

Chapter 246

ZONING

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[HISTORY: Adopted by the Board of Supervisors of the Township of Fairview 12-1-2003 by Ord. No. 9-2003. Amendments noted where applicable.]

GENERAL REFERENCES

Adult uses — See Ch. 82.

Uniform construction codes — See Ch. 113.

Driveway construction — See Ch. 127.

Floodplain management — See Ch. 141.

Stormwater management — See Ch. 211.

Subdivision and land development — See Ch. 225.

ARTICLE I
Administration

§ 246-1. Applicability of chapter.

This chapter shall apply throughout the Township of Fairview. Any activity regulated by this chapter shall only occur in such a way that conforms with the regulations of this chapter. See § 246-3A.

§ 246-2. Purposes; community development objectives.

This chapter is hereby adopted:

- A. In accordance with the requirements and purposes [including §§ 604 and 605 or their successor section(s), which are included by reference] of the Pennsylvania Municipalities Planning Code, as amended.¹
- B. In accordance with goals and objectives of the Fairview Township Comprehensive Plan, which are hereby included by reference.
- 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;

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

- (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; and
- (15) To promote new business development in appropriate areas that will provide additional tax revenue and job opportunities.

§ 246-3. Permits and certificates.

A. Applicability.

- (1) Any of the following activities or any other activity regulated by this chapter shall only be carried out in conformity with this chapter:
 - (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 chapter 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 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; and/or
 - [4] Demolition of a building.
 - [5] Replacement of a roof on a principal or accessory building; and [Added 2-2-2016 by Ord. No. 1-2016]
 - [6] Landscaping as provided under § 246-66 of this chapter. [Added 2-2-2016 by Ord. No. 1-2016]

- (b) The Township may, at its option, issue combined or separate building permits and zoning permits and/or may utilize a 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 nonresidential use until a certificate of use and occupancy for such building or use has been issued by the Township staff.
 - (b) The Township staff may permit the zoning permit application to serve as the application for the certificate of use and occupancy.
 - (c) The certificate of 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. The Township may also withhold issuance of the certificate until there is compliance with other Township ordinances.
 - (d) 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 issue a temporary certificate of occupancy. Such temporary certificate may permit an activity to occur in all or part of a structure before the entire work covered by the permit has been completed.
 - [1] 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.
 - [2] 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.
 - [3] Failure to receive a permanent certificate of use and occupancy within such time period shall be a violation of this chapter.
 - [4] The temporary certificate may be conditioned upon compliance with certain specific requirements within certain time periods.
 - [5] See also Subsection G of this section.
- B. Repairs and maintenance. Ordinary repairs and maintenance to existing structures shall not by itself be regulated by this chapter. 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.)
- C. Types of uses.
- (1) Permitted by right use. The Zoning Officer shall issue a 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 or application requiring a variance. A permit under this chapter 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 conditional use is a use requiring zoning approval by the Board of Supervisors under § 246-17.

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 two copies of a site plan with the application if the application involves a new principal building, expansion of a principal building or addition of three 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; and
 - (f) Well and primary and alternate septic system locations. See § 246-29.
- (3) Additional 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) 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) A description of the proposed use of the property;
 - (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; and
 - (f) Such additional information that the Zoning Officer may determine is reasonably necessary to determine compliance with this chapter.

- (4) Submittals to the Board. In addition to the information listed in Subsection D(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 chapter:
 - (a) The present zoning district and major applicable lot requirements;
 - (b) For a nonresidential use:
 - [1] A description of the proposed nonresidential 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 chapter 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 "drugstore" 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 acknowledgement of the application by the applicant; and
 - (i) Such additional information required under applicable sections of this chapter.
 - (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 the definition of "landowner" in Article II.)
- E. Issuance of permits.
- (1) At least one copy of each permit application and any other zoning approval shall be retained in Township files.
 - (2) Pennsylvania Department of Transportation (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.
- 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 chapter 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 Crimes Code² 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 chapter or an approved site plan or approved permit application; and/or
 - (d) 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 under this chapter 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 chapter, such provisions were in Sections 914.1 and 1002-A.³)
- 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 45 days for Christmas tree sales and 12 total days per calendar year for all other activities; 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.

2. Editor's Note: See 18 Pa.C.S.A. § 101 et seq.

3. Editor's Note: See 53 P.S. §§ 10914.1 and 11002-A, respectively.

- (c) A temporary permit may be issued for customary, routine and accessory short-term special events with the use of a structure such as a tent or trailer used for retail sales, provided that: **[Added 2-2-2016 by Ord. No. 1-2016]**
- [1] The temporary use is one that would otherwise be permitted in the zoning district upon which the temporary structure is to be located;
 - [2] The temporary structure meets the dimensional regulations (setbacks, height, lot coverage etc.) of the zoning district where it is to be located;
 - [3] The temporary structure or use does not adversely affect or interfere with the use and quiet enjoyment of adjoining or surrounding properties as determined on a case-by-case basis by the Zoning Officer;
 - [4] The lot upon which the temporary structure is located meets the minimum loading and parking facilities for the existing and temporary uses, and the access drive(s) is permitted by way of a highway occupancy permit and meets the requirements of this chapter; and
 - [5] A permit may be issued for temporary structures under this subsection by the Zoning Officer for a period not to exceed 30 days from the effective date of the permit.
- (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 seven-day maximum period shall apply. A temporary permit may be renewed for just cause.
- (3) Temporary retail sales. Except as provided for in Subsection G(1)(a)[1] above, and except for agricultural sales allowed by § 246-26, 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 chapter.
 - (e) If food or beverages are sold that are not prepackaged, 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 chapter 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.
- H. Compliance with Township Subdivision and Land Development Ordinance. If an application under this chapter would also be regulated by Chapter 225, Subdivision and Land Development, then any permit or approval under this chapter shall automatically be conditioned upon compliance with Chapter 225. See the definitions of "land development" and "subdivision" in Chapter 225. 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.

§ 246-4. Permit issuance or denial; commencement of construction or use.

- 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.
- B. After the permit under this chapter 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 thirty-day appeal period shall be at the risk of the applicant.

§ 246-5. Interpretation of chapter; uses not regulated.

- A. Minimum requirements. Where more than one provision of this chapter controls a particular matter, the provision that is more restrictive upon uses and structures shall apply. The provisions of this chapter are in addition to any other applicable Township ordinance.
- 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 chapter 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 less intensive in 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 § 246-67F;
 - (3) The use would meet the standards that would apply under § 246-17 to a conditional use; and

- (4) The use is not specifically prohibited in that district.
- C. Interpretation of chapter text and boundaries.
- (1) The Zoning Officer shall literally apply the wording of this chapter 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 chapter should be interpreted in the applicant's favor, the applicant may appeal to the Zoning Hearing Board. See § 246-11.
- (3) See § 246-24.
- D. Undefined terms/interpretation of definitions. See § 246-19.

§ 246-6. 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 chapter by reference. (Note: As of the adoption date of this chapter, these provisions were primarily in Sections 616.1, 617 and 617.2 of such act.)⁵

- A. Violations. Any person who shall commit or who shall permit any of the following actions violates this chapter:
- (1) Failure to secure a zoning permit prior to a change in use of land or structure, or the erection, construction or alteration of any structure or portion thereof, or the excavation 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.
- B. Enforcement notice. If the Township has reason to believe that a violation of a provision of this chapter 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.⁶ Prior to sending an official enforcement notice, the Zoning Officer may at his/her option informally request compliance.
- C. Time limits. An official enforcement notice shall state the deadline to complete bringing the property into compliance with this chapter, and shall state that the

4. Editor's Note: See 53 P.S. § 10616.1 et seq.

5.

6. Editor's Note: See 53 P.S. § 10616.1.

applicant has 30 days from the receipt of the notice to appeal to the Zoning Hearing Board.

- D. Causes of action; enforcement 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 chapter, such provisions were in Section 617 of such law.)⁷⁸
- (1) Enforcement action. If the enforcement notice is not complied with promptly, the Zoning Officer shall notify the Board of Supervisors. The Supervisors may request the Township Solicitor to institute in the name of the Township any appropriate action or proceeding at law or in equity to prevent, restrain, correct or abate such violation or to require the removal or termination of the unlawful use of the structure, building, sign, landscaping or land in violation of the provisions of this chapter or the order or direction made pursuant thereto. The Board of Supervisors may also direct the Zoning Officer or Township Solicitor to institute a civil enforcement proceeding before a Magisterial District Judge.
 - (2) Violations and penalties. Any person who has violated or permitted the violation of the provisions of this chapter shall, upon being found liable therefor in a civil enforcement proceeding commenced by the Township, pay a judgment of not more than \$500, plus all court costs, including the reasonable attorneys' 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 Magisterial District Judge. 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 Magisterial District Judge determining that there has been a violation further determines that there was a good-faith basis for the person 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 of a violation by the Magisterial District Judge, and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable attorneys' fees collected for the violation of this chapter shall be paid over to the Township for the general use of the Township.
 - (3) Remedies. In case any building, structure, sign or landscaping is erected, constructed, reconstructed, altered, repaired, converted or maintained; or any building, structure, sign or land is used; or any hedge, shrub, tree or other growth is maintained in violation of this chapter or of any of the regulations made pursuant thereto or any of the permits or certificates of use and occupancy issued under this chapter 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, any appropriate action or proceeding may be instituted or taken to prevent or restrain such unlawful erection, construction, reconstruction, alteration, repair, conversion,

7. Editor's Note: See 53 P.S. § 10617.

8.

maintenance or use or to prevent any illegal act, conduct, business or use in and about such premises.

- 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.

§ 246-7. 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.

§ 246-8. Amendments to chapter.

Within the requirements of the state Municipalities Planning Code,⁹ the Board of Supervisors may amend, or repeal any or all portions of this chapter on its own motion or after agreeing to hear a written request of any person, entity, landowner or the Planning Commission.

§ 246-9. Curative amendments.

The applicable provisions of the state Municipalities Planning Code shall apply. (Note: As of the adoption date of this chapter, these provisions were primarily in Sections 609.1, 609.2 and 916.1 of such act.¹⁰)

§ 246-10. Zoning Officer.

- A. Appointment. The Zoning Officer 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.
- B. Duties and powers. The Zoning Officer's duties and powers shall include the following:
- (1) Administer this chapter in accordance with its literal terms, including to receive and examine all applications required under the terms of this chapter, and issue or refuse permits within the provisions of this chapter;
 - (2) Conduct inspections to determine compliance, and receive complaints of violation of this chapter;
 - (3) Keep records of applications, permits, certificates, written decisions, and variances granted by the Board, and of enforcement orders, with all such records being the property of the Township and being available for public inspection;

⁹. Editor's Note: See 53 P.S. § 10101 et seq.

¹⁰. Editor's Note: See 53 P.S. §§ 10609.1, 10609.2 and 10916.1.

- (4) Review proposed subdivisions and land developments for compliance with this chapter; and
- (5) Take enforcement actions as provided by the state Municipalities Planning Code, as amended.¹¹

§ 246-11. Zoning Hearing Board actions and variances.

A. Membership of Board.

- (1) The Zoning Hearing Board shall consist of five residents of the Township appointed by the Board of Supervisors. The existing terms of office shall continue, with terms of office being five 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.
- (2) 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 chapter, such provisions were in Section 903(b) of such act.¹²]

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

C. Organization. The applicable provisions of the state Municipalities Planning Code, as amended, shall apply. [Note: As of the adoption date of this chapter, these provisions were in Section 906(a), (b) and (c) of such act.¹³]

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 chapter.
 - (b) See time limitations for appeals in § 246-11E.
- (2) Challenge to the validity of this chapter or the Zoning Map. The applicable provisions of the state Municipalities Planning Code, as amended, shall apply. (Note: As of the adoption date of this chapter, these provisions were primarily in Sections 909.1 and 916 of such act.¹⁴)
- (3) Variance.

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

12. Editor's Note: See 53 P.S. § 10903(b).

13. Editor's Note: See 53 P.S. § 10906(a), (b) and (c).

14. Editor's Note: See 53 P.S. §§ 10909.1 and 10916.1.

- (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 chapter, the Municipalities Planning Code provided that all of the following findings must be made, where relevant:
 - [1] There are unique physical circumstances or conditions (including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property) and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of this chapter in the neighborhood or district in which the property is located;
 - [2] Because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this chapter and a variance is therefore necessary to enable the reasonable use of the property;
 - [3] Such unnecessary hardship has not been created by the appellant;
 - [4] 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
 - [5] 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 chapter.
- (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 chapter. See § 246-16.
 - (b) Conditions. In granting a special exception, the Zoning Hearing Board may attach such reasonable conditions and safeguards, in addition to those expressed in this chapter, as it may deem necessary to implement the purposes and intent of this chapter.
- (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 chapter 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 Amendments¹⁵ and/or the Americans with Disabilities Act,¹⁶ 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 chapter 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 chapter, such provisions were primarily within Section 909.1 of such law.¹⁷)
- 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 chapter, these provisions were in Section 914.1 of such act.¹⁸)
- 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 chapter, such provisions were in Section 915.1 of such act.¹⁹)
- G. Time limits on permits and approvals.
- (1) After a variance is approved or other zoning 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 such permits shall then be completed within 12 months after the issuance of the permits.
 - (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 36 months after permits are issued.

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

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

17. Editor's Note: See 53 P.S. § 10909.1.

18. Editor's Note: See 53 P.S. § 10914.1.

19. Editor's Note: See 53 P.S. § 10915.1.

- (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 may conclusively presume that the applicant has waived, withdrawn or abandoned approvals and permits under this chapter and may consider all such approvals and permits to have become null and void.
- 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.

§ 246-12. Zoning Hearing Board hearings and decisions.

The following requirements shall apply to procedures, hearings and decisions of the Zoning Hearing Board:

- 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.²⁰ 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 Chairperson of the Board of Supervisors. In addition, the Township shall endeavor to provide notice to the last known principal owner of record of each property that is immediately adjacent to or immediately across a street from the subject property; however, failure to provide such notice shall not be grounds for an appeal. 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.
- B. Initiation of hearings. A hearing required under this chapter 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.
- 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.

²⁰. Editor's Note: See 53 P.S. § 10107.

- (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 chapter and/or the state Municipalities Planning Code.
- D. Notice of decision. A copy of the final decision shall be delivered or mailed to the applicant or his/her representative or 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 chapter, such provisions were within Section 908(9) and (10) of such act,²¹ including provisions regarding notice to other parties.]
- E. See also Section 908 of the Pennsylvania Municipalities Planning Code.

§ 246-13. 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 chapter, these provisions were in Sections 1001-A, 1002-A, 1003-A, 1004-A, 1005-A and 1006-A of such act.²²)

§ 246-14. Limited public utility exemptions.

See the provisions of the state Municipalities Planning Code, as amended. (Note: As of the adoption date of this chapter, such provisions were within Section 619 of such act.²³)

§ 246-15. Limited Township and municipal authority exemption.

The minimum lot area, minimum lot width and minimum street frontage requirements of this chapter shall not apply to uses or structures owned by Fairview Township or by a municipal authority created solely by Fairview Township for uses and structures that are intended for a public utility, stormwater, public recreation or public health and safety purpose.

§ 246-16. Special exception use process.

- 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.
- B. Special exception procedure.
 - (1) A site plan shall be submitted, which shall contain the information required in § 246-3D. 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.

21. Editor's Note: See 53 P.S. § 10908.

22. Editor's Note: See 53 P.S. § 11001-A et seq.

23. Editor's Note: See 53 P.S. § 10619.

- (2) The Zoning Officer should provide a review to the Zoning Hearing Board regarding the compliance of the application with this chapter.
 - (3) The Zoning Hearing Board shall follow the procedures provided in § 246-12.
 - (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.
- C. Consideration of special exception applications. When special exceptions are allowed by this chapter, the Zoning Hearing Board shall hear and decide requests for such special exceptions in accordance with standards established by this chapter, including the following:
- (1) Compliance with this chapter. The applicant shall establish by credible evidence that the application complies with all applicable requirements of this chapter. 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 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 chapter.
 - (5) Neighborhood. The proposed use shall not substantially harm any surrounding residential neighborhood, after considering any proposed conditions upon approval.
 - (6) Safety. The proposed use shall not create a significant hazard to the public health and safety, such as fire, toxic or explosive hazards.
- D. Conditions. In granting a special exception, the Board may require such reasonable conditions and safeguards (in addition to those expressed in this chapter) as it determines are necessary to implement the purposes of this chapter. 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 chapter.

§ 246-17. Conditional use process.

- 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.
- 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.²⁴
- (1) Submittal. A site plan shall be submitted, which shall contain the information listed in § 246-3D. 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 chapter.
 - (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 III and Article IX. **[Amended 8-4-2014 by Ord. No. 1-2014]**
 - (4) Time limit. To minimize delays for applicants, the Township has established the following time limit upon conditional use applications. The Board of Supervisors shall approve, conditionally approve or reject a conditional use application within 120 days after the Township's official receipt of a complete application for a conditional use, unless the applicant provides a written time extension. (Note: As of the adoption date of this chapter, the state Municipalities Planning Code generally establishes a sixty-day time limit for the first hearing and a forty-five-day time limit for a decision after the last hearing.)
- C. Consideration of conditional use application. The Board of Supervisors shall determine whether the proposed conditional use would meet the applicable requirements of this chapter. The same standards shall apply to a conditional use as are listed in § 246-16C for a special exception use.
- D. Conditions. In approving conditional use applications, the Board of Supervisors may attach conditions it considers necessary to protect the public welfare and meet the standards of this chapter. These conditions shall be enforceable by the Zoning Officer,

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

and failure to comply with such conditions shall constitute a violation of this chapter and be subject to the penalties described in this chapter.

§ 246-18. Liability.

- A. Any review of activity within the floodplain, site plan review, subdivision or land development approval, erosion control review, wetland delineation review, stormwater runoff review, review of activity on steep slopes, or any other review, approval or permit under this chapter 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.
- B. If the Zoning Officer mistakenly issues a permit under this chapter, the Township shall not be liable for any later lawful withdrawal of such permit.

ARTICLE II
Terminology

§ 246-19. Word usage. [Amended 2-2-2016 by Ord. No. 1-2016]

For the purposes of this chapter, words and terms used herein shall be interpreted as follows:

- A. It is not intended that these definitions include only words used or referred to in this chapter. The words are included in order to facilitate the interpretation of this chapter for administrative purposes and in carrying out the duties by the Zoning Officer and Zoning Hearing Board.
- B. Unless otherwise expressly stated, the general words or terms listed in § 246-19C through § 246-19L shall have the meanings indicated herein.
- C. Words used in the present tense shall include the past and future tense. Words of masculine gender shall include the feminine gender and the neuter; words of feminine gender shall include the masculine gender and the neuter.
- D. The word "person" shall include a profit or nonprofit firm, association, organization, corporation, company, partnership, trust, or individual or single proprietorship, or any other similar entity.
- E. The words "used" or "occupied" as applied to any land or building shall include the words "intended," "arranged" or "designed" to be used, occupied or maintained.
- F. The word "building" shall include "part thereof" and "structure."
- G. The word "lot" shall include "plot," "parcel" or "tract."
- H. The words "shall" and "must" are always mandatory; the words "may" and "should" are permissive.