

CITY OF SCRANTON

Lackawanna County, Pennsylvania

FILE OF COUNCIL #74, 1993

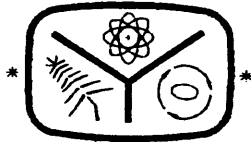
(ADOPTED BY SCRANTON CITY COUNCIL-DECEMBER 15, 1993)

**DEVELOPED BY THE PLANNING COMMISSION OF
THE CITY OF SCRANTON**

EFFECTIVE DECEMBER 21, 1993

ZONING ORDINANCE

CITY OF SCRANTON



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ARTICLE I

ADMINISTRATION

101. **PURPOSES AND OBJECTIVES.** This Ordinance is hereby adopted: 1) in accordance with the requirements and purposes (including Section 604 or its successor section, which is included by reference) of the PA. Municipalities Planning Code, as amended, 2) in accordance with the community development goals and objectives (which are included by reference) of the City of Scranton Comprehensive "Master" Plan of 1992 (as may be amended), which constitutes an overall program, 3) in consideration of the character of the City, its various parts and the suitability of the various parts for particular uses and structures, 4) to assist in carrying out the purposes and provisions of the Constitution of the Commonwealth of Pennsylvania (especially Article I, Section 27), the PA. Floodplain Management Act, PA. Storm Water Management Act, PA. DER regulations on erosion and sedimentation control, PA. Dept. of Transportation regulations on highway access control and other relevant Federal and State laws, regulations, official policies and relevant Court decisions and 5) to protect property values and protect existing desirable residential neighborhoods from incompatible intrusions.

102. **APPLICABILITY.**

102.A. Any activity regulated by this Ordinance shall only occur in such a way that conforms with the regulations of this Ordinance.

102.B. This Ordinance regulates matters authorized by Section 603 "Ordinance Provisions" of the State Planning Code, or such successor section.

102.C. Any of the following activities or any other activity regulated by this Ordinance shall only be carried out after receipt of any required approval or permit and in compliance with this Ordinance:

1. Erection, construction, movement, placement or extension of a structure, building or sign, except for signs that Article VII specifically states do not require a permit,
2. Change of the type of use or expansion of the use of a structure or area of land, and/or
3. Creation of a lot or alteration of lot lines.

102.D. **Repairs and Maintenance.** Ordinary repairs, structural strengthening, facade improvements and maintenance to existing structures that do not infringe upon a required setback may be made without a Zoning Permit, if such work does not involve: 1) a change in use, 2) an expansion, construction or placement of a structure, 3) an increase in the number of dwelling units or boarding house units and/or 4) any other activity regulated by this Ordinance. However, such work may require other City permits.

102.E. All readers maintain the responsibility to procure the latest amendments to this Ordinance.

103. **ENFORCEMENT, VIOLATIONS AND PENALTIES.**

103.A. See Sections 616 and 617 of the PA. Municipalities Planning Code.

103.B. Previous Enforcement Actions. The passage of this Ordinance shall not suspend or inhibit the enforcement of sections of the pre-existing City of Scranton Zoning Ordinance upon actions regulated under that Ordinance, except that such applicant may apply for approval under this Ordinance. If the Zoning Officer determines that the action of the applicant that was alleged to

be unlawful under the previous Zoning Ordinance would now be lawful under this Ordinance, then such enforcement action may be withdrawn by the City.

103.C. **Burden of Proof.** The burden of proof shall be upon an applicant to prove that: a) a proposed zoning amendment would be in the public interest, b) that a proposed zoning variance would be justified under the conditions stated in Section 111.E. or c) that a proposed conditional or special exception use would meet the specific standards of this Ordinance.

104. **FILING FEES AND COSTS.**

104.A. Fee Schedule. Unless and until revised by resolution of City Council, the following fee schedule shall apply to actions under this Ordinance, in addition to fees provided for in the City's Building Codes. All such fees shall be paid in advance.

1. Certificates of Non-Conformance. \$5 fee.
2. Occupancy Permit. \$20 fee, unless another fee is provided for in the City Building Codes.
3. Request for Amendment of the Zoning Ordinance or Zoning Map, including a Curative Amendment. \$300 for each proposed amendment, plus the applicant shall re-imburse the City for expenses for all required legal advertisements.
4. Written Statement of Zoning Compliance (When Requested). \$2 fee for a written statement of the zoning district or floodplain district a property is within. \$5 for any other written statement of compliance. If such statement is intended to state compliance of an existing use with specific requirements, then the applicant must in advance provide a signed written statement describing the use, the setbacks and such additional information as needed to determine compliance.
5. Fees for Submittal to the Zoning Hearing Board for a variance or special exception or to the City Council as a conditional use shall be as follows:

<u>Construction/ Alteration Cost</u>	<u>Permit Charge</u>
\$0 to \$5,000	\$100
\$5,001 to 50,000	\$175
\$50,001 to \$100,000	\$250
\$100,001 to \$500,000	\$325
\$500,001 to \$1,000,000	\$400
\$1,000,001 and over	\$400 per million dollars of construction cost or fraction thereof up to a maximum fee of \$3,000

104.B. No application or appeal shall be considered filed until all fees are paid.

105. **INTERPRETATION AND SIMILAR USES.**

105.A. Minimum Requirements. The provisions of this Ordinance shall be interpreted as the minimum requirements to promote public health, safety and general welfare. Where a provision of this Ordinance differs or conflicts with any other provision of this Ordinance or any other ordinance, regulation or law, the provision that is more restrictive upon uses and structures shall apply.

105.B. Uses Not Specifically Regulated. If a use clearly is not permitted by right, by condition or by special exception by this Ordinance within any Zoning District in the City, the use is prohibited in the City, except the applicant may apply to the Zoning Hearing Board. After a review by the Planning Commission, the Zoning Hearing Board may permit such use if the applicant proves all of the following to the satisfaction of the Zoning Hearing Board:

1. that the use would clearly be less offensive in impacts and nuisances than uses permitted in that district,
2. that the use would be compatible with permitted uses in that District,
3. that the proposed use would be compatible with the purposes of the district,
4. that the use can meet the general criteria listed in Section 118.C. entitled "Standards for Decisions," and
5. that the use is not "specifically prohibited" in the District.

105.C. Sketches. Sketches in this Ordinance are for illustrative purposes only and are not regulatory, unless otherwise stated.

105.D. Interpretation of Ordinance Text and Boundaries. The Zoning Officer shall apply the wording of this Ordinance and the location of all District boundaries to particular applications. The Zoning Officer may request an advisory opinion from the City Solicitor. See Section 111 and the City fee schedule concerning appeals.

105.E. Definitions. An applicant may appeal the Zoning Officer's determination of meaning of a term that is not defined by this Ordinance to the Zoning Hearing Board.

106. GENERAL PROCEDURE FOR PERMITS.

106.A. See provisions regarding applications in Section 107.D. After receiving a proper and complete application for a permitted by right use, the Zoning Officer shall either: 1) issue the permit under this Ordinance or 2) refuse the Permit, indicating at least one applicable reason verbally or in writing to the applicant or his/her representative. If specifically requested in writing by an applicant, reason(s) for a refusal shall then be stated in writing.

106.B. Reviews. Certain activities require review and/or approval of the Zoning Hearing Board and/or of the City Council, and/or the recommendations of the Planning Commission. In such case, the Zoning Officer shall not issue a Zoning Permit until such required review or approval occurs.

106.C. Appeal. See Section 111.E. which describes processes to appeal actions of the Zoning Officer to the Zoning Hearing Board.

106.D. Timing. After a Zoning Permit has been received by the applicant, the applicant may undertake the action permitted by the permit under this Ordinance, as long as the work complies with other City Ordinances. However, it is recommended that applicants wait 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 30 day appeal period shall be at the risk of the applicant. See occupancy permit process in Section 107.H.

107. PERMITS AND CERTIFICATES.

107.A. Applicability. See Section 102.

107.B. Types of Uses.

1. Permitted by Right Uses. If a use is listed as permitted by right by this Ordinance and meets the requirements of this Ordinance, the Zoning Officer shall issue a permit in response to a complete application. See additional requirements for specific uses listed in Sections 402 and 403.

2. Special Exception Use or Application Requiring a Variance. A permit under this Ordinance for a use requiring a Special Exception or Variance shall be issued by the Zoning Officer only upon the written order of the Zoning Hearing Board after a hearing. See provisions for Planning Commission review in Section 119.
3. Conditional Use. A permit under this Ordinance for a Conditional Use shall be issued by the Zoning Officer only upon the written order of the City Council, after the Planning Commission has been given an opportunity to review the application.

107.C. Applications.

1. Any request for a decision, interpretation or variance by the Zoning Hearing Board or for a permit under this Ordinance shall be made in writing on a form provided by the City. Such completed application, with any required fees, and with any required site plans or other required information, shall be submitted to a City employee responsible for processing such application. The applicant is responsible to ensure that a responsible City official notes the date of the official receipt on the application.
2. Unless waived by the Zoning Officer, 7 copies of a site plan shall be submitted if an application requires action by the Zoning Hearing Board, and 2 copies shall be submitted if action by the Board is not required. Such site plan shall be drawn to scale.
3. Any application to the Zoning Officer or Zoning Hearing Board shall include the following information, unless the Zoning Officer determines that a site plan or such information is unnecessary to determine compliance with this Ordinance:
 - a. the location and dimensions of the lot,
 - b. locations, dimensions, heights and uses of existing and proposed structures, signs, parking and loading areas, and locations of existing and proposed uses of areas of land, with differentiation between existing and proposed features,
 - c. existing and proposed numbers of parking spaces,
 - d. name and address of the applicant, or appellant,
 - e. name and address of the owner of the affected property,
 - f. a description of the existing and proposed use(s) of the property, including numbers of dwelling units, minimum square feet of proposed dwelling units and number of proposed business establishments, if any,
 - g. plans for any required buffer plantings (See Section 803),
 - h. such additional information that the Zoning Officer may determine is reasonably necessary to determine compliance with this Ordinance and
 - i. all other applicable information listed on the official City application form.
4. Submittals to the Board. In addition to the information listed in part "3." above, an application requiring a site plan and action by the Zoning Hearing Board shall also include the following information, unless the Zoning Officer determines that such information is unnecessary for determination of whether the proposal complies with this Ordinance:
 - a. the present zoning district and major applicable lot requirements,
 - b. a description of the proposed 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 and
 - c. if a principal non-residential use is proposed within close proximity to dwellings, a description of hours of operation and proposed methods of storing garbage outdoors on-site,
 - d. a listing of any specific sections of this Ordinances being appealed, with the reasons for any appeal and

- e. for a mineral extraction use, such additional information as listed in Section 402 for such use.
5. Other Laws. The Zoning Officer may withhold issuance of a permit under this Ordinance if there is clear knowledge by him or her that such a use would violate another City, State or Federal law or regulation.
6. Ownership. No person other than a landowner or their specifically authorized agent or a tenant or leasee with written permission of the landowner shall submit a zoning application (see definition of "landowner" in Article II).
7. Advisory Reviews. The Zoning Officer may submit a copy of any plan and application to any appropriate agencies and/or individuals (such as the Planning Commission, the Lackawanna County Regional Planning Commission, the County Conservation District or City Engineer) for review and comment.

107.D. Issuance of Permit.

1. At least 2 copies of any permit required under this Ordinance shall be made.
2. 1 copy of any such permit shall be retained in City files and one copy shall be retained by the applicant. A copy of any such permit shall be shown by the applicant to the Zoning Officer upon the Zoning Officer's request. One copy of a submitted site plan should be returned to the applicant after approval/ disapproval, with such action certified on the plan with the signature of the Zoning Officer.
3. The Zoning Officer should issue or deny a permit for a permitted by right use that meets the requirements of this Ordinance within a maximum of 90 days after a complete, duly filed application and fees are submitted.
4. No owner, contractor, worker or other person shall perform building or construction activity of any kind regulated by this Ordinance unless a valid Zoning Permit has been issued for such work, nor shall such persons conduct such work after notice that a Zoning Permit has been revoked.

107.E. Revocation of Permits. The Zoning Officer shall revoke a permit or approval issued under the provisions of the Zoning Ordinance in case of:

1. any false statement or misrepresentation of fact in the application or on the plans on which the permit or approval was based; (The Pennsylvania Criminal Code provides for penalties for providing false information to a municipal employee in the carrying out of his/her duties) or
2. upon violation of any condition lawfully imposed upon a special exception or conditional use; or
3. any work being accomplished or land or structures being used in such a way that does not comply with this Ordinance or an approved site plan or approved permit application or
4. for any other just cause set forth in this Ordinance.

If a Zoning Permit is revoked, the person holding the permit shall immediately surrender such permit and all copies to the Zoning Officer.

107.F. Temporary Permit. See Section 807.

107.G. Changes to Approved Plans.

1. After the issuance of a permit and/or approval of a site plan under this Ordinance by the City, such approved application and/or site plan shall not be changed without the written consent of the City, as stated in subsection "2." below.

2. Changes to a site plan approved by the Zoning Hearing Board as a special exception use or by the City Council as a conditional use shall require re-approval of the changes by such bodies if the Zoning Officer determines that such changes affect matters that were within the scope of approval of such board. Such approval by the Hearing Board or the Council is not required for clearly minor technical adjustments or matters that are solely corrections of information that do not affect any of the significant features of the site plan or the intensity of the use, as determined by the Zoning Officer.
3. A copy of such adjustment or correction should be provided in writing to the Chairperson of the Planning Commission, the President of City Council or the Chairperson of the Zoning Hearing Board if the change concerns a plan approved by such bodies.

107.H. Certificate of Use and Occupancy (or "Occupancy Permit").

1. A Certificate of Use and Occupancy shall be required by the City upon a change of use or completion of work authorized by a permit or approval under this Ordinance. It shall be unlawful to use and/or occupy a structure, building and/or land or portions thereof until such Certificate has been issued. A new Certificate of Use and Occupancy shall be required if the use of the property should change.
2. An application for such Certificate shall be made on an official City form. If such use is in conformance with City ordinances and approvals, such Certificate should be issued in duplicate within 10 days of a properly submitted and duly filed application. A minimum of 1 copy shall be retained in City records.
3. The designated City Staffperson(s) shall inspect such structure or land related to an application for such Certificate. If he/she determines, to the best of his/her current knowledge, that such work conforms with this Ordinance and applicable City codes, approvals and permits, then he/she shall issue the Certificate of Use and Occupancy.
4. The applicant shall show a valid Certificate of Use and Occupancy to the Zoning Officer upon request.

108. **AMENDMENTS TO THIS ORDINANCE.**

- 108.A. The City Council may amend, challenge, or repeal any or all portions of this Ordinance on:
1. its own motion or
 2. upon agreeing to hear a written request of any person, entity or the Planning Commission.

108.B. Before voting on the enactment of an amendment, the City Council shall hold a public hearing thereon, following the procedural requirements of the State Planning Code, including public notice.

108.C. Review of Amendments.

1. In the case of an amendment other than that prepared by or under the direction of the Planning Commission, the City Council shall submit each such amendment to the Planning Commission at least 30 days prior to their hearing on such proposed amendment; the Planning Commission shall be permitted an opportunity to provide recommendations.
2. County Review. The City shall submit the proposed amendment to the County Regional Planning Commission (LCRPC) for recommendations at least 30 days prior to the hearing on such proposed amendment.
3. No action shall be taken by the City Council until any LCRPC or City Planning Commission comments are received, unless 30 days pass without such comments being received.

- 108.D. Changes After a Hearing. If, after any public hearing held upon an amendment, the proposed amendment is revised, or further revised, to include or exclude land previously not affected by it, the City Council shall hold another public hearing, pursuant to public notice, before proceeding to vote on the amendment.
- 108.E. Application for Ordinance Amendment. Any request for amendment of the Zoning Ordinance (including supplement, change or repeal) by any person or entity (other than the City Staff, Planning Commission, City Council or committee appointed by the City Council or under the direct oversight of such entity) shall include the following:
1. A statement of why the change would be in the best interests of the City -
The burden of proof shall be upon the applicant to prove that a zoning amendment would in the public interest;
 2. A statement of how the proposal will relate to the City Comprehensive Plan;
 3. A statement addressing any adverse affects on adjacent residences;
 4. A statement addressing any major traffic access or congestion concerns;
 5. A map showing the proposed boundaries of any proposed map changes, the existing zoning of the land and of adjacent lands and the current uses of adjacent lots; and
 6. A statement explaining proposed extensions and major improvements, if needed, of public water, sanitary sewer or stormwater management systems to serve the land area.
 7. List of abutting and adjacent property owners.
- 108.F. Traffic Impacts of Zoning Amendments. The Planning Commission or the City Council may require an applicant for a zoning amendment to fund a traffic impact study following standard methods and completed by a qualified traffic engineer. Such a study shall take into account the entire land area proposed for a change, with an emphasis on the net projected traffic increases from the proposed amendment compared to the existing zoning, based upon reasonable assumptions about the intensity and type of development.
- 108.G. Notification of Proposed Zoning Map Amendment. If a zoning map amendment is requested by a private entity and is not considered at the same public hearing as zoning map amendments proposed by City officials, then at least 10 days prior to the hearing on the proposed change, the applicant shall send by return receipt mail, with the receipt provided to the Zoning Officer, written notice of the proposed change. The applicant shall provide a signed letter to the Zoning Officer stating that such notice has been sent. Such notice shall include the hearing date and time and a City official to contact for more information. Such notice shall be provided to all owners of record of all property proposed to be rezoned (other than the applicant) and all property directly abutting or directly across the street from the land to be rezoned.
- 108.H. Time Guideline on Reviewing Amendment. If a zoning amendment is properly requested in writing and submitted together with any required fees to the Zoning Officer outside of the curative amendment process, the Planning Commission should hold an initial public meeting on such proposed amendment within 60 days of receiving such request, unless the Commission determines at a regular meeting that such request is not worthy of further consideration.
109. **CURATIVE AMENDMENTS.** A landowner who desires to challenge on substantive grounds the validity of this Ordinance which prohibits or restricts the use or development of land in which he/she has an interest, may submit a curative amendment to the City Council with a written request that this challenge and proposed amendment be heard and decided as provided in the PA. Municipalities Planning Code.

110. **ZONING OFFICER.**

110.A. **Appointment.** The Zoning Officer(s) shall be appointed by the Mayor. Any full-time Zoning Officer appointed after the adoption of this Ordinance shall require confirmation by City Council. The Zoning Officer(s) shall not hold any elective office within the City, but may hold other appointed offices.

110.B. **Duties and Powers.** The Zoning Officer shall:

1. administer the Zoning Ordinance;
2. provide information to applicants regarding required procedures;
3. receive and examine all applications required under the terms of this Ordinance, and issue or refuse permits within this Ordinance;
4. receive complaints of violation of this Ordinance, and issue a written notice of violation to any person violating any provision of this Ordinance;
5. keep records of applications, permits, certificates, written decisions and interpretations issued, of variances granted by the Board, of complaints received, of inspections made, of reports rendered, and of notice or orders issued;
6. make all required inspections and perform all other duties as called for in this Ordinance; and
7. not have the power to permit any activity which does not conform to this Ordinance, or all other Ordinances of the City known to the Zoning Officer.

110.C. **Qualifications.** Pursuant to Section 614 of the PA. Municipalities Planning Code, the following minimum qualifications shall apply to any full-time Zoning Officer(s) appointed to serve the City after the adoption of this Ordinance, unless such mandatory qualifications are waived by motion of City Council.

1. The person shall demonstrate a working knowledge of zoning.
2. The person shall have one of the following combinations of education and experience:
 - a. a high school diploma or equivalent and a minimum of 4 years responsible experience in administering and enforcing municipal zoning and/or subdivision and land development ordinances, or
 - b. a high school diploma or equivalent and 2 additional years of continuing education, such as an Associate Degree (such continuing education preferably should be in a field such as law enforcement, community planning and/or public administration) and a minimum of 2 years responsible experience in administering and enforcing municipal zoning and/or subdivision and land development ordinances, or
 - c. a college or university Bachelor's degree in a field related to zoning (such as law enforcement, community planning and/or government administration) and a minimum of 8 months responsible experience in administering and enforcing municipal zoning and/or subdivision and land development ordinances.
3. The person shall be familiar with Constitutional issues concerning search and seizure and with the process of filing actions with the District Justice.
4. The person shall exhibit an ability to thoroughly evaluate site plans and building plans.
5. The person shall demonstrate excellent oral and written communication skills.
6. The person shall be familiar with the PA. Municipalities Planning Code.

110.D. **Other City Officials.** Police officers, firefighters, construction inspectors, other City staff and City officials and the general public may report possible zoning violations to the Zoning Officer for his/her determination.

111. ZONING HEARING BOARD ACTIONS AND VARIANCES.

111.A. Appointment, Terms and Qualifications.

1. The existing "Board of Zoning Appeals" is continued, and in conformance with the PA. Municipalities Planning Code is hereby renamed the "Zoning Hearing Board." The Zoning Hearing Board shall consist of residents of the City. Five regular members shall be appointed by City Council. Alternate members may be appointed in the same manner within the provisions of the PA. Municipalities Planning Code. Members of the Board shall hold no elected office in the City.
2. Terms. The existing terms of office of the Zoning Hearing Board members shall continue as previously authorized. Members shall be appointed to 3 year terms. The terms of offices shall be so established so that a minimum of 1 position and a maximum of 2 positions expire each year.
3. Recommended Qualifications. Each board member should:
 - a. demonstrate a working knowledge of zoning prior to appointment;
 - b. become familiar with the PA. Municipalities Planning Code; and
 - c. attend at least 1 seminar and/or workshop pertaining to municipal planning and/or zoning within each calendar year.

111.B. Vacancies. The Board shall promptly notify the Mayor and City Council of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of a term.

111.C. Removal of Members. See Section 905 of the PA. Municipalities Planning Code.

111.D. Organization.

1. Officers. The Board shall elect officers from its own membership. Officers shall serve annual terms and may succeed themselves.
2. Quorum. For the conduct of any hearing and taking of any action a quorum shall be not less than a majority of all members of the Board, except that the 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 Board, as provided by the PA. Municipalities Planning Code. The quorum may be met by alternate members, serving as permitted by the PA. Municipalities Planning Code.
3. Rules. The Board may make, alter, and rescind rules and forms for its procedure, consistent with all applicable City ordinances and State law.

111.E. Zoning Hearing Board Functions. The Zoning Hearing Board shall be responsible for the following:

1. Appeal of a Decision by the Zoning Officer.
 - a. The Board shall hear and decide appeals where it is alleged by the appellant (a person affected or any agency of the City) that the Zoning Officer has failed to follow prescribed procedures, or has misinterpreted or misapplied any valid provision of this Ordinance.
 - b. See time limitations for appeals in Section 111.F.

2. Challenge to the Validity of the Ordinance or Map.
 - a. The Board shall hear challenges to the validity of this Ordinance filed with the Board in writing by the landowner affected, any officer or agency of the City, or any person aggrieved.
 - b. After the conclusion of the hearing(s), the Board shall decide all questions and shall make findings on all relevant issues of fact, within the time limits of the PA. Municipalities Planning Code.

3. Variance.
 - a. The Board shall hear requests for variances filed with the Board in writing by any landowner (or any tenant with the permission of such landowner).
 - b. Standards. The Board may grant a variance only within the limitations of State law. **The applicant shall have the burden of proof to show compliance with such standards.** (As of 1993, the Municipalities Planning Code provided that all of the following findings must be made, where relevant:
 - i) 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 that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of this Ordinance in the neighborhood or district in which the property is located;
 - ii) Because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance and a variance is therefore necessary to enable the reasonable use of the property;
 - iii) Such unnecessary hardship has not been created by the appellant;
 - iv) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare; and
 - v) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.)
 - c. Additional standards.
 - i) Mere showing of economic hardship, shall not by itself justify a zoning variance.
 - ii) A variance may be granted where the applicant proves that the property can only be used for a permitted use at prohibitive expense.
 - iii) A variance may be granted where clearly necessary to comply with the Federal Americans with Disabilities Act.
 - d. The Zoning Officer shall refuse to accept a proposed appeal that is not materially or significantly different from an appeal on the same property that was denied by the Board within the previous year.
 - e. Variance Conditions. In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Ordinance and to protect the public health and safety. The Board may in variance cases prohibit certain otherwise permitted uses on a lot where the Board finds that such uses would be contrary to the public interest considering the facts and circumstances of the case and the variance.
 - f. Side Yard Exceptions for Accessory Structures.

- i) The following provision shall only apply to the placement of a 1 story customarily accessory structure of less than 2,000 square feet of building floor area or a household swimming pool serving a dwelling unit if such structure or pool is proposed within the required setback area for such use along abutting lot lines of another lot(s).
- ii) If all abutting property-owner(s) of record along such lot line sign a notarized statement clearly stating that he/she does not object to such reduction of the required setback for the placement of such structure or pool, and the Zoning Officer determines that no other City requirement would prevent such placement of such structure or pool, then the Zoning Officer shall permit such reduction or waiver of such required accessory setback.
- iii) In such case, future owners of such abutting lots shall not have the right to require movement of such structure or pool.
- iv) If the abutting lot owner(s) do not agree to such exception, such refusal shall not by itself prevent the granting of a variance by the Zoning Hearing Board.
- v) This subsection "f.iii)" shall not permit a reduction in setback abutting an existing public street or public alley.

4. Special Exception Uses.

- a. The Board shall hear and decide requests for all special exceptions filed with the Board in writing by any landowner (or any tenant with the permission of such landowner), as provided in this Ordinance and in accordance with such standards and criteria contained in this Ordinance and the procedures in Section 119.
- b. Conditions. In granting a special exception, the Zoning Hearing Board may attach such reasonable conditions and safeguards, in addition to those expressed in the Ordinance, as it may deem necessary to implement the purposes of this Ordinance and to protect the public health and safety.
- c. See Special Exception Use Process in Section 119.

5. Hearings. See Section 112.

6. Records and Reports. The staff to the Board shall keep full public records of its business.

7. Court Appeals. In the case of an appeal from the Board to the Court of Common Pleas, the Appellant shall make the return required by law, and should promptly notify the City Zoning Hearing Board Solicitor of such appeal.

8. Appeal by the Zoning Officer. See Section 105.D.

9. Standing. (Note - Standing generally means a party being sufficiently affected or threatened by affects by a controversy to obtain judicial resolution of that controversy.)

- a. The Zoning Hearing Board shall have the authority, if it chooses to exercise it, to determine who has standing on each case before the Board. The City Council, Scranton City Planning Commission, an abutting municipality whose boundaries are within 200 feet of the subject lot, a property-owner whose lot lines are within 200 feet of the subject lot and the affected City-recognized neighborhood organization shall, at an absolute minimum, have standing in a case.

- b. The Board shall determine that a person or business does not have standing if the Board determines that such person or business is apparently motivated primarily by an attempt to inhibit reasonable competition in an area of business, and that such person or business would not otherwise be threatened with substantive harm from the application.

111.F. Time Limits for Appeals. The time limitations for appeals shall be as follows:

1. No person shall be allowed to file any appeal with the Zoning Hearing Board later than 30 days after the decision by the Zoning Officer that is being appealed has been officially issued, or appeal with the County Court of Common Pleas later than 30 days after a decision of the Zoning Hearing Board has been officially issued, except as may be provided under Section 914.1 of the PA. Municipalities Planning Code.
2. The failure of an aggrieved person other than the landowner to appeal an adverse decision directly related to a preliminary subdivision or land development plan shall preclude an appeal from a final plan approval except in the case where the final submission substantially deviates from the approved preliminary plan.
3. This 30 day time limit for appeals shall not apply to the revocation of a permit under Section 107.F.

111.H. Stay of Proceedings. See Section 916 of the PA. Municipalities Planning Code.

111.I. Time Limits on Permits and Variances.

1. After a variance is approved or a conditional or special exception approval is officially authorized under this Ordinance, then a Zoning Permit shall be secured by the applicant within 12 months after the date of such approval or authorization. Such action under such permit shall then substantially begin within 12 months of the issuance of the permit.
2. If the applicant submits complete plans for a required site plan review or subdivision or land development approval or special exception or conditional use approval that is related to the variance or issuance of a permit under this Ordinance within the above time limits, then such time limits shall begin after such plan review is completed or such plan approval is granted.
3. For good cause the Zoning Officer may, upon application in writing stating the reasons therefore, extend in writing the 6-month application period to up to 18 months.
4. If an applicant fails to obtain the necessary permits within the above time period, or after obtained the permit fails to diligently commence substantial construction within 12 months or allows interruptions in substantial construction of longer than 6 months, it shall be conclusively presumed that the applicant has waived, withdrawn or abandoned the approval, and all such approvals, variances and permits shall be deemed automatically rescinded.
5. Any building construction shall be completed within 36 months of issuance of an applicable permit, unless a written extension is granted by the Zoning Officer for good cause. Otherwise, a permit shall be considered to have automatically expired at the end of such 36 month period.

112. **BOARD HEARINGS AND DECISIONS.** The Board shall conduct hearings and make decisions in accordance with the following:

112.A. Notice of Hearings. Notice of all hearings of the Board shall be given as follows:

1. Ad. Public notice shall be published, as defined by Section 107 of the PA. Municipalities Planning Code. The notice shall state the time and place of the hearing and the particular nature and property address of the matter to be considered.
2. Posting. Notice of such hearing shall be conspicuously posted on the affected tract of land at least one week prior to the hearing. It is the responsibility of the applicant to ensure that such notice is posted and remains posted until the hearing. Such notice shall state the time and place of the hearing and a general description of the request.
3. Persons Given Notice.
 - a. Written notice shall be mailed or personally delivered to the Applicant or his/her representative listed on an official application form.
 - b. Notice should be delivered or mailed to the Chairperson of the Planning Commission, the Mayor, the Clerk of City Council, the President of the appropriate official City-recognized neighborhood association and the last known address of owners of record of property abutting or directly across the street from the boundaries of the subject property. The applicant shall provide the City with a list of such property-owners. Failure of the City to notify all such persons shall not invalidate any action by the Board.
 - c. Also, such notice shall be mailed or delivered to the address of any other person or group (including civic or community organizations) who has made a written timely request (including an address) for such notice.
 - d. All notice under this sub-section should be intended to be received or posted at least 5 days prior to the hearing date.
4. Adjacent Municipalities. In any matter which relates to a lot which lies within 250 feet of the boundary of another municipality, except boundaries separated by a perennial river, and where the Zoning Officer determines the proposed activity may have significant impact on that municipality, the City staff should transmit to the offices of the adjacent municipality a copy of the official notice of the public hearing on such matter prior to the hearing date. Representatives of such adjacent municipality shall have the right to appear and be heard at the public hearing.
5. Fees. The City Council may, by resolution, establish a reasonable fee schedule, based on cost, to be paid by: a) the Applicant for any notice required by this Ordinance and b) those persons requesting any notice not required by this Ordinance.

112.B. Parties in Hearings.

1. The parties to a hearing shall be the City, any person affected by the application who has made timely appearance of record before the Board, representatives of any legitimate civic or community organization, and any other person permitted to appear before the Board.
2. The Board shall have power to require that all persons who wish to be considered parties enter appearances in writing on forms provided by the Board for that purpose.

- 112.C. Oaths and Subpoenas. The chair of the Board or Hearing Officer 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 reasonably needed by and requested by the parties.
- 112.D. Representation by Counsel. The parties shall have the right to be represented by legal counsel and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on relevant issues.
- 112.E. Evidence and Record. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded. The Board or the hearing officer, as applicable, shall keep a record of the proceedings as required by State law.
- 112.F. Communications Outside of Hearings.
1. The Board shall not meet with, visit the site with or directly communicate specifically on the matter with the applicant or any officially protesting party or their representatives in connection with any issue involved, except if opportunity is provided for the applicant and any officially protesting party to participate.
 2. The Board shall not take notice of any communication, reports, staff memoranda, or other materials directly affecting a proposed application unless the parties are afforded an opportunity to examine and contest the material so noticed or unless such materials are already a matter of public record. This restriction shall not apply to advice from the Board's solicitor.
- 112.G. Advisory Reviews. The Zoning Hearing Board may request that the Planning Commission, County Conservation District or City Engineer provide an advisory review on any matter before the Board.
- 112.H. Initiation of Hearings. A hearing required under this Ordinance shall be initiated within 60 days of the date of an applicant's request for a hearing, unless the applicant has agreed in writing to an extension of time. A request for a hearing by an applicant shall not be accepted prior to submission of a duly filed application.
- 112.I. Decision/Findings.
1. The Board shall render a written decision or make written findings (when no decision is called for) on each application within 45 days after the last hearing on that application before the Board, unless the applicant has agreed in writing to an extension of time.
 2. Where the application is contested or denied, the decision shall be accompanied by findings of fact and conclusions based thereon, together with the reasons for such conclusions.
 3. Any conclusion based on any provision of the PA. Municipalities Planning Code or of this Ordinance should contain a reference to the provision relied on.
- 112.J. Notice of Decision. A copy of the final decision or a copy of the findings (when no decision is called for), shall be personally delivered or mailed to the applicant or his or her representative or their last known address not later than the time limit established by Section 907 of the PA. Municipalities Planning Code.

112.K. Solicitor Conflict.

1. The Zoning Hearing Board Solicitor shall not represent private clients in cases before the Zoning Hearing Board or the Planning Commission.
2. If a conflict of interest exists for the Zoning Hearing Board Solicitor on a particular application before such Board, the Zoning Hearing Board Solicitor shall notify the Chairperson of the Board at least 7 days before the scheduled hearing date.
3. City Council may appoint an Alternate Solicitor to the Zoning Hearing Board to serve as needed for a specific application or for a term of office.

113. **APPEALS.**

113.A. In General. All appeals of activities and approvals within the jurisdiction of this Ordinance shall conform with Article X-A of the State Planning Code.

113.B. Procedural Defects in Enactment. Allegations that this Ordinance or any amendment was enacted in a procedural defective manner shall be appealed directly to the court and be filed not later than 30 days from the intended effective date of the Ordinance or amendment.

113.C. To the Zoning Hearing Board. Appeals to the Board shall comply with Section 112, "Hearings."

114. **PUBLIC UTILITY EXEMPTIONS.** See Section 619 of the State Planning Code.

115. **LIMITED CITY EXEMPTION.** The minimum lot area requirements of this Ordinance shall not apply to uses or structures owned by the City of Scranton for uses and structures that are intended for a legitimate governmental, recycling, public recreation, stormwater control or public health and safety purpose.

116. **SITE PLAN REVIEW PROCEDURES FOR CERTAIN USES.**

116.A. When Site Plan Required. A separate site plan review by the Planning Commission is required for any of the following uses unless the physical layout of the use will be approved as: a) a conditional use, b) a subdivision or c) a land development.

1. Any new construction, reconstruction or expansion of more than 2,500 square feet in the floor area of one of the following types:
 - a. Industrial, apartment, office or commercial building,
 - b. School, place of worship or institutional building or
 - c. Raising of livestock as a principal use;
2. Any new or expanded impervious area of greater than 10,000 square feet, such as a parking lot;
3. Conversion of a principal residential building to a principal non-residential use; or
4. Any change from one principal non-residential use to a different type of principal non-residential use that would require the addition of 10 or more off-street parking spaces beyond what would have been previously required.

116.B. Site Plan Procedures. The following procedures shall be followed for any use required to be reviewed under this Section:

1. Submission. 10 complete copies of any required site plan shall be submitted to the City. The Zoning Officer shall refuse to accept an application if it does not contain sufficient information to determine compliance with this Ordinance. A minimum of 1 copy shall be retained in City files. The Site Plan shall include the information listed in Section 117.
2. Timing. The applicant shall submit a complete site plan within a minimum of 15 days prior to the first Planning Commission meeting at which the site plan is intended to be reviewed. The Planning Commission shall be given an opportunity to review the site plan and provide any comments in writing to the Zoning Officer within the time guideline stated in part "3" below.
3. Zoning Officer Action. The Zoning Officer shall review the site plan and determine its compliance or noncompliance with this Ordinance, based upon his/her review and comments of the Planning Commission. The Zoning Officer should make such determination within 60 days after the first scheduled Planning Commission regular meeting that occurs a minimum of 15 days after the receipt of a complete site plan submission.
4. Notice. The City should mail or personally deliver a copy of the decision to the applicant or his/her representative within 15 days after such decision. If a proper application is denied, the Zoning Officer should state reason(s) for such denial.

B. Compliance With Approved Plan - See Section 107.H.

117. SUBMISSION REQUIREMENTS FOR SITE PLAN REVIEW.

117.A. The following information, as applicable, shall be submitted by the applicant for any conditional use or any use required to submit a site plan under Sections 116 or 118, except for information waived by the Zoning Officer as not applicable or necessary:

*** This information is not required on a zoning site plan if such information will be submitted on a subdivision or land development plan for the use, or for information that would be approved under a City Stormwater Management Ordinance adopted pursuant to State Act 167 of 1978.**

1. A statement describing the proposed use.
2. Layout. A site layout drawn to scale (1"=20', 1"=30', 1"=40', 1"=50' or another scale pre-approved by the Zoning Officer or City Engineer) showing the location, dimensions and area of each lot; the location, dimensions and height of proposed and any existing structures; the required setback areas; the proposed density of residential uses; the location and width of proposed or abutting streets; and the proposed areas to be used for different purposes within the development, including outdoor storage or display areas. If the plan involves one phase of what eventually may be a larger development, then the interrelationships of those phases shall be shown.
- 3.* Landscaping. The width of any buffer yard and the heights, spacing and general species of plants to be used for screening. General numbers, locations and types of landscaping to be provided in off-street parking lots, along streets and in other areas.
- 4.* Parking. The locations and numbers of parking spaces; the location and widths of aisles; the location and sizes of off-street loading areas. The method of calculating the off-street parking requirement, based upon Section 601.

- 5.* Lighting and Signs. The height, location and approximate intensity of exterior lighting. The sign area, height, location and general method of lighting of signs.
6. Sidewalks. The location of any proposed sidewalks (with width) and curbing.
7. Utilities. Proposed method of providing wastewater treatment and water supply (such as "Public Water and Public Sewage Services extended 100 feet from existing mains").
8. Nuisances and Safety. A description of any proposed industrial or commercial operations or storage in sufficient detail to indicate potential nuisances and hazards regarding noise, large trucks, glare, air pollution, odors, dust, fire or toxic or explosive hazards or other significant hazards to the public health and safety; together with proposed methods to control such hazards and nuisances.
- 9.* Grading and Stormwater. Proposed and existing contours if earth disturbance is proposed (at 2 feet contours or other contours pre-approved by the City Engineer or Zoning Officer). Identification of any slopes between 15% and 25% and greater than 25% that are proposed to be impacted. Proposed method of managing stormwater runoff. Delineation of any floodplains from the Official Floodplain Maps and any wetlands in areas proposed to be disturbed.
10. Map. A location map showing the relation of the project to surrounding streets. Approximate lot lines of abutting lots within 50 feet of the project, with identification of abutting land uses.
11. Zoning district and major applicable requirements.
12. Preparer. Name and address of the person who prepared the Site Plan (which shall be a registered engineer, architect, landscape architect or surveyor, who shall certify such plan), the applicant and the owner of record of the land.
13. Tax map parcel number.
14. Certification of ownership and acknowledgement of plan, signed by owner or developer.
15. Applicable signature blocks.
16. Such other data or information as the Zoning Officer deems is reasonably necessary to determine compliance with City ordinances.

118. CONDITIONAL USE PROCESS.

118.A. Applicability. Certain uses that are permitted by this Ordinance as "Conditional Uses" shall be required to follow the review and zoning approval procedures described in this section.

118.B. Procedure.

1. Submission.
 - a. 12 complete copies of any required site plan meeting the requirements of Section 117 shall be submitted to the City.
 - b. The Zoning Officer shall refuse to accept an incomplete application which does not provide sufficient information to determine compliance with this Ordinance.

2. **Distribution.** The City shall distribute copies of the site plan to the Planning Commission and the City Council. A minimum of 1 copy shall be retained in the City files. The City Fire Bureau should be given an opportunity for a review, if deemed appropriate by the Zoning Officer.
3. **Zoning Officer Review.** The Zoning Officer shall report in writing or in person to the Planning Commission or City Council stating whether the proposal complies with this Ordinance. The Zoning Officer may request a review by the City Engineer.
4. **Planning Commission.** The Planning Commission shall be given an opportunity to review the conditional use application and submit a recommendation to the City Council.
5. **Council Action.**
 - a. The City Council shall not act to approve or deny a conditional use application unless:
 - a) the Council has received the reports of the Zoning Officer and the Planning Commission or b) unless a period of at least 45 days has passed from the date of the application.
 - b. The City Council shall approve, conditionally approve or disapprove the conditional use submission within a maximum of 45 days after the conclusion of the last hearing, unless the applicant has agreed to a written time extension.
 - c. In granting a conditional use, the City Council may require such reasonable conditions and safeguards (in addition to those expressed in this Ordinance) as it determines are necessary to implement the purposes of this Ordinance.
 - d. The decision of the City Council shall be in writing and shall be directly communicated to, delivered to or mailed to the last known address of the applicant or his/her representative.

118.C. Approval of Conditional Uses. The City Council shall approve any proposed conditional use if they find adequate evidence that the proposed use will meet:

1. Any specific standards for the proposed use listed in Sections 402 or 403.
2. Other applicable sections of this Ordinance.
3. Generally be capable of meeting applicable sections of the Subdivision and Land Development Ordinance.
4. Comply with all of the following standards:
 - a. **Other Laws.** Will not clearly be in conflict with other City Ordinances or State or Federal laws or regulations known to the City. The City may require an applicant to prove compliance, or to prove that appropriate applications have been submitted to obtain such compliance.
 - b. **Traffic.** Will not result in or significantly add to a significant traffic hazard or significant net increase in traffic congestion, after taking into any improvements proposed to be funded or completed by the applicant.
 - c. **Safety.** Will not create a significant public safety hazard, including fire, toxic or explosive hazards.
 - d. **Storm Water Management.** Will follow adequate, professionally accepted engineering methods to manage storm water. Stormwater shall not be a criteria of a decision under this Ordinance if the application clearly would be subject to a separate engineering review and an approval of storm water management under the City Stormwater Management Ordinance.
 - e. **Neighborhood.** Will not significantly negatively affect the desirable character of an existing residential neighborhood.

- f. Site Planning. Will involve adequate site design methods, including plant screening and setbacks as needed to avoid significant negative impacts on adjacent uses.
- g. Performance Standards. Will not have a serious threat of inability to comply with the performance standards of this Ordinance, as stated in Article V.

119. SPECIAL EXCEPTION USE PROCESS.

119.A. Purpose. The Special Exception Process is designed to allow careful review of uses that have some potential of conflicts with adjacent uses or areas.

119.B. Special Exception Procedure.

1. All applicants for a special exception use shall submit 7 sets of Site Plans for the proposed use to the Secretary to the Zoning Hearing Board together with a written application. The Zoning Officer may waive the site plan requirement for home occupations that are not intense and other uses not involving new buildings nor additional off-street parking. Photographs of the existing site or buildings may also be requested to be presented by the applicant.
2. All Site Plans shall contain the information required in Section 107.C.
3. City Procedures.
 - a. The City shall forward the application to the Zoning Hearing Board, the Planning Commission (except for a home occupation) and the Zoning Hearing Board solicitor. A minimum of 1 copy shall be retained in the City files.
 - b. The Zoning Officer should, prior to the next Zoning Hearing Board meeting where the application will be discussed, review the Plan to determine compliance with this Ordinance and report these findings to the Zoning Hearing Board.
4. Planning Commission Review of Special Exception Uses.
 - a. The Planning Commission shall be provided with an opportunity to review any proposed special exception use, other than a home occupation, at a regular meeting prior to a decision by the Zoning Hearing Board. The Commission, at its option, may provide a written advisory review at their next regular meeting.
 - b. At the option of the Commission, this advisory review may take the place of any site plan review that may be required under Section 116.
 - c. Timing. If such report is not received within the time limit within which the Board must issue a decision, or within 30 days of such application being sent to the Planning Commission, then the Board may make a decision without having received comments from the Planning Commission.
5. Zoning Hearing Board Action on Special Exception Uses.
 - a. The Board shall hear and decide such request for a special exception use under the procedures of Article I and the State Planning Code.
 - b. The Board shall schedule the first hearing within 60 days of submittal of a proper application, unless granted a written extension by the applicant. The Board shall issue a decision within 45 days after the conclusion of the final hearing on the matter.
 - c. The decision of the Board shall be in writing and shall be communicated to the applicant or their representative in accordance with Article I.

- 119.C. Approval of Special Exception Uses. The Zoning Hearing Board shall approve any proposed special exception use if they find adequate evidence that any proposed use will meet:
1. All of the standards listed in Section 118.C.4
 2. Specific standards for the proposed use listed in Sections 402 and 403.
 3. All other applicable requirements of this Ordinance.
- 119.D. Conditions. In granting a special exception, the Board may require such reasonable conditions and safeguards (in addition to those expressed in this Ordinance) as it determines is necessary to implement the purposes of this Ordinance. Conditions imposed by the Zoning Hearing Board shall automatically become conditions of the construction permit issued pursuant thereto, and any failure to comply with said conditions shall be a violation of this ordinance.
120. **SITE PLANNING GUIDELINES.** The following advisory guidelines are intended to assist applicants and the City in developing well-planned developments.
- 120.A. Natural Features. Seek to minimize grading changes and removal of mature trees. Seek to preserve the natural beauty of highly visible areas. Seek to preserve land along creeks and steep hillsides.
- 120.B. Circulation. Seek to separate pedestrian circulation from major routes of vehicle traffic. Minimize the number of access points along major roads. Avoid parking spaces backing into through traffic routes. Ensure adequate capacity of driveways and drive-thru lanes to avoid traffic backing onto streets.
- 120.C. Utilities. Seek to place as many utility lines as possible underground.
- 120.D. Signs. Seek to minimize the lighting intensity of signs. Seek to avoid signs with overly bright, less attractive colors. Consider use of ground-mounted or wooden signs.
- 120.E. Compatibility. Seek to locate noisier and less compatible uses (such as loading docks) as far away from homes as possible. Seek to screen out views of less attractive activities from streets and homes.
121. **LIABILITY.**
- 121.A. Neither the approval nor the granting of any review, issuance of permit or approval related to construction, activity within the floodplain, site plan review, subdivision or land development approval, erosion control, storm water runoff, activity on steep slopes or any other review or permit of this Ordinance, by an officer, employee, consultant or agency of the City, shall constitute a representation, guarantee or warranty of any kind by the City, or its employees, officials, consultants or agencies, of the practicality or safety of any structure, use or subdivision, and shall create no liability upon, nor a cause of action against such public body, official, consultant nor employee for any damage that may result pursuant thereto.
- 121.B. If the Zoning Officer mistakenly issues a permit under this Ordinance, the City shall not be liable for any later lawful withdrawal of such permit for valid cause shown.