Upper Nazareth Township

Zoning Ordinance

As Adopted by the Upper Nazareth Township
Board of Supervisors on July 18, 2007
as Ordinance No. 125

Community Planning and Zoning Consultants

Urban Research and Development Corporation
Bethlehem, Pennsylvania

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Zoning Map . . . . . Insert at End

USING THIS ORDINANCE: AN OVERVIEW

These two pages describe the most efficient way to use this Ordinance. These pages are general descriptions but are not part of the actual Ordinance.

Start by using the following parts of the Zoning Ordinance:

- Please contact the Zoning Officer to make sure you have the latest version of the Zoning Ordinance Text and Map.

- Turn to the **Table of Contents** and the **Index** (at the end of the document) to find the pages and sections that apply to your particular situation. You may wish to photocopy the Table of Contents to highlight the relevant sections.

- Consult the **Zoning Map** at the end of this Zoning Ordinance to determine the zoning district that includes your lot.

- Turn to Section 306, the **Table of Permitted Uses By Zoning District**, which indicates the uses permitted in each zoning district. A use is permitted in three ways:

  a) by right,
  b) by special exception (the Zoning Hearing Board must approve the use, as described in Section 116), or
  c) as a conditional use (the Board of Supervisors must approve the use, as described in Section 117).

- Turn to Section 307, the **Table of Lot and Setback Requirements By Zoning District**. This table states the required minimum size of each lot and the required minimum distance that buildings must be from streets and other lot lines in each zoning district.

- Regularly refer to the **Definitions** in Section 202 to determine the meaning of specific words.

If a lot is already being legally used for a particular purpose and that use is not permitted in the zoning district according to Section 306, that use is called a **"Non-Conforming Use"**. In almost all cases, a lawful Non-Conforming Use can continue, can expand within limits, can change to another use within limits, and can be sold. See Section 805 -"Non-Conformities."

Certain specific uses must comply with **additional regulations**. The "principal uses" (which are the primary use of a property) are listed in alphabetical order in Section 402 and the "accessory uses" (which are secondary uses, such as low-intensity businesses in a home) are listed in alphabetical order in Section 403. For example, additional regulations are listed for sheds,

garages and other structures typically found on a residential lot under "Residential Accessory Structures" in Section 403.

If your lot may be flood-prone, see Section 504 and the Federal Floodplain Maps.

Turn to the following sections for regulations concerning parking, signs and buffer yards:

- Many uses must provide minimum numbers of off-street **Parking** spaces under Section 601 of this ordinance. The parking standards are listed in a table.

- If **Signs** are proposed within public view, Article 7 must be met. This article lists the types, heights and sizes of signs that are permitted.

- Certain uses are required to provide an open **Buffer Yard** with **Evergreen Screening** to buffer nearby homes and adjacent residentially zoned land from nuisances. See Section 803.

The following additional considerations should be kept in mind when using this Ordinance:

- An applicant may apply to the Township **Zoning Hearing Board** for a **Zoning Variance** if he/she is not able to comply with a provision of this Zoning Ordinance. An application fee is required to compensate the Township for legal advertisements and other costs. See Section 111, which includes the standards that must be met under State law in order to be granted a variance. Generally, under the PA Municipalities Planning Code, variances are not permitted unless an applicant proves a legal "Hardship."

- Generally, if one or more new lots will be created, or existing lot lines will be altered, or one or more new principal non-residential buildings are proposed, then the requirements and approval procedures of the Township **Subdivision and Land Development Ordinance** will also apply. This is a separate ordinance available at the Township Office.

- If there will be significant disturbance of the ground, it will be necessary to use certain measures to control **soil erosion**. In such case, contact the County Conservation District.

- If there will be impacts upon stormwater runoff, see the Township Stormwater Management Ordinance.

Any questions concerning the Zoning Ordinance should be directed to the Township's **Zoning Officer**. The Zoning Officer also administers applications for permits.

UPPER NAZARETH TOWNSHIP ZONING ORDINANCE
TITLE; ENACTMENT; SEVERABILITY

Ordinance No. 125

1. **TITLE**. A New Ordinance: a) dividing the Township of Upper Nazareth, Northampton County, Pennsylvania into districts with varying regulations; b) permitting, prohibiting, regulating and determining the uses of land, watercourses and other bodies of water, the size, height, bulk, location, erection, construction, repair, expansion, razing, removal and use of structures, the areas and dimensions of land and bodies of water to be occupied by uses and structures, as well as yards and other open areas to be left unoccupied; c) establishing the maximum density and intensity of uses; d) providing for the administration and enforcement of this Ordinance in accordance with the Pennsylvania Municipalities Planning Code, including provisions for special exceptions and variances to be administered by a Zoning Hearing Board; and e) establishing provisions for the protection of certain natural features.

2. **SHORT TITLE**. This Ordinance shall be known and be cited as the "Upper Nazareth Township Zoning Ordinance" of 2007.

3. **SEVERABILITY**. It is hereby declared to be the legislative intent that if a court of competent jurisdiction declares any provisions of this Ordinance to be invalid or ineffective in whole or in part, the effect of such decision shall be limited to those provisions which are expressly stated in the decision to be invalid or ineffective, and all other provisions of this Ordinance shall continue to be separately and fully effective. The Board of Supervisors hereby declares that it would have passed this Ordinance and each section or part thereof, other than any part declared invalid, if it had advance knowledge that any part would be declared invalid. If the entire Zoning Ordinance should be declared invalid, then the Upper Nazareth Township Zoning Ordinance that was in effect immediately prior to the enactment of this new Zoning Ordinance shall automatically be re-instated as the Zoning Ordinance for Upper Nazareth Township.

4. **PROCEDURAL DEFECTS IN ENACTMENT**. Allegations that this Ordinance or any amendment was enacted in a procedurally defective manner shall be appealed as provided in State law and be filed not later than 30 days after the intended effective date of the Ordinance or amendment.

5. **REPEALER**. The pre-existing Upper Nazareth Township Zoning Ordinance, as amended are hereby repealed, in addition to the repeal of any other Township ordinances or resolutions or parts thereof that were adopted prior to this Ordinance that are clearly in direct conflict with this Ordinance.

6. **ENACTMENT**. Under the authority conferred by the Pennsylvania Municipalities Planning Code, as amended, the Board of Supervisors of Upper Nazareth Township hereby enacts and ordains into an Ordinance the attached document this date of July 18, 2007. This Ordinance shall become effective in 5 calendar days.

Date of Board of Supervisors Public Hearing: July 18, 2007

UPPER NAZARETH TOWNSHIP BOARD OF SUPERVISORS

_____
Chairperson, Board of Supervisors

_____

_____

_____

_____

_____
Attest, Township Secretary

ARTICLE 1
ADMINISTRATION

101. **APPLICABILITY OF THIS ORDINANCE**. This Zoning Ordinance shall apply throughout the Township of Upper Nazareth. Any activity regulated by this Ordinance shall only occur in such a way that conforms with the regulations of this Ordinance. See Section 103.A.

102. **PURPOSES AND COMMUNITY DEVELOPMENT OBJECTIVES**. This Ordinance is hereby adopted:

102.A. in accordance with the requirements and purposes (including Sections 604 and 605 or their successor section(s), which are included by reference) of the Pennsylvania Municipalities Planning Code, as amended,

102.B. in accordance with goals and objectives of the Nazareth Area Regional Comprehensive Plan, which are hereby included by reference,

102.C. to carry out the following major objectives:

1. to make sure that development carefully relates to natural features, and to avoid overly intense development of environmentally sensitive land,
2. to minimize disturbance of creek valleys and steep woodlands,
3. to avoid overextending groundwater supplies, and to encourage groundwater recharge,
4. to protect the quality of groundwater and surface waters,
5. to promote traditional styles of development,
6. to promote compatibility between land uses,
7. to seek coordinated development and roads across municipal borders,
8. to provide for a variety of residential densities and meet legal obligations to provide opportunities for all housing types,
9. to promote development that retains the rural character of the Township,
10. to encourage rehabilitation and avoid demolition of historic buildings,
11. to direct higher density development to areas that are physically suitable, accessible by major roads and that have the potential of central water and sewage services,
12. to coordinate development with future central water and sewage service areas,
13. to direct industrial development to locations that will minimize conflicts with homes,
14. to direct commercial businesses to existing commercial areas, while avoiding new strip commercial areas that would cause traffic congestion and safety problems and conflicts with homes,
15. to promote new business development in appropriate areas that will provide additional tax revenue and job opportunities, and
16. to promote public health, safety and general welfare.

103. **PERMITS AND CERTIFICATES.**

103.A. Applicability.

1. Any of the following activities or any other activity regulated by this Ordinance shall only be carried out in conformity with this Ordinance.
   a. Erection, construction, movement, placement or extension of a structure, building or sign,
   b. Change of the type of use or expansion of the use of a structure or area of land,
   c. Creation of a lot or alteration of lot lines, and/or

d. Creation of a new use.

2. Zoning Permit. A Zoning Permit indicates that a zoning application complies with this Ordinance to the best knowledge of the applicable Township Staff.
   a. A Zoning Permit is required to be issued prior to the start of any of the following activities:
      (1) Erection, construction, movement, placement, relocation or expansion of a structure, building or sign;
      (2) Change of the type of use or expansion of the use of a structure or area of land;
      (3) Creation of a new use;
      (4) Demolition of a building, or partial demolition of the exterior of a building;
      (5) Site Alterations or Mineral Extraction as defined by Section 202;
      (6) Excavation or Grading in preparation for the construction of a building or a change in use of a property; and/or
      (7) Construction or Installation of any animal waste impoundment, lake, pond, dam or other water retention basin.
   b. The Township may, at its option, issue combined or separate Building Permits and Zoning Permits and/or may utilize single or separate applications for the permits.

3. Certificate of Occupancy.
   a. It shall be unlawful to use and/or occupy any new principal building or establish any new or replacement principal non-residential use until a Certificate of Occupancy for such building or use has been issued by the Township Staff. (Note - A Certificate of Occupancy may also be required in additional situations under the Construction Codes.)
   b. The Zoning Officer may require that the issuance of the Certificate of Occupancy be delayed if the Zoning Officer believes that the activity, structure or use is not in compliance with this Ordinance and associated zoning approvals, until such time as compliance is achieved.
   c. The applicant shall keep a copy of the Certificate of Occupancy available for inspection.
   e. Upon the request of an applicant, the Zoning Officer may in writing allow a temporary occupancy or activity to occur before all zoning requirements have been met where the following conditions are met:
      (1) The applicant shall prove to the Township that the activity or occupancy can occur safely without endangering public health or safety.
      (2) The temporary approval shall establish in writing a maximum time period under which it is valid. A 6 month maximum time period shall apply if not otherwise specified.
      (3) Failure to receive a permanent Certificate of Occupancy within such time period shall be a violation of this Ordinance.
      (4) The temporary approval may be conditioned upon compliance with certain specific requirements within certain time periods.
      (5) See Section 103.G.

103.B. Repairs and Maintenance. Ordinary repairs and maintenance to existing structures that do not involve an expansion or change of a use or structure shall not by itself be regulated by this Ordinance. Examples of such work include replacement of a roof or porch that does not involve

enclosure of space. (However, a Construction Permit under any Township Building Code may be needed for such work.)

103.C. Types of Uses.

1. Permitted by Right Uses. The Zoning Officer shall issue a permit under this Ordinance in response to an application for a use that is "permitted by right" if it meets all of the requirements of this Ordinance.
2. Special Exception Use or Application Requiring a Variance. A permit under this Ordinance for a use requiring a Special Exception or Variance shall be issued by the Zoning Officer only in response to a written approval by the Zoning Hearing Board following a hearing.
3. Conditional Use. A use requiring zoning approval by the Board of Supervisors under Section 117.

103.D. Applications.

1. Submittal. All applications for a Zoning Permit or a decision by the Zoning Hearing Board shall be made in writing on a form provided by the Township. Such completed application, with required fees, shall be submitted to a designated Township staff-person.

2. Site Plan. The applicant shall submit a minimum of 2 copies of a site plan with the application if the application involves a new building, expansion of a building or addition of 3 or more parking spaces. The site plan shall be drawn to scale and show the following:
   a. locations, dimensions and uses of existing and proposed structures, parking and loading areas, and locations of existing and proposed uses of areas of land, with existing features clearly distinguished from proposed features;
   b. notes showing the dimensions of all buildings from lot lines and street rights-of-way;
   c. locations of any watercourses and any 100 year floodplain;
   d. proposed lot areas, lot widths and other applicable dimensional requirements;
   e. locations and widths of existing and proposed sidewalks;
   f. a north arrow and scale; and
   g. well and primary and alternate septic system locations, if applicable. See Section 309.

3. Additional Information. Any application under this Ordinance shall include the following information, unless the Zoning Officer determines such information is unnecessary to determine compliance with this Ordinance:
   a. the address of the lot;
   b. name and address of the applicant, and of the owner of the property if different from the applicant;
   c. if the applicant is not the landowner of record, information shall be presented with the application, such as an agreement of sale or lease, to demonstrate that the applicant has the legal right to make the application;
   d. a current deed for the property;
   e. a description of the existing and proposed use(s) of the property, with the proposed use described in sufficient detail for the Zoning Officer to determine compliance with this Ordinance;
   d. all other applicable information listed on the official Township application form;
   e. if the applicant is incorporated, the legal names and day telephone numbers of officers of the organization/corporation;

f. such additional information that the Zoning Officer may determine is reasonably necessary to determine compliance with this Ordinance; and

g. a listing of all conditional uses, special exception approvals and/or variances which the applicant is requesting and/or a description with a date of any such approvals that were previously granted for this property that relate to this application.

4. Submittals to the Board. In addition to the information listed in part "3." above, an application requiring a site plan and action by the Zoning Hearing Board shall also include the following information, unless the Zoning Officer determines that such information is unnecessary to determine compliance with this Ordinance:

a. the present zoning district and major applicable lot requirements;

b. for a non-residential use:

(1) a description of the proposed non-residential operations and storage in sufficient detail to indicate potential nuisances and hazards regarding noise, large truck traffic, glare, odors, dust, fire or toxic or explosive hazards or other significant public health and safety hazards,

(2) a list of the maximum hours of operation;

c. the existing directions of stormwater flow (and any proposed revisions), and any proposed methods of stormwater management;

d. a listing of any sections of this Ordinance being appealed, with the reasons for any appeal;

e. approximate locations of principal buildings and locations of streets and alleys and zoning district boundaries within 100 feet of the boundaries of the tract, and description of uses of adjoining properties (such as "drug store" or "single family detached dwelling");

f. heights, locations, methods of illumination and intensity of exterior lighting and sign lighting;

g. name and address of person who prepared the site plan;

h. signed acknowledgment of the application by the applicant; and

I. such additional information required under applicable sections of this Ordinance.

5. Ownership. No person other than a landowner or their specifically authorized agent or a tenant or lessee with written permission of the landowner shall submit a zoning application (see definition of "landowner" in Article 2).

103.E. Issuance of Permits.

1. At least 1 copy of each permit application and any other zoning approval shall be retained in Township files.

2. PennDOT Permit. Where necessary for access onto a State road, a Township zoning or building permit shall be automatically conditioned upon issuance of a PennDOT Highway Occupancy Permit.

103.F. Revocation of Permits; Appeal of Permit or Approval.

1. Revocation. The Zoning Officer shall revoke, withhold or suspend a permit or approval issued under the provisions of the Zoning Ordinance in 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: The Pennsylvania Criminal Code

provides for penalties for providing false information to a municipal employee in the carrying out of his/her duties.)

b. upon violation of any condition lawfully imposed by the Zoning Hearing Board upon a special exception use or variance;

c. any work being accomplished or use of land or structures in such a way that does not comply with this Ordinance or an approved site plan or approved permit application; and/or

d. for any other just cause set forth in this Ordinance.

2. Appeals. A party with legitimate standing, or as otherwise provided by State law, may appeal decisions under this Ordinance within the provisions of the State Municipalities Planning Code. Any such appeal shall occur within the time period established in the State Municipalities Planning Code (as of the adoption date of this Ordinance, such provisions were in Sections 914.1 and 1002.A.).

103.G. Zoning Permit for Temporary Uses and Structures.

1. A Zoning Permit for a temporary use or structure may be issued by the Zoning Officer for any of the following:

a. A Temporary Permit may be issued for customary, routine and accessory short-term special events, provided that:

(1) only a well-established nonprofit organization or a permitted place of worship proposing a temporary use to clearly primarily serve a charitable, public service or religious purpose shall be eligible to receive approval for commercial-type activities in a district where a commercial use would not otherwise be permitted;

(2) such total events shall be limited to a maximum of 10 total days per calendar year; and

(3) the applicant shall prove to the Zoning Officer that sufficient parking and traffic control will be available for the special event, without obstructing parking that is required to serve other uses on the site.

b. A Temporary Permit may be issued for temporary storage and office trailers that are necessary to serve on-site construction, while such construction is actively underway under a valid Township permit.

c. In addition, Christmas Tree sales shall be allowed by right in all districts during the months of November and December.

2. Time Period. The Zoning Officer shall state a reasonable maximum time period on the temporary permit. If no time limit is stated, then a 7 day maximum period shall apply. A temporary permit may be renewed for just cause.

3. Temporary Retail Sales. Except as provided for in subsection 103.G.1.a. above, and except for agricultural sales allowed by Section 306, a lot shall only be used for temporary retail sales if all of the following conditions are met:

a. The property shall be located within a zoning district that allows retail sales.

b. The operator shall have received any business permits required by the Township.

c. No off-street parking spaces shall be obstructed that are required to serve permanent uses on the lot.

d. Any signs visible from a public street shall comply with this Ordinance.

e. If food or beverages are sold that are not pre-packaged, the applicant shall prove compliance with State health regulations, including having on-site facilities for workers to wash their hands. Proper bathroom facilities shall also be available for workers.
f. Any structure shall meet applicable minimum setbacks.
g. A permit under this Ordinance shall be required from the Township, which shall be displayed while the activity is open for business.
h. The application may be rejected if the Zoning Officer has reason to believe that the activity would obstruct safe sight distances.
I. Applicable State highway occupancy permit requirements shall be met.
j. A plan shall be submitted showing the location of the use on the site.

103.H. Compliance with Township Subdivision and Land Development Ordinance. If a application under this Ordinance would also be regulated by the Township Subdivision and Land Development Ordinance ("SALDO"), then any permit or approval under this Zoning Ordinance shall automatically be conditioned upon compliance with the SALDO. See the definitions of "Land Development" and "Subdivision" in the SALDO.

1. For example, if an applicant applies for a single family detached dwelling on a proposed new lot, the construction permit for such dwelling shall not be valid until after the lot is granted final subdivision approval and the lot is officially recorded by the County Recorder of Deeds.

104. GENERAL PROCEDURE FOR PERMITS.

104.A. After receiving a proper application, the Zoning Officer shall either: 1) issue the applicable permit(s), or 2) deny the application(s) as submitted, indicating one or more reasons.

104.B. After the permit under this Ordinance has been issued, the applicant may undertake the action specified by the permit, in compliance with other Township 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 30 day appeal period shall be at the risk of the applicant.

105. INTERPRETATION AND USES NOT REGULATED.

105.A. Minimum Requirements. Where more than one provision of this Ordinance controls a particular matter, the provision that is more restrictive upon uses and structures shall apply. The provisions of this Ordinance are in addition to any other applicable Township Ordinance.

105.B. Uses Not Specifically Regulated. If a use clearly is not permitted by right, as a conditional use, or as a special exception use by this Ordinance within any Zoning District, the use is prohibited, except that the Board of Supervisors may permit such use as a conditional use if the applicant specifically proves to the clear satisfaction of the Board of Supervisors that all of the following conditions would be met:

1. the proposed use would be no more intensive with respect to external impacts and nuisances than uses that are permitted in the District,
2. the proposed use would be closely similar in impacts and character to uses permitted in that District, considering the standards in Section 805.F.,
3. the use would meet the standards that would apply under Section 117 to a conditional use, and

4. the use is not specifically prohibited in that District.

105.C. Interpretation of Ordinance Text and Boundaries.

1. The Zoning Officer shall literally apply the wording of this Ordinance and the location of all District boundaries to particular applications. In any case, the Zoning Officer may also request an advisory opinion from the Township Solicitor to aid in the Zoning Officer's determination.
2. If an applicant disagrees with the Zoning Officer's determination and believes that the Ordinance should be interpreted in the applicant's favor, the applicant may appeal to the Zoning Hearing Board. See Section 111.
3. See Section 304.

105.D. Undefined Terms/ Interpretation of Definitions. See Section 201.

106. **ENFORCEMENT, VIOLATIONS AND PENALTIES**. All of the enforcement, violations and penalty provisions of the State Municipalities Planning Code, as amended, are hereby incorporated into this Ordinance by reference. (Note - As of the adoption date of this Ordinance, these provisions were primarily in Sections 616.1, 617 and 617.2 of such Act.)

106.A. Violations. Any person who shall commit or who shall permit any of the following actions violates this Ordinance:

1. Failure to secure a zoning permit prior to any of the following: a change in use of land or structure, or the erection, construction or alteration of any structure or portion thereof, or the placement of a sign, or a change in the area of a use or the land coverage or setback of a use, or the excavation or grading of land to prepare for the erection, construction or alteration of any structure or portion thereof;
2. Placement of false statements on or omitting relevant information from an application for a zoning permit;
3. Undertaking any action in a manner which does not comply with a zoning permit;
4. Violation of any condition imposed by a decision of the Zoning Hearing Board in granting a variance or special exception or other approval;
5. Violation of any condition imposed by a decision of the Board of Supervisors in granting a conditional use or other approval; or
6. Violation of any condition imposed by a decision of a court of competent jurisdiction, where such court has granted zoning approval with conditions.

106.B. Enforcement Notice. If the Township has reason to believe that a violation of a provision of the Zoning Ordinance has occurred, the Township shall initiate enforcement proceedings by sending an enforcement notice as provided in Section 616.1 of the State Municipalities Planning Code. Prior to sending an official enforcement notice, the Zoning Officer may at his/her option informally request compliance.

106.C. Time Limits. An official enforcement notice shall state the deadline to complete bringing the property into compliance with this Ordinance, and shall state that the applicant has 30 days from the receipt of the notice to appeal to the Zoning Hearing Board.

106.D. Enforcement, Penalties and Remedies. The Causes of Action and Enforcement Remedies provisions of the State Municipalities Planning Code, as amended, are hereby incorporated by reference. (Note - As of the adoption date of this Ordinance, such provisions were primarily in Section 617 and 617.2 of such law.)

1. Violations and Penalties. Any person, partnership, corporation or other entity who has violated or permitted the violation of the provisions of this Ordinance shall, upon being found liable therefor in a civil enforcement proceeding commenced by the Township, pay a judgment of not more than five hundred dollars plus all court costs, including the reasonable attorney's fees incurred by the Township 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 Township may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless a District Justice determining that there has been a violation further determines that there was a good faith basis for the person violating this Ordinance 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 of a violation by the District Justice, and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable attorney's fees collected for the violation of this Ordinance shall be paid over to the Township for the general use of the Township. Imprisonment is not authorized under this Ordinance.

2. Remedies. In case any building, structure, sign or landscaping is erected, constructed, reconstructed, altered, repaired, converted, maintained or used or any land is used or activity conducted in violation of this Ordinance or any of the permits issued under this Ordinance or any conditions imposed upon the grant of a special exception or variance by the Zoning Hearing Board or upon the grant of a conditional use, then, in addition to any other remedies provided by law, the Board of Supervisors may institute any appropriate action or proceeding to prevent , restrain, correct or abate such building, structure, landscaping, use or activity or to prevent, in and about such premises, any act, conduct, business or use constituting a violation.

106.E. Enforcement Evidence. In any appeal of an enforcement notice to the Zoning Hearing Board, the Township shall have the responsibility of presenting its evidence first.

107. **FEES**. A Township fee schedule for permits and applications may be established and amended by written resolution of the Board of Supervisors. No application or appeal shall be considered filed until all fees are paid.

108. **AMENDMENTS TO THIS ORDINANCE**. Within the requirements of the State Municipalities Planning Code, the Board of Supervisors may amend, or repeal any or all portions of this Ordinance on 1) its own motion, or 2) after agreeing to hear a written request of any person, entity, landowner or the Planning Commission.

109. **CURATIVE AMENDMENTS**. The applicable provisions of the State Municipalities Planning Code shall apply. (Note: As of the adoption date of this Ordinance, these provisions were primarily in Sections 609.1, 609.2 and 916.1 of such Act.)

110. ZONING OFFICER.

110.A. Appointment. The Zoning Officer(s) shall be appointed by the Board of Supervisors. The Board of Supervisors may designate other Township Staff-persons to serve as Assistant Zoning Officer(s). Assistant Zoning Officers may serve with the same authority and duties as the Zoning Officer. The Zoning Officer shall not hold any elective office within the Township, but may hold other appointed offices.

110.B. Duties and Powers. The Zoning Officer's duties and powers shall include the following:

1. administer the Zoning Ordinance in accordance with its literal terms, including to receive and examine all applications required under the terms of this Ordinance, and issue or refuse permits within the provisions of this Ordinance;
2. conduct inspections to determine compliance, and receive complaints of violation of this Ordinance;
3. keep records of applications, permits, certificates, written decisions, and variances granted by the Zoning Hearing Board, and of enforcement orders, with all such records being the property of the Township and being available for public inspection;
4. review proposed subdivisions and land developments for compliance with this Ordinance;
5. take enforcement actions as provided by the State Municipalities Planning Code, as amended;
6. maintain available records concerning non-conformities, provided that the Township is not required to document every non-conformity; and
7. serve such other functions as are provided in this Ordinance.

111. ZONING HEARING BOARD ACTIONS AND VARIANCES.

111.A. Membership of Board. The Zoning Hearing Board shall consist of 3 residents of the Township appointed by the Board of Supervisors. The existing terms of office shall continue, with terms of office being 3 years, and with the terms being so fixed that the term of office of one member shall expire each year. Members of the Board shall hold no other office in the Township.

1. Alternate Members. The Board of Supervisors may appoint alternate members of the Zoning Hearing Board within the applicable provisions of the State Municipalities Planning Code. (Note: As of the adoption date of this Ordinance, such provisions were in Section 903(b) of such Act.)

2. Expenditures. Within the maximum amount of funds appropriated by the Board of Supervisors, the Zoning Hearing Board may employ or contract for secretaries, legal counsel, and other technical and clerical services. Members and alternate members may receive compensation, within limits established by the Board of Supervisors, for the performance of their duties.

111.B. Vacancies. Appointments to fill vacancies shall be only for the unexpired portion of a term.

111.C. Organization. The applicable provisions of the State Municipalities Planning Code, as amended shall apply. (As of the adoption date of this Ordinance, these provisions were in Sections 906(a), (b) and ©)) of such Act.)

111.D. Zoning Hearing Board Jurisdiction and Functions. The Zoning Hearing Board shall be responsible for the following:

1. Appeal of a Decision by the Zoning Officer.
   a. The Board shall hear and decide appeals where it is alleged by an affected person, entity or the Board of Supervisors that the Zoning Officer has improperly acted under the requirements and procedures of this Ordinance.
   b. See time limitations for appeals in Section 111.F.

2. Challenge to the Validity of the Ordinance or Map. The applicable provisions of the State Municipalities Planning Code, as amended, shall apply. (Note: As of the adoption date of this Ordinance, these provisions were primarily in Sections 909.1 and 916 of such Act.)

3. Variance.
   a. The Board shall hear requests for variances filed with the Township Staff in writing.
   b. Standards. The Board may grant a variance only within the limitations of State law. *(Note: As of the adoption date of this Ordinance, the Municipalities Planning Code provided that all of the following findings must be made, where relevant:*
      I) There are unique physical circumstances or conditions (including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property) and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of this Ordinance in the neighborhood or district in which the property is located;
      ii) Because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance and a variance is therefore necessary to enable the reasonable use of the property;
      iii) Such unnecessary hardship has not been created by the appellant;
      iv) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare; and
      v) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.)
   c. In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Ordinance.

4. Special Exception.
   a. The Board shall hear and decide requests for all special exceptions filed with the Township Staff in writing. The Board shall only permit a special exception that is authorized by this Ordinance. See Section 116.
   b. Conditions. In granting a special exception, the Zoning Hearing Board may attach such reasonable conditions and safeguards, in addition to those expressed in the Ordinance, as it may deem necessary to implement the purposes and intent of this Ordinance.

5. Persons With Disabilities. After the Zoning Officer receives a complete written application, the Zoning Hearing Board shall grant a special exception allowing modifications to specific requirements of this Ordinance that the applicant proves to the satisfaction of the Zoning Hearing Board are required under applicable Federal law to provide a "reasonable accommodation" to serve persons who the applicant proves have "disabilities" as defined in and protected by such laws.

a. Such reasonable accommodations shall be requested in accordance with the U.S. Fair Housing Act Amendments and/or the Americans with Disabilities Act, as amended.

b. If the applicant is requesting a reasonable accommodation under the United States Fair Housing Amendments Act of 1988 or the Americans with Disabilities Act, the applicant shall identify the disability which is protected by such statutes, the extent of the modification of the provisions of this Ordinance necessary for a reasonable accommodation, and the manner by which the reasonable accommodation requested may be removed when such person(s) with a protected disability no longer will be present on the property.

c. Any modification approved under this Section may be limited to the time period during which the persons with disabilities occupy or utilize the premises.

6. The Zoning Hearing Board shall also hear any other matters as set forth in the State Municipalities Planning Code, as amended. (Note: As of the adoption date of this Ordinance, such provisions were primarily within Section 909.1 of such law.) The Zoning Hearing Board also may hear appeals of other matters if authorized under a separate Township ordinance. (Note - As of the adoption date of this Ordinance, the Zoning Hearing Board also heard appeals of the Property Maintenance Code).

111.E. Time Limits for Appeals. The applicable provisions of the State Municipalities Planning Code, as amended, shall apply. (Note: As of the adoption date of this Ordinance, these provisions were in Section 914.1 of such Act.)

111.F. Stay of Proceedings. The Stay of Proceedings provisions of the State Municipalities Planning Code, as amended, shall apply. (Note: As of the adoption date of this Ordinance, such provisions were in Section 915.1 of such Act.)

111.G. Time Limits on Permits and Approvals.

1. After a variance is approved or other zoning approval (such as special exception or conditional use approval) is officially authorized, then any applicable zoning and building permits shall be secured by the applicant within 12 months after the date of such approval or authorization. The work authorized by zoning permits shall then be completed within 12 months after the issuance of the permits.

   a. However, if a variance is approved to address a violation of this Zoning Ordinance, then the permit shall be acquired and the work completed within 6 months after the variance is approved, with no further time extension.

2. Extension. In response to an applicant stating good cause in writing, the Zoning Officer may extend in writing the time limit for completion of work to a maximum total of 24 months after permits are issued.

3. If an applicant fails to obtain the necessary permits or begin construction within the above time periods, or allows interruptions in substantial construction of longer than 12 months, the Zoning Officer shall conclusively presume that the applicant has waived, withdrawn or abandoned approvals, variances and permits under this Ordinance and all such approvals, variances and permits shall be deemed automatically rescinded by the Township.

111.H Multiple Applications. No more than one application for the same property shall be pending before the Zoning Hearing Board for special exception approval at any time.

112. **ZONING HEARING BOARD HEARINGS AND DECISIONS**. The following requirements shall apply to procedures, hearings and decisions of the Zoning Hearing Board.

112.A. Notice of Hearings. Notice of all hearings of the Board shall be given as follows:

1. Ad. Public notice shall be published, as defined by Section 107 of the State Municipalities Planning Code. The notice shall state the time and place of the hearing and the particular nature of the matter to be considered.

2. Posting. Notice of such hearing shall be conspicuously posted on the affected tract of land at least one week prior to the hearing. The Township Staff shall post the property. It is the responsibility of the applicant to make sure that such notice remains posted until the hearing.

3. Persons Given Notice. The Township shall provide written notice to the Applicant of the time and place of the hearing. The Township should also provide notice to the Chairpersons of the Board of Supervisors and Planning Commission. The Township should also provide notice to the last known primary owners of record of property that is within a 200 feet radius of the subject site. Also, such notice shall be given to any other person or group (including civic or community organizations) who has made a written timely request for such notice. Any such notices should be mailed or delivered to the last known address.

112.B. Initiation of Hearings. A hearing required under this Ordinance shall be initiated within 60 days of the date of an applicant's request for a hearing, unless the applicant has agreed in writing to an extension of time.

112.C. Decision/Findings.

1. The Board shall render a written decision on each application within 45 days after the last hearing on that application before the Board, unless the applicant has agreed in writing to an extension of time.

2. Where the application is contested or denied, the decision shall be accompanied by findings of fact and conclusions based thereon, together with the reasons for such conclusions.

3. References shall be provided to the most pertinent section(s) of this Ordinance and/or the State Municipalities Planning Code.

112.D. Notice of Decision. A copy of the final decision shall be delivered or mailed to the applicant or his/her representative at their last known address not later than the time limit established by the State Municipalities Planning Code, as amended. (Note: As of the adoption date of this Ordinance, such provisions were within Sections 908(9) and 908(10) of such Act, including provisions regarding notice to other parties.)

112.E. See also Section 908 of the PA. Municipalities Planning Code.

113. **APPEALS TO COURT**. The provisions for appeals to court that are stated in the State Municipalities Planning Code, as amended, shall apply. (Note: As of the adoption date of this Ordinance, these provisions were in Sections 1001-A, 1002-A, 1003-A, 1004-A, 1005-A and 1006-A of such Act.)

114. **LIMITED PUBLIC UTILITY EXEMPTIONS**. See the provisions of the State Municipalities Planning Code, as amended. (Note: As of the adoption date of this Ordinance, such provisions were within Section 619 of such Act.)

115. **TOWNSHIP AND MUNICIPAL AUTHORITY EXEMPTION**. This Zoning Ordinance shall not apply to uses or structures owned by Upper Nazareth Township or by a municipal authority created solely by Upper Nazareth Township for uses and structures that are intended for a public utility, stormwater, public works, recycling, municipal administrative, public recreation or public health and safety purpose.

116. **SPECIAL EXCEPTION USE PROCESS.**

116.A. Purpose. The Special Exception Process is designed to allow careful review of uses that have some potential of conflicts with adjacent uses or areas.

116.B. Special Exception Procedure.

1. A Site Plan shall be submitted, which shall contain the information required in Section 103.D. If a fully engineered subdivision or land development plan will be required, it may be submitted separately, such as after a special exception is approved.

2. The Zoning Officer should provide a review to the Zoning Hearing Board regarding the compliance of the application with this Ordinance.

3. The Zoning Hearing Board shall follow the procedures provided in Section 112.

4. The Township Staff should offer a special exception application to the Township Planning Commission for any advisory review that the Commission may wish to provide. However, the Zoning Hearing Board shall meet the time limits of State law for a decision, regardless of whether the Township Planning Commission has provided comments.

5. Time Limits. See Section 908 of the State Municipalities Planning Code.

116.C. Consideration of Special Exception Applications. When special exceptions are allowed by this Ordinance, the Zoning Hearing Board shall hear and decide requests for such special exceptions in accordance with standards established by this Ordinance, including the following:

1. Compliance with this Ordinance. The applicant shall establish by credible evidence that the application complies with all applicable requirements of this Ordinance. The applicant shall provide the Board with sufficient plans, studies or other data to demonstrate this compliance.

2. Compliance with Other Laws. The approval may be conditioned upon the applicant later showing proof of compliance with other specific applicable township, state and federal laws, regulations and permits. Required permits or other proof of compliance may be required to be presented to the Township prior to the issuance of any zoning permit, building permit, certification of occupancy and/or recording of an approved plan.

3. Traffic. The applicant shall establish that the traffic from the proposed use will be accommodated in a safe and efficient manner that will minimize hazards and congestion, after considering any improvements proposed to be made by the applicant as a condition on approval.

4. Site Planning. The application shall include proper site layout, internal circulation, parking, buffering, and all other elements of proper design as specified in this Ordinance.

5. Neighborhood. The proposed use shall not substantially change the character of any surrounding residential neighborhood, after considering any proposed conditions upon approval such as limits upon hours of operation.

6. Safety. The proposed use shall not create a significant hazard to the public health and safety, such as fire, toxic or explosive hazards.

7. Natural Features. The proposed use shall be suitable for the site, considering the disturbance of steep slopes, mature woodland, wetlands, floodplains, springs and other important natural features.

116.D. Conditions. In granting a special exception, the Board may require such reasonable conditions and safeguards (in addition to those expressed in this Ordinance) as it determines are necessary to implement the purposes of this Ordinance. Conditions imposed by the Zoning Hearing Board shall automatically become conditions of the building permit issued pursuant thereto, and any failure to comply with said conditions shall be a violation of this ordinance.

117. CONDITIONAL USE PROCESS.

117.A. Purpose. The conditional use approval process is designed to allow the Board of Supervisors to review and approve certain uses that could have significant impacts upon the community and the environment.

117.B. Procedure. The Board of Supervisors shall consider the conditional use application and render its decision in accordance with the requirements of the State Municipalities Planning Code.

1. Submittal. A Site Plan shall be submitted, which shall contain the information listed in Section 103.D. Detailed site engineering (such as stormwater calculations and profiles) are not required at the conditional use stage. If a fully engineered subdivision or land development plan will be required, it may be submitted separately, such as after a conditional use is approved. Or, an applicant may voluntarily choose to submit a subdivision or land development plan for review at the same time as a conditional use application.

2. Reviews.
   a. The Zoning Officer should provide a review to the Board regarding the compliance of the application with this Ordinance.
   b. The Township Staff shall submit a conditional use application to the Planning Commission for any review that the Commission may wish to provide. However, the Board of Supervisors shall meet the time limits for a decision, regardless of whether the Planning Commission has provided comments.

3. The only uses that shall be approved as conditional uses shall be those listed as conditional uses in Article 3.

4. Time Limit. See Section 913.2 of the State Municipalities Planning Code.

117.C Consideration of Conditional Use Application. The Board of Supervisors shall determine whether the proposed conditional use would meet the applicable requirements of this Ordinance. The same standards shall apply to a conditional use as are listed in Section 116.C. for a special exception use.

117.D Conditions. In approving conditional use applications, the Board of Supervisors may attach conditions they consider necessary to protect the public welfare and meet the standards of this Ordinance. These conditions shall be enforceable by the Zoning Officer and failure to comply with such conditions shall constitute a violation of this Ordinance and be subject to the penalties described in this Ordinance.

118. LIABILITY.

118.A. Any review of activity within the floodplain, site plan review, subdivision or land development approval, erosion control review, wetland delineation review, storm water runoff review, review of activity on steep slopes, or any other review, approval or permit under this Ordinance by an officer, employee, board, commission, solicitor, consultant or agency of the Township shall not constitute a representation, guarantee or warranty of any kind by the Township, or its employees, officials, boards, solicitor(s), consultants or agencies of the practicality or safety of any structure, use or subdivision, and shall create no liability upon nor a cause of action against such entity or person for any damage that may result pursuant thereto.

118.B. If the Zoning Officer mistakenly issues a permit under this Ordinance, the Township shall not be liable for any later lawful withdrawal of such permit.

119. PLOT / GRADING PLAN REQUIREMENT.

119.A. Prior to the issuance of a building permit or commencement of use for a non-residential principal structure or addition of a non-residential principal use, the applicant shall submit to the Zoning Officer for review and approval four copies of a final plot, grading and erosion and sedimentation control plan drawn at a scale of 1"=20'. The plan shall contain the information listed below along with any other appropriate data.

1. A grading plan to divert surface runoff away from principal buildings, driveways, walkways and on-lot sewage disposal systems without directing increased runoff onto sensitive neighboring parcels. In the case where basic grading provisions have been defined during site plan or subdivision plan approval, the lot specific grading plan shall conform to said basic grading provisions insofar as practicable.

2. A required plot / grading plan shall include the following information, unless the Zoning Officer determines in advance that such information is not relevant:

   a. All lot lines defined by bearings and distances or curve data.

b. Existing and proposed contour elevation lines at maximum intervals of two feet.
c. Spot elevations for the first floor level of any structure, adjacent to any door, window opening to grade or Bilco-style basement door, primary and secondary on-lot sewage disposal systems, finished street elevations at point of entry. Finish drive elevations at point of intersection of centerlines, intersection with gutters and a maximum of 50 feet intervals (and any other area as deemed necessary by the Township Engineer).
d. Benchmark.
e. North reference, easements and rights-of-way within or adjacent to the subject property.
f. Location, size and elevations of all existing or proposed storm drainage structures or swales within or adjacent to the subject property.
g. Lot numbers of all adjoining lots and names of adjoining street(s).
h. Locations of all percolation test holes, soil probes and wells, and the location and dimension of primary and secondary on-lot sewage disposal systems with isolation distances.
I. The exact location and dimensions of any proposed structure, appurtenant structure, road or driveway, with tie-in dimensions to property lines.
j. Building footprint with all wall dimensions necessary to lay out the shape of the building. Street cartway and right-of-way lines shall be shown and dimensioned. For corner lots, a dimension shall be given from the centerline of the proposed driveway to the centerline of the parallel street and the clear sight triangle easement shall be shown.
k. Location, size and detailed calculations of dry wells, leach areas or other stormwater control measures.
l. Erosion and sedimentation control measures and sequence of operations.
m. Engineer's or Surveyor's seal.
n. Any type of basement pump or foundation drainage system shall be noted on the plan. Any such system shall be designed to drain in a way that avoids erosion of shoulders of roads, prevents increased drainage onto public roads and avoids drainage problems for neighboring properties. Four copies of any calculations, designs and methods for handling any such discharged water shall be submitted with the Plot and Lot Grading Plan.

3. Any application for an accessory structure or use shall include the applicable information on Township application forms, unless determined by the Zoning Officer to be unnecessary to determine compliance with this Ordinance.

4. In addition to the information listed above, an application requiring a site plan and action by the Zoning Hearing Board shall also include the following information, unless the Zoning Officer determines that such information is unnecessary for determination of whether the proposal complies with this Ordinance.

a. The present zoning district and major applicable lot requirements.
b. A description of the proposed non-residential operations and storage in sufficient detail to indicate potential nuisances and hazards regarding noise, traffic (including

description of any traffic by large trucks), glare, odors, dust, fire or toxic or explosive hazards or other significant public health and safety hazards.

c. If a non-residential use is proposed within 100 feet of a dwelling, a description of hours of operation.

d. A listing of any sections of this Ordinance being appealed, with the reasons for any appeal.

5. The Zoning Officer may delay the issuance of a permit under this Ordinance if he / she has reason to believe that such a use would violate another Township, State or Federal law or regulation until such compliance is proven by the applicant.

6. No person other than a landowner or their agent (with specific written authorization) or a tenant or lessee with written permission of the landowner shall submit a zoning application.

7. The Zoning Officer may submit a copy of any plan and application to any appropriate agencies and/or individuals (such as the Planning Commission, the County Conservation District, utilities or Township Engineer) for review and comment, with costs of such review being paid by the applicant.