

## PART 3 - ADMINISTRATION

### SECTION 300 MODIFICATIONS

The Chapter requirements are minimum standards for the protection and promotion of the public health, safety, and welfare. The regulations preserve public order and establish interactions among citizens, developers, business owners, and officials in a way that prevents a conflict of rights. The regulations ensure the uninterrupted enjoyment of rights by all of the citizens, developers, business owners, and officials by guiding adaptive reuse, infill, replacement, redevelopment, and new development and growth and to permit the Borough to minimize such problems as may presently exist or which may be foreseen.

Modifications should only be granted; to encourage flexibility and ingenuity in the layout and design of subdivisions and land developments when meeting the intent and purpose of the Chapter, when literal compliance would be unreasonable, cause undue hardship, or when an alternative standard is demonstrated to provide equal or better results and if the modification would not be contrary to the public interest.

#### A. Purpose.

1. The provisions of these regulations are intended as a minimum standard for the protection of the public health, safety and general welfare. If the literal compliance with any mandatory provision of these regulations is demonstrated by the applicant to be unreasonable and to cause undue hardship because of peculiar conditions pertaining to the particular property, and if the applicant demonstrates that an alternative proposal will provide equal or better results, the Highspire Borough Council, after review and recommendation by the Highspire Borough Planning Commission, may grant a modification from such mandatory provision so that substantial justice may be done and the public interest secured while permitting the reasonable utilization of the property. However, the granting of a modification shall not have the effect of making null and void the purpose and/or intent of this Chapter.

#### B. Procedure.

All requests for modifications shall be made in accordance with the following procedure:

1. Application Requirements.
  - a. All requests for modifications shall be made in writing and shall accompany and be a part of the application for development for a subdivision or land development plan. The request shall state in full the grounds and facts of unreasonableness or hardship on which the request is based, or the alternative standard proposed to provide equal or better results, the provision(s) of this Chapter which are requested to be modified, and the minimum modification necessary. The request shall be accompanied by a plan prepared at least to the minimum standards of a sketch plan (see Section 501).
    - 1) If a modification request is not submitted with an application for subdivision or land development, then the processing procedures outlined in Section 402 shall apply.
  - b. Should a revision to a submitted plan require a modification that was not apparent at the time of initial plan submission, the request for a Modification shall be

submitted in accordance with Section 300.B.1 above, at the time of resubmission of the plans.

2. Review by Highspire Borough Planning Commission .  
At a scheduled public meeting, the Highspire Borough Planning Commission shall review the modification request and provide comments to the Highspire Borough Council.
3. Action by Highspire Borough Council.  
At a scheduled public meeting, the Highspire Borough Council shall review the comments submitted by the Highspire Borough Planning Commission, and the request to determine if the literal compliance with any mandatory provision of the Chapter is demonstrated by the applicant to exact undue hardship or to be unreasonable, or that an alternative standard has been demonstrated to provide equal or better results, provided that such modification will not be contrary to the public interest and that the purpose and intent of this Chapter is observed. The applicant shall demonstrate that the alternative proposal represents the minimum modification necessary. If the Highspire Borough Council determines that the applicant has met his burden, it may grant a modification from the literal compliance with the terms of this Chapter.

C. Display on Plans.

1. Where modifications have been requested and subsequently granted, all subdivision or land development plans must display all granted modifications prior to their approval.

D. Authority to Impose Conditions.

1. In granting a modification, the Highspire Borough Council or Highspire Borough Planning Commission, as applicable, may impose such conditions, as will, in its judgment, secure substantially the objectives of the standards and requirements of this Chapter.

E. Time Extension Modifications.

1. In instances where the applicant requires additional time to resolve outstanding conditions of approval, a written request with the associated fee shall be submitted for consideration of review for the last Highspire Borough Council meeting, as applicable, prior to the deadline for plan recordation. The written request must include an explanation necessary to justify the time extension.

F. Waiver of Preliminary Plan Modifications.

1. In instances where the applicant submits preliminary/final or final plan and is approved for a waiver of preliminary plan processing, a written notification shall be provided to the Dauphin County Planning Commission as part of their application so that the County reviews the plan as a preliminary/final or final plan and creates recording papers.

## **SECTION 301 CHALLENGES AND APPEALS**

### **A. Right to Appeal.**

1. Any person aggrieved by a finding, decision, or recommendation of the Highspire Borough Council or Highspire Borough Planning Commission with respect to the approval or disapproval of a plan or request for modification may appeal as provided for in the MPC and other relevant statutes and rules.

### **B. Mediation Option.**

1. As an alternative to an adjudicatory appeal proceeding, any party entitled to appeal a decision of the Highspire Borough Council or Highspire Borough Planning Commission may request the utilization of mediation as an aid in resolving the dispute. Participation in mediation shall be wholly voluntary by the parties, and shall be conducted as prescribed in the MPC.

## **SECTION 302 RECORDS**

- A. The Borough shall keep an accurate, public record of its findings, decisions and recommendations relevant to all applications filed with it for review or approval.

## **SECTION 303 FEES**

### **A. Review Fee.**

1. Each subdivision or land development plan application shall be accompanied by the required review fee as established and adopted by resolution by the Highspire Borough Council. Fees shall be payable to the Borough at the time of application (unless otherwise noted herein) and plan processing, approval, and recording shall not be completed until all required fees are paid. There shall be no refund or credit of fees or a portion of any fee should the applicant withdraw the plan during the review process or fail to receive plan approval.

### **B. Professional Service Fees.**

1. In addition to the required review fee, it is anticipated that additional expenses will be incurred by the Borough in processing the preliminary and/or final plans which are submitted or which may be required to be submitted under this Chapter, for engineering, legal or other professional consultant expenses. If the fees are not sufficient to cover these expenses incurred in the review of said plans, the Borough shall notify the person submitting the plans for review of the additional expense and shall request payment of the same. All payment requested by the Borough for engineering, legal or other professional consultant expense shall be the actual cost of the services incurred by the Borough. These services shall be billed at the normal established rate for engineering, legal, or other professional consultant services provided to the Borough.

C. Professional Service Fee Disputes.

1. An applicant must notify the Borough within ten (10) days of the date billed if the fee is disputed. Once notified of the dispute, the Borough cannot delay or disapprove an application based on differences over fees. If, within twenty (20) days of the date of billing the applicant and Borough cannot agree on the amount of expenses that are reasonable and necessary, a procedure shall be followed whereby another engineer, legal, or professional consultant is mutually appointed to establish the cost. The applicant must immediately pay the entire amount determined by the mutually appointed engineer, legal, or professional consultant.

When the applicant and Borough cannot agree upon appointment of an engineer, legal, or professional consultant, either party can apply to the court of common pleas who will appoint one. The court appointed engineer, legal, or professional consultant will determine the amount of reasonable and necessary expenses. If that amount is equal to or greater than the original amount billed, the fee of the court appointed engineer, legal, or professional consultant shall be paid by the applicant. If the determined fee is less than the amount billed by one thousand dollars (\$1,000) or more, the fee of the court appointed engineer, legal, or professional consultant shall be paid by the Borough; differences less than one thousand dollars (\$1,000) are to be shared equally by the applicant and Borough.