

PART 3

ADMINISTRATION & ENFORCEMENT

Section. 300. Applicability of this Chapter

- A. This Chapter shall apply throughout Highspire Borough, Dauphin County, PA. Any activity regulated by this Chapter shall only occur in such a way that conforms with the regulations of this Chapter.

Section. 301. Administration

- A. The provisions of this Chapter shall be enforced by an agent, to be appointed by the Borough Council of the Borough of Highspire who shall be known as the Zoning Officer. The Zoning Officer may have designated an employee of the Borough of Highspire as his Assistant, who shall exercise all the powers of the Zoning Officer during the temporary absence or disability of the Zoning Officer.
- B. The duties of the Zoning Officer shall be:
1. Administer this Chapter in accordance with its literal terms;
 2. To receive, examine and process all applications and permits as provided by the terms of this Chapter. The Zoning Officer shall also issue zoning permits for special exception and conditional uses, or for variances after the same have been approved by the body having the respective jurisdiction;
 3. To record and file all applications for zoning permits, certificates of use and occupancy, and other permits as may be set forth in this Chapter and accompanying plans and documents, and keep them for public record;
 4. To inspect properties to determine compliance with all provisions of this Chapter as well as conditions attached to the approval of variances, special exceptions, conditional uses and curative amendments;
 5. Determine the date before which steps for compliance must be commenced and the date before which the steps must be completed. The Zoning Officer shall determine an appropriate duration of time for compliance of the specified activity, not to exceed thirty (30) days. Extensions up to a total of ninety (90) days from the date of receipt of the enforcement notice may be granted at the discretion of the Zoning Officer if applied for in writing;
 6. Upon the request of the Borough Council of the Borough of Highspire or the Zoning Hearing Board, present to such bodies facts, records, and any similar information on specific requests, to assist such bodies in reaching their decisions;
 7. To be responsible for keeping this Chapter and the Official Zoning Map up to date, including any amendments thereto;
 8. To revoke a permit or approval issued under the provisions of this Chapter in case of any false statement or misrepresentation of fact in the application or on the plans on which the permit or approval was based or for any other cause set forth in this Chapter, or otherwise permitted by law;
 9. To review proposed subdivisions and land developments for compliance with this Chapter; and
 10. To take enforcement actions as provided by the Pennsylvania Municipalities Planning Code (MPC), as amended.

Section. 302. Permits & Certificates

- A. A Zoning Permit indicates that a zoning application complies with this Chapter to the best knowledge of the Zoning Officer or his designee. No zoning permit or certificate of use and occupancy shall be granted by him for any purpose except in compliance with the literal provisions of this Chapter. The Zoning Officer may be authorized to institute civil enforcement proceedings as a means of enforcement when acting within his scope of employment.
1. A Zoning Permit is required to be issued prior to the start of any of the following activities:
 - a. Use, occupation, erection, construction, reconstruction, movement, alteration, razing, demolition, removal, placement, of or extension (vertical or horizontal) of a structure, building or sign.
 - b. Change of the type of use or expansion of the use of a structure, building or area of land.
 - c. Creation of a lot or alteration of lot lines.
 - d. Creation of a new use.
 - e. Other activities required to have a permit by this Chapter
 - f. The alteration or development of any improvement or unimproved real estate, including, but not limited to, mining, dredging, filling, grading, paving, excavation or drilling operations for underground utilities provided the final grade is not altered.
 - h. The construction or installation of lakes, ponds, dams, or other water retention basins;
 - i. No zoning permit shall be required for repairs or routine maintenance of any structure, building, or land provided such repairs or maintenance do not change the use or the exterior dimensions of the structure, building, or otherwise violate the provisions of this Chapter;
 2. The Borough of Highspire may, at its option, issue combined or separate Building Permits and Zoning Permits (and related Certificates of Use and Occupancy) and/or may utilize a single or separate application for the permits.
 3. The only determination by the Zoning Officer that shall be official shall be a written determination after the Zoning Officer receives a duly submitted written official application.
 4. Such zoning permits shall be granted or refused within ninety (90) days from date of application.
 5. No zoning permit shall be issued except in conformity with:
 - a. All applicable regulations of this Chapter;
 - b. Any conditions imposed upon the site by the Zoning Hearing Board or the Borough Council of the Borough of Highspire; and
 - c. Any recorded subdivision or land development plan.
 6. In all instances in which the Zoning Officer expresses a reasonable doubt as to the ability of a proposed use to meet all of the above-described requirements, it will be incumbent upon the applicant to furnish adequate evidence in support of his application. If such evidence is not presented, the zoning permit will be denied.

7. Application for a zoning permit shall be made by the owner or lessee of any building, structure, or land, or the agent of either; provided, however, that if the application is made by a person other than the owner or lessee, it shall be accompanied by a written authorization of the owner or the qualified person making the application, that the proposed work is authorized by this owner. The full names and addresses of the owner, lessee, applicant, and of the responsible officers, if the owner or lessee is a corporate body, shall be stated in the application.
8. The Zoning Officer may call upon other Borough of Highspire staff and/or Borough of Highspire appointed consultants in the review of submitted materials for applications.
9. The Zoning Officer may revoke a permit or approval issued under the provisions of this Chapter in case of any false statement or misrepresentation of fact in the application or on the plans which the permit or approval was based or for any other cause set forth in this Chapter.
10. Where a zoning permit is required by this Chapter, but the work is commenced or changed prior to obtaining such permit, and after notice by the Borough of Highspire the fees set by ordinance or resolution of the Borough Council of the Borough of Highspire for such permit shall be doubled. The doubling of the permit fee shall be required to reflect the additional expense incurred by the Borough of Highspire resulting from the need to inspect the property, respond to any complaints, issue any enforcement notices and/or process the application as soon as it is received. The payment of such increased permit fee shall not relieve any person from complying with all requirements of this Chapter or any other applicable Borough of Highspire chapters, ordinances, regulations, or from any penalties or enforcement actions authorized by this Chapter.
11. Issuance of Permits. Upon receiving the application, the Zoning Officer shall examine the same within a reasonable time after filing. If the application or plans do not conform to the provisions of all pertinent local laws, he shall reject such application in writing, stating the reasons therefore. He shall inform the applicant of his right to appeal to the Zoning Hearing Board in the event such application is rejected. If satisfied that the proposed work and/or use conforms to the provisions of this Chapter and all laws and ordinances applicable thereto, and that the certificate of use and occupancy as required herein has been applied for, he shall issue a permit therefore as soon as practical but not later than ninety (90) days from receipt of the application.
12. Reconsideration of Application. An applicant whose request for a zoning permit has been denied by the Zoning Officer may make a later application for a permit provided all deficiencies which were the basis for the prior denial of the permit have been eliminated. Additional fees may apply as set by the Borough Council of the Borough of Highspire.
13. Expiration of Zoning Permit. The permit shall expire after one (1) year from the date of issuance; provided, however, that the same may be extended one time for one (1) additional year, upon written request by the applicant at least thirty (30) days prior to the permit expiration date, and upon subsequent approval by the Zoning Officer, on a form provided by the Borough of Highspire.
14. Compliance with this Chapter. The permit shall be a license to proceed with the work and should not be construed as authority to violate, cancel, or set aside any of the provisions this Chapter, except as stipulated by the Zoning Hearing Board.
15. Compliance with Permit and Plot/Site Plan. All work or uses shall conform to the approved application and plans for which the permit has been issued as well as the approved plot/site plan.
16. Display of Zoning Permit. All approved zoning permits shall be prominently displayed on the subject property during construction, renovation, reconstruction, repair, remodeling or the conduct of other site improvements. Such permit displays shall occur within five (5) days of permit

issuance, or prior to the commencement of actual work on the site, whichever occurs first. Such permit display shall be continuous until the site receives its certificate of use and occupancy.

17. Inspections. Inspections of the property in question by the Zoning Officer or other duly appointed official may be required at various intervals during the construction, renovation, reconstruction, repair, remodeling or the conduct of other site improvements process. By submitting an application for a zoning permit, the landowner or applicant authorizes the Borough of Highspire to perform such inspections as required.

Section. 303. Certificate of Use and Occupancy

- A. It shall be unlawful to use and/or occupy any structure, sign, land area or portion thereof for which a Zoning Permit is required until a Certificate of Use and Occupancy for such activity has been issued by the Zoning Officer.
- B. The Borough of Highspire staff may permit the Building Permit and Zoning Permit application to serve as the application for the Certificate of Use and Occupancy.
- C. The Certificate of Use and Occupancy shall only be issued by the Zoning Officer if the Zoning Officer determines that the activity complies with this Chapter, to the best knowledge of the Zoning Officer.
- D. The applicant shall keep a copy of the Certificate of Use and Occupancy available for inspection.
- E. Upon request of the applicant, the Zoning Officer may issue a temporary Certificate of Use and Occupancy. Such temporary Certificate may permit as activity to occur in all or part of a structure or on all or part of the land before the entire work covered by the zoning permit has been completed.
 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 (6) 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.
- F. The Zoning Officer shall inspect any structure, building, or land within ten (10) days upon notification that the proposed work that was listed under a zoning permit has been completed and if satisfied that the work is in conformity and compliance with the work listed in the issued permit and all other pertinent laws, he shall issue a Certificate of Use and Occupancy for the intended use listed in the original application. Where a building permit is required under Chapter 5 relating to buildings, of the Codified Ordinances of the Borough of Highspire, a certificate of use and occupancy shall not be issued until a final inspection by the Building Code Official is complete and found to be satisfactory.

Section. 304. Zoning Permit for Temporary Uses and Structures

- A. A Zoning Permit for a temporary use or structure may be issued by the Zoning Officer for any of the following:
 1. Customary, routine and accessory short-term special events, provided that only a well-established nonprofit organization or a permitted place of worship proposing a temporary use demonstrates clearly

that the proposed use will primarily serve a charitable, public service or religious purpose in order to be eligible to receive approval for commercial-type activities in a zoning district where a commercial use would not otherwise be permitted;

2. Temporary storage and office trailers that are necessary to serve on-site construction, while such construction is actively underway;
 3. Such other activities that the applicant proves are routine, customary and temporary, including those specific "temporary" uses and structures set forth in Part 4
- B. Time Period. The Zoning Officer shall state a reasonable maximum time period on the temporary permit. If no time limit is stated or otherwise specifically provided in Part 4, then a six (6) month maximum period shall apply. A temporary permit may be renewed for just cause.

Section. 305. Types of Uses

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

Section 306. Applications for Zoning Permits

- A. Submittal. All applications for a Zoning Permit shall be made in writing on a form provided by the Borough of Highspire. Such completed application, with required fees, shall be submitted to a designated Borough of Highspire employee.
- B. Plot/Site Plan. The applicant shall submit a minimum of two (2) copies of a plot/site plan with the application. The plot/site plan shall be drawn to scale and show the following:
1. The approximate layout of the lot, with lot width, lot area and other applicable dimensional requirements.
 2. The total number of lots, units of occupancy, density and proposed land use (if multiple land uses are proposed, the location of each land use shall be indicated).
 3. The approximate location and configuration of existing and proposed buildings, structures, parking compounds, loading areas, streets, access drives, driveways, alleys, sidewalks, easements, and general stormwater facility locations, with existing features clearly distinguished from proposed features.
 4. Building setback lines, with notes showing the dimensions of all structures and buildings from lot lines and street rights-of way.

5. Location of any watercourses and any one hundred (100) year floodplain.
- C. 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:
1. Address of the lot.
 2. Name and address of the applicant, and of the owner of the property if different from the applicant.
 3. Description of the proposed use of the property.
 4. All other applicable information listed on the official Borough of Highspire application form.
 5. Such additional information that the Zoning Officer may determine is reasonably necessary to determine compliance with this Chapter.
 6. Applications for Permits in the MN/C and CBD Zoning Districts and the NCS Overlay District
- In addition to the information, required in Section 306 above, applications for the construction of new principal buildings or structures or additions / alterations to existing principal buildings or structures in the MN/C and CBD zoning districts and NCS Overlay district shall be submitted with the following information:
- a. A complete set of calculations (i.e. averages of heights, setbacks, etc.) used to determine and demonstrate compliance with all applicable standards set forth in the Dimensional Requirements of Parts 7 – 10 of this Chapter.
 - b. A schematic architectural drawing of the principal building's front façade(s).
- D. Application for Zoning Permits for Non-Residential Uses (excluding demolition permits) shall include the following:
1. A location plan showing the tract to be developed, zone boundaries, adjoining tracts, significant natural features (such as wetlands, stands of trees, streams, etc.), and streets for a distance of two hundred (200) feet from all tract boundaries;
 2. A plot/site plan certified by a qualified professional land surveyor, engineer or landscape architect licensed and/or registered to practice in the Commonwealth of Pennsylvania of the lot showing the location of all existing and proposed buildings, structures, driveways, parking lots, access drives, driveways, circulation patterns, curb cuts, lot access, parking stalls, screening, fences and walls, buffer yards, waste disposal or other methods of sewage disposal, other construction features on the lot, and the location of all topographical features;
 3. A description of the operations proposed in sufficient detail to indicate the effects of those operations in producing traffic congestion, noise, glare, air pollution, water pollution, vibration, fire hazards, safety hazards, or the emission of any potentially harmful or obnoxious matter or radiation and other performance standards in accordance with Part 4 of this Chapter;
 4. Evidence that the disposal of materials and wastes will be accomplished in a manner that complies with Borough, State and Federal regulations. If not provided by the Borough's contracted solid waste disposal provider, such evidence shall, at a minimum, include copies of contracts with waste haulers licensed to operate within Dauphin County which have been contracted to dispose of the materials used and wastes generated on-site. The zoning permit shall remain valid only so long as

such contracts remain in effect and all materials and wastes are properly disposed of on a regular basis. Should the nature of the use change in the future such that the materials used or wastes generated change significantly, either in type or amount, the owner shall so inform the Zoning Officer, and shall provide additional evidence demonstrating continued compliance with the requirements of this section;

5. Engineering plans for the handling of traffic, noise, glare, air pollution, water pollution, vibration, fire hazards, or safety hazards, smoke, or emission of any potentially harmful or obnoxious matter or radiation;
 6. Designation of the manner by which sanitary sewage and stormwater shall be disposed and water supply, and other utilities obtained/provided;
 7. The proposed number of shifts to be worked and the maximum number of employees on each shift;
 8. Where use by more than one firm is anticipated, a list of firms which are likely to be located in the on the property, their floor area, and estimated number of employees; and
 9. Submission, approval and recordation of a subdivision and/or land development plan in accordance with Chapter 22 of the Codified Ordinances of the Borough of Highspire, relating to subdivision and land development, as required.
- E. Areas Subject to Flooding. If the proposed development, excavation or construction is located within an area subject to regulation by Part 15 Floodplain Overlay Regulations, the information set forth in Section 1508 shall accompany all applications.
- F. Chapter 5 of the Codified Ordinances of the Borough of Highspire Relating to Buildings. Where the proposed use is regulated under the Chapter 5 of the Codified Ordinances of the Borough of Highspire relating to buildings, the applicant shall submit an application of building permit concurrently with the zoning permit. A zoning permit will not be issued until satisfactorily meeting the requirements of Chapter 5 of the Codified Ordinances of the Borough of Highspire Relating to Buildings.
- G. Submittals for Special Exception or Conditional Uses. In addition to the information listed above, an application for a special exception or conditional use requiring a site/plot plan and action by the Zoning Hearing Board or Borough Council of the Borough of Highspire shall also include the following information, unless the Zoning Officer determines that such information is not necessary to determine compliance with this Chapter:
1. Present zoning district and major applicable structure, building, and lot requirements.
 2. For mixed use and non-residential uses:
 - a. Description of the proposed mixed use and non-residential operations and storage in sufficient detail to indicate potential nuisances and hazards regarding noise, large truck traffic, glare, odors, dust, fire or toxic or explosive hazards or other significant public health and safety hazards.
 - b. Hours of operation.
 3. Existing directions of stormwater flow (and any proposed revisions) and any proposed methods of stormwater management.
 4. Listing of any sections of this Chapter from which a variance is being requested.

5. Approximate locations of principal buildings and locations of streets and alleys and zoning district boundaries within one hundred (100) feet of the boundaries of the tract, and description of uses of abutting properties (such as “tavern” or “single-family detached dwelling”).
6. Heights, locations, methods of illumination and intensity of exterior lighting and sign lighting.
7. Name and address of person who prepared the plot/site plan.
8. Signed acknowledgement of the site plan by the applicant.
9. Such additional information required under applicable sections of this Chapter.

Section 307. Issuance of Permits

- A. At least one (1) copy of each zoning permit application and any other zoning approvals shall be retained in the Borough of Highspire files.
- B. PennDOT Permit. Where necessary for access onto a State-owned street or road, a Borough of Highspire zoning or building permit shall be automatically conditioned upon issuance of a PennDOT Highway Occupancy Permit.

Section 308. Revocation of Permits; Appeal of Permit or Approval

- A. Revocation. The Zoning Officer shall revoke, withhold or suspend a permit or approval issued under the provisions of this Chapter in the case of one or more of the following:
 1. Any false statement or misrepresentation of fact in the application or on the plans on which the permit or approval was based. (Note: The Pennsylvania Criminal Code provides for penalties for providing false information to a municipal employee in the carrying out of his duties).
 2. Upon violation of any condition lawfully imposed by the Zoning Hearing Board for a special exception Use or a Variance.
 3. Upon violation of any condition lawfully imposed by the Borough Council of the Borough of Highspire for a conditional use.
 4. 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.
 5. Any other just cause set forth in this Chapter.
- B. Appeals. A party with legitimate standing, or as otherwise provided by State law, may appeal decisions made under this Chapter within the provisions of the MPC. Such appeal shall occur within the time period established by the MPC.

Section 309. Compliance with Chapter 22 of the Codified Ordinances of the Borough of Highspire, Relating to Subdivision and Land Development.

- A. If an application under this Chapter would also be regulated by Chapter 22 of the Codified Ordinances of the Borough of Highspire, relating to subdivision and land development, also known as the Borough of Highspire Subdivision and Land Development Ordinance (SALDO), then any permit or approval under this Chapter (Zoning Ordinance) shall automatically be conditioned upon compliance with Chapter 22. However, if the granting of a variance, special exception or conditional use is necessary, such approval shall be obtained prior to submitting an application for subdivision and/or land development approval.

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

Section 310. General Procedure for Permits

- 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 in writing to the applicant.
- B. After the permit under this Chapter has been issued, the applicant may undertake the action specified in the permit, in compliance with other Borough of Highspire codes and ordinances. However, it is recommended that applicants wait thirty (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 (30) day appeal period shall be at the risk of the applicant.

Section 311. Interpretation

- A. Minimum Requirements. Where more than one provision of this Chapter controls a particular matter, the provision that is more restrictive upon uses, structures, and buildings shall apply. The provisions of this Chapter are in addition to any other applicable Borough of Highspire code or ordinance.
- B. Interpretation of Chapter Text and Boundaries
 1. The Zoning Officer shall literally apply the wording of this Chapter and the location of all Zoning District boundaries to applications (see Part 6 of determining zoning district boundaries). In any case, the Zoning Officer may also request an advisory opinion from the Borough of Highspire Planning Commission, Borough of Highspire Solicitor, or the Zoning Hearing Board 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.

Section 312. Enforcement, Violations and Penalties

All of the enforcement, violations and penalty provisions of the MPC, as amended, are hereby incorporated into this Chapter by reference.

- 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 pursuing any activity listed in Section 104 and 302 of this Chapter.
 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 an approved Zoning Permit.
 4. Violation of any conditions imposed by a decision of the Zoning Hearing Board in granting a variance, special exception or other approval.

5. Violation of any condition imposed by a decision of the Borough Council of the Borough of Highspire in granting a conditional use.

B. Causes of Action; Enforcement; Remedies

1. Enforcement. If it appears to the Borough of Highspire that a violation of this Chapter has occurred, the Borough of Highspire shall initiate enforcement proceedings by sending an enforcement notice. Prior to sending an official enforcement notice, the Zoning Officer may at his option informally request compliance.
2. Enforcement Notice. The enforcement notice shall be sent to the owner of record of the parcel on which the violation has occurred, to any person who has filed a written request to receive enforcement notices regarding that parcel, and to any other person requested in writing by the owner of record. An enforcement notice shall state the following, at minimum:
 - a. The name of the owner of record and any other person against whom the Borough of Highspire intends to take action.
 - b. The location and address of the property in violation.
 - c. The specific violation with a description of the requirements which have not been met, citing in each instance, the applicable provisions of this Chapter.
 - d. The date before which the steps for compliance must be commenced and the date before which the steps must be completed.
 - e. That the recipient of the notice has the right to appeal to the Zoning Hearing Board within a prescribed period of time in accordance with procedures set forth in this Chapter.
 - f. That failure to comply with the notice within the time specified, unless extended by appeal to the Zoning Hearing Board, constitutes a violation, with possible sanctions clearly described.
3. Evidence & Fees. In any appeal of an enforcement notice to the Zoning Hearing Board, the Borough of Highspire shall have the responsibility of presenting its evidence first. Any filing fees paid by a party to an appeal of an enforcement notice to the Zoning Hearing Board shall be returned to the appealing party by the Borough of Highspire if the Zoning Hearing Board, or any court in a subsequent appeal, rules in the appealing party's favor.
4. Cause of Action. If the enforcement notice is not complied with, within the specified time period, the Zoning Officer shall notify the Borough Council of the Borough of Highspire. With the consent of the Borough Council of the Borough of Highspire, the Borough of Highspire Solicitor or other officer of the Borough of Highspire may institute any appropriate action or proceeding to prevent, restrain, correct or abate such building, structure, landscaping or land, or to prevent in or about such premises, any act, conduct, business or use constituting a violation.
5. Violations and Penalties. Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of this Chapter shall, upon being found liable therefore in a civil enforcement proceeding commenced by the Borough of Highspire, pay a judgment of not more than five hundred dollars (\$500) plus all court costs, including the reasonable attorney's fees incurred by the Borough of Highspire as a result thereof. No judgment shall commence or be imposed, levied or be payable until the date of the determination of a violation by the District Justice. If the defendant neither pays nor timely appeals the judgment, the Borough of Highspire may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a

violation continues shall constitute a separate violation, unless a District Justice determining that there has been a violation, further determines that there was a good faith basis for the person, partnership or corporation violating this Chapter to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination by the District Justice, and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable attorney's fees collected for the violation of this Chapter shall be paid over to the Borough of Highspire. Imprisonment shall not be authorized by this Chapter.

Section 313. Fees

- A. Determination. The Borough Council of the Borough of Highspire may, by ordinance or resolution, establish fees for the administration of this Chapter. All fees shall be determined by a schedule that is made available to the general public. The Borough Council of the Borough of Highspire may reevaluate the fees schedule and make necessary alterations to it. Such alterations shall not be considered an amendment to this Chapter and may be adopted at any public meeting of the Borough Council of the Borough of Highspire.

Section 314. Amendments

- A. Power of Amendment. The Borough Council of the Borough of Highspire may from time to time, amend, supplement, change or repeal this Chapter including the Official Zoning Map. Any amendment, supplement, change or repeal may be initiated by the Borough of Highspire Planning Commission, the Borough Council of the Borough of Highspire or by a petition to the Borough Council of the Borough of Highspire by an interested party;
- B. Hearing and Enactment Procedures for Zoning Amendments:
 - 1. Public Hearing. Before hearing and enacting this Chapter and/or Zoning Map amendments, the Borough Council of the Borough of Highspire shall conduct a public hearing to inform the general public of the nature of the amendment, and to obtain public comment. Such public hearing shall be conducted after public notice (as defined herein and listed below) has been given.
 - 2. Public Notice. Before conducting a public hearing, the Borough Council of the Borough of Highspire shall provide public notice as defined in Part 2 and as follows:
 - a. The notice published once each week for two (2) successive weeks in a newspaper of general circulation in the Borough. Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing. The first publication shall not be more than thirty (30) days and the second publication shall not be less than seven (7) days from the date of the hearing. Publication of the proposed amendment shall include either the full text thereof or the title and brief summary, prepared by the municipal solicitor and setting forth all the provisions in reasonable detail.
 - b.1. For Official Zoning Map amendments, public notice shall also include the posting of a sign at conspicuous locations along the perimeter of the subject property; these sign(s) shall be posted at least one week prior to the hearing and will exhibit the nature, date, time, municipality, location of the hearing;
 - b.2. In addition to the requirement, that notice be posted on the subject property, where the proposed amendment involves a zoning map change, notice of the public hearing shall be mailed by the Borough of Highspire at least thirty (30) days prior to the date of the hearing by first class mail to the addresses to which real estate tax bills are sent for all real property located within the area being rezoned, as evidenced by tax records within

- the possession of the Borough of Highspire. The notice shall include the location, date and time of the public hearing. The provisions of this section shall not apply when the rezoning constitutes a comprehensive rezoning.
- c. For curative amendments, public notice shall also indicate that the validity of this Chapter and/or map is in question, and shall give the place where and the times when a copy of the request including any plans, explanatory material or proposed amendments may be examined by the public; and,
 - d. If, after any public hearing held upon an amendment, the proposed amendment is changed substantially, or is revised, to include land previously not affected by it, the Borough Council of the Borough of Highspire shall hold another public hearing, pursuant to public notice, before proceeding to vote on the amendment;
3. **Enactment Notice.** In addition to the public notice requirements defined herein, the Borough Council of the Borough of Highspire must publish a reference to the time and place of the meeting at which passage of this Chapter or amendment will be considered, and a reference to a place within the Borough of Highspire where copies of the proposed Chapter or amendment may be examined without charge, or obtained for a charge not greater than the cost thereof. Enactment notice shall be published at least once in one newspaper of general circulation in the Borough of Highspire not more than sixty (60) days nor less than seven (7) days prior to passage. The published content of the enactment notice shall be the same as that required for public notice described in the preceding subsection;
 4. **Borough of Highspire Planning Commission Referrals.** For amendments proposed by parties other than the Borough of Highspire Planning Commission, the Borough Council of the Borough of Highspire shall submit each amendment at least thirty (30) days prior to public hearing to the Borough of Highspire Planning Commission for review and comment. The Borough of Highspire Planning Commission shall submit a report of its review, together with any recommendations, to the Borough Council of the Borough of Highspire within forty-five (45) days from the date of said referral. The recommendation of the Borough of Highspire Planning Commission may include a specific statement as to whether or not the proposed amendment is in accordance with the intent of this Chapter and the most recent version of any officially adopted Highspire Borough Comprehensive Plan. The Borough Council of the Borough of Highspire cannot act upon the amendment until it has received a recommendation from the Borough of Highspire Planning Commission; however, should the Borough of Highspire Planning Commission fail to submit its recommendation within forty-five (45) days, the Borough Council of the Borough of Highspire may proceed without its recommendation;
 5. **Dauphin County Planning Commission Referrals.** All proposed amendments shall be submitted to the Dauphin County Planning Commission at least thirty (30) days prior to public hearing on such amendments. The Dauphin County Planning Commission may submit recommendations to the Borough Council of the Borough of Highspire within thirty (30) days of such referral. The Borough Council of the Borough of Highspire cannot act upon the amendment until it has received a recommendation from the Dauphin County Planning Commission; however, should the Dauphin County Planning Commission fail to submit its recommendation within f thirty (30) days, the Borough Council of the Borough of Highspire may proceed without its recommendation;
 6. **Adjournment of Public Hearing.** If during the public hearing process, the Borough Council of the Borough of Highspire needs additional time to understand the proposal, inform the public, receive public comment, and/or render a decision, it may adjourn the public hearing to a specific time and place; and,
 7. **Within thirty (30) days after enactment, a copy of the amendment to this Chapter shall be forwarded to the Dauphin County Planning Commission;**

- C. Amendment Initiated by the Borough of Highspire Planning Commission. When an amendment, supplement, change or repeal is initiated by the Borough of Highspire Planning Commission, the proposal shall be presented to the Borough Council of the Borough of Highspire which shall then proceed in the same manner as with a petition to the Borough Council of the Borough of Highspire which has already been reviewed by the Borough of Highspire Planning Commission;
- D. Amendment Initiated by the Borough Council of the Borough of Highspire. When an amendment, supplement, change or repeal is initiated by the Borough Council of the Borough of Highspire, such amendment, supplement, change or repeal shall follow the procedure prescribed for a petition under Section 314 above.
- E. Amendment Initiated by a Petition from an Interested Party. A petition for amendment, supplement, change or repeal for a portion of this Chapter shall include an accurate legal description and surveyed plan of any land to be rezoned, and all of the reasons supporting the petition to be considered. The petition shall also be signed by at least one (1) record owner of the property in question whose signature shall be notarized attesting the truth and correctness of all the facts and information presented in the petition. A fee to be established by Borough Council of the Borough of Highspire shall be paid upon the filing of such petition for change and for the purpose of defraying the costs of the proceedings prescribed herein. The Borough Council of the Borough of Highspire may require duplicate sets of petition materials.
- F. Curative Amendment by a Landowner. A landowner, who desires to challenge on substantive grounds the validity of this Chapter or the Official 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 of the Borough of Highspire, including all of the reasons supporting the request to be considered, with a written request that his challenge and proposed amendment be heard and decided as provided in the MPC, as amended. The Borough Council of the Borough of Highspire shall commence a hearing thereon within sixty (60) days of the request. The curative amendment shall be referred to the Dauphin County Planning Commission as provided for in Section 314 and public notice of the hearing shall be provided as defined herein.
1. In reviewing the curative amendment, the Borough Council of the Borough of Highspire may deny the request, accept the request as submitted, or may adopt an alternative amendment which will cure the challenged defects. The Borough Council of the Borough of Highspire shall consider the curative amendments, plans and explanatory material submitted by the landowner and shall also consider:
 - a. The impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities;
 - b. If the proposal is for a residential use, the impact of the proposal upon regional housing needs and the effectiveness of the proposal in providing housing units of a type actually available to and affordable by classes of persons otherwise unlawfully excluded by the challenged provisions of the Chapter or Official Zoning Map;
 - c. The suitability of the site for the intensity of use proposed by the site's soils, slopes, woodland, wetlands, floodplains, aquifers, natural resources and other natural features;
 - d. The impact of the proposed use on the site's soils, slopes, woodlands, wetlands, floodplains, natural resources and natural features, the degree to which these are protected or destroyed, the tolerance of the resources to development and any adverse environmental impacts; and,
 - e. The impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare;

2. The Borough Council of the Borough of Highspire shall render its decision within forty-five (45) days after the conclusion of the last hearing;
3. If the Borough Council of the Borough of Highspire fails to act on the landowner's request within the time limits referred to above, a denial of the request is deemed to have occurred on the forty sixth (46th) day after the close of the last hearing;

Public notice of the hearing shall include notice that the validity of this Chapter or Zoning Map is in question and shall give the place where and the times when a copy of the request including any plans, explanatory material or proposed amendments may be examined by the public;

5. The challenge shall be deemed denied when:
 - a. The Borough Council of the Borough of Highspire fails to commence the hearing within sixty (60) days;
 - b. The Borough Council of the Borough of Highspire notified the landowner that it will not adopt the curative amendment;
 - c. The Borough Council of the Borough of Highspire adopts another curative amendment which is unacceptable to the landowner; or
 - d. The Borough Council of the Borough of Highspire fails to act on the request forty-five (45) days after the close of the last hearing on the request, unless the time is extended by mutual consent by the landowner and municipality;
6. Where, curative amendment proposal is approved by the grant of a curative amendment application by the Borough Council of the Borough of Highspire pursuant to this section or a validity challenge is sustained by the Zoning Hearing Board or the court acts finally on appeal from denial of a curative amendment proposal or a validity challenge, and the proposal or challenge so approved requires a further application for subdivision or land development, the developer shall have two years from the date of such approval for a subdivision, land development or planned residential development. Within the two-year period, no subsequent change or amendment in the zoning, subdivision or other governing ordinance or plan shall be applied in any manner which adversely affects the rights of the applicant as granted in the curative amendment or the sustained validity challenge. Upon the filing of the preliminary or tentative plan, the provisions of the MPC, as amended shall apply; and,
7. Where the proposal appended to the curative amendment application or the validity challenge is approved but does not require further application under any subdivision or land development Chapter, the developer shall have one year within which to file for a zoning permit. Within the one-year period, no subsequent change or amendment in the zoning, subdivision or other governing ordinance or plan shall be applied in any manner which adversely affects the rights of applicant as granted in the curative amendment or the sustained validity challenge. During these protected periods, the court shall retain or assume jurisdiction for the purposes of awarding such supplemental relief as may be necessary;

G. Curative Amendment by the Borough Council of the Borough of Highspire

1. The Borough Council of the Borough of Highspire, by formal action, may declare this Chapter or portions thereof substantively invalid and propose to prepare a curative amendment to overcome such invalidity. Within thirty (30) days following such declaration proposal, the Borough Council of the Borough of Highspire shall:

- a. By resolution, make specific findings setting forth the declared invalidity of this Chapter or portions thereof which may include:
 - (1) references to specific uses which are either not permitted or not permitted in sufficient quantity;
 - (2) references to a class of use or uses which require revision; or
 - (3) references to the entire Chapter which requires revisions.
 - b. Begin to prepare and consider a curative amendment to this Chapter to correct the declared invalidity.
2. Within one hundred eighty (180) days from the date of the declaration and proposal, the Borough Council of the Borough of Highspire shall enact a curative amendment to validate or reaffirm the validity of this Chapter pursuant to the provisions required by the MPC, as amended in order to cure the declared invalidity of the Chapter;
 3. Upon the date of the declaration and proposal, the Borough Council of the Borough of Highspire shall not be required to entertain or consider any curative amendment filed by a landowner. Nor shall the Zoning Hearing Board be required to give a report, upon request, for a challenge to the validity of this Chapter subsequent to the declaration and proposal, based upon the grounds identical to or substantially similar to those specified in the resolution required by this Section. Upon the enactment of a curative amendment to, or the reaffirmation of the validity of this Chapter, no rights to a cure by amendment or challenge shall, from the date of the declaration and proposal, accrue to any landowner on the basis of the substantive invalidity of the unamended Chapter for which the Borough Council of the Borough of Highspire propose to prepare a curative amendment; and,
 4. The Borough Council of the Borough of Highspire, having utilized the procedures as set forth in this Section, may not again utilize said procedures for a thirty-six (36) month period following the date of the enactment of a curative amendment, or reaffirmation of the validity of this Chapter; provided however, that if after the date of declaration and proposal there is a substantially new duty or obligation imposed upon the Borough of Highspire by virtue of a decision by any Court of competent jurisdiction, the Borough Council of the Borough of Highspire may utilize the provisions of this Section to prepare a curative amendment to this Chapter to fulfill this duty or obligation.
- H. Authentication of Official Zoning Map. Whenever there has been a change in the boundary of a zoning district or a reclassification of the zoning district adopted in accordance with the above, the change on the Official Zoning Map shall be made, and shall be duly certified by the Borough of Highspire Manager/Secretary and shall thereafter be refilled as part of the permanent records of the Borough of Highspire.

Section 315. Zoning Hearing Board

A. Establishment and Membership

1. There shall be a Zoning Hearing Board which shall consist of three (3) members who shall be appointed by resolution by the Borough Council of the Borough of Highspire. The membership of the Zoning Hearing Board shall consist of residents of Highspire Borough. Their terms of office shall be three (3) years and shall be so fixed that the term of office of one member shall expire each year. The Zoning Hearing Board shall promptly notify the Borough of Highspire of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of

the term. Members of the Zoning Hearing Board shall hold no other elected or appointed office in the Borough nor shall any member be an employee of the Borough.

2. The Borough Council of the Borough of Highspire may appoint by resolution at least one (1) but no more than three (3) residents of the municipality to serve as alternate members of the Zoning Hearing Board. The term of office of an alternate member shall be three (3) years. When seated pursuant to the provisions of this Section, an alternate shall be entitled to participate in all proceedings and discussions of the Zoning Hearing Board to the same and full extent as provided by law for Zoning Hearing Board members, including specifically the right to cast a vote as a voting member during the proceedings, and shall have all the powers and duties set forth in this Chapter and as otherwise provided by law. Alternates shall hold no other office in the Borough of Highspire, including membership on the Planning Commission and Zoning Officer. Any alternate may participate in any proceeding or discussion of the Zoning Hearing Board but shall not be entitled to vote as a member of the Zoning Hearing Board nor be compensated, unless designated as a voting alternate member pursuant to this Part.
3. Any member of the Zoning Hearing Board may be removed for malfeasance, misfeasance, or nonfeasance in office or for other just cause by a majority vote of the Borough Council of the Borough of Highspire taken after the member has received fifteen (15) days advance notice of the intent to take such a vote. A hearing shall be held in connection with the vote if the member shall request it in writing.

B. Organization of Zoning Hearing Board

The Zoning Hearing Board shall elect from its own membership its officers, who shall serve annual terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all members of the Zoning Hearing Board, but the Zoning Hearing Board may appoint a hearing officer from its own membership to conduct any hearing on its behalf and the parties may waive further action by the Zoning Hearing Board as provided in Section 315.D.2. If, by reason of absence or disqualification of a member, a quorum is not reached, the Chairman of the Zoning Hearing Board shall designate as many alternate members of the Zoning Hearing Board to sit on the Zoning Hearing Board as may be needed to provide a quorum. Any alternate member of the Zoning Hearing Board shall continue to serve on the Zoning Hearing Board in all proceedings involving the matter or case for which the alternate was initially appointed until the Zoning Hearing Board has made a final determination of the matter or case. Designation of an alternate pursuant to this section shall be made on a case-by-case basis in rotation according to declining seniority among all alternates. The Zoning Hearing Board may make, alter, and rescind rules and forms for its procedure, consistent with codes or ordinances of the Borough of Highspire and laws of the Commonwealth. The Zoning Hearing Board shall keep full public records of its business, which records shall be the property of the Borough of Highspire, and shall submit a report of its activities to the Borough Council of the Borough of Highspire upon request.

C. Expenditures for Services

Within the limits of funds appropriated by the Borough Council of the Borough of Highspire, the Zoning Hearing Board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services. Members of the Zoning Hearing Board may receive compensation for the performance of their duties, as may be fixed by the Borough Council of the Borough of Highspire. Alternate members of the Zoning Hearing Board may receive compensation, as may be fixed by the Borough Council of the Borough of Highspire, for the performance of their duties when designated as alternate members pursuant to Section 315.A, but in no case shall such compensation exceed the rate of compensation authorized to be paid to the members by the Borough Council of the Borough of Highspire.

D. Hearings

1. The Zoning Hearing Board shall conduct hearings and make decisions in accordance with the following requirements:
 - a. Public notice (as defined herein) shall be provided. In addition, the Zoning Hearing Board shall notify in writing by mail the applicant, Zoning Officer, and other such persons whether owners or tenants of property located within two hundred (200) feet of the subject property for which the application was submitted, and every other person or organization who shall have registered with the Zoning Hearing Board for the purposes of receiving such notices. Such mailed notices shall state the location of the site and the nature of the request. It shall also state the time, date, and location of the proposed hearing. In addition to the written notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one (1) week prior to the hearing;
 - b. The Borough Council of the Borough of Highspire may prescribe reasonable fees with respect to hearing before the Zoning Hearing Board. Fees for said hearings may include compensation for the secretary and members of the Zoning Hearing Board, notice and advertising costs and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses of the Zoning Hearing Board, expenses for engineering, architectural or other technical consultants or expert witness costs;
 - c. The first hearing before the Zoning Hearing Board or hearing officer shall be commenced within sixty (60) days from the date of receipt of the applicant's application, unless the applicant has agreed in writing to an extension of time. Each subsequent hearing before the Zoning Hearing Board or hearing officer shall be held within forty-five (45) days of the prior hearing, unless otherwise agreed to by the applicant in writing or on the record. An applicant shall complete the presentation of its case-in-chief within one hundred (100) days of the first hearing. Upon the request of the applicant, the Zoning Hearing Board or hearing officer shall assure that the applicant receives at least seven (7) hours of hearing within the one hundred (100) days, including the first hearing. Persons opposed to the application shall complete the presentation of their opposition to the application within one hundred (100) days of the first hearing held after the completion of the applicant's case-in-chief. An applicant may, upon request, be granted additional hearings to complete its case-in-chief provided the persons opposed to the application are granted an equal number of additional hearings to complete their opposition to the application provided the applicant is granted an equal number of additional hearings for rebuttal.
2. The hearings shall be conducted by the Zoning Hearing Board or the Zoning Hearing Board may appoint any member or an independent attorney as a hearing officer. The decision, or, where no decision is called for, the findings shall be made by the Zoning Hearing Board; however, the appellant or the applicant, as the case may be, in addition to the Borough of Highspire, may, prior to the decision of the hearing, waive decisions or findings by the Zoning Hearing Board and accept the decision or findings of the hearing officer as final;
3. The parties to the hearing shall be the Borough of Highspire, any person affected by the application who has made timely appearance of record before the Zoning Hearing Board, and any other person including civic or community organizations permitted to appear by the Zoning Hearing Board. The Zoning Hearing Board shall have power to require that all persons who wish to be considered parties enter appearances in writing on forms provided by the Zoning Hearing Board for that purpose;
4. The Chairman or Acting Chairman of the Zoning Hearing Board or the hearing officer presiding shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses and documents requested by the parties;

5. The parties shall have the right to be represented by council and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues;
6. Formal rules of evidence shall not apply, but irrelevant, immaterial, and unduly repetitious evidence may be excluded;
7. The Zoning Hearing Board or the hearing officer, as the case may be, shall keep a stenographic record of the proceedings. The appearance fee for a stenographer shall be shared equally by the applicant and the Zoning Hearing Board. The cost of the original transcript shall be paid by the Zoning Hearing Board if the transcript is ordered by the Zoning Hearing Board or hearing officer; or shall be paid by the person appealing the decision of the Zoning Hearing Board if such appeal is made, and in either event the cost of additional copies shall be paid by the person requesting such copy or copies. In other cases the party requesting the original transcript shall bear the cost thereof;
8. The Zoning Hearing Board or the hearing officer shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials, except advice from their solicitor, unless the parties are afforded an opportunity to contest the materials so noticed and shall not inspect the site or its surroundings after the commencement of hearings with any party or his representative unless all parties are given an opportunity to be present;
9. The Zoning Hearing Board or the hearing officer, as the case may be, shall render a written decision or, when no decision is called for, make written findings on the application within forty-five (45) days after the last hearing before the Zoning Hearing Board or hearing officer. Where the application is contested or denied, each decision shall be accompanied by the findings of fact and conclusions based thereon together with the reasons therefore. Conclusions based on any provisions of this or of any ordinance, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in light of the facts found. If the hearing is conducted by a hearing officer, and there has been no stipulation that his decision or findings are final the Zoning Hearing 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 Zoning Hearing Board prior to final decision or entry of findings, and the Zoning Hearing Board's decision shall be entered no later than thirty (30) days after the report of the hearing officer. Except for challenges filed under Article IX of the PA MPC, where the Zoning Hearing Board fails to render the decision within the period required by this subsection or fails to commence, conduct or complete the required hearing as provided in Section 315.D of this Chapter, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the Zoning Hearing Board to meet or render a decision as hereinabove provided, the Zoning Hearing Board shall give public notice of said decision with ten (10) days from the last day it could have met to render a decision in the same manner as provided in Section 315.D of this Chapter. If the Zoning Hearing Board shall fail to provide such notice, the applicant may do so. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal.
10. A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to him not later than the next business day following its date. To all other persons who have filed their name and address with the Zoning Hearing Board not later than the last day of the hearing, the Zoning Hearing Board shall provide by mail or otherwise, brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined; and,

11. Effect of Zoning Hearing Board's Decision

- a. If the variance or special exception is granted or the issuance of a permit is approved, or other action by the appellant is authorized, the necessary permit shall be secured and the authorized action begun within two (2) years after the date when the variance or special exception is finally granted, or the issuance of a permit is finally approved, or the other action by the appellant is authorized, and the building or alteration, as the case may be, shall be completed within three (3) years of said date. For good cause, the Zoning Hearing Board may at any time, upon application in writing extend either of these deadlines;
- b. Should the appellant or applicant fail to obtain the necessary permits within said two (2) year period, or having obtained the permit, should he fail to commence work thereunder within such two (2) year period, it shall be conclusively presumed that the appellant or applicant has waived, withdrawn, or abandoned his appeal or his application, and all provisions, variances and permits granted to him shall be deemed automatically rescinded by the Zoning Hearing Board;
- c. Should the appellant or applicant commence construction or alteration within said two (2) year period, but should he fail to complete such construction or alteration within said three (3) year period, the Zoning Hearing Board may, upon ten (10) days' notice in writing, rescind or revoke the granted variance or special exception, or the issuance of the permit, or permits, or the other action authorized to the appellant or applicant, if the Zoning Hearing Board finds that no good cause appears for the failure to complete within such three (3) year period, and if the Zoning Hearing Board further finds that conditions have so altered or changed in the interval since the granting of the variance, permit or action, that revocation or rescission of the action is justified; and,
- d. As an alternative to the preceding, an applicant can request, as part of the original application before the Zoning Hearing Board, the granting of a timetable associated with the request which would supersede the deadlines imposed. In so doing, the applicant must demonstrate that the times requested are logically related to normal and expected progress of the project. In approving a timetable under this section, the Zoning Hearing Board must establish and bind a definite time frame for (1) issuance of a zoning permit, and (2) completion of construction of the project.

E. Zoning Hearing Board's Functions

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

1. Substantive Challenges to the Validity of this Chapter, except those brought before the Borough Council of the Borough of Highspire pursuant to Section 916.1(a)(2) of the PA MPC.
 - a. If a challenge heard by a Zoning Hearing Board is found to have merit, the decision of the Zoning Hearing Board shall include recommended amendments to the challenged Chapter which will cure the defects found. In reaching its decision, the Zoning Hearing Board shall consider the amendments, plans and explanatory material submitted by the landowner and shall also consider:
 - (1) The impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities;

- (2) If the proposal is for a residential use, the impact of the proposal upon regional housing needs and the effectiveness of the proposal in providing housing units of a type actually available to and affordable by classes of persons otherwise unlawfully excluded by the challenged provisions of this Chapter or Official Zoning Map;
 - (3) The suitability of the site for the intensity of use proposed by the site's soils, slopes, woodland, wetlands, floodplains, aquifers, natural resources and other natural features;
 - (4) The impact of the proposed use on the site's soils, slopes, woodlands, wetlands, floodplains, natural resources and nature features, the degree to which these are protected or destroyed, the tolerance of the resources to development and any adverse environmental impacts; and,
 - (5) The impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare;
 - b. Public notice of the hearing shall be provided as specified in Section 315.D of this Chapter.
 - c. The Zoning Hearing Board shall commence its hearings within sixty (60) days after the request is filed unless the landowner requests or consents to an extension of time; and,
 - d. The Zoning Hearing Board, shall render its decision with forty-five (45) days after the conclusion of the last hearing. If the Board fails to act on the landowner's request within this time limit a denial of the request is deemed to have occurred on the forty sixth (46th) day after the close of the last hearing;
2. Challenges to the Validity of this Chapter, raising procedural questions or alleged defects in the process of enactment or adoption which challenges shall be raised by an appeal taken within thirty (30) days after the effective date of this Chapter;
3. Special Exceptions as provided for in this Chapter and subject to all applicable requirements, including, but not limited to:
 - a. Filing Requirements. In addition to the required zoning permit information, each special exception application shall include the following:
 - (1) Ground floor plans and elevations or proposed structures;
 - (2) Names and address of abutting property owners including properties directly across a public right-of-way;
 - (3) A scaled drawing (site/plot plan) of the site with sufficient detail and accuracy to demonstrate compliance with all applicable provisions of this Chapter; and,
 - (4) A written description of the proposed use in sufficient detail to demonstrate compliance with all applicable provisions of this Chapter;
 - b. General Criteria. Each applicant must demonstrate compliance with the following:
 - (1) The proposed use shall be consistent with the purpose and intent of this Chapter;

- (2) The proposed use shall not detract from the use and enjoyment of adjacent or nearby properties;
 - (3) The proposed use will not substantially change the character of the subject property's neighborhood;
 - (4) Adequate public facilities are available to serve the proposed use (e.g., schools, fire, police and ambulance protection, sewer, water and other utilities, vehicular access, etc.);
 - (5) The proposed use complies with Part 15 of this Chapter, Floodplain Overlay Regulations;
 - (6) The proposed use shall comply with those criteria specifically listed in Part 14 of this Chapter. In addition, the proposed use must comply with all other applicable regulations contained in this Chapter; and,
 - (7) The proposed use will not substantially impair the integrity of the the most recent version of any officially adopted Highspire Borough Comprehensive Plan.
- c. Conditions. The Zoning Hearing Board in approving special exception applications, may attach conditions considered necessary to protect the public welfare and the purposes listed above, including conditions which are more restrictive than those established for other uses in the same zoning district. The conditions shall be enforceable by the Zoning Officer and failure to comply with such conditions shall constitute a violation of this Chapter and,
- d. Plot/Site Plan Approval. Any site/plot plan presented in support of the special exception pursuant to Section 315.E.1.a(3) shall become an official part of the record for said special exception. Approval of any special exception will also bind the use in accordance with the submitted site/plot plan; therefore, should a change in the site/plot plan be required as part of the approval of the use, the applicant shall revise the site plan prior to the issuance of a zoning permit. Any subsequent change to the use on the subject property not reflected on the originally approved site/plot plan, shall require the obtainment of another special exception approval;
4. Variances. The Zoning Hearing Board shall hear requests for Variances where it is alleged that the provisions of this Chapter inflict unnecessary hardship upon the applicant. The Zoning Hearing Board may, by rule, prescribe the form of application to the Zoning Officer. The Zoning Hearing Board may grant a Variance, provided that all of the following findings are made where relevant in a given case:
- a. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of this Chapter in the neighborhood or zoning district in which the property is located;
 - b. That because of such physical circumstances or conditions, there is not a possibility that the property can be developed in strict conformity with the provisions of this Chapter and that the authorization of a variance is therefore necessary to enable reasonable use of the property;

- c. That such unnecessary hardship has not been created by the appellant;
 - d. That the Variance, if authorized, will not alter the essential character of the zoning district or neighborhood in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, not be detrimental to the public welfare;
 - e. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulations in issue;
 - f. The proposed use complies with Part 15 of this Chapter, Floodplain Overlay Regulations;
 - g. Filing Requirements. In addition to the required zoning permit each variance application shall include the following:
 - (1) Ground floor plans and elevations of existing and/or proposed structures;
 - (2) Names and addresses of adjoining property owners, including properties directly across a public right-of-way;
 - (3) A scaled drawing (site plan) of the site with sufficient detail and accuracy to demonstrate compliance with all applicable provisions of this Chapter; and,
 - (4) A written description of the proposed use in sufficient detail to demonstrate compliance with all applicable provisions of this Chapter;
 - h. Conditions. The Zoning Hearing Board in approving Variance applications, may attach conditions considered necessary to protect the public welfare and the purposes listed above, including conditions which are more restrictive than those established for other uses in the same zoning district. These conditions shall be enforceable by the Zoning Officer and failure to comply with such conditions will constitute a violation of this Chapter; and,
 - i. Plot/Site Plan Approval. Any site/plot plan presented in support of a Variance shall become an official part of the record for said Variance. Approval of any Variance will also bind the use in accordance with the submitted site plan;
- 5. 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 therefore, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot;
 - 6. Appeals from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provisions of this Chapter;
 - 7. Appeals from the Zoning Officer's determination under Section 916.2 (and any subsequent amendments) of the MPC; and,
 - 8. Appeals from the determination of the Zoning Officer or municipal engineer in the administration of any land use ordinance with reference to sedimentation and erosion control, and/or storm water management for applications not involving a subdivision/land development.
- F. Parties Appellant before the Zoning Hearing Board

Appeals under Sections 315.E.5; 315.E.6; 315.E.7; and 315.E.8 and proceedings to challenge this Chapter under Section 315.E may be filed with the Zoning Hearing Board in writing by the landowner affected, any officer or agency of the Borough of Highspire, or any person aggrieved. Requests for a variance or a special exception may be filed with the Zoning Hearing Board by any landowner or any tenant with the permission of such landowner. Any appeal shall state:

1. The name and address of the appellant and applicant;
2. The name and address of the landowner of the real estate to be affected;
3. A brief description and location of the real estate to be affected by such proposed change together with a plot/site plan drawn to scale with sufficient clarity to show the nature and character of the request;
4. A statement of the present zoning classification of the real estate in question, the improvements thereon, and the present use thereof; and,
5. A statement of the Section of this Chapter under which the request may be allowed, and reasons why it should, or should not be granted.

G. Time Limitations

1. No person shall be allowed to file any proceeding with the Zoning Hearing Board later than thirty (30) days after an application for development, preliminary or final, has been approved by the Zoning Officer or the agency responsible for granting such approval if such proceeding is designed to secure reversal or to limit the approval in any manner unless such person alleges and proves that he had no notice or knowledge, or reason to believe that such approval had been given. If such person has succeeded to his interest after such approval, he shall be bound by the knowledge of his predecessor in interest.
2. The failure of anyone other than the landowner to appeal from an adverse decision by the Zoning Officer a challenge to the validity of this Chapter or the Official Zoning Map pursuant to Section 916.2 of the MPC, as amended, shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved tentative preliminary approval.

H. Stay of Proceeding

1. Upon filing of any proceeding referred to in Section 315.F above and during its pendency before the Zoning Hearing Board, all land development pursuant to any challenged ordinance, order or approval of the Zoning Officer or of any agency or body, and all official action thereunder, shall be stayed unless the Zoning Officer or any other appropriate agency or body certifies to the Zoning Hearing Board facts indicating that such stay would cause imminent peril to life or property, in which case, the development or official action shall not be stayed otherwise than by a restraining order, which may be granted by the Zoning Hearing Board or by the court having jurisdiction of zoning appeals on petition after notice to the Zoning Officer or other appropriate agency or body. When an application for development, preliminary or final, has been duly approved and proceedings designed to reverse or limit the approval are filed with the Zoning Hearing Board by person other than the applicant, the applicant may petition the court having jurisdiction of zoning appeals to order such person to post bond as a condition to continuing the proceedings before the Zoning Hearing Board. After the petition is presented, the court shall hold a hearing to determine if the filing of the appeal is frivolous. At the hearing, evidence may be presented on the merits of the case. It shall be the burden of the applicant for a bond to prove the appeal is frivolous. After consideration of all evidence presented, if the court determines that the appeal is frivolous it shall grant the petition for a bond. The right to petition the court to order the

appellants to post bond may be waived by the appellee but such waiver may be revoked by him if an appeal is taken from a final decision of the court. The question whether or not such petition should be granted and the amount of the bond shall be within the sound discretion of the court. An order denying a petition for bond shall be interlocutory. An order directing the responding party to post a bond shall be interlocutory.

2. If an appeal is taken by a respondent to the petition for a bond from an order of the court dismissing a zoning appeal for refusal to post a bond and the appellant court sustains the order of the court below to post a bond, the respondent to the petition for a bond, upon motion of the petitioner and after hearing in the court having jurisdiction of zoning appeals, shall be liable for all reasonable costs, expenses, and attorney fees incurred by the petitioner.

I. Appeal

Any person, taxpayer, or the Borough of Highspire aggrieved by any decision of the Zoning Hearing Board may within thirty (30) days after such decision of the Zoning Hearing Board seek review by the Court of Common Pleas of such decision in the manner provided by the laws of the Commonwealth of Pennsylvania and the MPC as amended.

Section 316. Conditional Uses

- A. Filing of Conditional Use. For any use permitted by conditional use, a conditional use must be obtained from the Borough Council of the Borough of Highspire. In addition to the information required on the zoning permit application, the conditional use application must show:
 1. Ground floor plans and elevations or proposed structures;
 2. Names and address of abutting property owners including properties directly across a public right-of-way;
 3. A scaled drawing (site/plot plan) of the site with sufficient detail and accuracy to demonstrate compliance with all applicable provisions of this Chapter; and,
 4. A written description of the proposed use in sufficient detail to demonstrate compliance with all applicable provisions of this Chapter;
 5. General Criteria. Each applicant must demonstrate compliance with the following:
 - a. The proposed use shall be consistent with the purpose and intent of this Chapter;
 - b. The proposed use shall not detract from the use and enjoyment of adjacent or nearby properties;
 - c. The proposed use will not substantially change the character of the subject property's neighborhood;
 - d. Adequate public facilities are available to serve the proposed use (e.g., schools, fire, police and ambulance protection, sewer, water and other utilities, vehicular access, etc.);
 - e. The proposed use complies with Part 15 of this Chapter, Floodplain Overlay Regulations;
 - f. The proposed use shall comply with those criteria specifically listed in Part 14 of this Chapter. In addition, the proposed use must comply with all other applicable regulations contained in this Chapter; and,

- production of relevant documents and paper, including witnesses and documents requested by the parties;
6. The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues;
 7. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded;
 8. The Borough Council of the Borough of Highspire may keep a stenographic record of the proceedings. The appearance fee for a stenographer shall be shared equally by the applicant and the Borough Council of the Borough of Highspire. The cost of the original transcript shall be paid by the Borough Council of the Borough of Highspire if the transcript is ordered by the Borough Council of the Borough of Highspire; or shall be paid by the person appealing the decision of the Borough Council of the Borough of Highspire 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; and,
 9. The Borough Council of the Borough of Highspire 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 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,
 10. The hearing shall be conducted by the Borough Council of the Borough of Highspire or the Borough Council of the Borough of Highspire may appoint any member or an independent attorney as a hearing officer. The decision, or, where there is no decision, the findings shall be made by the Borough Council of the Borough of Highspire. However, the appellant or the applicant, as the case may be, in addition to the Borough of Highspire, may, prior to the decision of the hearing, waive decision or findings by the Borough Council of the Borough of Highspire and accept the decision or findings of the hearing officer as final.
 11. The Borough Council of the Borough of Highspire shall render a written decision or, when no decision is called for, make written finds on the conditional use application within forty-five (45) days after the last hearing before the Borough Council of the Borough of Highspire. Where the application is contested or denied, each decision shall be accompanied by findings of fact or conclusions based thereon, together with any reasons therefore. Conclusions based on any provisions of this Chapter or of any ordinance, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found.
 12. Where the Borough Council of the Borough of Highspire fails to render the decision within the period required by this Part or fails to commence, conduct or complete the required hearing as provided in Section 317.E.2, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record of an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the Borough Council of the Borough of Highspire to meet or render a decision as hereinabove provided, the Borough Council of the Borough of Highspire shall give public notice of the decision within ten (10) days from the last day it could have met to render a decision in the same manner as required by the public notice requirements of this Part. If the Borough Council of the Borough of Highspire shall fail to provide such notice, the applicant may do so.

F. Time Limitation

1. If a conditional use is granted, the necessary permit shall be secured and the authorized action begun within two (2) years after the date when the conditional use is finally granted, and the building or alteration, as the case may be, shall be completed within three (3) years of said date. For good cause, the Borough Council of the Borough of Highspire may at any time, upon application in writing, extend either of these deadlines;
2. Should the appellant or applicant fail to obtain the necessary permits within said two (2) year period, or having obtained the permit should he fail to commence work thereunder within such two (2) year period, it shall be conclusively presumed that the appellant or applicant has waived, withdrawn, or abandoned his application, and all approvals and permits granted to him shall be deemed automatically rescinded by the Borough Council of the Borough of Highspire;
3. Should the appellant commence construction or alteration within said two (2) year period, but should he fail to complete such construction or alteration within said three (3) year period, the Borough Council of the Borough of Highspire may, upon ten (10) days notice in writing, rescind or revoke the granted conditional use, if the Borough Council of the Borough of Highspire finds that no good cause appears for the failure to complete within such three (3) year period, and if the Borough Council of the Borough of Highspire further finds that conditions have altered or changed in the interval since the granting of the conditional use that revocation or rescission of the action is justified; and,
4. As an alternative to the preceding, an applicant can request, as part of the original application before the Borough Council of the Borough of Highspire the granting of a timetable associated with the request which would supersede the deadlines imposed in this Part. In so doing, the applicant must demonstrate that the times requested are logically related to normal and expected progress of the project. In approving a timetable under this section, the Borough Council of the Borough of Highspire must establish and bind a definite time frame for (1) issuance of a zoning permit, and (2) completion of construction of the project.