

ORDINANCE NO. 184

AN ORDINANCE OF THE BOROUGH OF AVONDALE, CHESTER COUNTY, PENNSYLVANIA, AMENDING CHAPTER XXVI OF THE AVONDALE BOROUGH CODE, I.E. ORDINANCE NO. 172, THE "AVONDALE BOROUGH ZONING ORDINANCE".

BE IT ENACTED AND ORDAINED BY THE AVONDALE BOROUGH COUNCIL AND IT IS HEREBY ORDAINED AND ENACTED BY AUTHORITY OF THE SAME AS FOLLOWS:

§1.01 PART 2 "DEFINITIONS", SECTION 2.2 ("SPECIFIC DEFINITIONS") is hereby amended as follows:

- A. The following Specific Definitions shall become part of Section 2.2 ("Specific Definitions"):

Building - Any structure having a roof, self-supported or supported by walls, columns or air pressure, which is permanently affixed to the ground, used or occupied for the shelter, housing, or enclosure of any person, animal, process, equipment, goods or materials of any kind or any nature. The term "building" shall include the terms "dwelling" and "structure".

Building Height - A building's vertical measurement from the mean level of the ground abutting the building to a point mid-way between the highest and lowest points of the roof.

Lot, Corner - A lot located at the junction of and abutting on two or more intersecting streets, or at the point of abrupt change in the direction of a single street, the interior angle of which is not greater than one hundred and thirty-

five degrees (135°). In the case of a corner lot, whichever street-abutting lot line is elected by the owner of the property or person applying for the building permit shall be deemed to be the "**LOT LINE, FRONT**".

Lot, Non-conforming - A lot of record existing as of 12:01 A.M. prevailing time, December 17, 1996, which does not have the minimum width or other required dimensions, does not contain the minimum area for the district in which it is located, or otherwise does not conform to permit as of right the construction of a principal building otherwise permitted as of right in the district in which the lot is located.

Structure, Non-conforming - A structure or part of a structure which does not comply with the provisions of this Ordinance for the Zoning District in which such structure or part of a structure is located, and where such structure was lawfully in existence prior to 12:01 A.M. prevailing time, December 17, 1996, which has continued to exist thereafter; such non-conforming structures include but are not limited to non-conforming signs.

Agricultural Use - Includes uses and necessary buildings related to the tilling of land, the raising of farm products, the raising and keeping of horses, cattle and other livestock, and the raising of poultry and poultry products subject to other provisions of this Ordinance.

Road Classification - A designation given a road in accordance with its function as a carrier of traffic and from which specific setback distances as may be provided in this Ordinance. Classifications for new road within the Borough shall be determined by the Borough Council after recommendations by the Planning Commission. For purposes of this Ordinance, the following three (3) classifications shall apply:

- A. Arterial: A street whose primary function is to service comparatively high volumes of through traffic at speeds higher than desirable on collector and local streets.
- B. Collector: A road whose function is to provide for the movement of traffic to community facilities and carry larger volumes of traffic to the arterial road system.
- C. Local: A road whose function is to provide for local traffic movement and direct access to abutting properties.

Person - The word "person" shall include an individual, corporation, partnership, incorporated association, or any other similar entity.

Driveway - An accessory structure which provides motor vehicle access for or to a lot.

Home Occupation -

- (1) In the "R-1 Residence District", the "R-2 Residence District", and the "FD Flexible Use District", home occupations shall be permitted only in the following types of dwelling units:
 - (a) Single-family detached dwelling.
 - (b) Single-family semi-attached ("Twin") dwelling.

(2) The following occupations - and only the following occupations - shall be considered and permitted as "Home Occupations":

- (a) Insurance salesperson.
- (b) Doctor.
- (c) Dentist.
- (d) Manufacturer's representative.
- (e) Sales representative.
- (f) Dress-maker or milliner.
- (g) Tailor.
- (h) Telephone answering or secretarial service.
- (i) Music teacher.
- (j) Educational tutor.
- (k) Architect, engineer, planner or land planning consultant.
- (l) Painter, sculptor or writer.

- (m) Home craft, such as model making, rug weaving, woodworking, and cabinet making.
- (n) Home cooking and preserving.
- (o) Computer programming or word processor.
- (p) Attorney.

Municipal Use - Publicly owned uses including, by way of example but not by way of limitation, parks, playgrounds and other recreational, cultural and conservation areas; the sites for schools, sewage treatment, refuse, disposal or other public facilities owned or operated for the residents of the Borough of Avondale and the Commonwealth of Pennsylvania, and activities regularly conducted by the Commonwealth of Pennsylvania or the Borough of Avondale as such sites and/or facilities.

Impervious Surface Area - All surfaces which do not absorb rain including but not limited to any structure which will not permit absorption of rain into the ground. Total roof square foot area as projected on a horizontal plane shall be considered as "impervious surface area".

Accessory Structure - A building or other structure subordinate to the permitted principal building on a lot and used for purposes customarily incidental to those of such principal building. If an accessory structure is attached to a permitted principal building in a substantial and permanent manner, such as by means of a wall or roof, then the accessory structure shall be considered part of the principal building.

Use, Non-conforming - The use of land or the use of a building or other structure which does not comply with the provisions of this Ordinance or the Zoning District in which the use is located, provided such use was lawfully in existence prior to 12:01 A.M. prevailing time, December 17, 1996, or prior to the enactment of subsequent amendments thereafter which render such use non-conforming, but which was lawfully in existence prior to the enactment of this Ordinance or any amendment and which has continued thereafter.

- R.** The definitions of "Accessory Use" and "Lot, Coverage" in Ordinance No. 172 are hereby deleted in their entirety and replaced with the following definitions:

Accessory Use - A use conducted on the same lot as a permitted principal use to which it is related and which is located either within the same structure(s), in an accessory building or other structure, or on the same lot; an accessory use shall also be a use which is clearly incidental to - and customarily found in connection with - a particular permitted principal use.

Lot Coverage - The percentage of lot area covered by any and all impervious materials, including but not limited to buildings, structures, roofs, paved parking areas, paved walks, paving in general, terraces and similar surfaces which do not normally absorb rainfall.

- C.** The definition of "**Conditional Use**" is hereby deleted in its entirety, with no replacement term.

§2.01

- A. The provisions of Section 14.1.A (“Zoning Officer”) of Part 14 (“Administration”) of Ordinance No. 172 are hereby deleted and replaced with the following:

A. Zoning Officer.

The Borough Council shall appoint a Zoning Officer who shall not hold any elective office in the Borough. The Zoning Officer shall administer this Ordinance in accordance with its literal terms and shall not have the power to permit any construction or any use or change of use which does not conform to the provisions of this Ordinance. The Zoning Officer is hereby given the power and authority to enforce this Ordinance and is authorized to institute civil enforcement proceedings as a means of enforcement when acting within the scope of his duties. The Zoning Officer shall be appointed by the Borough Council for an indefinite term at the pleasure of Council, and shall serve in that capacity until a successor is chosen and appointed.

- B. Section 14.1.B.6 is hereby deleted in its entirety and replaced with the following:

6. Issue permits for uses and structures approved by Special Exceptions and/or Variances only after such uses and structures permitted in conjunction therewith are approved by the Zoning Hearing Board in accordance with the terms of this Ordinance or as directed by a court of competent appellate jurisdiction, subject to such conditions or stipulations contained in any such Order.

C. Section 14.1.B. is hereby amended by adding the following paragraph 8:

8. Inspect non-conformities, including non-conforming uses, structures and lots.

D. The precatory language in Section 14.2 (“Violations”) of Part 14 is hereby deleted in its entirety and replaced with the following:

Section 14.2 Violations - Failure to secure a permit prior to the construction, alteration, extension or demolition of any building or structure, failure to secure a permit prior to a change in use of land, buildings or structures, failure to secure a use and occupancy permit prior to the use or occupancy of any land building or structure, failure to obey or comply with an order or condition of approval of any special exception, variance (conditional use) or other zoning relief ordered and granted by the Zoning Hearing Board or Borough Council, as applicable, failure to comply with an enforcement notice duly issued by the Zoning Officer or any authorized borough enforcement officer in relation to the provisions of this ordinance, failure to comply with a lawful directive of the Zoning Officer issued under the provisions of this Ordinance and the undertaking of any deliberate action which is contrary to the terms of this Ordinance shall constitute a violation of this Ordinance, and the Zoning Officer is authorized to take such enforcement action as determined appropriate under the provisions of this Part 14.

E. Section 14.2.B.2.(e) is hereby deleted in its entirety and replaced with the following:

e. That the recipient of the notice has the right to appeal to the Zoning Hearing Board within thirty (30) days of the recipient’s receipt of the enforcement notice.

- F. Section 142.2.B.2 is hereby amended by adding the following subsection g.:
- g. The enforcement notice shall be served by United States Certified or Registered Mail or by personal service.
- G. The first sentence only of Section 14.3.B (“**Issuance of Permits**”) is hereby deleted in its entirety and replaced with the following sentence:
- Provided that the application for a permit has been correctly completed by an applicant, and further provided any fee established by the Borough has been paid for the permit, the permit shall be granted or refused within thirty (30) days after the date of submission of the application therefor.
- H. Section 14.4 (“**Conditional Use Procedures**”) is hereby repealed in its entirety, with no substitution therefor.
- I. Section 14.5 (“**Power of Amendment**”) is hereby deleted in its entirety and replaced with the following:

Section 14.5 Power of Amendment

- (1) This Ordinance and the Zoning Map may be amended, supplemented, changed, altered, modified or repealed either in whole or in part by the Borough Council in accordance with the provisions of the Pennsylvania Municipalities Planning Code, i.e. the Act of July 31, 1968, P.L. 805, No. 247, as amended.
- J. Section 14.6 (“**Curative Amendments**”) is hereby deleted in its entirety and replaced with the following:

Section 14.6 Curative Amendments

- (1) A land owner who desires to challenge on substantive grounds the validity of the Zoning Ordinance or the Zoning Map or any provision thereof which prohibits or restricts the use or development of land in which he has an interest may submit a Curative Amendment to the Borough Council, with a written request that his challenge and the proposed amendment be heard and decided in accordance with the provisions of the Pennsylvania Municipalities Planning Code, as amended.

- K. Part 14 (“Administration”) is hereby amended by adding the following section :

Section 14.8 Fees

- A. Fees for applications to the Zoning Hearing Board of any nature, or any permit authorized or required under this Ordinance shall be paid for in advance and in accordance with a Schedule of Fees adopted by a Resolution of the Borough Council, as may be amended from time to time.

§3.01

- A. Section 15.4 (“Organization of the Board”) is hereby amended by adding the following subsection:
- E. In accordance with the Pennsylvania Municipalities Planning Code, as amended, the Board may make, alter and rescind rules and forms for its procedure, consistent with the Ordinances of the Borough of Avondale and the laws of the Commonwealth of Pennsylvania.

B. Section 15.6.C (“Special Exceptions”) is hereby deleted in its entirety and replaced with the following:

C. Special Exceptions. To hear and decide Special Exceptions where provided for in this Ordinance in accordance with the provisions of Section 15.10 of this Ordinance.

C. Section 15.6 (“Jurisdiction”) is hereby deleted in its entirety and replaced with the following:

Section 15.6 Jurisdiction

The Zoning Hearing Board shall have exclusive jurisdiction to hear and render final adjudications in the following matters:

A. Appeals from the Zoning Officer

The Board shall hear and decide appeals from the determination of the Zoning Officer including, but not limited to, the granting or denial of any permit or failure to act on the application therefor, the issuance of any cease and desist order or the registration or refusal to register any non-conforming use, structure or lot, and from the Zoning Officer’s determination under MPC Section 916.2.

B. Variances

The Board shall hear applications for variances from the terms of the Zoning Ordinance and Flood Hazard Ordinance or such provisions within a Land Use Ordinance pursuant to MPC Section 910.2.

C. Special Exceptions

To hear and decide applications for special exceptions under the Zoning Ordinance or Flood Plain or Flood Hazard Ordinances or such provisions within a Land Use Ordinance pursuant to MPC Section 912.1.

D. Validity of Land Use Ordinances

The Board shall hear substantive challenges to the validity of any Land Use Ordinance except those brought before the Borough Council pursuant to Sections 609.1 and 916.1(a)(2) of the Pennsylvania Municipalities Planning Code. Also, the Board shall hear challenges to the validity of a Land Use Ordinance raising procedural questions or alleged defects in the process of enactment or adoption which challenges shall be raised by an appeal taken within thirty (30) days after the effective date of said Ordinance.

E. Appeals From Determination by the Zoning Officer or Borough Engineer.

The Board shall hear appeals from a determination by the Township Engineer or the Zoning Officer with reference to the administration of any Flood Plain or Flood Hazard Ordinance or such provisions within a Land Use Ordinance; and shall hear appeals from the determination of the Zoning Officer or Borough Engineer in the administration of any Land Use Ordinance or provision thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to development not involving MPC Article

V or VII applications.

F. Any other applications or appeals authorized by law to be submitted to and/or heard by the Zoning Hearing Board.

D. Section 15.7 (“Hearings”) is hereby amended as follows:

1. Sections 15.7.I, and 15.7.J, are hereby deleted in their entirety and replaced with the following:

I. Record of Proceedings

The Board or the Hearing Officer, as the case may be, shall keep a stenographic record of the proceedings. The appearance fee for a stenographer shall be shared equally by the Applicant and the Board. The cost of the original transcript shall be paid by the Board if the transcript is ordered by the Board or Hearing Officer or shall be paid by the person appealing from the decision of the Board if such appeal is made, and in either event the cost of additional copies shall be paid by the person requesting such copy or copies. In other cases, the party requesting the original transcript shall bear the cost thereof.

J. Communications

The Board or the Hearing Officer shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials, except advice from their solicitor, unless the parties are afforded an

opportunity to contest the material so noticed and shall not inspect the site or its surroundings after the commencement of hearings with any party or his representative unless all parties are given an opportunity to be present.

2. Section 15.7.K.1 is amended by deleting the phrase "...of the conclusion of the hearing..." where that phrase appears in the first sentence and substituting the following phrase therefor:

"...after the last hearing before the Board or Hearing Officer, ..."

3. Sections 15.7.K.2 and 15.7.K.3 are deleted in their entirety and replaced with the following:

Section 15.7.K.2

If the Hearing is conducted by a Hearing Officer, and there has been no stipulation that his decision or findings are final, the Board shall make his report and recommendations available to the parties within forty-five (45) days and the parties shall be entitled to make written representations thereon to the Board prior to final decision or entry of findings, and the Board's decision shall be entered no later than thirty (30) days after the report of the Hearing Officer. Where the Board fails to render the decision within the period required by this subsection, or fails to hold the required Hearing within sixty (60) days from the date of the Applicant's request for Hearing, the decision shall be deemed to have been rendered in favor of the Applicant unless the Applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the Applicant because of the failure of the Board to meet or render a decision as hereinabove provided, the Board shall give public notice of said decision within ten (10)

days from the last day it could have met to render a decision in the same manner as provided in Subsection 1. of this section. If the Board shall fail to provide such notice, the Applicant may do so. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

Section 15.7.K.3

A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the Applicant personally or mailed to him not later than the day following its date. To all other persons who have filed their name and addresses with the Board not later than the last day of the Hearing, the Board shall provide by mail or otherwise, brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined.

4. Section 15.7.K.4 is hereby deleted in its entirety, with no replacement therefor.
- E. Sections 15.9.B and 15.9.C are hereby deleted and replaced with the following:
- B. In granting a Variance, the Board may attach such reasonable conditions and safeguards as it deems necessary to implement the purposes of the MPC and this Zoning Ordinance.
 - C. All owners of land within 500 feet of the property which is the subject of an application shall be notified by the Borough by ordinary mail of the application for the Variance.

- F. 1. Sections 15.10.A through and including Section 15.10.E are hereby deleted in their entirety and replaced with the following:

A. Procedure for Special Exception Hearings

The Zoning Hearing Board shall conduct hearings on Special Exceptions in accordance with the provisions of Section 15.7 of this Ordinance. In granting a Special Exception, the Board may attach such reasonable conditions and safeguards, in addition to those set forth in this Ordinance, if any, as it may deem necessary to implement the purposes of the MPC and this Ordinance.

2. The letter capital letter "F." in Section 15.10.F is hereby deleted and replaced with the capital letter "B."

- G. Section 15 ("Zoning Hearing Board") is hereby amended by adding the following new subsection:

Section 15.11 Expiration of Special Exceptions and Variances

- A. After the grant of a Special Exception or Variance, an applicant must apply within six (6) months for a Building Permit or a Use and Occupancy Permit, and unless the construction or use shall commence within one (1) year from the granting of the Special Exception or Variance, the Special Exception or the Variance shall expire automatically; further, if construction has begun pursuant to a Special Exception and/or a Variance, and construction is abandoned for a period of one (1) year, the Special Exception and/or Variance shall automatically expire.

§4.01

- A. In any section of this Ordinance where a “use” is permitted as a “conditional use”, or anywhere in this Ordinance where the phrase “use is permitted by conditional use” appears, such phrases and the use of the term “conditional use” are hereby deleted and are replaced by the words “special exception” or “uses permitted by special exception”, it being the express intent of the Avondale Borough Council that all uses permitted by “conditional use” be permitted by, and governed in accordance with, the “Special Exception” provisions of this Ordinance.
- B. The provisions of this Ordinance shall not apply to real property owned by Avondale Borough.

§5.01

- A. In all other respects, the Avondale Borough Zoning Ordinance, i.e. Ordinance #172 (CH. XXVI of the Avondale Borough Code), shall remain in full force and effect.

§6.01 Invalidity.

If any section or provision of this amendatory Ordinance is declared by any court of competent jurisdiction to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect the constitutionality, legality or validity of this amendatory Ordinance as a whole, nor the constitutionality, legality or validity of any other section or provision of the amendatory Ordinance other than the one so declared to be unconstitutional, illegal or invalid; further, if this amendatory Ordinance (or any section thereof) is declared by a court of competent jurisdiction to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or repeal any provision of Ordinance No. 172 or any subsequent Ordinance amending Ordinance No. 172 enacted

prior to the adoption of this amendatory Ordinance. It is hereby declared to be the intent of the Borough of Avondale that, in the event this amendatory Ordinance (or any section thereof) is declared to be unconstitutional, illegal or invalid, this amendatory Ordinance is intended to be severable from Ordinance No. 172, or any subsequent amendatory Ordinances and, further, the Borough of Avondale would have continued Ordinance No. 172 in its entirety, as amended except for this amendment, in full force and effect as enacted prior to the adoption of this amendatory Ordinance.

§7.01 Effective Date.

This Ordinance shall become effective immediately upon enactment.

ORDAINED AND ENACTED by the Council of the Borough of Avondale in a public meeting held this 16th day of February, 1999.

ATTEST:

AVONDALE BOROUGH COUNCIL

Becky McAleer
BECKY MCALEER, Secretary

By: R. N. McCue
ROBERT N. McCUE, President

APPROVED this 16 day of February, 1999.

BOROUGH OF AVONDALE

By: Doris E. Howell
DORIS E. HOWELL, Mayor