

## PART 12

**ADMINISTRATION AND ENFORCEMENT****§ 27-1201. Applicability. [Ord. No. 497, 1/8/2013]**

This chapter shall apply throughout Wormleysburg Borough, Cumberland County, PA. Any activity regulated by this chapter shall only occur in such a way that conforms to the regulations of this chapter.

**§ 27-1202. Administration. [Ord. No. 497, 1/8/2013]**

1. The provisions of this chapter shall be enforced by an official, appointed by the Wormleysburg Borough Council, who shall be known as the "Zoning Officer." The Zoning Officer may have designated an assistant, who shall exercise all the powers of the Zoning Officer during the temporary absence or disability of the Zoning Officer.
2. The duties of the Zoning Officer shall be to:
  - A. Administer this chapter in accordance with its literal terms;
  - B. Receive, examine and process all applications and permits as provided by the terms of this chapter. The Zoning Officer shall also issue zoning permits for special exception and conditional uses, or for variances after the same have been approved by the body having the respective jurisdiction;
  - C. Receive and process all requests for reasonable accommodation under the Fair Housing Amendments Act and/or the American Disabilities Act,<sup>71</sup> as applicable. Criteria and procedures for the handling of such requests shall be in accordance with Subsection 3;
  - D. Review proposed subdivisions and land developments for compliance with this chapter;
  - E. Determine the date before which steps for compliance must be commenced and the date before which the steps must be completed. The Zoning Officer shall determine an appropriate duration of time for compliance of the specified activity, not to exceed 30 days. Extensions up to a total of 90 days from the date of receipt of the enforcement notice may be granted at the discretion of the Zoning Officer if applied for in writing;
  - F. Record and file all applications for zoning permits, certificates of use and occupancy, and other permits as may be set forth in this chapter

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71. Editor's Note: See 42 U.S.C. § 12101 et seq.

and accompanying plans and documents, and keep them for public record;

- G. Inspect properties to determine compliance with all provisions of this chapter as well as conditions attached to the approval of variances, special exceptions, conditional uses and curative amendments;
  - H. Upon the request of the Wormleysburg Borough Council or the Wormleysburg Zoning Hearing Board, present to such bodies facts, records, and any similar information on specific requests, to assist such bodies in reaching their decisions;
  - I. Be responsible for keeping this chapter and the official Zoning Map up-to-date, including any amendments thereto;
  - J. Revoke a permit or approval issued under the provisions of this chapter in case of any false statement or misrepresentation of fact in the application or on the plans on which the permit or approval was based or for any other cause set forth in this chapter, or otherwise permitted by law; and
  - K. Take enforcement actions as provided by the Municipalities Planning Code (MPC), as amended.<sup>72</sup>
3. Reasonable Accommodation. The Borough complies with the Federal Fair Housing Act (FHA), as amended,<sup>73</sup> and/or the Americans with Disabilities Act (ADA),<sup>74</sup> as amended, to ensure that policies and regulations including but not limited to this chapter, do not discriminate against persons on the basis of race, color, religion, national origin, disability, or family status.
- A. The Borough shall grant requests for reasonable accommodations if such requests provide equal housing and accessibility opportunities to persons with disabilities, and such requests do not constitute substantial changes or deviations to standards and provisions of this chapter.
  - B. Persons requesting reasonable accommodation under the Fair Housing Amendments Act and/or the Americans with Disabilities Act, shall submit a request, in writing, to the Zoning Officer, which shall, at a minimum, include the following information:
    - (1) The name and address of the applicant.
    - (2) Specific sections, standards, and provisions of this chapter from which reasonable accommodation is being requested.

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72. Editor's Note: See 53 P.S. § 10101 et seq.

73. Editor's Note: See 42 U.S.C. § 3601 et seq.

74. Editor's Note: See 42 U.S.C. § 12101 et seq.

- (3) The specific description of the reasonable accommodation being sought and the other pertinent information, including a detailed listing of any proposed structural or location-related accommodations.
  - (4) The specific condition(s) of the applicant for which reasonable accommodation is sought.
  - (5) A description of the hardship, if any, that the applicants will incur should the request for reasonable accommodation being sought not be granted.
  - (6) A description of any alternative methods of relieving the claimed hardship that have been considered, as well as the reason, if any, why the applicants have rejected such alternatives.
  - (7) A statement describing why the requested accommodation is necessary to afford the applicants an opportunity equal to a nonhandicapped or nondisabled person to use and enjoy the dwelling, building, or structure in question.
  - (8) A description of the manner in which the accommodation, if granted, will be removed, terminated, and/or discontinued if no longer necessary to afford equal opportunity to a nonhandicapped or nondisabled person to use and enjoy the dwelling, building, or structure in question.
  - (9) A statement of any facts indicating whether or not nonhandicapped or nondisabled persons would be permitted to utilize the property in question in a manner similar to that which is sought by the applicant.
- C. The Zoning Officer, at his discretion, may hold any meetings and/or hearings to solicit information or argument pertinent to the request for accommodation.
- D. The Zoning Officer's decision shall be in writing and state the reasons for the decision, including references to the specific sections of this chapter and any other relevant and related chapters of the Codified Ordinance of the Borough.
- E. The Zoning Officer shall issue his written decision to the applicants and the Borough within 30 days of filing of the request for accommodation.
- F. A request for reasonable accommodation should be directed in the first instance to the Zoning Officer. In considering a request for reasonable accommodation, the Zoning Officer shall, with the advice of the

counsel of the Borough Solicitor and/or Borough Engineer, apply the following criteria:

- (1) Whether the applicant is handicapped or disabled within the meaning of the Federal Fair Housing Act Amendments and/or the Americans with Disabilities Act.<sup>75</sup>
- (2) The degree to which the accommodation sought is related to the handicap or disability of the applicant.
- (3) A description of hardship, if any, that the applicant will incur should the request for reasonable accommodation being sought not be granted.
- (4) The extent to which the requested accommodation is necessary to afford the applicant opportunities equal to a nonhandicapped or nondisabled person to use and enjoy the dwelling, building, or structure in question.
- (5) The extent to which the proposed accommodation may impact other property owners in immediate vicinity.
- (6) The extent to which the proposed accommodation may be consistent with or contrary to the purposes of this chapter, most recent version of the Wormleysburg Borough Comprehensive Plan, and the community development objectives set forth in this Part 1 of this chapter relating to purpose of enactment.
- (7) The extent to which the requested accommodation would impose financial and administrative burdens upon the Borough.
- (8) The extent to which the requested accommodation would impose an undue hardship upon the Borough.
- (9) The extent to which the accommodation would require a fundamental alteration in the nature of the Borough's regulatory policies, objectives, and regulations.
- (10) The extent to which the requested accommodation would result in a subsidy, privilege, or benefit not available to nonhandicapped or nondisabled persons.
- (11) The permanency of the requested accommodation and the conditions under which such accommodation will be removed, terminated, and/or discontinued when it is no longer needed to provide handicapped or disabled persons with equal

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75. Editor's Note: See 42 U.S.C. § 12101 et seq.

opportunity to use and enjoy the dwelling, building, or structure in question.

- G. Persons aggrieved by the Zoning Officer's determination may appeal to the Wormleysburg Zoning Hearing Board in accordance with Part 12 of this chapter relating to Zoning Hearing Board.

**§ 27-1203. Permits and Certificates. [Ord. No. 497, 1/8/2013]**

1. A zoning permit indicates that a zoning application complies with this chapter to the best knowledge of the Zoning Officer or his designee. No zoning permit or certificate of use and occupancy shall be granted by him for any purpose except in compliance with the literal provisions of this chapter. The Zoning Officer may be authorized to institute enforcement proceedings as set forth in this Part 12 relating to enforcement, violations, and penalties.
2. A zoning permit is required to be issued prior to the start of any of the following activities:
  - A. Use, occupation, erection, construction, reconstruction, addition, conversion, alteration, movement, placement, or extension (vertical or horizontal) of any structure or building.
  - B. Change in the type of use and expansion of the use of a structure, building, or area of land, including non-conformities.
  - C. Creation or establishment of a new use of a structure, building, or area of land.
  - D. Other activities required to have a permit and/or approval by this chapter.
  - E. No zoning permit shall be required for repairs or routine maintenance of any structure, building, or land, provided such repairs or maintenance do not change the use or the exterior dimensions of the structure, building, or otherwise violate the provisions of this chapter.
3. The Borough of Wormleysburg may, at its option, issue combined or separate building permits and zoning permits and related certificates of use and occupancy, and may utilize a single or separate application for the permits.
4. The only determination by the Zoning Officer that shall be official shall be a written determination after the Zoning Officer receives a duly submitted written official application.
5. Any zoning permit shall be issued or denied within 90 days from the date of application.
6. No zoning permit shall be issued except in conformity with:

- A. All applicable regulations of this chapter;
  - B. Any conditions imposed upon the site by the Wormleysburg Zoning Hearing Board or the Wormleysburg Borough Council; and
  - C. Any recorded subdivision or land development plan.
7. In all instances in which the Zoning Officer expresses a reasonable doubt as to the ability of a proposed use to meet all of the above-described requirements, it will be incumbent upon the applicant to furnish adequate evidence in support of his application. If such evidence is not presented, the zoning permit may be denied.
  8. Application for a zoning permit shall be made by the owner or authorized agent of any building, structure, or land; provided, however, that if the application is made by a person other than the owner, it shall be accompanied by a written authorization of the owner that the proposed work is authorized by the owner. The full names and addresses of the owner, applicant, and responsible officers, if the owner is a corporate body, shall be stated in the application.
  9. The Zoning Officer may call upon other Borough of Wormleysburg staff and/or appointed consultants in the review of submitted materials for applications.
  10. The Zoning Officer may revoke a permit or approval issued under the provisions of this chapter in case of any false statement or misrepresentation of fact in the application or plans on which the permit or approval was based or for any other cause set forth in this chapter.
  11. Where a zoning permit is required by this chapter, but the work is commenced or changed prior to obtaining such permit, and after notice by the Borough of Wormleysburg the fees set by ordinance or resolution of the Wormleysburg Borough Council for such permit shall be doubled. The doubling of the permit fee shall be required to reflect the additional expense incurred by the Borough of Wormleysburg resulting from the need to inspect the property, respond to any complaints, issue any enforcement notices, or process the application as soon as it is received. The payment of such increased permit fees shall not relieve any person from complying with all requirements of this chapter or any other applicable Borough chapters, ordinances, regulations, or from any penalties or enforcement actions authorized by this chapter.
  12. Issuance of Permits. Upon receiving the application, the Zoning Officer shall examine the same within the required timeframe set forth in this subsection after filing. If the application or plans do not conform to the provisions of all applicable local laws, the Zoning Officer shall reject such application, in writing, stating the reasons therefore. The Zoning Officer shall inform the applicant of his right to appeal to the Wormleysburg Zoning Hearing Board in the event such application is rejected. If satisfied that the proposed work

and/or use conforms to the provisions of this chapter and all laws and ordinances applicable thereto, and that the zoning permit as required herein has been applied for, the Zoning Officer shall issue a permit therefor to the maximum extent feasible but not later than 90 days from receipt of the application.

13. **Reconsideration of Application.** An applicant whose request for a zoning permit has been denied by the Zoning Officer may make a later application for a permit, provided all deficiencies which were the basis for the prior denial of the permit have been eliminated. Additional fees may apply as set by the Wormleysburg Borough Council.
14. **Expiration of Zoning Permit.** Should the applicant fail to commence work within six months of the date of issuance of the zoning permit, the permit shall expire; provided, however, that the same may be extended one time for six additional months, upon written request by the applicant at least 30 days prior to the permit expiration date, and upon subsequent approval by the Zoning Officer.
15. **Compliance with this chapter.** The permit shall be a license to proceed with the work and should not be construed as authority to violate, cancel, or set aside any of the provisions this chapter, except as stipulated by the Wormleysburg Zoning Hearing Board. This shall not relieve the applicant from obtaining any required building permit approvals as required under Chapter 5, relating to code enforcement.
16. **Compliance with Permit and Plot/Site Plan.** All work or uses shall conform to the approved application and plans for which the permit has been issued as well as the approved plot/site plan.
17. **Display of Zoning Permit.** All approved zoning permits shall be prominently displayed on the subject property during construction, renovation, reconstruction, repair, remodeling, or the conduct of other site improvements. Such permit displays shall occur within five days of permit issuance, or prior to the commencement of actual work on the site, whichever occurs first. Such permit display shall be continuous until the site receives its certificate of use and occupancy.
18. **Inspections.** Inspections of the property in question by the Zoning Officer or other duly appointed official may be required at various intervals during the construction, renovation, reconstruction, repair, remodeling or the conduct of other site improvement processes. By submitting an application for a zoning permit, the landowner or applicant authorizes the Borough of Wormleysburg to perform such inspections as required.

**§ 27-1204. Certificate of Use and Occupancy. [Ord. No. 497, 1/8/2013]**

1. It shall be unlawful to use and/or occupy any structure, sign, land area, or portions thereof for which a zoning permit is required until a certificate of use and occupancy for such activity has been issued by the Zoning Officer.
2. The Borough staff may permit the building permit and zoning permit application to serve as the application for the certificate of use and occupancy.
3. The certificate of use and occupancy shall only be issued by the Zoning Officer if the Zoning Officer determines that the activity complies with this chapter, to the best knowledge of the Zoning Officer.
4. The applicant shall keep a copy of the certificate of use and occupancy available for inspection.
5. Upon request of the applicant, the Zoning Officer may issue a temporary certificate of use and occupancy. Such temporary certificate may permit an activity to occur in all or part of a structure or on all or part of the land before the entire work covered by the zoning permit has been completed.
  - A. However, such temporary certificate shall only be issued if the applicant proves to the Zoning Officer that the activity or occupancy can occur safely without endangering public health or safety.
  - B. The temporary certificate shall establish in writing a maximum time period under which it is valid. A six-month maximum time period shall apply if not otherwise specified.
  - C. Failure to receive a permanent certificate of use and occupancy within such time period shall be a violation of this chapter.
  - D. The temporary certificate may be conditioned upon compliance with certain specific requirements within certain time periods.
6. The Zoning Officer shall inspect any structure, building, or land within 15 days upon notification that the proposed work that was listed under a zoning permit has been completed and, if satisfied that the work is in conformity and compliance with the work listed in the issued permit and all other pertinent laws, he shall issue a certificate of use and occupancy for the intended use listed in the original application. Where a building permit is required under Chapter 5, relating to code enforcement, a certificate of use and occupancy shall not be issued until a final inspection by the Building Code Official is complete and found to be satisfactory.



**§ 27-1205. Zoning Permit(s) for Temporary Uses and Structures. [Ord. No. 497, 1/8/2013]**

1. A zoning permit for a temporary use or structure (including signs) may be issued by the Zoning Officer for any of the following:
  - A. Customary, routine, and accessory short-term special events, provided that only a well-established nonprofit organization or a permitted place of worship proposing a temporary use demonstrates clearly that the proposed use will primarily serve a charitable, public service or religious purpose in order to be eligible to receive approval for commercial or business-type activities in a zoning district where a commercial or business use would not otherwise be permitted;
  - B. Temporary storage and office trailers that are necessary to serve on-site construction, while such construction is actively underway;
  - C. Such other activities that the applicant proves are routine, customary and temporary, including those specific "temporary" uses and structures set forth in Part 7 and Part 8 of this chapter.
2. Time Period. The Zoning Officer shall state a reasonable maximum time period on the temporary permit. If no time limit is stated or otherwise specifically provided in Part 7 of this chapter, then a 180-day maximum period shall apply. A temporary permit may be renewed not more than one additional time beyond the initial approval, for just cause.

**§ 27-1206. Types of Uses. [Ord. No. 497, 1/8/2013]**

1. Use Permitted By Right. The Zoning Officer shall issue a zoning permit under this chapter in response to an application for a use that is "permitted by right" if it meets all of the requirements of this chapter.
2. Special Exception Use. A zoning permit under this chapter for a use requiring a special exception shall be issued by the Zoning Officer only in response to a written approval by the Wormleysburg Zoning Hearing Board, following a hearing, and compliance with any conditions by the Wormleysburg Zoning Hearing Board and any conditions required by this chapter.
3. Conditional Use. A zoning permit under this chapter for a use requiring a conditional use shall be issued by the Zoning Officer only in response to a written approval by the Wormleysburg Borough Council, following a hearing, and compliance with any conditions by the Wormleysburg Borough Council and any conditions required by this chapter.
4. Application Requiring a Variance. A permit under this chapter for a use requiring a variance shall be issued by the Zoning Officer only in response to a written approval by the Wormleysburg Zoning Hearing Board, following a

hearing, and in compliance with any conditions set by the Wormleysburg Zoning Hearing Board.

**§ 27-1207. Applications for Zoning Permits. [Ord. No. 497, 1/8/2013]**

1. Submission. All applications for a zoning permit shall be made in writing on a form provided by the Borough of Wormleysburg. Such completed application, with required fees, shall be submitted to a designated Borough of Wormleysburg official.
2. Application Information. Any application under this chapter shall include the following information, unless the Zoning Officer determines such information is unnecessary to determine compliance with this chapter:
  - A. Address of the lot.
  - B. Name and address of the applicant, and of the owner of the property if different from the applicant.
  - C. Description of the proposed use of the property.
  - D. All other applicable information listed on the official Borough of Wormleysburg application form.
  - E. Such additional information that the Zoning Officer may determine is reasonably necessary to determine compliance with this chapter.
  - F. Applications for Zoning and/or Building Permits involving the construction of new principal buildings or additions/expansions to existing principal buildings, etc., in the FST Overlay Zoning District (FSTO) shall be submitted with the information required in Part 6 of this chapter relating to FST Overlay Zoning District (FSTO).
3. Plot/Site Plan. The applicant shall submit a minimum of two copies of a plot/site plan with the application. The plot/site plan shall be drawn to scale and show the following:
  - A. The approximate layout of the lot, with lot width, lot area and other applicable dimensional standards and requirements.
  - B. The total number of lots, units of occupancy, density and proposed land use. If multiple land uses are proposed, the location of each land use shall be indicated.
  - C. The approximate location and configuration of existing and proposed buildings, structures, parking compounds, loading areas, streets, access drives, driveways, alleys, sidewalks, easements, and general stormwater management facilities and locations, with existing features clearly distinguished from proposed features.

- D. Setback lines and yards with notes showing the dimensions of all structures and buildings from lot lines and street rights-of-way.
  - E. Location of any watercourses and any 100-year floodplain.
4. Application for zoning permits for nonresidential uses shall include the following, unless the Zoning Officer determines such information is unnecessary to determine compliance with this section:
- A. A location map showing the tract to be developed, zoning district boundaries, adjoining tracts, significant natural features, including wetlands, stands of trees, streams, etc., and streets for a distance of 200 feet from all tract boundaries;
  - B. A plot/site plan, certified by a qualified professional land surveyor, engineer, or landscape architect licensed and registered to practice in the Commonwealth of Pennsylvania, of the lot showing the location of all existing and proposed buildings, structures, access drives, driveways, circulation patterns, curb cuts and lot access, parking compounds, screening, fences and walls, buffer yards, waste disposal or other methods of sewage disposal, other construction features on the lot, and the location of all topographical features;
  - C. An hours of operation and management plan, as required in Part 7 of this chapter relating to hours of operation and management plan, as applicable.
  - D. A schematic architectural drawing of the principal building(s) front facade(s).
  - E. Submission, approval, and recording information subdivision and/or land development plan in accordance with Chapter 22, relating to subdivision and land development, as required.
5. Application for zoning permits for signs shall also include the following:
- A. A plot/site plan as required in Subsection 3 above, showing the location of the building, structure or lot to which the sign is to be attached or erected, showing the location and size of other signs on the property, and showing the position of the sign in relation to nearby buildings, thoroughfares, and property lines. Plan must be to scale.
  - B. A plan drawn to scale showing the design of the sign, materials to be used, colors, lighting, lettering, method of construction, and means of attachment to the building or ground
  - C. Name of person, firm, corporation or association erecting, altering or moving the sign.

- D. Written consent of the owner of the land on which the sign is to be erected, altered or relocated. In the event that the sign is considered abandoned or must be removed for any reasons, it will be the responsibility of the owner of the land to do so.
- E. The following requirements shall be complied with:
  - (1) Chapter 5 of the Codified Ordinances of the Borough of Wormleysburg, relating to code enforcement.
  - (2) All electrical service to signs shall be underground.
- 6. Areas Subject to Flooding. If the proposed development, excavation or construction is located within an area subject Part 6 of this chapter relating to Floodplain Overlay Zoning District (FPO) and to Chapter 8 relating to floodplains, the information set forth in the applicable sections shall accompany all applications.
- 7. The Borough Building Code Ordinance. Where the proposed use is regulated under Chapter 5, relating to code enforcement, the applicant may submit an application for a building permit concurrently with the zoning permit. A zoning permit will not be issued until satisfactorily meeting the requirements of Chapter 5 relating to code enforcement.

**§ 27-1208. Issuance of Permits. [Ord. No. 497, 1/8/2013]**

- 1. At least one copy of each zoning permit application and any other zoning approvals shall be retained in the Borough of Wormleysburg files.
- 2. PennDOT Permit. Where necessary for access onto a state-owned street or road, a Borough zoning and/or building permit shall be automatically conditioned upon issuance of a PennDOT highway occupancy permit.

**§ 27-1209. Revocation of Permits; Appeal of Permit or Approval. [Ord. No. 497, 1/8/2013]**

- 1. Revocation. The Zoning Officer shall revoke, withhold or suspend a permit or approval issued under the provisions of this chapter in the case of one or more of the following:
  - A. Any false statement or misrepresentation of fact in the application or on the plans on which the permit or approval was based. (Note: Title 18 the Pennsylvania Crimes and Offences Code provides for penalties for providing false information to a municipal employee in the carrying out of his duties.)
  - B. Upon violation of any condition lawfully imposed by the Wormleysburg Zoning Hearing Board for a special exception use or a variance.

- C. Upon violation of any condition lawfully imposed by the Wormleysburg Borough Council for a conditional use.
  - D. Any work being accomplished or use of land or structures in such a way that does not comply with this chapter or an approved site plan or approved permit application.
  - E. Any other just cause set forth in this chapter.
2. Appeals. A party with legitimate standing, or as otherwise provided by state law, may appeal decisions made under this chapter within the provisions of the MPC, as amended.<sup>76</sup> Such appeal shall occur within the time period established by the MPC, as amended.

**§ 27-1210. Compliance with the Borough Subdivision and Land Development Ordinance. [Ord. No. 497, 1/8/2013]**

If an application under this chapter is also regulated by Chapter 22, relating to subdivision and land development, then any permit or approval under this chapter shall automatically be conditioned upon compliance with the Chapter 22, relating to subdivision and land development. However, if the granting of a variance, special exception, or conditional use is necessary, such approval shall be obtained prior to submitting an application for subdivision and/or land development approval.

- 1. Example 1: If an applicant applies for a permit for a single-family detached dwelling on a proposed new lot, the zoning and building permit for such dwelling shall not be valid until after the lot is granted final subdivision and land development approval and the lot is officially recorded by the Cumberland County Recorder of Deeds.

**§ 27-1211. General Procedure for Permits. [Ord. No. 497, 1/8/2013]**

- 1. After receiving a proper application, the Zoning Officer within the prescribed timeframes set forth in Part 12 of this chapter, relating to permits & certificates, shall either:
  - A. Issue the applicable permit(s); or
  - B. Deny the application(s) as submitted, indicating one or more reasons, in writing, to the applicant.
- 2. The only determination by the Zoning Officer that shall be official shall be a written determination after the Zoning Officer receives a duly submitted written official application.
- 3. Unless other approvals are required prior to the issuance of a permit, after the permit under this chapter has been issued, the applicant may undertake the action specified in the permit, in compliance with other Borough codes

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<sup>76</sup> Editor's Note: See 53 P.S. § 10101 et seq.

and ordinances. However, it is recommended that applicants wait 30 days to begin construction if there is a possibility of an appeal by another party to have the permit revoked. Any commencement of construction or a use within this thirty-day appeal period shall be at the risk of the applicant.

**§ 27-1212. Interpretation. [Ord. No. 497, 1/8/2013]**

1. Minimum Requirements. Where more than one provision of this chapter controls a particular matter, the provision that is more restrictive upon uses, structures, and buildings shall apply. The provisions of this chapter are in addition to any other applicable Borough code or ordinance.
2. Interpretation of This Chapter Text and Boundaries.
  - A. The Zoning Officer shall literally apply the wording of this chapter and the location of all zoning district boundaries to applications; see Part 1 of this chapter relating to zoning districts and map. In any case, the Zoning Officer may also request an advisory opinion from the Borough Solicitor and/or Borough Engineer to aid in the Zoning Officer's determination.
  - B. If an applicant disagrees with the Zoning Officer's determination and believes that the chapter should be interpreted in the applicant's favor, the applicant may appeal to the Wormleysburg Zoning Hearing Board.

**§ 27-1213. Enforcement; Violations and Penalties. [Ord. No. 497, 1/8/2013]**

All of the enforcement, violations and penalty provisions of the MPC, as amended,<sup>77</sup> are hereby incorporated into this chapter by reference.

1. Violations. Any person who shall commit or who shall permit any of the following actions violates this chapter:
  - A. Failure to secure a zoning permit prior to pursuing any activity listed in Part 12 of this chapter relating to permits and certificates.
  - B. Placement of false statements on or omitting relevant information from an application for a zoning permit.
  - C. Undertaking any action in a manner which does not comply with an approved zoning permit.
  - D. Violation of any conditions imposed by a decision of the Wormleysburg Zoning Hearing Board in granting a variance, special exception, or other approval.

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77. Editor's Note: See 53 P.S. § 10101 et seq.

- E. Violation of any condition imposed by a decision of the Wormleysburg Borough Council in granting a conditional use.
2. Causes of Action; Enforcement; Remedies.
- A. Enforcement. If it appears to the Borough that a violation of this chapter has occurred, the Borough shall initiate enforcement proceedings by sending an enforcement notice. Prior to sending an official enforcement notice, the Zoning Officer may, at his option, informally request compliance.
  - B. 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 that parcel, and to any other person requested, in writing, by the owner of record. If the owner of record of the parcel of which the violation has occurred is not to whom the zoning permit was issued, then the enforcement notice shall also be sent to the person(s) to whom the zoning permit was granted. An enforcement notice shall state the following, at minimum:
    - (1) The name of the owner of record and any other person against whom the Borough of Wormleysburg intends to take action.
    - (2) The location and address of the property in violation.
    - (3) The specific violation with a description of the requirements which have not been met, citing, in each instance, the applicable provisions of this chapter.
    - (4) The date before which the steps for compliance must be commenced and the date before which the steps must be completed.
    - (5) That the recipient of the notice has the right to appeal to the Wormleysburg Zoning Hearing Board within a prescribed period of time in accordance with procedures set forth in this chapter.
    - (6) That failure to comply with the notice within the time specified, unless extended by appeal to the Wormleysburg Zoning Hearing Board, constitutes a violation, with possible sanctions clearly described.
  - C. Evidence and Fees. In any appeal of an enforcement notice to the Wormleysburg Zoning Hearing Board, the Borough of Wormleysburg shall have the responsibility of presenting its evidence first. Any filing fees paid by a party to an appeal of an enforcement notice to the Wormleysburg Zoning Hearing Board shall be returned to the appealing party by the Borough of Wormleysburg if the Wormleysburg

Zoning Hearing Board, or any court in a subsequent appeal, rules in the appealing party's favor.

- D. Cause of Action. If the enforcement notice is not complied with within the specified time period, the Zoning Officer shall notify the Wormleysburg Borough Council. With the consent of the Wormleysburg Borough Council, the Borough Solicitor or other officer of the Borough of Wormleysburg may institute any appropriate action or proceeding to prevent, restrain, correct or abate such building, structure, landscaping or land, or to prevent in or about such premises any act, conduct, business or use constituting a violation.
- E. Violations and Penalties. Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of this chapter shall, upon being found liable therefore in a civil enforcement proceeding commenced by the Borough of Wormleysburg, pay a judgment of not more than \$500 plus all court costs, including the reasonable attorney's fees incurred by the Borough of Wormleysburg as a result thereof. No judgment shall commence or be imposed, levied or be payable until the date of the determination of a violation by the District Justice. If the defendant neither pays nor timely appeals the judgment, the Borough of Wormleysburg may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation unless a District Justice determining that there has been a violation further determines that there was a good faith basis for the person, partnership or corporation violating this chapter to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination by the District Justice, and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs, and reasonable attorney's fees collected for the violation of this chapter shall be paid over to the Borough of Wormleysburg. Imprisonment shall not be authorized by this chapter.

**§ 27-1214. Fees. [Ord. No. 497, 1/8/2013]**

The Wormleysburg Borough Council may establish fees for the administration of this chapter. All fees shall be determined by a schedule that is made available to the general public. The Wormleysburg Borough Council may reevaluate the Fees Schedule and make necessary alterations to it. Such alterations shall not be considered an amendment to this chapter and may be adopted at any public meeting of the Wormleysburg Borough Council.



**§ 27-1215. Amendments. [Ord. No. 497, 1/8/2013]**

All of the amendment provisions of the MPC, as amended,<sup>78</sup> are hereby incorporated into this chapter by reference.

1. Power of Amendment. The Wormleysburg Borough Council may, from time to time, amend, supplement, change or repeal this chapter, including the Official Zoning Map. Any amendment, supplement, change or repeal may be initiated by the Wormleysburg Borough Planning Commission, the Wormleysburg Borough Council, or by a petition to the Wormleysburg Borough Council by an interested party;
2. Hearing and Enactment Procedures for Zoning Amendments. Before conducting any hearing and considering enacting any amendment, supplement, change or repeal to this chapter, including any petitions for text and rezonings or map changes, the Wormleysburg Borough Council shall comply with the procedures and timeframes established by the MPC, as amended.<sup>79</sup>
  - A. Public Notice. Before conducting a public hearing, the Wormleysburg Borough Council shall provide public notice as follows:
    - (1) The notice shall be published once each week for two successive weeks in a newspaper of general circulation in the Borough. Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing. The first publication shall not be more than 30 days and the second publication shall not be less than seven days from the date of the hearing. Publication of the proposed amendment shall include either the full text thereof or the title and brief summary, prepared by the municipal solicitor and setting forth all the provisions in reasonable detail;
    - (2) For Official Zoning Map amendments, public notice shall also include the posting of a sign at conspicuous locations along the perimeter of the subject property; these sign(s) shall be posted at least one week prior to the hearing and will exhibit the nature, date, time, municipality, and location of the hearing;
    - (3) In addition to the requirement that notice be posted on the subject property, where the proposed amendment involves a zoning map change, notice of the public hearing shall be mailed by the Borough of Wormleysburg at least 30 days prior to the date of the hearing by first-class mail to the addresses to which real estate tax bills are sent for all real property located within the area being rezoned, as evidenced by tax records within the possession of the Borough of Wormleysburg. The notice shall

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78. Editor's Note: See 53 P.S. § 10101 et seq.

79. Editor's Note: See 53 P.S. § 10101 et seq.

include the location, date and time of the public hearing. The provisions of this section shall not apply when the rezoning constitutes a comprehensive rezoning;

- (4) For curative amendments, public notice shall also indicate that the validity of this chapter and/or map is in question, and shall give the place where and the times when a copy of the request, including any plans, explanatory material or proposed amendments, may be examined by the public; and
  - (5) If, after any public hearing held upon an amendment, the proposed amendment is changed substantially or is revised to include land previously not affected by it, the Wormleysburg Borough Council shall hold another public hearing, pursuant to public notice before proceeding to vote on the amendment.
- B. Enactment Notice. In addition to the public notice requirements defined herein, the Wormleysburg Borough Council must publish a reference to the time and place of the meeting at which passage of this chapter or amendment will be considered, and a reference to a place within the Borough where copies of the proposed chapter or amendment may be examined without charge, or obtained for a charge not greater than the cost thereof. Enactment notice shall be published at least once in one newspaper of general circulation in the borough not more than 60 days nor less than seven days prior to passage. The published content of the enactment notice shall be the same as that required for public notice described in the preceding subsection;
- C. Wormleysburg Borough Planning Commission Referrals. For amendments proposed by interested parties other than the Wormleysburg Borough Planning Commission, the Wormleysburg Borough Council shall submit each amendment at least 30 days prior to public hearing to Wormleysburg Borough Planning Commission for review and comment. The Wormleysburg Borough Planning Commission shall submit a report of its review, together with any recommendations, to the Wormleysburg Borough Council within 45 days from the date of said referral. The recommendation of the Wormleysburg Borough Planning Commission may include a specific statement as to whether or not the proposed amendment is in accordance with the intent of this chapter and the most recent version of the Wormleysburg Borough Comprehensive Plan. The Wormleysburg Borough Council cannot act upon the amendment until it has received a recommendation from the Borough Planning Commission; however, should the Wormleysburg Borough Planning Commission fail to submit its recommendation within 45 days, the Wormleysburg Borough Council may proceed without its recommendation;

- D. Cumberland County Planning Commission Referrals. All proposed amendments shall be submitted to the Cumberland County Planning Commission at least 30 days prior to public hearing on such amendments. The Cumberland County Planning Commission may submit recommendations to the Wormleysburg Borough Council within 30 days of such referral. The Wormleysburg Borough Council cannot act upon the amendment until it has received a recommendation from the Cumberland County Planning Commission; however, should the Cumberland County Planning Commission fail to submit its recommendation within 30 days, the Wormleysburg Borough Council may proceed without its recommendation;
  - E. Adjournment of Public Hearing. If, during the public hearing process, the Wormleysburg Borough Council needs additional time to understand the proposal, inform the public, receive public comment, and/or render a decision, it may adjourn the public hearing to a specific time and place; and
  - F. Within 30 days after enactment, a copy of the amendment to this chapter shall be forwarded to the Cumberland County Planning Commission.
3. Amendment Initiated by a Petition from an Interested Party.
- A. All petitions for amendment, supplement, change, or repeal for a portion of this chapter shall include but not be limited to:
    - (1) A statement of why proposed amendment would be in the best interests of the Borough.
    - (2) A statement of how the proposed amendment is in accordance with the intent of this chapter.
    - (3) A statement of how the proposed amendment furthers the objectives of the most recent version of the Wormleysburg Borough comprehensive plan.
    - (4) All fee established by Wormleysburg Borough Council shall be paid upon the filing of such petition for change and for the purpose of defraying the costs of the proceedings prescribed herein.
    - (5) The Borough reserves the right to require duplicate sets of petition materials and request additional information in order to evaluate the applicability of the petition.
  - B. In addition to the requirements and procedures set forth in Part 12 of this chapter relating to Amendments including specific timeframes and County Planning reviews, petitions involving rezoning or map

change amendments shall also be processed in accordance with the following:

- (1) Purpose of Rezoning or Map Change Procedures and Requirements.
  - (a) The purpose of these rezoning or map change procedures and requirements is to protect the safety, capacity and efficiency of the Borough's existing infrastructure systems; to maintain fiscal responsibility; and to uphold the objectives of the most recent version of the Wormleysburg Borough comprehensive plan, and/or other applicable plans adopted by Wormleysburg Borough.
  - (b) Borough rezoning or map change recommendations shall be based on the projected beneficial and/or detrimental effects not only on the immediate neighborhood, but also on the Borough as a whole.
- (2) Request for Rezoning or Map Change. All requests for rezoning or map change shall be accompanied by a package of the plans, analyses and reports required below, to demonstrate the compatibility of a rezoning or map change request.
- (3) Review of Request for Rezoning or Map Change Package.
  - (a) Upon receipt of a request for rezoning or map change package, the Zoning Officer will review the package for completeness. If the Zoning Officer finds the submission to be incomplete or insufficient, the rezoning or map change request package will be returned to the applicant. When the rezoning or map change request package is found to be complete by the Zoning Officer, one copy shall be forwarded to each member of the Wormleysburg Borough Council, Borough Planning Commission, and the Cumberland County Planning Commission. As part of the rezoning or map change request package, the Wormleysburg Planning Commission and Wormleysburg Borough Council shall consider the motivation and implications of each plan, analysis, and report.
  - (b) The Borough shall review and act on the rezoning or map change request in compliance with the following procedural guidelines:
    - 1) The Borough shall decide if the proposed rezoning or map change request is or is not generally consistent with the most recent version of the

Wormleysburg Borough comprehensive plan, and/or other applicable plans adopted by Wormleysburg Borough.

- 2) If the rezoning or map change request is found to be generally consistent with the most recent version of the Wormleysburg Borough comprehensive plan, and/or other applicable plans adopted by Wormleysburg Borough, the Borough shall consider any projected beneficial and/or detrimental effects not only on the immediate neighborhood, but also on the Borough as a whole.
  - 3) The Wormleysburg Borough Council shall render a decision in favor or not in favor of the rezoning or map change request proposal. The Borough shall compose a brief summary explanation of its decision and forward the decision and explanation to the Zoning Officer.
- (4) Rezoning or Map Change Request Criteria.
- (a) There are two categories of rezoning or map change requests: minor and major. Minor and major rezoning or map change requests are differentiated based on the size of the area to be rezoned and the anticipated fiscal, physical, environmental and social impacts, not only on the immediate neighborhood, but also on the Borough as a whole.
  - (b) Minor Rezoning or Map Change Requests. Minor rezoning or map change requests are expected to have a lesser impact on the traffic, fiscal resources and existing physical and environmental character of the Borough. The following situations constitute eligibility for the minor application:
    - 1) The rezoning of a nonresidential parcel, or contiguous parcel(s), that totals one acre or less and is located in a mixed-use district.
    - 2) The rezoning of an existing residential parcel, or contiguous parcel(s), that totals three acres or less in a residential district.
  - (c) Major Rezoning or Map Change Requests. Any rezoning project that does not meet either of the criteria in Subsection 3B(4)(b) is a major application.

- (d) Rezoning or Map Change Requests Requirements. Subsection 3B(5) outlines the plans, analyses and reports that a landowner and/or developer shall submit as part of minor or major rezoning applications.
- (5) Rezoning or Map Change Request Package: Plans, Analyses and Reports.
  - (a) All rezoning or map change request shall include a signature by at least one record owner of the property in question whose signature shall be notarized attesting the truth and correctness of all the facts and information presented in the petition.
  - (b) Minor Rezoning or Map Change Requests. Plans, analyses and reports required to be submitted as part of a minor rezoning or map change requests shall include a scaled plot/site plan certified by a qualified professional land surveyor, engineer or landscape architect licensed and registered to practice in the Commonwealth of Pennsylvania and shall be submitted in accordance with the following:
    - 1) Location and Identification.
      - a) The name and address of the owner(s) of the tract (or authorized agent), the developer, and the firm that prepared the plan.
      - b) A North arrow, a graphic scale and a written scale.
      - c) A location map, drawn to a scale of a minimum of one inch equals 2,000 feet relating the subdivision and/or development to at least two intersections of street center lines. The approximate distance to the intersection of the center lines of the nearest improved street intersection shall be identified.
      - d) If the tract of land is located within 200 feet of a Borough or zoning district boundary line(s), the location of such boundary shall be shown and labeled accordingly.

- e) The source of title including the deed, lot, and plan of record number to the subject tract.
  - f) Tax parcel identification number(s) for the subject tract.
- 2) Existing Features.
- a) Existing Contours. Cumberland County geographic information system (GIS) topography may be accepted.
  - b) The following items when located within the subject tract, including the name and approximate location and approximate dimensions of existing rights-of-way and/or easements relating to streets, cartways, access drives, driveways, alleys, sidewalks, railroads, public utilities, stormwater management facilities, telecommunications, electric, gas, and oil transmission lines. The approximate location of building and development features, including, building and structures, parking and loading areas, circulation patterns, curb cuts lot access, parking stalls, screening, fences and walls, buffer yards, waste disposal or other methods of sewage disposal; other features and environmental and topographic features, including, but not limited to, floodplains, wetlands, mineral extraction sites, woodlands, habitats for threatened and endangered species, solid waste disposal areas, historic resources, cemetery or burial sites, archeological sites, or areas with highly erosive soils.
  - c) When available, the following items when located within 200 feet of the subject tract: the names of adjacent landowners; names and approximate location and approximate dimensions of existing rights-of-way and/or easements relating to streets, cartways, access drives, driveways, alleys, sidewalks, railroads, public utilities, stormwater management facilities, telecommunications, electric, gas, and oil transmission lines, the approximate location and general uses of

- land, buildings, parking and loading areas, floodplains, and wetlands.
- d) If applicable, existing and proposed protective covenants running with the land.
- 3) Proposed Features and Plan Information.
- a) The total approximate acreage of the entire existing tract.
- b) The zoning district and lot size and/or density, and other requirements of the applicable zoning regulations.
- c) The approximate layout of the lot(s), with approximate dimensions, setback lines, yards, etc.
- d) The total number of lots, units of occupancy, density and proposed land use. If multiple land uses are proposed, the location of each land use shall be indicated.
- e) The approximate layout of streets, alleys, and sidewalks, including cartway and right-of-way widths.
- f) The approximate location and configuration of proposed uses, building and structures, parking and loading areas, circulation patterns, curb cuts and lot access, parking stalls, screening, fences and walls, buffer yards, waste disposal or other methods of sewage disposal, general stormwater management facilities and locations, easements, and other features.
- g) A note on the plan indicating the types of sewer or water facilities to be provided.
- 4) A schematic architectural drawing of the principal building's front facade(s).
- 5) Additional Information. The Borough reserves the right to request additional information as part of the rezoning or map change request process in order to evaluate the applicability of the rezoning or map change request.



- (c) Major Rezoning or Map Change Requests. Plans, analyses and reports required to be submitted as part of a major rezoning or map change requests shall include:
- 1) All of the plans, analyses, and reports for set forth above for minor rezoning or map change requests.
  - 2) Site Conditions Report. The applicant shall describe the following existing characteristics about the site proposed for development.
    - a) Total site acreage.
    - b) Existing zoning district(s), land use(s) and covenants.
    - c) Existing land characteristics, including general topographic form, site accessibility, length of public road frontage, pattern and density of vegetative cover, significant adjacent and long-range views to and from the site, hydrological patterns.
    - d) Relationship of proposed development to adjacent, existing and proposed community facilities which serve or influence the site; available utilities; number of lots and acreage; business areas; playgrounds; main traffic thoroughfares; elementary and high schools; and street improvements.
    - e) Reservations, if any, by the landowner and/or developer of any area designed for use as public grounds shall be suitable size and location for designated uses.
    - f) Land which is subject to flooding or subsidence either shall be made safe for the purpose for which such land is proposed to be used, or that such land shall be set aside for use which shall not endanger life or lot, or further aggravate or increase existing menace.
    - g) A copy of the option agreement or certificate of title shall be submitted as evidence of the applicant's interest in the lot.

- 3) Infrastructure Demand Statement. The infrastructure demand statement shall be submitted to the Borough, containing the following information:
  - a) Predevelopment data for overall demand.
  - b) Estimated gallons of sanitary sewage created per average day.
  - c) Estimated gallons of potable water consumed/utilized per average day.
  - d) Estimated number of school-age children.
  - e) Estimated total residents and/or employees.
- 4) Post-development data for overall demand.
  - a) Estimated gallons of sanitary sewage created per average day.
  - b) Estimated gallons of potable water consumed/utilized per average day.
  - c) Estimated number of school-age children.
  - d) Estimated total residents and/or employees.
- 5) Fiscal Impact Analysis. An evaluation providing the following information shall be completed:
  - a) Potential Borough and school district tax generation of the proposed development.
  - b) Population projections, including the number of school-aged children at build-out of the proposed development.
  - c) Length of road to be dedicated to the Borough.
  - d) Length of sewer and water lines to be dedicated to the Borough.
  - e) The Borough will evaluate the proposed development of the proposed zoning in relationship to the potential development in the existing zoning.

- 6) Additional Information. The Borough reserve the right to request additional information as part of the rezoning or map change request review and approval process in order to evaluate the applicability of the rezoning or map change request including but not limited to:
  - a) Environmental impacts that are likely to be generated (e.g., odor, noise, smoke, dust, litter, glare, vibration, electrical disturbance, wastewater, stormwater, solid waste, etc.) and specific measures employed to mitigate or eliminate any negative impacts.
  - b) Traffic impact studies in accordance with Part 7 of this chapter, relating to traffic impact study requirements, or Chapter 22, relating to subdivision and land development; and/or
  - c) Phase I environmental assessments.
4. Curative Amendments by a Landowner or by the Wormleysburg Borough Council. The procedures for curative amendments shall be in accordance with the MPC, as amended.<sup>80</sup>
5. Authentication of Official Zoning Map. Whenever there has been a change in the boundary of a zoning district or a reclassification of the zoning district adopted in accordance with the above, the change on the Official Zoning Map shall be made, and shall be duly certified by the designated Borough official and shall thereafter be refiled as part of the permanent records of the Borough.

**§ 27-1216. Zoning Hearing Board. [Ord. No. 497, 1/8/2013]**

All of the Zoning Hearing Board Provisions of the MPC, as amended,<sup>81</sup> are hereby incorporated into this chapter by reference.

1. Establishment and Membership.
  - A. There shall be a Zoning Hearing Board which shall consist of three members who shall be appointed by resolution by the Wormleysburg Borough Council. The membership of the Wormleysburg Zoning Hearing Board shall consist of residents of Wormleysburg Borough. Their terms of office shall be three years and shall be so fixed that the

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<sup>80</sup>. Editor's Note: See 53 P.S. § 10101 et seq.

<sup>81</sup>. Editor's Note: See 53 P.S. § 10101 et seq.

term of office of one member shall expire each year. The Wormleysburg Zoning Hearing Board shall promptly notify the Borough of any vacancies that occur. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members of the Wormleysburg Zoning Hearing Board shall hold no other elected or appointed office in the Borough nor shall any member be an employee of the Borough.

- B. The Wormleysburg Borough Council may appoint by resolution at least one but no more than three residents of the Borough to serve as alternate members of the Wormleysburg Zoning Hearing Board. The term of office of an alternate member shall be three years. When seated pursuant to the provisions of this section, an alternate shall be entitled to participate in all proceedings and discussions of the Wormleysburg Zoning Hearing Board to the same and full extent as provided by law for Wormleysburg Zoning Hearing Board members, including specifically the right to cast a vote as a voting member during the proceedings, and shall have all the powers and duties set forth in this chapter and as otherwise provided by law. Alternates shall hold no other office in the Borough, including membership on the Borough Planning Commission and Zoning Officer. Any alternate may participate in any proceeding or discussion of the Wormleysburg Zoning Hearing Board but shall not be entitled to vote as a member of the Wormleysburg Zoning Hearing Board nor be compensated, unless designated as a voting alternate member pursuant to this Part 12 of this chapter.
  - C. Any member of the Wormleysburg Zoning Hearing Board may be removed for malfeasance, misfeasance, or nonfeasance in office or for other just cause by a majority vote of the Wormleysburg Borough Council taken after the member has received 15 days' advance notice of the intent to take such a vote. A hearing shall be held in connection with the vote if the member shall request it in writing.
2. Organization of Zoning Hearing Board. The Wormleysburg Zoning Hearing Board shall elect from its own membership its officers, who shall serve annual terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all members of the Wormleysburg Zoning Hearing Board, but the Wormleysburg Zoning Hearing 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 Wormleysburg Zoning Hearing Board as provided in Subsection 4B of this section. If, by reason of absence or disqualification of a member, a quorum is not reached, the Chairman of the Wormleysburg Zoning Hearing Board shall designate as many alternate members of the Wormleysburg Zoning Hearing Board to sit on the Wormleysburg Zoning Hearing Board as may be needed to provide a quorum. Any alternate member of the Wormleysburg Zoning Hearing Board shall continue to serve on the Wormleysburg Zoning Hearing Board in all

proceedings involving the matter or case for which the alternate was initially appointed until the Wormleysburg Zoning Hearing Board has made a final determination of the matter or case. Designation of an alternate pursuant to this section shall be made on a case-by-case basis in rotation according to declining seniority among all alternates. The Wormleysburg Zoning Hearing Board may make, alter, and rescind rules and forms for its procedure consistent with codes or ordinances of the Borough and laws of the Commonwealth. The Wormleysburg Zoning Hearing Board shall keep full public records of its business, which records shall be the property of the Borough, and shall submit a report of its activities to the Wormleysburg Borough Council upon request.

3. Expenditures for Services. Within the limits of funds appropriated by the Wormleysburg Borough Council, the Wormleysburg Zoning Hearing Board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services. Members of the Wormleysburg Zoning Hearing Board may receive compensation for the performance of their duties, as may be fixed by the Wormleysburg Borough Council. Alternate members of the Wormleysburg Zoning Hearing Board may receive compensation, as may be fixed by the Wormleysburg Borough Council, for the performance of their duties when designated as alternate members pursuant to Subsection 1 of this section, but in no case shall such compensation exceed the rate of compensation authorized to be paid to the members by the Wormleysburg Borough Council.
4. Hearings.
  - A. The Wormleysburg Zoning Hearing Board shall conduct hearings and make decisions in accordance with the following requirements:
    - (1) Public Notice Shall be Provided. In addition, the Wormleysburg Zoning Hearing Board shall notify, in writing, by mail, the applicant, Zoning Officer, and other such persons, whether owners or tenants of property located within 200 feet of the subject property for which the application was submitted, and every other person or organization who shall have registered with the Wormleysburg Zoning Hearing Board for the purposes of receiving such notices. Such mailed notices shall state the location of the site and the nature of the request. It shall also state the time, date, and location of the proposed hearing. In addition to the written notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one week prior to the hearing;
    - (2) The Wormleysburg Borough Council may prescribe reasonable fees with respect to hearing before the Wormleysburg Zoning Hearing Board. Fees for said hearings may include compensation for the secretary and members of the Wormleysburg 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 Wormleysburg Zoning Hearing Board, expenses for engineering, architectural or other technical consultants or expert witness costs;

- (3) The first hearing before the Wormleysburg Zoning Hearing Board or hearing officer shall be commenced within 60 days from the date of receipt of the applicant's application, unless the applicant has agreed, in writing, to an extension of time. Each subsequent hearing before the Wormleysburg Zoning Hearing Board or hearing officer shall be held within 45 days of the prior hearing, unless otherwise agreed to by the applicant in writing or on the record. An applicant shall complete the presentation of its case-in-chief within 100 days of the first hearing. Upon the request of the applicant, the Wormleysburg Zoning Hearing Board or hearing officer shall assure that the applicant receives at least seven hours of hearing within the 100 days, including the first hearing. Persons opposed to the application shall complete the presentation of their opposition to the application within 100 days of the first hearing held after the completion of the applicant's case-in-chief. An applicant may, upon request, be granted additional hearings to complete its case-in-chief, provided the persons opposed to the application are granted an equal number of additional hearings to complete their opposition to the application, provided the applicant is granted an equal number of additional hearings for rebuttal.
- B. The hearings shall be conducted by the Wormleysburg Zoning Hearing Board or the Wormleysburg Zoning Hearing Board may appoint any member or an independent attorney as a hearing officer. The decision, or, where no decision is called for, the findings, shall be made by the Wormleysburg Zoning Hearing Board; however, the appellant or the applicant, as the case may be, in addition to the Borough, may, prior to the decision of the hearing, waive decisions or findings by the Wormleysburg Zoning Hearing Board and accept the decision or findings of the hearing officer as final.
- C. The parties to the hearing shall be the Borough, any person affected by the application who has made timely appearance of record before the Wormleysburg Zoning Hearing Board, and any other person, including civic or community organizations, permitted to appear by the Wormleysburg Zoning Hearing Board. The Wormleysburg Zoning Hearing Board shall have power to require that all persons who wish to be considered parties enter appearances, in writing, on forms provided by the Wormleysburg Zoning Hearing Board for that purpose.

- D. The Chairman or Acting Chairman of the Wormleysburg Zoning Hearing 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.
- E. 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.
- F. Formal rules of evidence shall not apply, but irrelevant, immaterial, and unduly repetitious evidence may be excluded.
- G. The Wormleysburg Zoning Hearing 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 Wormleysburg Zoning Hearing Board. The cost of the original transcript shall be paid by the Wormleysburg Zoning Hearing Board if the transcript is ordered by the Wormleysburg Zoning Hearing Board or hearing officer; or shall be paid by the person appealing the decision of the Wormleysburg Zoning Hearing 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.
- H. The Wormleysburg Zoning Hearing Board or the hearing officer shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials, except advice from its solicitor, unless the parties are afforded an opportunity to contest the materials so noticed and shall not inspect the site or its surroundings after the commencement of hearings with any party or its representative unless all parties are given an opportunity to be present.
- I. The Wormleysburg Zoning Hearing Board or the hearing officer, as the case may be, shall render a written decision or, when no decision is called for, make written findings on the application within 45 days after the last hearing before the Wormleysburg Zoning Hearing Board or hearing officer. Where the application is contested or denied, each decision shall be accompanied by the findings of fact and conclusions based thereon together with the reasons therefor. Conclusions based on any provisions of this chapter or of any ordinance, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in 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

Wormleysburg Zoning Hearing Board shall make his report and recommendations available to the parties within 45 days and the parties shall be entitled to make written representations thereon to the Wormleysburg Zoning Hearing Board prior to final decision or entry of findings, and the Wormleysburg Zoning Hearing Board's decision shall be entered no later than 30 days after the report of the hearing officer. Except for challenges filed under Article IX of the MPC, as amended,<sup>82</sup> where the Wormleysburg Zoning Hearing Board fails to render the decision within the period required by this subsection or fails to commence, conduct or complete the required hearing as provided in Subsection 4 of § 27-1216 of this chapter, 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 Wormleysburg Zoning Hearing Board to meet or render a decision as hereinabove provided, the Wormleysburg Zoning Hearing Board shall give public notice of said decision with 10 days from the last day it could have met to render a decision in the same manner as provided in Subsection 4 of § 27-1216 of this chapter. If the Wormleysburg Zoning Hearing Board shall fail to provide such notice, the applicant may do so. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal.

- J. A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to him not later than the next business day following its date. To all other persons who have filed their name and address with the Wormleysburg Zoning Hearing Board not later than the last day of the hearing, the Wormleysburg Zoning Hearing Board shall provide, by mail or otherwise, brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined.
- K. Effect of Wormleysburg Zoning Hearing Board's Decision.
  - (1) If the variance or special exception is granted or the issuance of a permit is approved, or other action by the appellant is authorized, the necessary permit shall be secured and the authorized action begun within two years after the date when the variance or special exception is finally granted, or the issuance of a permit is finally approved, or the other action by the appellant is authorized, and the building or alteration, as the case may be, shall be completed within three years of said date. For good cause, the Wormleysburg Zoning Hearing Board may at any time, upon application in writing, extend either of these deadlines;

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82. Editor's Note: See 53 P.S. § 10901 et seq.



- (2) Should the appellant or applicant fail to obtain the necessary permits within said two-year period, or, having obtained the permit, should he fail to commence work thereunder within such two-year period, it shall be conclusively presumed that the appellant or applicant has waived, withdrawn, or abandoned his appeal or his application, and all provisions, variances and permits granted to him shall be deemed automatically rescinded by the Wormleysburg Zoning Hearing Board;
  - (3) Should the appellant or applicant commence construction or alteration within said two-year period, but should he fail to complete such construction or alteration within said three-year period, the Wormleysburg Zoning Hearing Board may, upon 10 days' notice in writing, rescind or revoke the granted variance or special exception, or the issuance of the permit, or permits, or the other action authorized to the appellant or applicant if the Wormleysburg Zoning Hearing Board finds that no good cause appears for the failure to complete within such three-year period, and if the Wormleysburg Zoning Hearing Board further finds that conditions have so altered or changed in the interval since the granting of the variance, permit or action that revocation or rescission of the action is justified; and
  - (4) As an alternative to the preceding, an applicant can request, as part of the original application before the Wormleysburg Zoning Hearing Board, the granting of a timetable associated with the request which would supersede the deadlines imposed. In so doing, the applicant must demonstrate that the times requested are logically related to normal and expected progress of the project. In approving a timetable under this section, the Wormleysburg Zoning Hearing Board must establish and bind a definite time frame for 1) issuance of a zoning permit, and 2) completion of construction of the project.
5. Zoning Hearing Board's Functions. The Wormleysburg Zoning Hearing Board shall have the exclusive jurisdiction to hear and render decisions in the following matters:
- A. Substantive challenges to the validity of this chapter, except those brought before the Wormleysburg Borough Council pursuant to Section 916.1(a)(2) of the MPC, as amended.<sup>83</sup>
    - (1) If a challenge heard by the Wormleysburg Zoning Hearing Board is found to have merit, the decision of the Wormleysburg Zoning Hearing Board shall include recommended amendments to the challenged chapter which will cure the defects found. In reaching its decision, the Wormleysburg Zoning Hearing Board

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83. Editor's Note: See 53 P.S. § 10916.1(a)(2).

shall consider the amendments, plans and explanatory material submitted by the landowner and shall also consider:

- (a) The impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities;
  - (b) If the proposal is for a residential use, the impact of the proposal upon regional housing needs and the effectiveness of the proposal in providing housing units of a type actually available to and affordable by classes of persons otherwise unlawfully excluded by the challenged provisions of this chapter or Official Zoning Map;
  - (c) The suitability of the site for the intensity of use proposed by the site's soils, slopes, woodland, wetlands, floodplains, aquifers, natural resources and other natural features;
  - (d) The impact of the proposed use on the site's soils, slopes, woodlands, wetlands, floodplains, natural resources and nature features, the degree to which these are protected or destroyed, the tolerance of the resources to development, and any adverse environmental impacts; and
  - (e) The impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare;
- (2) Public notice of the hearing shall be provided as specified in Subsection 4 of § 27-1216 of this chapter;
  - (3) The Wormleysburg Zoning Hearing Board shall commence its hearings within 60 days after the request is filed unless the landowner requests or consents to an extension of time; and
  - (4) The Wormleysburg Zoning Hearing Board, shall render its decision with 45 days after the conclusion of the last hearing. If the Board fails to act on the landowner's request within this time limit, a denial of the request is deemed to have occurred on the 46th day after the close of the last hearing.
- B. Challenges to the validity of this chapter raising procedural questions or alleged defects in the process of enactment or adoption, which challenges shall be raised by an appeal taken within 30 days after the effective date of this chapter.
  - C. Special exceptions as provided for in this chapter and subject to all applicable requirements, including, but not limited to:

- (1) Filing Requirements. In addition to the required zoning permit information, each special exception application shall include the following:
  - (a) Ground floor plans and elevations of proposed structures;
  - (b) Names and address of abutting property owners, including properties directly across a public right-of-way;
  - (c) A scaled drawing (plot/site plan) of the site with sufficient detail and accuracy to demonstrate compliance with all applicable provisions of this chapter; and
  - (d) A written description of the proposed use in sufficient detail to demonstrate compliance with all applicable provisions of this chapter.
- (2) General Criteria. Each applicant must demonstrate compliance with the following:
  - (a) The proposed use shall be consistent with the purpose and intent of this chapter;
  - (b) The proposed use shall not detract from the use and enjoyment of adjacent or nearby properties;
  - (c) The proposed use will not substantially change the character of the subject property's neighborhood;
  - (d) Adequate public facilities are available to serve the proposed use (e.g., schools, fire, police and ambulance protection, sewer, water and other utilities, vehicular access, etc.);
  - (e) The proposed use complies with this chapter, including Part 6, relating to Floodplain Overlay Zoning District (FPO), and Chapter 8, relating to floodplains;
  - (f) The proposed use shall comply with those criteria specifically listed in Part 11 of this chapter. In addition, the proposed use must comply with all other applicable regulations contained in this chapter; and
  - (g) The proposed use will not substantially impair the integrity of the most recent version of the Wormleysburg Borough comprehensive plan and/or other applicable plans adopted by Wormleysburg Borough.
- (3) Conditions. The Wormleysburg Zoning Hearing Board, in approving special exception applications, may attach conditions considered necessary to protect the public welfare and the

purposes listed above, including conditions which are more restrictive than those established for other uses in the same zoning district. The conditions shall be enforceable by the Zoning Officer and failure to comply with such conditions shall constitute a violation of this chapter.

- (4) Plot/Site Plan Approval. Any plot/site plan presented in support of the special exception pursuant to Subsection 5A(1)(c) of § 27-1216 shall become an official part of the record for said special exception. Approval of any special exception will also bind the use in accordance with the submitted plot/site plan; therefore, should a change in the plot/site plan be required as part of the approval of the use, the applicant shall revise the site plan prior to the issuance of a zoning permit. Any subsequent change to the use on the subject property not reflected on the originally approved plot/site plan shall require the obtainment of another special exception approval.

D. Variances. The Wormleysburg Zoning Hearing Board shall hear requests for variances where it is alleged that the provisions of this chapter inflict unnecessary hardship upon the applicant. The Wormleysburg Zoning Hearing Board may, by rule, prescribe the form of application to the Zoning Officer. The Wormleysburg Zoning Hearing Board may grant a variance, provided that all of the following findings are made where relevant in a given case:

- (1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of this chapter in the neighborhood or zoning district in which the property is located;
- (2) That, because of such physical circumstances or conditions, there is not a possibility that the property can be developed in strict conformity with the provisions of this chapter and that the authorization of a variance is therefore necessary to enable reasonable use of the property;
- (3) That such unnecessary hardship has not been created by the appellant;
- (4) That the variance, if authorized, will not alter the essential character of the zoning district or neighborhood in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare;

- (5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulations in issue;
  - (6) The proposed use complies with this chapter, including Part 6, relating to Floodplain Overlay Zoning District (FPO), and Chapter 8, relating to floodplains;
  - (7) Filing Requirements. In addition to the required zoning permit, each variance application shall include the following:
    - (a) Ground floor plans and elevations of existing and/or proposed structures;
    - (b) Names and addresses of adjoining property owners, including properties directly across a public right-of-way;
    - (c) A scaled drawing (plot/site plan) of the site with sufficient detail and accuracy to demonstrate compliance with all applicable provisions of this chapter; and
    - (d) A written description of the proposed use in sufficient detail to demonstrate compliance with all applicable provisions of this chapter.
  - (8) Conditions. The Wormleysburg Zoning Hearing Board, in approving variance applications, may attach conditions considered necessary to protect the public welfare and the purposes listed above, including conditions which are more restrictive than those established for other uses in the same zoning district. These conditions shall be enforceable by the Zoning Officer, and failure to comply with such conditions will constitute a violation of this chapter; and
  - (9) Plot/Site Plan Approval. Any site/plot plan presented in support of the variance pursuant to Subsection 5D(7)(c) of § 27-1216 shall become an official part of the record for said variance. Approval of any variance will also bind the use in accordance with the submitted plot/site plan; therefore, should a change in the plot/site plan be required as part of the approval of the use, the applicant shall revise the plot/site plan prior to the issuance of a zoning permit. Any subsequent change to the use on the subject property not reflected on the originally approved plot/site plan, shall require the obtainment of another variance approval.
- E. Appeals from the determination of the Zoning Officer, including, but not limited to, the granting or denial of any permit, or failure to act on the application therefor, the issuance of any cease-and-desist order or

- the registration or refusal to register any nonconforming use, structure or lot;
- F. Appeals from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provisions of this chapter;
  - G. Appeals from the Zoning Officer's determination under Section 916.2 (and any subsequent amendments) of the MPC, as amended;<sup>84</sup> and
  - H. Appeals from the determination of the Zoning Officer or Borough Engineer in the administration of any land use ordinance with reference to sedimentation and erosion control, and/or stormwater management for applications not involving a subdivision/land development.
6. Parties Appellant before the Wormleysburg Zoning Hearing Board. Appeals under Subsection 5E, F, G and H; and proceedings to challenge this chapter under Subsection 5 of § 27-1216 may be filed with the Wormleysburg Zoning Hearing Board, in writing, by the landowner affected, any officer or agency of the Borough of Wormleysburg, or any person aggrieved. Requests for a variance or a special exception may be filed with the Wormleysburg Zoning Hearing Board by any landowner or any tenant with the permission of such landowner. Any appeal shall state:
- A. The name and address of the appellant and applicant;
  - B. The name and address of the landowner of the real estate to be affected;
  - C. A brief description and location of the real estate to be affected by such proposed change together with a plot/site plan drawn to scale with sufficient clarity to show the nature and character of the request;
  - D. A statement of the present zoning classification of the real estate in question, the improvements thereon, and the present use thereof; and
  - E. A statement of the section of this chapter under which the request may be allowed, and reasons why it should or should not be granted.
7. Time Limitations.
- A. No person shall be allowed to file any proceeding with the Wormleysburg Zoning Hearing Board later than 30 days after an application for development, preliminary or final, has been approved by the Zoning Officer or the agency responsible for granting such approval if such proceeding is designed to secure reversal or to limit the approval in any manner, unless such person alleges and proves

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84. Editor's Note: See 53 P.S. § 10916.2.

that he had no notice or 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.

- B. The failure of anyone other than the landowner to appeal from an adverse decision by the Zoning Officer a challenge to the validity of this chapter or the official Zoning Map pursuant to Section 916.2 of the MPC, as amended,<sup>85</sup> shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved tentative preliminary approval.

8. Stay of Proceeding.

- A. Upon filing of any proceeding referred to in Subsection 6 above and during its pendency before the Wormleysburg Zoning Hearing 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 Wormleysburg Zoning Hearing 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 Wormleysburg Zoning Hearing Board or by the court having jurisdiction of zoning appeals on petition after notice to the Zoning Officer or other appropriate agency or body. When an application for development, preliminary or final, has been duly approved and proceedings designed to reverse or limit the approval are filed with the Wormleysburg Zoning Hearing Board by person other than the applicant, the applicant may petition the court having jurisdiction of zoning appeals to order such person to post bond as a condition to continuing the proceedings before the Wormleysburg Zoning Hearing Board. After the petition is presented, the court shall hold a hearing to determine if the filing of the appeal is frivolous. At the hearing, evidence may be presented on the merits of the case. It shall be the burden of the applicant for a bond to prove the appeal is frivolous. After consideration of all evidence presented, if the court determines that the appeal is frivolous it shall grant the petition for a bond. The right to petition the court to order the appellants to post bond may be waived by the appellee but such waiver may be revoked by him if an appeal is taken from a final decision of the court. The question whether or not such petition should be granted and the amount of the bond shall be within the sound discretion of the court. An order denying a petition for bond shall be interlocutory. An order directing the responding party to post a bond shall be interlocutory.

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85. Editor's Note: See 53 P.S. § 10916.2.

- B. If an appeal is taken by a respondent to the petition for a bond from an order of the court dismissing a zoning appeal for refusal to post a bond and the appellant court sustains the order of the court below to post a bond, the respondent to the petition for a bond, upon motion of the petitioner and after hearing in the court having jurisdiction of zoning appeals, shall be liable for all reasonable costs, expenses, and attorney fees incurred by the petitioner.
9. Appeal. Any person, taxpayer, or the Borough of Wormleysburg aggrieved by any decision of the Wormleysburg Zoning Hearing Board may, within 30 days after such decision of the Wormleysburg Zoning Hearing Board, seek review by the Court of Common Pleas of such decision in the manner provided by the laws of the Commonwealth of Pennsylvania and the MPC, as amended.<sup>86</sup>

**§ 27-1217. Conditional Uses. [Ord. No. 497, 1/8/2013]**

1. Filing of Conditional Use. For any use permitted by conditional use, a conditional use must be obtained from the Wormleysburg Borough Council. In addition to the information required on the zoning permit application, the conditional use application must show:
- A. Ground floor plans and elevations of proposed structures.
  - B. Names and address of abutting property owners, including properties directly across a public right-of-way.
  - C. A scaled drawing (plot/site plan) of the site with sufficient detail and accuracy to demonstrate compliance with all applicable provisions of this chapter.
  - D. A written description of the proposed use in sufficient detail to demonstrate compliance with all applicable provisions of this chapter.
  - E. General Criteria. Each applicant must demonstrate compliance with the following:
    - (1) The proposed use shall be consistent with the purpose and intent of this chapter;
    - (2) The proposed use shall not detract from the use and enjoyment of adjacent or nearby properties;
    - (3) The proposed use will not substantially change the character of the subject property's neighborhood;

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<sup>86</sup>. Editor's Note: See 53 P.S. § 10101 et seq.



- (4) Adequate public facilities are available to serve the proposed use (e.g., schools, fire, police and ambulance protection, sewer, water and other utilities, vehicular access, etc.);
  - (5) The proposed use complies with this chapter, including Part 6, relating to Floodplain Overlay Zoning District (FPO), and Chapter 8, relating to floodplains;
  - (6) The proposed use shall comply with those criteria specifically listed in Part 12 of this chapter. In addition, the proposed use must comply with all other applicable regulations contained in this chapter; and
  - (7) The proposed use will not substantially impair the integrity of the most recent version of the Wormleysburg Borough comprehensive plan, and/or other applicable plans adopted by Wormleysburg Borough.
2. Conditions. The Wormleysburg Borough Council, in approving conditional use applications, may attach conditions considered necessary to protect the public welfare and the purposes listed above, including conditions which are more restrictive than those established for other uses in the same zone. These conditions shall be enforceable by the Zoning Officer and failure to comply with such conditions shall constitute a violation of this chapter.
3. Plot/Site Plan Approval. Any plot/site plan presented in support of the conditional use pursuant to Subsection 1A of § 27-1217 shall become an official part of the record for said conditional use. Approval of any conditional use will also bind the use in accordance with the submitted plot/site plan; therefore, should a change in the plot/site plan be required as part of the approval of the use, the applicant shall revise the plot/site plan prior to the issuance of a zoning permit. Any subsequent change to the use on the subject property not reflected on the originally approved plot/site plan shall require the obtainment of another conditional use approval.
4. Hearing Procedures.
  - A. Before voting on the approval of a conditional use, the Wormleysburg Borough Council shall hold a public hearing thereon, pursuant to public notice. The Wormleysburg Borough Council shall submit each such application to the Wormleysburg Borough Planning Commission at least 30 days prior to the hearing held upon an application to provide the Borough Planning Commission an opportunity to submit recommendations. If, after any public hearing held upon an application, the proposed application is revised, the Wormleysburg Borough Council shall hold another public hearing, pursuant to public notice, before proceeding to vote on the application.
  - B. Public notice as defined herein, shall be provided. In addition, the Wormleysburg Borough Council shall notify, in writing, by mail, the

applicant, Zoning Officer, and other such persons whether owners or tenants of property located within 200 feet of the subject property for which the application was submitted, and every other person or organization who shall have registered with the Borough for the purposes of receiving such notices, and other persons as the Wormleysburg Borough Council shall designate by ordinance, and to any person who has made timely request for the same. Written notices shall be given at such time and in such manner as shall be prescribed by ordinance or, in the absence of ordinance provisions, by rules of the Wormleysburg Borough Council. In addition to the written notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one week prior to the hearing.

- C. The Wormleysburg Borough Council may prescribe reasonable fees with respect to hearings. Fees for said hearings may include compensation for the secretary, notice and advertising costs and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses, expenses for engineering, architectural, or other technical consultants, or expert witness costs.
- D. The parties to the hearing shall be the Borough, any person affected by the application who has made timely appearance of record before the Wormleysburg Borough Council, and any other person, including civic or community organizations permitted to appear by the Wormleysburg Borough Council. The Wormleysburg Borough Council shall have power to require that all persons who wish to be considered parties enter appearance, in writing, on forms provided by the Wormleysburg Borough Council for that purpose.
- E. The President, Vice President, or Acting President of the Wormleysburg Borough Council shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and paper, including witnesses and documents requested by the parties.
- F. 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.
- G. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
- H. The Wormleysburg Borough Council may keep a stenographic record of the proceedings. The appearance fee for a stenographer shall be shared equally by the applicant and the Wormleysburg Borough Council. The cost of the original transcript shall be paid by the Wormleysburg Borough Council if the transcript is ordered by the

Wormleysburg Borough Council; or shall be paid by the person appealing the decision of the Wormleysburg Borough Council if such appeal is made, and, in either event, the cost of additional copies shall be paid by the person requesting such copy or copies. In other cases, the party requesting the original transcript shall bear the cost thereof.

- I. The Wormleysburg Borough Council shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials, except advice from its solicitor, unless 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 its representative unless all parties are given an opportunity to be present.
- J. The hearing shall be conducted by the Wormleysburg Borough Council or the Borough Council may appoint any member or an independent attorney as a hearing officer. The decision, or, where there is no decision, the findings shall be made by the Wormleysburg Borough Council. However, the appellant or the applicant, as the case may be, in addition to the Borough, may, prior to the decision of the hearing, waive decision or findings by the Wormleysburg Borough Council and accept the decision or findings of the hearing officer as final.
- K. The Wormleysburg Borough Council shall render a written decision or, when no decision is called for, make written finds on the conditional use application within 45 days after the last hearing before the Wormleysburg Borough Council. Where the application is contested or denied, each decision shall be accompanied by findings of fact or conclusions based thereon, together with any reasons therefor. Conclusions based on any provisions of this chapter or of any ordinance, 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.
- L. Where the Wormleysburg Borough Council fails to render the decision within the period required by this Part 12 of this chapter or fails to commence, conduct or complete the required hearing as provided in Subsection 5B of § 27-1217, 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, of an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the Wormleysburg Borough Council to meet or render a decision as hereinabove provided, the Wormleysburg Borough Council shall give public notice of the decision within 10 days from the last day it could have met to render a decision in the same manner as required by the public notice requirements of this Part 12 of this chapter. If the

Wormleysburg Borough Council shall fail to provide such notice, the applicant may do so.

5. Time Limitation.

- A. If a conditional use is granted, the necessary permit shall be secured and the authorized action begun within two years after the date when the conditional use is finally granted, and the building or alteration, as the case may be, shall be completed within three years of said date. For good cause, the Wormleysburg Borough Council may, at any time, upon application in writing, extend either of these deadlines;
- B. Should the appellant or applicant fail to obtain the necessary permits within said two-year period or, having obtained the permit, should he fail to commence work thereunder within such two-year period, it shall be conclusively presumed that the appellant or applicant has waived, withdrawn, or abandoned his application, and all approvals and permits granted to him shall be deemed automatically rescinded by the Wormleysburg Borough Council;
- C. Should the appellant commence construction or alteration within said two-year period, but should he fail to complete such construction or alteration within said three-year period, the Wormleysburg Borough Council may, upon 10 days' notice in writing, rescind or revoke the granted conditional use if the Wormleysburg Borough Council finds that no good cause appears for the failure to complete within such three-year period, and if the Wormleysburg Borough Council further finds that conditions have altered or changed in the interval since the granting of the conditional use that revocation or rescission of the action is justified; and
- D. As an alternative to the preceding, an applicant can request, as part of the original application before the Wormleysburg Borough Council the granting of a timetable associated with the request which would supersede the deadlines imposed in this Part 12 of this chapter. In so doing, the applicant must demonstrate that the times requested are logically related to normal and expected progress of the project. In approving a timetable under this section, the Wormleysburg Borough Council must establish and bind a definite timeframe for 1) issuance of a zoning permit, and 2) completion of construction of the project.