential unit.
- 515.2(f) No more than thirty percent (30%) in aggregate of the home and accessory buildings may be used for a home occupation.
- 515.2(g) One (1) sign no larger than two and one-half (2-1/2) square feet may be used to announce the name or purpose of the home occupation.
- 515.2(h) Home occupations shall not operate before 8:00 a.m. nor after 9:00 p.m.

- 515.2(i) Any retail sales shall consist primarily of items made on the premises. No more than twenty-five percent (25%) of on-premises sales shall be from items not made on the premises.
- 515.2(j) No more than one (1) home occupation per dwelling shall be permitted.
- 515.3 Day Care: Day Care Services for children have three (3) separate types (see Article 7 for definitions), Family Day Care Homes, Group Day Care Homes and Day Care Centers. Day care may be allowed in specified districts, as a Special Exception, providing the following criteria are met:
- 515.3(a) Any outdoor play area shall be effectively screened from abutting properties.
- 515.3(b) For all new construction, and where feasible for existing structures, circular driveways shall be provided to deliver and pick up children. These will be for the safety of the children and the protection of the neighborhood.
- 515.3(c) One (1) parking space for each employee shall be required plus one (1) parking space for each three (3) children.
- 515.3(d) The operator shall secure and keep current all required licensed permits from the Commonwealth or other licensing agencies.
- 515.4 Adult Day Care: The purpose of such homes is to provide temporary care for adults in a home-like setting. Consequently, it is essential to maintain an exterior appearance that is in harmony with surrounding residences. In addition, such uses shall meet the following criteria:
- 515.4(a) There shall be no sign or exterior display indicating the name of the home or its use larger than two and one-half (2-1/2) square feet.
- 515.4(b) At least one (1) additional on-lot parking space shall be provided for each four (4) guests.
- 515.4(c) No home shall have more than eight (8) guests/clients at any one time.
- 515.4(d) Any required local, county and/or State certifications or licenses shall be presented.
- 515.5 Medical Clinics:
- 515.5(a) Such facilities shall exclude the quartering and treatment of the insane, penal, or correctional institutions.

- 515.5(b) All required parking, loading and unloading shall be contained entirely on lot, including sufficient maneuvering room so that vehicles will not back onto a public street.
- 515.5(c) All lighting shall be so arranged to prevent glare to adjoining properties.
- 515.5(d) Any parking area next to a residential use shall be screened (see Screening).
- 515.5(e) Building size shall not exceed four thousand (4,000) square feet.
- 515.6 Bed and Breakfast: Such uses are intended to provide overnight or short-term accommodations for transient guests in a home-like atmosphere. They must meet the following regulations:
- 515.6(a) No signs in excess of two and one-half (2-1/2) square feet shall be allowed. Only one (1) such sign shall be permitted.
- 515.6(b) No more than six (6) guest rooms will be permitted.
- 515.6(c) One (1) off-street parking space for each guest room shall be required.
- 515.7 Personal Care Homes: The purpose of such homes is to provide residences for individuals in a home-like setting. Consequently, it is essential to maintain an exterior appearance that is in harmony with surrounding residences. Personal care homes are facilities which offer food, shelter and personal assistance for a period of more than twenty-four (24) consecutive hours for four (4) or more adult residents who are not relatives of the operator and where the residents do not require hospitalization or nursing facility care. In addition, such uses shall meet the following conditions:
- 515.7(a) There shall be no sign or exterior display beyond the name of the home or its use, such sign will not exceed two and one-half (2-1/2) square feet.
- 515.7(b) At least one (1) additional on-lot parking space shall be provided for each four (4) guests.
- 515.7(c) No home shall admit more than eight (8) guests/clients at any one time.
- 515.7(d) Required local, county and/or State certifications shall be presented to the Board. Specially included are to be permits from the Pennsylvania Departments of Welfare and Labor and Industry.
- 515.8 Funeral Parlors and Parlors (amended Ord. 3-97, November 10, 1997):
- Funeral Homes and Parlors are defined as a building or part thereof used for human funeral services which includes any and all activities for which a license is

required pursuant to the Funeral Director Law of Pennsylvania, 63 P.S. §479.1, *et seq.* (1996) as the same currently exists or as it may be amended, supplemented or replaced by the General Assembly at any time in the future. Holding of viewing hours in a church shall not be deemed the operation or maintenance of a funeral home or parlor. Holding of viewing hours in a single-family residence shall not be deemed the operation or maintenance of a funeral parlor where the deceased was an owner or the parent, grandparent, spouse, child or grandchild, cousin, aunt or uncle of an owner of the residence.

- 515.8(a) There shall be no receiving vault, preparation room or display of merchandise visible from outside the principal building.
- 515.8(b) There shall be a minimum of five thousand (5,000) square feet of off-street parking, but in no event less than that required by Article 4 of this Ordinance.
- 515.8(c) Loading, unloading facilities shall be entirely on lot.
- 515.9 Bulk Petroleum Products Distribution: The sale and hauling of chemical and petroleum products, especially in bulk quantities represent a potential hazard to the community. Due to this, such uses must:
- 515.9(a) Present evidence that all required Federal and State permits, licenses, etc. have been secured, or are in the process of being secured. Specifically, the regulations of the Pennsylvania State Fire Marshall shall be followed. This includes approval of underground tank installation. A Certificate of Occupancy will not be issued until all such permits are finalized.\*
- 515.9(b) Copies of plans showing any underground piping, storage facilities, and related appurtenances as they involve chemical or petroleum products must be presented.
- “As-built” corrections must be made before a Certificate of Occupancy is issued.\*
- 515.9(c) No structure involving the use, storage, or handling of chemical or petroleum products shall be within four hundred (400) feet of a residential use or district.
- 515.9(d) All lots shall be at least two (2) acres in size.

\*This information will be shared with public safety organizations.

- 515.10 Requirements for Drive-In, Drive-Thru Facilities: This section provides standards for Drive-In, Drive-Thru facilities. These include such uses as banks, restaurants and car washes. The purpose of these standards is to provide minimal stacking capacity for various uses so vehicles will not use public streets while queuing in line for service. All references to stacking capacity relates to typical automobiles. A length of twenty (20) feet per auto will be used to accommodate one (1) vehicle and minimal head space. Minimum stacking lane width is nine (9) feet.

Developers should add to these minimal standards if their business needs shall exceed same.

<u>Use</u>	<u>Stacking Capacity Per Drive-In Window</u>
Restaurant	8* per drive-in window
Bank	5 per drive-in window
Car Wash	4 per wash bay

\*If there are separate order and pickup windows, four (4) for each shall be accepted.

Note: Stacking capacity is to be measured from the lot line to the service window and is not to include any area of the public right-of-way.

515.11 Heavy Manufacturing: Heavy manufacturing shall be located where the emission of objectionable gases, fumes, smoke or dust will not be objectionable to established permitted uses nearby or is controlled by the installation of special equipment. Outside storage yards abutting or immediately across a street from any “R” District shall be screened. They shall meet all performance standards set forth in this Ordinance.

515.12 Recycling, Scrap and Salvage Yards: Shall comply with the following requirements:

515.12(a) All lots shall be at least two (2) acres in size.

515.12(b) There shall be no storage of scrap, machinery or equipment of any kind in the front yard area.

515.12(c) All yard spaces shall be increased ten (10) feet.

515.12(d) The processing or storage of hazardous materials as the same are defined by the Department of Environmental Protection shall not be permitted.

515.12(e) They shall provide an eight (8) foot fence around the premises.

515.12(f) All yards shall provide screening of at least six (6) feet by the use of screen plantings. Such planting shall be maintained in healthy condition.

515.12(g) A junkyard automobile/vehicle is defined as any vehicle which required registration and inspection to be legally operated on public roads in any state, but does not carry a current inspection sticker from the state of origin for a continuous period of nine (9) months or more.

- 515.12(h) An exception to the above 515.12(g)(i) is when the vehicle is garaged in a structure conforming to this Ordinance for such vehicles.
- 515.13 Mineral Excavations: Excavation of sand, gravel, coal, oil, gas or other material from the ground shall be considered a temporary use, and may be permitted in certain districts as a Special Exception if approved by the Board. All mineral excavation shall comply with the following minimum requirements and any other measures that the Board might specify to protect the public interest. A zoning certificate shall be required for each property.
- 515.13(a) All operations must be conducted no closer than one hundred (100) feet to an adjacent property, unless under common lease or ownership, and no closer than one hundred (100) feet to any road right-of-way line.
- 515.13(b) All operations must be conducted no closer than one hundred (100) feet to an existing dwelling, school, hospital, or similar residential use.
- 515.13(c) The operator shall file with the Board a plan showing location of adjacent properties, roads, and natural features.
- 515.13(d) Except for oil and gas extraction, the operators shall submit to the Board for approval, a plan for the restoration of the area to be mined, which shall include: anticipated future use of the restored land, the proposed final topography indicated by contour lines of no greater interval than five- (5) foot steps which will be taken to conserve the topsoil, and the location of future roads, drainage courses, or other improvements contemplated.
- 515.13(e) Except for oil and gas extraction, the operators shall file with the Zoning Officer written proof that he has met all registration and bonding requirements of the Pennsylvania Department of Mines and/or other applicable authority. When the operator has performed all requirements contained in the restoration plan, he will be issued a second Zoning Certificate by the Zoning Officer that the restoration is complete and is in compliance with the plan.
- 515.14 Water Recreation and Storage Areas: Any facility such as swimming clubs and facilities such as reservoirs, and sewage lagoons (except home-owned type swimming pools) shall comply with the following regulations:
- 515.14(a) The facility must meet the yard requirements for the applicable district.
- 515.14(b) Before a permit shall be issued to the operator or owner of the facility, a plan shall be approved by the Board as to size of facility, proposed use, parking arrangement and the use of any buildings on the site, surrounding properties and their usage and any other pertinent information.

- 515.15        Mobile Homes: Individual mobile homes may be permitted in residential districts specified by the zoning schedule, as a Conditional Use, if they conform with lot and yard dimensions for single-family dwellings as well as the remaining provisions of this Section.
- 515.15(a)    There must be a minimum of six hundred (600) square feet of floor space in trailer or mobile home, exclusive of additions.
- 515.15(b)    Mobile homes shall be placed upon foundations which conform to ANSI Standards A225.1-1987. All units will provide anchoring in accordance to such standards. Mobile homes will have permanent connections to available utilities.
- 515.16        Mobile Home (Trailer) Parks: Mobile home (trailer) parks shall meet the following requirements and shall be considered a Conditional Use:
- 515.16(a)    No trailer park shall have an area of less than five (5) acres.
- 515.16(b)    Each trailer site within the park shall have an area of at least five thousand (5,000) square feet.
- 515.16(c)    No trailer shall be closer than forty (40) feet to an adjacent property, not within the confines of the mobile home park. (See Section 304.4)
- 515.16(d)    Not less than ten percent (10%) of the gross area of the park shall be improved for recreational activities of the residents of the park.
- 515.16(e)    The park shall be appropriately landscaped and screened from adjacent properties.
- 515.16(f)    Every trailer or mobile home park shall be served by a central water supply and sewage disposal system approved and maintained according to the applicable regulations of the Erie County Department of Health and DEP, and every trailer or mobile home shall be connected thereto. Where feasible, connections to the Borough's sanitary sewer system will be required.
- 515.16(g)    Streets Within Parks:
- I.        Streets must be provided for adequate access to each mobile home stand and other important facilities within the park.
- II.       All entrance streets and collector streets with parking shall be a minimum of twenty-four (24) feet wide.
- III.      Collector streets with no parking shall be a minimum of twenty (20) feet wide.

IV. Minor or cul-de-sac streets with no parking shall be a minimum of twenty (20) feet wide.

V. Adequate storm sewer systems must be provided to carry off surface water from the park.

VI. In any area where public streets are proposed, compliance with all then applicable subdivision regulations shall be mandatory.

VII. All roads are to be seal-coated or paved.

515.16(h) Sites Within Park:

I. Each site must be on high ground with adequate gradient for surface drainage.

II. Each lot must be graded so that surface water from mobile home park stands, patios, service buildings, etc. will drain away from the improvements to prevent flooding and erosion.

III. The stand where each unit is placed shall be at least fourteen (14) feet by sixty-five (65) feet.

IV. Each such stand shall be surfaced with gravel or crushed stone or paved to provide a stable base for the mobile home and to control weeds.

515.16(i) Mobile home foundations shall comply with 309.2.

515.16(j) Two (2) off-street parking spaces shall be provided at each site.

515.16(k) Utilities: All systems for supplying electricity, telephone, natural or propane gas and fuel oil shall be underground.

515.17 Regulations Governing Adult Entertainment Uses (Ord. No. 1-2001, June 11, 2001):

An adult entertainment use shall be only a Special Exception limited to the R-1 Residential District. All Adult Entertainment Uses shall be subject to all portions of the Borough of McKean Zoning Ordinance No. of 1995 and shall also comply with the following additional requirements.

A. No adult entertainment use shall be located within one thousand (1000) feet of the nearest property line of a parcel containing:

- (1) A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities.
- (2) A public or private educational facility including, but not limited to, child day care facilities, nursery schools, pre-schools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges and universities; school includes the school grounds, but does not include the facilities used primarily for another purpose and only incidentally as a school;
- (3) A public park or recreational area which has been designated for park or recreational activities including, but no limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian or bicycle paths, wilderness areas, or any other similar public land within the Borough which is under the control, operation, or management of the Borough, or other similar land within the Borough which is under the control, operation or management of private parties and open and available for use by the general public;
- (4) An entertainment business which is oriented primarily towards children and family entertainment;
- (5) A licensed premises, licensed pursuant to the alcoholic beverage control regulations of the Commonwealth of Pennsylvania;
- (6) A bottle club;
- (7) Any other adult entertainment use.

B. Measurement of the distances required in this section shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in this Section 515.17 – Regulations Governing Adult Entertainment Uses. Presence of a municipal, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section 515.17.

- C. Any lot, which is to be used for any adult entertainment use, shall contain screening and buffering along property lines adjoining other zoning districts or any residences. The screening and buffering shall consist of an opaque, permanent fence made of durable, weather-resistant material and at least six (6) feet in height, but in no case shall be fence exceed ten (10) feet in height.
- D. Sufficient additional data shall be submitted to enable the Zoning Hearing Board to determine that the requirements of this and any other ordinances of the Borough relevant to the proposed use have been fulfilled and that the owners and operators of proposed adult entertainment facilities demonstrate a desire and ability to comply with the ordinances of the Borough and to prevent their establishments from being used for any illegal activities.
- E. Any person proposing an adult entertainment use shall comply with all license and requirements adopted by the Borough heretofore, or in the future.

515.18 Multiple-Family Dwelling – Apartment House (Ord. 2-2007, April 9, 2007). When the multiple-family dwelling consists of an apartment house, the following criteria shall apply:

- 515.18(a) There shall be no sign or exterior display indicating the name of the apartment house larger than two and one-half (2.5) square feet.
- 515.18(b) At least two (2) additional on-lot parking spaces shall be provided for each unit.
- 515.18(c) Any required local, county, and/or state certifications or licenses shall be presented.

## ARTICLE 6 – AMENDMENTS

### Section 601 GENERAL

The Borough Council may introduce and consider amendments to this Ordinance and to the Official Zoning Map, as proposed by a member of the Borough Council, by the Planning Commission, or by a petition of a person residing or owning property within the Borough.

### Section 602 PETITIONS

Petitions for amendment shall be filed with the Planning Commission, and the petitioner, upon such filing, shall pay an advertising deposit and a filing fee, in accordance with a schedule fixed and imposed by resolution of the Borough Council. The Planning Commission shall review the proposed amendment and report its findings and recommendations, in writing, to the Borough Council within thirty (30) days after receipt; if findings and recommendations are not received, it shall be taken as acceptance without comment.

### Section 603 REFERRAL

Any proposed amendment presented to the Borough Council without written findings and recommendations from the McKean Borough Planning Commission or the Erie County Department of Planning shall be referred to these agencies for review prior to public hearing by the Borough Council. A review period of thirty (30) days shall be allowed by the Borough Planning Commission and the Erie County Department of Planning prior to Council's public hearing.

### Section 604 ACTION

Before acting upon a proposed amendment, the Borough Council shall hold a public hearing thereon. The required public notice shall be as required by the Planning Code. If the change is to involve an amendment to the Zoning Map, the effected property shall be posted as required by the Planning Code.

### Section 605 CONFORMITY TO STATUTE

It is hereby acknowledged that the procedures set forth in Sections 401 through 409 and Sections 501 through 514 are modeled after the provisions of the Municipalities Planning Code. Any amendment to the provisions of the Municipalities Planning Code relating to the procedures set forth in these sections at any future time shall be deemed amendments to the applicable section of the ordinance.

## ARTICLE 7 – DEFINITIONS

Except where specifically defined herein, all words used in this Ordinance shall carry their customary meaning. Words used in the present tense shall include the future. The singular number shall include the plural, and the plural the singular. The word “shall” is always mandatory and not permissive. The word “used” or “occupied” as applied to any land or building shall be construed to include the words “intended, arranged or designed to be used or occupied.”

**Accessory Building:** A subordinate building, incidental to and located on the same lot as principal building, and used for an accessory use.

**Adult Entertainment Uses** shall include the following (Ord. No. 1-2001, June 11, 2001):

**Adult Arcade:** Any place to which the public is permitted or invited wherein coin operated, slug operated, or for any form of consideration, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or any 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 are so displayed are distinguished or characterized by the depicting or describing of “specified sexual activities” or “specified anatomical areas.”

**Adult Bookstore, Adult Novelty Store, 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 or more of the following:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”;  
or
- (2) Instruments, devices or paraphernalia that are designed for use in connection with “specified sexual activities” or “specified anatomical areas.”

\*NOTE: 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 an adult book store, an adult novelty store, or adult video store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult book store, an adult novelty store, or adult video store so long as one of its purposes is the offering for sale or rental for consideration of specified materials which are characterized by the depiction or description of “specified sexual activities” or specified anatomical areas.”

Adult Cabaret: A night club, bar, bottle club, restaurant, or similar commercial establishment which regularly features:

- (1) Persons who appear in a state of nudity or semi-nudity; or
- (2) Live performances which are characterized by the exposure of “specified sexual activities” or “specified anatomical areas”; or
- (3) Films, motion pictures, videocassettes, slides or other photographic reproductions, which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

Adult Motion Picture Theater: Commercial establishments where, for any form of consideration, films, motion pictures, videocassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

Adult Theatre: A theatre concern, hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nudity, or live performances which are characterized by the exposure of “specified sexual activities” or “specified anatomical areas.”

Bottle Club: An establishment operated for profit or pecuniary gain, which has a capacity for the assembly of twenty (20) or more persons and in which alcoholic liquors, alcohol or malt or brewed beverages are not legally sold, but where alcoholic liquors, alcohol or malt or brewed beverages are either provided by the operator or agents or employees of the operator for the consumption on the premises or are brought into or kept at the establishment by the patrons or persons assembling there for use and consumption.

Escort Agency: A person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

Massage Parlor: Any place where a person offers a massage to other persons who pay money or any other form of consideration. Massage Parlor shall not include a facility wherein a person licensed or certified pursuant to Title 63 of the Pennsylvania Statutes offers massage as a form of treatment.

Nude Model Studio: Any place where a person who appears semi-nude, in a state of nudity, or who displays “specified anatomical areas” and is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration. Nude model studio shall not include a proprietary school licensed by the Commonwealth of Pennsylvania or a college, junior college or university supported entirely or in part by public taxation; 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; or in a structure:

- (1) That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and
- (2) Where in order to participate in a class a student must enroll at least three (3) days in advance of the class; and
- (3) Where no more than One (1) nude or semi-nude model is on the premises at any one time.

Sexual Encounter Center: A business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

- (1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- (2) Activities between male and female persons and/or persons of the same sex where one or more of the persons is in a state of nudity or semi-nudity.

**Adult Entertainment Uses—Supplemental Definitions** (Ord. 1-2001, June 11, 2001): For purposes of any and all Sections relating to the regulation of Adult Entertainment Uses, the following definitions apply:

Employee: A person who performs any service on the premises of a sexually oriented business on a full time, part time or contract basis; whether or not the person is denominated employee, independent contractor, agent or otherwise, and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

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 strip tease for another person.

Escort Agency: A person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

Establishment:

- (1) The opening or commencement of any sexually oriented business as a new business.

- (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business.
- (3) The addition of any sexually oriented business to any other existing sexually oriented business.
- (4) The relocation of any sexually oriented business.

Nudity or State of Nudity: The showing of the human male or female's genitals, pubic area, vulva, anus, anal cleft, or cleavage with less than a fully opaque covering, the showing of the female breasts with less than a fully opaque covering of any part of the areola and/or nipple, or the showing of the male covered genitals in a discernibly turgid state.

Person: An individual, proprietorship, partnership, corporation, association, or other legal entity.

Semi-Nude or in a Semi-Nude Condition: The state of dress in which clothing partially or opaquely covers "specified anatomical areas."

Sexually Oriented Business: An adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult theater, massage parlor, escort agency, nude model studio, or sexual encounter center.

Specified Anatomical Areas: The human genitals, pubic region, anus, buttocks, female breast(s) below a point immediately above the tip of the areola or human male genitals in a discernibly turgid state, even if completely covered.

Specified Sexual Activities: any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or
- (3) Excretory functions as part or in connection with any of the activities set forth in (1) and (2) above.

Substantial Enlargement of a sexually oriented business means the increase in floor area occupied by the business by more than twenty-five percent (25%) as the floor area exists on June 11, 2001 (the date of this amendment).

Agriculture: Any agriculture use, including farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture, animal and poultry husbandry, and forestry (including the harvesting of timber).

**Area:** Area of a lot or site shall be calculated from dimensions derived by horizontal projections of the site.

**Basement:** A story having more than fifty percent (50%) of its clear view below the average level of the surrounding grounds. A basement shall be counted as a story for the purpose of height measurement if the vertical distance between the ceiling and the average level of the adjoining ground is more than five (5) feet or if used for dwelling purposes.

**Bed and Breakfast:** A residence offering, for pay, overnight or short-term lodging and breakfast for transient guests.

**Board:** The Zoning Hearing Board of the Borough of McKean, Erie County, Pennsylvania.

**Board, Rooming, Tourist or Lodging House:** A building where lodging is provided, for compensation, for five (5) or more persons.

**Building:** A roofed structure enclosed by walls for the shelter housing or enclosure of persons, goods, materials or animals.

**Building Height:** The vertical distance from the average elevation at grade level to the highest point of the deck of a flat roof or a mansard roof or to the mean height between the eaves and the ridge of gable, hip and gambrel roofs.

**Building or Setback Line:** Imaginary line parallel to or concentric with the nearest road right-of-way line. No portion of a building foundation or wall may extend nearer the lot line than the required front yard depth.

**Business Service:** Any business activity which renders service to other commercial or industrial enterprises.

**Camp:** Simple building for temporary lodging of sportsmen, fishermen, campers, hunters or families for temporary occupancy; does not include vacation cottages or other dwellings designed for family living quarters.

**Church:** A place of religious instruction or public worship and is exempt from the tax rolls by the Erie County Assessment Bureau.

**Clear Sight Triangle:** A triangular-shaped portion of land established at street intersections in which nothing is erected, placed, planted, or allowed to grow in such a manner as to limit or obstruct the sight distance of motorists entering or leaving the intersection.

**Clinic:** Any establishment where human patients are examined and treated by doctors or dentists but not hospitalized overnight.

**Club:** An establishment operated by an organization for social, recreational, educational and fraternal purposes, but open only to members and their guests and not the general public.

**Commission (or Planning Commission):** The Borough of McKean Planning Commission, Erie County, Pennsylvania.

**Conditional Use:** The term “Conditional Use” shall mean a use permitted by the governing body according to the criteria set forth in the Ordinance and the Pennsylvania Municipalities Planning Code.

**Coverage:** That percentage of the lot area covered by principal and accessory use structures.

**Day Care:** For children – provides out-of-home care for part of a 24-hour day to children under sixteen (16) years of age, excluding care provided by relatives. For the purpose of this Ordinance, Day Care Facilities are divided into the following types:

**Family Day Care Home** - Is any premise operated for profit or not for profit, in which day care is provided at any one time to four (4), five (5), or six (6) children. A family Day Care Home may be operated from a single-family dwelling.

**Group Day Care Home** – Is any premise operated for profit or not for profit in which day care is provided at any one time for more than six (6) but less than twelve (12) children and where the child care areas are being used as a family residence.

**Child Day Care Centers** – Is a facility in which care is provided for seven (7) or more children at any one time and the child care areas are not being used as a family residence.

To qualify as a Day Care Facility, these uses must secure any needed state permits or licenses.

**Density:** The area of a lot or group of lots computed exclusive of any portion of the right-of-way of any road divided by the number of families housed on the lot or group of lots.

**DEP:** The Pennsylvania Department of Environmental Protection.

**Dwelling:** Any building (including cottages) designed or used as a permanent or temporary living quarters for one (1) or more families.

**Dwelling, Single-Family:** A detached building arranged or used for occupancy by one (1) family containing a habitable floor area of at least eight hundred (800) square feet of dwelling space.

**Dwelling, Multiple** (Ord. 2-2007, April 9, 2007): A building arranged or used as residence for three (3) or more families independently of each other and doing their own cooking therein, including apartment houses, flats and group houses.

**Dwelling, Two-Family:** A building arranged or used as residence for two (2) families independently of each other and doing their own cooking therein, including duplexes (side by side), two-unit flats (one over the other) and single-family dwelling conversions.

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

**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, including poles, wire, mains, drains, sewer, pipes, conduit cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment and accessories in connection therewith; reasonably necessary for the furnishing of adequate services by such public utilities or municipal or other governmental agencies or for the public health or safety or general welfare, but not including structures.

**Family:**

1. One (1) or more persons related by blood, marriage or adoption, plus domestic servants, occupying a dwelling unit, including not more than four (4) boarders, roomers or lodgers; and/or
2. Four (4) or less unrelated persons occupying a dwelling unit, living together and maintaining a common household.
3. A family shall not encompass any business use including a family care facility or group care facility as defined in this Ordinance.

**Family or Group Care Facility:** A facility which provides services in a common household to more than two (2) individuals, not related by blood, marriage or adoption who are in need of supervision on account of a physical and/or mental handicap, age, disability, violation of a penal law, and adjudication of delinquency, and/or an addiction to drugs, and/or alcohol.

**Firehouse** (Ord. 3-2003, October 13, 2003): A building utilized by a fire company duly organized under the laws of the Commonwealth of Pennsylvania and recognized by the Borough of McKean for the providing of fire fighting and emergency services for the housing of fire engines and fire apparatus, radio equipment, boats, rescue and life saving equipment and supplies and for the meeting, training and schooling of the members of a fire company.

**Floor Area (Habitable):** The enclosed area of a building designed and intended for all season use of human habitation.

**Garage, Repair (See also Service Station):** Premises where motor vehicles are serviced and repaired, including engine overhaul and body work.

**Golf Course:** Land for playing the sport of golf, consisting of a minimum of nine (9) holes, but excluding miniature golf, par-three golf, pitch and putt, driving ranges and similar golf-associated activities except as accessory uses on a golf course.

**Governing Body:** Shall be the Borough Council of the Borough of McKean, Erie County, Pennsylvania.

**Group Homes:** The coming together of more than four (4) handicapped persons\* not related by blood, marriage or adoption in a single housekeeping unit which provides the physical and social needs normal to a residence and whose management is under the direction of a public or semi-public institution operating in pursuit of its objectives.

\*As defined by the Federal Fair Housing Act, as amended.

**Home Occupation:** Any use customarily carried on entirely within a dwelling by occupants thereof, which use is clearly incidental and subordinate to the use of the dwelling for dwelling purposes and which does not change the residential character thereof. Home occupations are divided into two categories. Home occupations – office are uses which present little, if any, intrusion upon the neighborhood and need only be processed by the Zoning Officer according to the provisions of this Ordinance. Other home occupations are treated as Special Exceptions.

**Junkyard:** The use of more than fifty (50) square feet of any land or structure for the collecting, storage, processing or sale of scrap metal, scrapped, abandoned or junked motor vehicles, machinery, equipment, waste paper, glass, rags, containers and other discarded materials. It shall not include, however, refuse or garbage kept in a proper container for the purpose of prompt disposal.

**Light Manufacturing:** The processing or fabrication of certain materials and products which does not produce noise, vibration, air pollution, fire hazard or other disturbances or danger to neighboring properties.

**Loading Space:** A portion of a lot usable for the standing, loading or unloading of motor vehicles.

**Lot:** A parcel of land occupied or capable of being occupied by one (1) or more buildings devoted to a common interest or use, and including accessory uses and open yard space.

**Lot Corner:** A lot at the junction of and fronting on two (2) or more intersecting street rights-of-way.

**Lot, Depth of:** A mean horizontal distance between the front and rear lot lines.

**Lot, Minimum Area of:** The area of a lot computed exclusive of any portion of the right-of-way of any public thoroughfare.

**Lot, Width of:** The width measured at the front building line.

**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.

**Mobile Home Lot:** A parcel of land in a mobile home park, improved with the necessary utility connections and other appurtenances necessary for the erections thereon of a single mobile home, which is leased by the park owner to the occupants of the mobile home erected on the lot.

**Mobile Home Park:** A parcel or contiguous parcels of land under single ownership which has been so designated and improved that it contains two (2) or more mobile home lots for the placement thereon of mobile homes.

**Modular/Manufactured Housing:** Factory-built, single-family structures that meeting the National Manufactured Home Construction and Safety Standards Act (42 U.S.C. Sec. 5401), commonly known as the HUD (U.S. Department of Housing and Urban Development) code, but excluding mobile homes.

**Nonconforming Lot:** A lot the area or dimension of which was lawful prior to the adoption or amendment of this Zoning Ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption or amendment.

**Nonconforming Structure:** A structure or part of a structure manifestly not designed to comply with the applicable use or extent of use provisions of this Ordinance or an amendment hereafter enacted, where such structure lawfully existed prior to the enactment of this Ordinance or amendment or prior to the application of this Ordinance 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 structure, which does not comply with the applicable use provisions of this Ordinance or amendment hereafter enacted, where such use was lawfully in existence prior to the enactment of this Ordinance or amendment or prior to the application of this Ordinance or amendment under the Zoning Ordinance.

**Permitted Use:** The main or primary purpose for which a building, other structure, and/or land is designed, arranged or intended for use, or for which it may be used, occupied or maintained under the Zoning Ordinance.

**Personal Services:** Any enterprise conducted for many which primarily offer services to the general public such as: shoe repairs, valet service, watch repairing, barber shops, beauty parlors and related activities.

**Planned Unit Residential Development:** An area of land, controlled by a landowner, to be developed as a single entity for a number of dwelling units, the development plan for which does

not correspond in lot size, bulk or type of dwelling, density, lot coverage and required open space to the regulations established in any one residential district created, from time to time, under the provisions of a municipal ordinance.

**Planning Agency:** A planning commission, planning department or a planning committee of the governing body.

**Planning Code:** The Pennsylvania Municipalities Planning Code, as the same is amended from time to time.

**Professional Offices:** The use of offices and related spaces for such professional services as are provided by doctors, dentists, lawyers, architects and engineers.

**Public Notice:** Notice as required by the Planning Code.

**Road:** The entire right-of-way of a public or private street or highway.

**Service Station:** A retail place of business engaged primarily in the sale of motor fuels, but also in supplying goods and services generally required in the operation and maintenance of automotive vehicles and the fulfilling of motorist needs. These may include sale of petroleum products; sale and servicing of tires, batteries, automotive accessories and replacement items, washing and lubrication services, the performance of minor automotive maintenance and repair, and the supplying of other incidental customer services and products.

**Sign:** Any structure, building, wall, or other outdoor surface, or any device or part thereof, which displays or includes any letter, word, model, banner, flag, pennant, insignia, device, or other representations used for announcement, direction, advertisement or identification. The word “sign” includes the word “billboard,” but does not include the flag, pennant, or insignia of any nation, State, city or other political unit, nor public traffic or directional signs.

The “area of a sign” shall be construed to include all lettering, wording, and accompanying designs and symbols, together with the background, including framework and bracing which is incidental to the display itself, when viewed from its widest silhouette. Where the sign consists of individual letters or symbols attached to or painted on a surface, the area shall be considered the smallest rectangle which can be drawn to encompass all of the letters and symbols.

**Sign, Advertising:** A sign which directs attention to a business, profession, service or industry, conducted, sold, manufactured, assembled or offered for sale other than upon the premises where the sign is displayed.

**Sign, Business:** A sign which directs attention to a business, profession or industry conducted on the premises or to products sold, manufactured or assembled upon the same premises upon which it is displayed.

**Special Exceptions:** A modification of the regulations of the ordinance which the Zoning Hearing Board is permitted to authorize in specific instances listed in this Ordinance, under the terms, procedures and conditions prescribed herein.

**Specialized Animal Raising and Care:** The use of land and structures for the raising and care of fur-bearing animals, the stabling and care of horses, animal kennels, bird-raising or similar operations.

**Story:** The portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, the space between such floor and the ceiling above it. A basement shall be considered as a story if more than fifty percent (50%) of its clear height is above finished grade, or if it is used for business or dwelling purposes.

**Street:** Includes street, avenue, boulevard, road, highway, freeway, parkway, lane, alley, viaduct and any other ways used or intended to be used by vehicular traffic or pedestrians whether public or private.

**Structure:** Any man-made object having an ascertainable stationary location on or in land or water, whether or not affixed to the land.

**Tourist Home:** A rooming house primary for transient guests.

**Travel Trailer:** A mobile vehicle, with wheels, designed for overnight occupancy or camping purposes, capable of being towed by a passenger automobile/truck and having an overall length of less than twenty-five (25) feet and an overall width of less than eight (8) feet.

**Truck Stop:** A facility designed to provide for service and repair of trucks and associated motorized equipment and which may incidentally provide for eating facilities and lodging facilities.

**Truck Terminal:** A facility to accommodate the service, repair and storage of trucks and other motorized equipment, and which may incidentally provide warehousing activities.

**Variance:** A departure from the strict letter of the Ordinance as it applies to specific properties as authorized by the Zoning Hearing Board.

**Yard:** Any open space located on the same lot with a building, unoccupied and unobstructed from the ground up, except for accessory buildings, or such projections as are expressly permitted by this Ordinance. The minimum depth or width of a yard shall consist of the horizontal distance between the lot line or road right-of-way line and the nearest point of the foundation wall of the main building.

**Yard, Front:** An open space extending the full width of the lot between the building and the road right-of-way line.

**Yard, Rear:** An open space extending the full width of the lot between the building and the rear lot line.

**Yard, Side:** An open space extending from the front yard to the rear between a building and the nearest side lot line.

**Zoning Certificate:** The written authorization issued by the Zoning Officer for the use of land, or buildings, or other structures.

**Zoning Map:** The map containing the zoning districts of the Borough of McKean, Erie County, Pennsylvania, together with all amendments subsequently adopted.

**Zoning Officer:** The Zoning Officer or his authorized representative, appointed by the Borough Council of the Borough of McKean, Erie County, Pennsylvania.

ARTICLE 8  
DISTRICT, LOT AND YARD REGULATIONS

TABLE 801  
DISTRICT REGULATIONS

R-1 District  
Low Density Residential

Permitted Uses

Single-Family Dwellings  
Public Parks and Playgrounds  
Essential Services  
Accessory Uses and Buildings  
Signs  
Agriculture (310)  
Group Homes (313)  
Home Occupation #1 (312)

Special Exceptions

Water Recreation and Storage (515.14)  
Churches (513.1)  
Home Occupation #2 (515.2)  
Home Day Care (515.3)  
Adult Day Care (515.4)  
Adult Entertainment Uses (515.17)

Conditional Uses

None

R-2 District  
Medium Density Residential

Permitted Uses

Single-Family Dwellings  
Two-Family Dwellings  
Public Parks and Playgrounds  
Essential Services  
Accessory Uses and Buildings  
Signs  
Agriculture (310)  
Group Homes (313)  
Home Occupation #1 (312)  
Firehouses (Ord. 3-2003, October 13, 2003)

Special Exceptions

Water Recreation and Storage (515.14)  
Churches (515.1)  
Home Occupation #2 (515.2)  
Public and Parochial Schools (515.1)  
Home Day Care (515.3)  
Adult Day Care (515.4)  
Multiple-Family Dwelling (515.17) (Ord. 2-  
2007, April 9, 2007)

Conditional Uses

Mobile Homes (515.15)

R-3 District  
High Density Residential

Permitted Uses

Single-Family Dwellings  
Two-Family Dwellings  
Multiple-Family Dwellings  
Public Parks and Playgrounds  
Accessory Uses and Buildings  
Group Homes (313)  
Essential Services  
Signs  
Home Occupation #1 (313)

Conditional Uses

Mobile Homes (515.15)  
Mobile Home Parks (515.16)

Special Exceptions

Water Recreation and Storage (515.14)  
Churches (515.1)  
Home Occupation #2 (515.2)  
Public and Parochial Schools (515.1)  
Medical Clinics (515.5)  
Hospitals (515.1)  
Personal Care Homes (515.7)  
Funeral Homes (515.8)  
Bed and Breakfast (515.6)  
Home Day Care (515.3)  
Group Day Care (515.3)  
Adult Day Care (515.4)

B-1 Business District

Permitted Uses

Retail Business  
Eating and Drinking Establishments  
Commercial Indoor Amusement  
Social/Fraternal Clubs  
Personal Services  
Professional Services  
Auto Sales/Service and Repair  
Service Station  
Repair Garage  
Business Services  
Essential Services  
Accessory Uses and Buildings  
Multiple-Family Dwellings  
Funeral Homes  
Medical Clinics  
Hotels and Motels  
Bed and Breakfast  
Day Care – All Types (515.3)  
Firehouses (Ord. 3-2003, October 13, 2003)

Conditional Uses

None

Special Exceptions

Churches (515.1)  
Public or Parochial Schools (515.1)  
Hospitals (515.1)  
Nursing Homes (515.1)  
Drive-Thru Restaurants (515.10)  
Drive-Thru Banks (515.10)  
Car Wash (515.10)  
Home Occupation #1 (319)  
Home Occupation #2 (515.2)

I-1 District  
Industrial District

Permitted Uses

Light Manufacturing  
Warehousing  
Repair Garage  
Business Services  
Essential Services  
Accessory Uses and Buildings  
Offices  
Agriculture (310)  
Firehouses (Ord. 3-2003, October 13, 2003)  
All permitted used in the Business District (Ord. 2-2012, May 14, 2012)

Special Exceptions

Water Recreation and Storage (515.14)  
Salvage Yards (515.12)  
Mineral Extraction  
Truck Terminals (515.15)  
Bulk Petroleum Distribution (515.9)  
Heavy Manufacturing (515.12)  
Recycling Centers (515.18)

Conditional Uses

None

TABLE 802  
LOT REQUIREMENTS AND YARD REGULATIONS

The following table delineates the general requirements for each district. Specific applications of these requirements are also delineated in Section 303, Application of Yard Regulations and Section 305, Height Limitations.

	On-Lot Sewer (Sq.Ft)	<u>Minimum Lot Area</u>		On-Lot Sewer (Sq. Ft.)	<u>Minimum Lot Width</u>		<u>Minimum Front Yard</u>		<u>Minimum Side Yd.</u>	<u>Minimum Rear Yd.</u>	<u>Maximum Height</u>	<u>Maximum Coverage</u>
		Central Sewer (Sq. Ft.)	Central Sewer and Water		Central Sewer (Sq. Ft.)	Central Sewer and Water	On-Lot Sewer (Feet)	Central Sewer and/or Water (Feet)	(Each) (Feet)	(Feet)	(Bldg.) (Feet)	(Lot)
<b><u>R-1 DISTRICT</u></b>												
Single-Family Dwelling	1 Acre	20,000	15,000	150	100	80	50	25	15	30	35	20%
All Other Uses	1 Acre	1 Acre	1 Acre	150	150	150	50	25	15	30	35	20%
<b><u>R-2 DISTRICT</u></b>												
Single-Family Dwelling	30,000	15,000	10,000	120	80	70	50	25	10	30	35	20%
Two-Family Dwelling	1 Acre	20,000	15,000	150	100	80	50	25	10	30	35	20%
All Other Uses	1 Acre	1 Acre	1 Acre	150	150	150	50	25	10	30	35	20%
<b><u>R-3 DISTRICT</u></b>												
Single-Family Dwelling	20,000	10,000	7,200	100	70	60	50	25	10	30	35	20%
Two-Family Dwelling	30,000	15,000	10,000	120	80	70	50	25	15	30	35	20%
Multiple Dwelling	1 Acre	20,000	15,000	150	100	80	50	25	15	30	35	20%
All Other Uses		1 Acre	1 Acre		150	150		25	15	30	35	20%
<b><u>B-1 DISTRICT</u></b>												
Multiple Dwelling		15,000	10,000		80	70		None	15	25	40	40%
All Other Uses		None	None		None	None		None	None	None	40	70%
<b><u>I-1 DISTRICT</u></b>												
All Uses		2 Acres	2 Acres		200	150		25	20	25	40	40%