

# *article VIII*

## *Administration*

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### ***SECTION 800 MODIFICATIONS***

- A. The Borough Council may grant a modification of the requirements of one or more provisions where the applicant can successfully demonstrate that literal enforcement will exact undue hardship because of peculiar conditions pertaining to the land in question, provided that such modification will not be contrary to the public interest and that the purpose and intent of the Ordinance is observed.
- B. All requests for a modification shall be in writing and shall accompany and be a part of the application for development. The request shall state in full the grounds and facts of unreasonableness or hardship on which the request is based, the provision or provisions of the Ordinance involved, and the minimum modification necessary.
- C. The Planning Commission shall review all requests for modifications and shall make advisory comments with regard to said requests prior to submittal to the Borough Council.
- D. In granting modifications, Borough Council may impose such conditions as will, in its judgement, secure substantially the objectives of the standards and requirements so modified.
- E. The Borough shall keep a written record of all action on all requests for modifications.

### ***SECTION 801 RECORDS***

- A. The Borough shall assign a subdivision application number to all subdivision and land development applications, and all matters referring to an application should be filed in accordance with the subdivision case number. The Borough shall keep a record of its findings, decisions, and recommendations relative to all plans filed with it for review.
- B. All such records shall be public records.

### ***SECTION 802 FEES AND COSTS***

- A. No application for preliminary or final approval shall be deemed to have been submitted until the fee and escrow deposit, as set forth below, shall have been paid. Failure by the applicant to deliver the funds necessary to meet the escrow requirement within thirty (30) days of receipt of the plans shall constitute good and sufficient grounds for the rejection of the plans as received.
- B. A subdivision or land development application fee (nonrefundable) and an escrow deposit shall be submitted with any application for preliminary or final plan review and approval to cover the costs of plan review and processing. Amounts of the application fee and escrow deposit shall be fixed by

the Borough Council by resolution. The escrow funds shall be used to reimburse the Borough for actual expenditures incident to these procedures, including but not limited to fees of the Borough Engineer and other professionals deemed necessary by the Borough and legal fees in excess of the fee for review of the Borough's standard forms. If or when the unused amount of the escrow deposit is at or below twenty-five (25) percent of the required deposit, the applicant shall replenish the escrow deposit to its initial value. Any unexpended balance in the escrow deposit shall become part of the second deposit required in Section 802.C, below.

- C. Following final plan approval and recording and the establishment of any required performance guarantee, a second escrow deposit shall be established to cover the cost of inspection of improvements construction; materials or site testing; or maintenance costs prior to the acceptance of improvements by the Borough. If or when the unused amount of the second escrow deposit is at or below twenty-five (25) percent of the required second escrow deposit, the applicant shall replenish the escrow deposit to its initial value. Any unexpended balance in the escrow deposit following acceptance of dedication of improvements by the Borough shall be returned to the applicant. The amount of the escrow deposit shall be fixed by resolution of Borough Council. The escrow deposit may be waived by the Borough where the proposed development will not include the construction or installation of any public improvements.

### ***SECTION 803 ENFORCEMENT***

- A. Preventive Remedies.
1. In addition to other remedies, the Borough may institute and maintain appropriate actions to restrain, correct, or abate violations, to prevent unlawful construction, to recover damages and to prevent illegal occupancy of a building, structure or premises. The description by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring shall not exempt the seller or transferor from such penalties or from the remedies herein provided.
  2. The Borough may refuse to issue any permit or grant any approval necessary to further improve or develop any real property which has been developed or which has resulted from a subdivision of real property in violation of this Ordinance. This authority to deny such a permit or approval shall apply to any of the following applicants:
    - a. The owner of record at the time of such violation.
    - b. The vendee or lessee of the owner of record at the time of such violation without regard as to whether such vendee or lessee had actual or constructive knowledge of the violation.

- c. The current owner of record who acquired the property subsequent to the time of violation without regard as to whether such current owner had actual or constructive knowledge of the violation.
  - d. The vendee or lessee of the current owner of record who acquired the property subsequent to the time of violation without regard as to whether such vendee or lessee had actual or constructive knowledge of the violation.
3. As an additional condition for issuance of a permit or the granting of an approval to any such owner, current owner, vendee or lessee for the development of any such real property, the municipality may require compliance with the conditions that would have been applicable to the property at the time the applicant acquired an interest in such real property.

B. Enforcement Remedies.

- 1. Any person, partnership, or corporation who or which has violated the provisions of this Ordinance shall, upon being found liable therefore in a civil enforcement proceeding commenced by the Borough, pay a judgement of not more than five-hundred (500) dollars plus all court costs, including reasonable attorney fees incurred by the Borough as a result thereof.
- 2. No judgement shall commence or be imposed, levied, or be payable until the date of the determination of a violation by the district justice.
- 3. If the defendant neither pays nor timely appeals the judgement, the Borough may enforce the judgement pursuant to the applicable rules of civil procedures.
  - a. Each day that a violation continues shall constitute a separate violation, unless the 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 Ordinance to have believed that there was no such violation.
  - b. In the event of the aforementioned, there shall be deemed to be only one (1) such violation, until the fifth (5th) day following the date of the determination of a violation by the district justice and thereafter each day that a violation continues shall constitute a separate violation.
- 4. The court of common pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem judgement pending a final adjudication of the violation and judgement.

5. Nothing contained in this section shall be construed or interpreted to grant to any person or entity other than the Borough the right to commence any action for enforcement pursuant to this section.