



Urban Research & Development Corporation

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TO: Myerstown Borough Council and Planning Commission
FROM: URDC, Charlie Schmehl (cschmehl@urdc.com)
SUBJECT: **Summary of the Draft Zoning Ordinance**

This memo summarizes the draft zoning ordinance.

This memo is not intended to provide legal advice. It will be essential to have the Borough Solicitor review all of the proposed ordinance changes.

The Zoning Ordinance is being coordinated with the County Subdivision and Land Development Ordinance (SALDO). The Zoning Ordinance is much more policy oriented than the SALDO, which is more a technical document used by engineers and surveyors on larger developments to design streets and other improvements.

Overview of Zoning

The zoning ordinance primarily regulates: a) the uses of land and buildings, and b) the densities of development. Different types of land uses and different densities are allowed in various zoning districts. A zoning ordinance also regulates: the distance buildings can be placed from streets and lot lines, the heights and sizes of signs, and the amount of parking that must be provided by new development.

Zoning is primarily intended to protect existing residential neighborhoods from incompatible development. However, it also can be used to avoid traffic problems, improve the appearance of new development, preserve historic buildings, and protect important natural features.

The Pennsylvania Municipalities Planning Code (the “MPC”) provides municipalities with the authority to regulate development. The MPC establishes limits on the ways zoning can be used and requires that certain procedures be followed.

Ways to Address Different Uses

In each zoning district, different uses are allowed or prohibited. There are three different ways that a use can be allowed:

- as a permitted by right use, with the zoning approved by the Zoning Officer,
- as a special exception use, with the zoning approved by the Zoning Hearing Board, and
- as a conditional use, with the zoning approved by the Borough Council (which is not used in Myerstown).

Intense and potentially controversial uses should only be permitted as special exception uses. This results in a public meeting that allows public comment. The Zoning Hearing Board can carefully review the application to make sure that it meets Borough ordinances. Also, conditions can be placed upon these types of approvals, such as to protect public safety.

- However, a special exception use is still an “allowed” use. Therefore, under the law, it is difficult to reject a special exception use if the applicant proves they meet all of the specific requirements of the zoning ordinance. Generally, in such case, the application could only be rejected if an opponent or the Borough was able to prove that the application violated a “general” requirement of the Ordinance. For example, it might be possible to prove that a certain type of industrial use would generate a major public safety hazard.
- Myerstown currently uses the special exception use process. With a special exception, the Borough Council can provide testimony before the Zoning Hearing Board, and Council can appeal the Board’s decisions.
- Also, the number of special exception uses should be held to a reasonable minimum. If the process is overused, it becomes a burden in time and expense to both the Borough and applicants. Moreover, time-consuming processes can make it harder to attract desirable types of businesses.

Nonconformities

Zoning primarily regulates **new** development, expansions of uses and changes in uses. Under State law, an existing use that was legal when it was first established can continue to operate, regardless of zoning regulations that are later enacted. An existing legal use that would not be permitted to be newly established under current zoning regulations is known as a “nonconforming use.” Generally, nonconforming uses can: a) be sold to a new operator, b) be expanded within certain limits, and c) be changed to a different nonconforming use, as long as the new use is not more intense than the old use.

For example, an auto repair garage may have existed before the Borough adopted zoning. It is located in a residential district. It may be changed to a store, which would be less intense. However, it could not be changed to an asphalt plant, which would be more intense.

Likewise, in most cases, existing vacant lots that were legally established may be built upon – even if they do not meet the minimum size requirements of a zoning ordinance. However, any building would still need to meet setback, wetland and floodplain regulations.

However, if a use was not legal when it first started, it has no right to continue. For example, if a house was illegally converted into apartments twenty years ago, it is still illegal, and can be required to be de-converted.

Lot Sizes

Please keep the following lot sizes in mind:

One acre = 43,560 square feet (such as 150 by 290 feet)

One-half acre = approximately 22,000 square feet (such as 125 by 175 feet)

One-quarter acre = approximately 11,000 square feet (such as 80 by 135 feet)

Major Goals and Objectives

The following is a summary of relevant goals and objectives from the Borough’s Mini-Comprehensive Plan.

Goal: Provide for a compatible and complimentary mixture of land uses, development patterns, and building designs respecting and enhancing the community's established neighborhoods and other developed areas, in addition to the natural resources, for accommodating residents and businesses.

- A. Ensure development is planned and designed to fit into the character of the surrounding neighborhoods, by allowing appropriate land uses and applying development design standards.
- B. Develop and orient itself towards a true downtown with appropriate use and design standards.
- C. Ensure auto-oriented and other intensive business uses are limited to selected areas with appropriate use and design standards.
- D. Ensure natural resources are protected with appropriate use and design standards.
- E. Ensure historic resources are protected with appropriate use and design standards.
- F. Ensure business signs fit into the character of the surrounding neighborhood.
- G. Develop attractive gateways into the community.

Downtown / Town Center Objectives:

- A. Promote the downtown as a pedestrian-oriented area serving the region, and also featuring destination businesses that serve a particular niche.
- B. Provide for a mixture of compatible non-residential and residential uses within the same building, the same lot, and within proximity to one another.
- C. Provide for pedestrian-oriented and pedestrian-scaled development.
- D. Enhance the downtown's image, identity, and safety via public and private improvements supporting a coordinated and attractive streetscape, greening, traffic calming, gateway and wayfinding program.

Goal: Provide for a variety of housing opportunities that are compatible with the existing neighborhood characteristics, for accommodating existing and future residents.

- A. Provide for the rehabilitation, reasonable expansion, and enhancement of existing housing opportunities in a manner compatible with the structure and the surrounding neighborhood.

Goal: Promote a complimentary mixture of sustainable businesses meeting the community's employment and purchasing demands, while also attracting customers and visitors from outside the community.

- A. Ensure an appropriate balance of jobs within the Borough to housing so that people can live close to work.
- B. Enhance opportunities for a variety of home-based businesses which are designed to fit into the character of the surrounding neighborhood with appropriate use and design standards, in a fashion that does not detract from the existing residential character.
- C. Accommodate small-scale neighborhood-serving businesses with appropriate use and design standards, in the "Traditional Mixed Neighborhoods" around the downtown, in a fashion that does not detract from the existing homes.

- D. Enhance and promote the downtown area as a pedestrian-oriented area that serves the neighborhood and region and which also includes niche destination-businesses.
- E. Provide for auto-oriented businesses and other intensive commercial and industrial uses at the north and south ends of the Borough, instead of in the downtown.

Goal: Ensure that community facilities, utilities, and services are provided in a cost-effective manner.

- A. Provide a coordinated set of wayfinding or directional signs guiding residents and visitors to a variety of public facilities and points of interest.
- B. Ensure new public and semi-public buildings and uses are compatible with, and enhance the surrounding neighborhood.

Goal: Promote safe and efficient access for people and goods, through enhancing the interconnected network of streets and alleys, and by promoting public transit and non-motorized opportunities.

- A. Provide for an appropriate and compatible mixture of mobility options for motor vehicles, pedestrians, bicycles, and public transit.
- B. Ensure pedestrian-friendliness and safety through interconnected network of pedestrian improvements including sidewalks, signals and crosswalks.
- C. Enhance the interconnected street, alley, and sidewalk network, primarily in the traditional grid-pattern.
- D. Maintain and enhance streetscapes through a coordinated series of pedestrian safety improvements and traffic calming techniques, including appropriately designed and installed street trees, sidewalks/crosswalks, curb extensions, period-style street lights and on-street parking.

Goal: Work to preserve, enhance and promote the community's historic, cultural, and architectural heritage.

- A. Ensure development near key identified historic, cultural, and architectural resources is sensitive to the surrounding context, by taking into consideration building placement, height, setbacks, color scheme, facade characteristics, screening and buffering.
- B. Consider developing specific criteria and a review process regarding demolition and/or removal of certain identified historic, cultural and architectural resources.

Goal: Preserve, enhance, and promote natural resources.

- A. Preserve and enhance the quality and quantity of natural resources, including floodplains, streams and watercourses, wetlands, larger stands of trees and vegetation, etc.
- B. Protect and enhance the Tulpehocken Creek corridor as a "greenway," which includes a variety of natural, recreation and educational opportunities, and provides connections to other community assets.
- C. Enhance the appearance of the community using a variety of greening initiatives, including preservation of existing trees, and public and private landscaping improvements using native vegetation, shade trees and street trees.

Avoiding Over-Regulation of Routine Changes

To avoid over-regulation of routine changes, it may be desirable to make some adjustments. Setback and coverage requirements were reviewed to make sure it is not too difficult to expand a one family house, add a deck or shed or a porch, or make a modest addition onto a church or business.

Excessive regulations upon routine changes can create great aggravation to residents and a large workload for the Borough staff and the Zoning Hearing Board. If a certain type of variance is commonly requested and approved, then the ordinance should be changed so that a type of variance is not needed.

User-Friendliness of the Zoning Ordinance

The proposed new Zoning Ordinance is intended to make greater use of tables and graphics to make it easier to use. The Ordinance will also be posted on the Borough's website, which will allow word searches. There also will be a detailed table of contents and an index. The goal is also to have a zoning ordinance that is very clear and predictable for developers and builders, and that does not result in unnecessary delays for desirable types of development in appropriate locations.

Proposed Zoning Map and Zoning Districts

The Zoning Map is being updated as part of this project, to carry out the Comprehensive Plan, which included a Future Land Use Plan Map. The Zoning Ordinance is supposed to be “generally consistent” with the Plan, but Borough officials may decide to make revisions from the Plan recommendations.

The zoning districts are shown on the Draft Zoning Map. More detail on the suggested allowed uses for each zoning district are included in the draft zoning text.

LDR Low Density Residential District (“Suburban Residential” in the Plan)

This is proposed to be the lowest density residential district. The intent is to allow for single family detached houses, and semi-detached (side-by-side) dwellings. In addition, townhouses would be allowed with Zoning Hearing Board approval, provided the lot includes at least one-half acre. The one-half acre requirement is intended to avoid the demolition of a single family home to build townhouses in the middle of a single family detached block. A maximum of 4 townhouses could be attached in a row in this district. The maximum density is suggested to be 5 to 6 homes per acre.

The current ordinance allows apartments on large lots in these areas, which would no longer be allowed.

New churches and other places of worship would need a ½ acre lot in a residential district. It is particularly important to make sure that an individual house on a small lot in the middle of a residential block cannot become a new place of worship.

OT Old Town Residential

This district is proposed to include most of the existing residential neighborhoods in the Borough. A variety of housing types would be allowed, with a maximum density of 10 to 14 dwelling units per acre.

A one family house would not be allowed to be converted into two or more apartments unless it is an unusually large house (over 3,000 square feet).

There would be a minimum tract size of 1/3 acre for new apartments, so that they could not be built on a small lot in the middle of single detached houses.

The Zoning Ordinance would provide the Zoning Hearing Board with authority to approve alternative uses in former industrial buildings or schools, churches, rectories, convents and similar non-residential buildings, without needing proof of a hardship. Those alternative uses could include conversions to apartments, offices, funeral homes and selected other uses.

TMN Traditional Mixed Neighborhood

The TMN district would apply along the length of Main Avenue (except in the center of the downtown) and most of the length of College Street. This TMN category would also absorb the C-3 Neighborhood Commercial district that currently exists along the west end of Main Avenue.

The TMN category is intended to allow a mix of housing types at 12 to 20 housing units per acre. In addition, these areas are intended to allow low intensity businesses, such as retail sales, office and personal service uses, day care, and bed and breakfast inns. There could be a storefront business with apartments above.

Also, "Live Work Units" could allow flexible use of business and residential space, provided that the operator of the business lives within the same building area. A Live Work Unit functions like a home-based business, but without limits on the amount of floor area used for the business.

The goal is to only allow types of commercial uses that would be good neighbors for nearby residents. We recommend limiting late night hours of operation for uses that are not already open during late night hours. Any new late night hours (11 pm to 6 am) would need Zoning Hearing Board approval.

TC Town Center District

This district would apply to the Downtown segment of Main Avenue and some adjacent segments of College Avenue. Because College Avenue has more traffic and more visibility than Main Avenue, it may be easier to attract new businesses to College Avenue.

This district would continue to allow apartments (except along the first floor street frontage), retail stores, offices, theaters, hotels, recreation uses, restaurants without drive-through service, personal services, funeral homes, day care, and similar uses.

Auto sales, auto repair and boat sales would not be allowed. In any case, existing lawful uses can continue to operate.

With Zoning Hearing Board approval in this district, it would be possible to develop nightclubs and taverns. Car washes and warehouses would no longer be allowed in the Town Center, except for accessory warehousing. The draft ordinance would move treatment centers (such as drug treatment) and gambling uses to the General Industrial district.

New buildings would be required to be placed close to the street, with parking located to the side or rear of the building.

The current downtown district has a minimum height of 25 feet and a maximum height of 45 feet. Consideration should be given to allowing a taller height, such as a maximum of 5 stories or 70 feet, whichever is more restrictive.

GB General Business District

This district would include commercial areas along the Route 422 corridor. GB would allow the same uses as Town Center, plus gas stations, vehicle repair, vehicle sales and drive-through restaurants.

This district would also be applied to the former shirt factory complex east of Cherry Street and north of Main Avenue and to the adjacent Borough Hall, which is being sold for business uses.

LI Light Industrial District

This district is proposed to mainly include current industrial lands in the southern part of Myerstown, including the Bayer complex. The LI District is proposed to allow offices, warehouses and almost all types of industrial uses. However, the heaviest and most intensive industrial uses would be limited to the General Industrial District.

The draft uses a much more specific listing of the various types of industrial uses in all industrial districts. The uses that are less likely to cause nuisances and hazards should be permitted by right, while the more intensive and potentially hazardous uses should need Zoning Hearing Board approval. Currently, all types of manufacturing, processing and handling industrial uses are permitted by right, which could allow some noxious uses by right.

GI General Industrial District

The GI District is proposed to include lands east of S. Cherry St. and south of E. Richland Av. The GI District would allow all of the same uses as the LI district, plus would be used to meet obligations under State law for the Borough to allow a location where it is possible to develop a trash transfer station, chemical plant or strip club. Zoning Hearing Board approval would be needed for the most intensive uses.

Under Federal law, every municipality must allow locations for strip clubs and other adult uses. There are currently large setbacks from churches, parks and residential districts, which is the standard way to address these uses. An additional set of requirements could be added for these uses, such as wider buffers and limits on hours of operation.

CF Community Facilities District

This district is proposed to include cemeteries, some of the larger churches and some of the retirement communities. It would mainly allow for institutional uses. Housing would be allowed under the same standards as the Old Town Residential district, except with a higher density and taller height for age-restricted housing. This district would also allow for colleges, seminaries, personal care centers, nursing homes and hospices.

CN Conservation District

This district is proposed to include most of the public parks, plus areas along the Tulpehocken Creek that are within the "100 year floodway." The 100 year floodway is the area that is projected to carry the majority of the floodwaters during the worst storm in an average 100 year period. There also are regulations to control the adjacent "100 year flood-fringe," which is subject to less frequent and more shallow flooding. New buildings would continue to be prohibited in the floodway.

Home Day Care and Home-Based Businesses

The draft Zoning Ordinance includes updated standard for home-based day care, which is becoming increasingly common. Most communities limit the number of children who can be cared for in various areas, with lower numbers in lower density residential districts. In addition to children who are close relatives of the caregiver, up to 3 kids could be cared for in the LDR district, up to 6 kids in the OT district and up to 12 kids in the TMN district.

Currently, all home occupations are permitted by right, as long as they do not involve more than one employee who does not live in the house. Under the draft, the most intensive and unusual types of home

occupations would need special exception approval from the Zoning Hearing Board. The lower intensity and more common types of home occupations should continue to be permitted by right. On-site retail sales should be prohibited as part of this use in residential districts.

Group Homes

Group homes typically provide housing and supervision for persons with “disabilities”, such as persons with developmental disabilities.

Updated provisions are proposed in the draft regarding group homes, to meet requirements under Federal law while also protecting residential neighborhoods. Up to 4 residents and a supervisor would be allowed, which could be increased to 6 residents and a supervisor with Zoning Hearing Board approval. The draft would then require that the largest and most controversial types of group homes need special exception approval and be limited to business districts. The Zoning Hearing Board would be given the authority to grant special exceptions if the applicant proves an accommodation is required for persons with disabilities under Federal law.

The Borough Solicitor should carefully review these matters.

Two federal court decisions have limited the ability of municipalities to regulate the location of outpatient methadone treatment centers. They are typically required to be treated the same as any medical office.

Controversial Uses

The revised Zoning Ordinance would very carefully regulate uses that are most likely to cause nuisances and hazards. These include chemical plants, asphalt plants, trash transfer facilities, salvage/scrap yards, after hours clubs, and drug and alcohol treatment centers. The general rule under State law is that it is more legally defensible to allow a use in one district with very strict regulations than to try to completely prohibit it.

Historic Building Demolition

We are not proposing the creation of a Historic District that requires approval of routine changes to existing buildings. As a result, we are not proposing a zoning approval process for the designs of the replacement of doors, windows and roofing materials.

The draft Zoning Ordinance would establish an approval process before important older buildings could be demolished. State law provides the Borough with the authority to decide which buildings are significant.

This provision would only need approval if the main building on the lot was proposed to be demolished. The applicant would need to show that there was a valid reason for the demolition, such as the building being in such poor condition that it cannot be rehabilitated. A partial demolition would also be regulated, such as a removal of an older front porch or an architectural cornice. This process would involve requiring special exception approval from the Zoning Hearing Board.

The draft Zoning Ordinance would also allow incentives for historic rehabilitation. For instance, a restored historic building might be allowed to be converted into an office or bed and breakfast inn within a residential district that would not normally allow those uses.

Control of Nuisances

Provisions have been updated to control excessive lighting, noxious odors or noise. For example, noise levels would be regulated, with more restrictive regulations if the noise is being heard within a

residential district, particularly at night. Additional controls are proposed to limit excessive lighting and to make sure that lighting is properly directed so that it does not cause glare for neighbors and motorists.

Buffering and Landscaping

The draft has a greater emphasis on buffering and landscaping. Even a high impervious coverage can still be attractive with the proper landscaping. This is the best way to improve the appearance of business development – particularly because a municipality cannot control architecture outside of a historic district. Shade trees should be required within and around parking lots and along streets, wherever existing trees will not be preserved.

Buffering is particularly important between new businesses and residential neighborhoods. Any overnight outdoor storage of multiple trucks should be screened by plants from view from streets.

Buffering along a street should be designed with low level shrubs and higher canopy trees, so that there is visibility into a site for security purposes.

Signs

The Zoning Ordinance regulates the allowed height, sizes, types and locations of signs. The sign provisions have been updated to ensure that they balance the need for visibility by businesses with the goal of maintaining an attractive character throughout the Borough.

The draft would encourage older styles of projecting signs (that project vertically from the building) in the downtown. Those signs increase visibility for motorists and pedestrians, particularly when there is not room for a freestanding sign. The draft would also allow temporary sidewalk signs in the downtown, such as restaurant menu boards, as long as they do not obstruct wheelchairs and pedestrian traffic.

In addition to prohibiting flashing and animated signs, the ordinance would prohibit electronic signs that change too frequently.

Billboards need to be carefully controlled. The maximum sign size can be limited to 300 square feet, which is a medium size. New billboards would be limited to a single zoning district (General Commercial), with large setbacks from homes and separation distances between billboards.

Parking and Loading

The Zoning Ordinance requires certain amounts of off-street parking to be provided for new, expanding or intensified uses. These standards have been updated, based upon research into nationwide parking needs.

Please contact us if there are any questions or comments.