

URBAN RESEARCH AND DEVELOPMENT CORPORATION

28 W. Broad St. Bethlehem PA 18018
610-865-0701

Revised August 16, 2009, with editorial corrections October 16, 2009

TO: Boyertown, Colebrookdale and Pike Officials
FROM: URDC, Charlie Schmehl (cschmehl@urdc.com)
SUBJECT: **Summary of the Draft Joint Zoning Ordinance**

This memo summarizes the major policy issues regarding the draft new Joint Zoning Ordinance. This memo is not intended to provide legal advice. It will be essential to have the municipal solicitors review the proposed ordinance.

We have used the term “Governing Body” to refer to the Borough Council, Board of Supervisors or Board of Commissioners, as applicable.

Overview of Zoning

The new zoning ordinance will apply in place of the three current zoning ordinances. The intent is that each municipality would continue to maintain its own fees, its own zoning officer, its own engineer and its own zoning hearing board.

A zoning ordinance primarily regulates: a) the uses of land and buildings, and b) the densities of development. Different types of land uses and different densities are allowed in various zoning districts. A zoning ordinance also regulates: the distance buildings can be placed from streets and lot lines, the heights and sizes of signs, and the amount of parking that must be provided by new development.

Zoning is primarily intended to protect existing residential neighborhoods from incompatible development. However, it also can be used to avoid traffic problems, improve the appearance of new development, preserve historic buildings, and protect important natural features.

The Pennsylvania Municipalities Planning Code (the “MPC”) provides municipalities with the authority to regulate development. The MPC establishes limits on the ways zoning can be used and requires that certain procedures be followed.

Ways to Address Different Uses

In each zoning district, different uses are allowed or prohibited. There are three different ways that a use can be allowed:

- as a permitted by right use, with the zoning approved by the Zoning Officer,
- as a special exception use, with the zoning approved by the Zoning Hearing Board, and
- as a conditional use, with the zoning approved by the Governing Body.

Intense and potentially controversial uses should only be permitted as special exception or conditional uses. This results in a public meeting that allows public comment. The Zoning Hearing Board or Governing Body can carefully review the application to make sure that it meets County ordinances. Also, conditions can be placed upon any approval, such as conditions to protect public safety.

- However, a special exception or conditional use is still an “allowed” use. Therefore, under the law, it is difficult to reject a special exception or conditional use if the applicant proves they meet all of the specific requirements of the zoning ordinance. Generally, in such case, the application could only be rejected if an opponent or the municipality was able to prove that the application violated a “general” requirement of the Ordinance. For example, it might be possible to prove that a certain type of industrial use would generate a major public safety hazard.
- The draft ordinance proposes a mix of conditional and special exception uses. (Note - With a special exception, the Governing Body can provide testimony before the Zoning Hearing Board, and can appeal their decisions to Court.)
- Also, the number of conditional/special exception uses should be held to a reasonable minimum. If the process is overused, it becomes a burden in time and money to both the municipality and applicants.

Nonconformities

Zoning primarily regulates **new** development, expansions of uses and changes in uses. Generally, an existing use that was legal when it was first established can continue to operate regardless of zoning regulations. An existing use that would not be permitted under current zoning regulations is known as a “nonconforming use.” Generally, nonconforming uses can: a) be sold to a new operator, b) be expanded within certain limits (proposed to be a 50 percent total lifetime expansion for the building size), and c) be changed to certain different nonconforming uses. The draft would allow a nonconforming use to be changed to a different nonconforming if the applicant proves the new use is no more intense than the old use.

For example, an auto repair garage may have existed before the municipality adopted zoning. It is located in a residential district. It may be changed to a store, which would be less intense. However, it could not be changed to an asphalt plant, which would be more intense.

Likewise, in most cases, existing vacant lots that were legally established may be built upon – even if they do not meet the minimum size requirements of a zoning ordinance. However, any building would still need to meet setback requirements, wetland regulations and sewage requirements.

Lot Sizes

Please keep the following lot sizes in mind:

One acre = 43,560 square feet (such as 150 by 290 feet)

One-half acre = approximately 22,000 square feet (such as 125 by 175 feet)

One-quarter acre = approximately 11,000 square feet (such as 80 by 135 feet)

Major Goals and Objectives

The following are derived from land use goals in the Regional Comprehensive Plan.

- Provide for compatibility between different types of development, particularly to protect residential areas from very intense business uses and nuisances.
- Maintain a strong agricultural economy and promote the preservation of contiguous areas of prime farmland.
- Direct most new residential development to areas that are not adjacent to agricultural uses.
- Protect the water supplies, including groundwater and surface waters.
- Seek that new development be clustered on the most suitable portions of a tract, while permanently preserving sensitive natural areas.
- Conserve important natural areas, particularly very steep wooded slopes and creek valleys.
- Maintain a natural vegetative buffer along creeks.
- Direct most new residential development to areas that can be efficiently served by public water and sewerage services, to minimize consumption of land.
- Avoid excessive regulations upon routine changes by residents to their residential properties.
- Provide for a range of housing choices at various densities, to meet the needs of diverse types of households and persons of all ages.
- Seek to strengthen a sense of community and a community of neighborhoods, extending the best features of older neighborhoods into new development.
- Coordinate development and traffic patterns across municipal borders.
- Seek to preserve important historic buildings.
- Strengthen economic activity in downtown Boyertown, while promoting a pedestrian-friendly streetscape.
- Meet obligations under State law to provide opportunities for all types of land uses in at least one buildable area in the region.
- Promote appropriate types of businesses in business zoning districts to attract employers and generate additional tax revenue, while avoiding locating the most intense business uses next to residential areas.
- Direct most business uses to selected sites with good access towards Routes 100, 562 and 73.

- Provide suitable areas for mining, with appropriate reclamation of the land.

Regional Comprehensive Plan

The State Municipalities Planning Code provides that zoning ordinances should be generally consistent with an adopted Comprehensive Plan. The Regional Comprehensive Plan includes a Land Use Plan Map that divides the Region into various land use categories, such as: various densities of Residential, Village Commercial, Industrial, Planned Business Development (renamed Light Industrial) and Rural Preservation (renamed Rural Conservation).

Open Space Development

Open Space Residential Development is also known as “cluster development” or “conservation development.” The goal of Open Space Development is to have substantial areas of open space permanently preserved within any new development. New homes would have to be located in a manner that protects important natural features. Special attention would be paid towards protecting sensitive lands such as wetlands, clusters of mature trees and stream corridors. In comparison, conventional subdivisions usually result in little or no preserved open space because the entire tract is subdivided into building lots. Often most of the building lots in a conventional subdivision are virtually the same size and shape—hence the nickname “Cookie Cutter Subdivisions.”

The goal is to encourage subdivision design that places homes on the most suitable portions of a tract, with the important natural areas being preserved, such as lands along creeks. The open space development option allows developers more flexibility in site layout. For example, developers can make better use of site topography and avoid soils that are not suitable for septic systems. Open Space development also permit the developer to cluster building lots thereby reducing road lengths, grading and utility extensions - each of which saves on construction and maintenance costs.

Open space development can help to maintain the scenic character of the region by preserving landscaped open areas between developments. Preserved open space can often increase values of adjacent homes. Open space development also can avoid stormwater and sinkhole problems by reducing alterations to the environment.

Open space development primarily works through incentives and disincentives, by allowing smaller lot sizes (such as a 50 percent reduction) in return for open space preservation (such as 40% of the tract).

Open space development can allow smaller lots on part of a tract without dramatically increasing the total number of homes built on a tract. This can be achieved by increasing the current minimum lot size if open space is not preserved, and then requiring that open space be preserved in order to obtain current lot sizes.

The density needs to be calculated in a manner that does not result in an excessively high increase in density for an Open Space Development vs. a conventional development. Otherwise, on a tract with many unbuildable areas, the allowance of smaller lots could be mis-used to allow a high density on the buildable portions of the tract, while counting lands that are entirely unbuildable as the open space.

Colebrookdale currently has a cluster development option, but it does not include all of the safeguards and design standards of Open Space Development.

This option would be possible in the bulk of Pike Township, except within the AC Agricultural Conservation and RC Rural Conservation districts.

Several alternatives exist for long term maintenance of the preserved open space, including ownership by a legally-binding homeowners association, the Township, the County, or a land conservancy. In most cases, the preserved open space would be low-maintenance areas that are planted to eventually become reforested, and that would be owned by homeowner associations. However, in some cases, it may be suitable to seek Township parkland. The ordinance could also allow a golf course to count as open space. If there are not other alternatives to manage the open space, then the County could allow the open space to be part of one very large private lot, with conservation easements to make sure that the vast majority of that lot will remain preserved.

Wherever feasible, open space should be provided in locations that can connect to existing public or semi-public open spaces or preserve land along a creek valley or the river. Opportunities should be also sought for trails that will connect with neighborhoods and public lands. In some cases, the open space could remain in an agricultural use or a horse farm.

There needs to be careful standards on the types of land that are allowed to be counted towards the open space requirement. For example, at least half of the required open space could be in one contiguous lot, and areas of less than 50 feet in width could not count as open space. Proper standards are needed to make sure that the preserved open space is well-located and improved so that it serves important public functions.

Zoning District Recommendations

The following summarizes the draft zoning districts. A separate zoning map is proposed for each municipality.

RC Rural Conservation and RC-O Rural Conservation- Open Space Districts

The Plan showed the rural areas of Pike as “Rural Preservation” areas. The term Rural Conservation is preferable for legal reasons vs. Rural Preservation. Based upon the Comprehensive Plan, these RC and RC-O areas in Pike Township would require minimum 3-acre lots. Within the RC-O areas, Open Space Development (as described above) would be allowed as an option. That option would allow 1.5 acre minimum lots if preserved open space equals at least 40% of total tract size.

This category is intended to: a) preserve agriculture and the rural environment, b) protect sensitive natural features, including high-quality waterways, steep slopes, and large woodland blocks, and c) accommodate only very low density, single-family detached home development with significant preserved open space, preferably not in mowed lawn.

RA Rural Agricultural District

This district would be similar to the RC district, except it would allow smaller lots in Colebrookdale Township. A 2 acre minimum lot size is proposed. This lot size could be reduced to 1 acre through use of the Open Space Development Option, if at least 40 percent of the tract was preserved in open space.

AC Agricultural Conservation District

This new proposed zoning district would emphasize continuation of agricultural activities. Only a limited number of homes would be allowed per tract of land, such as 1 new lot on a tract of 2 to 20 acres, 2 new lots on a tract of 20 to 30 acres, etc. New lots of over 15 acres would not be limited in number. The intent is to emphasize placing a limited number of homes on portions of the land that are not prime for crops. A lot could not contain more than 2 acres of prime agricultural soils.

LDR Low Density Residential District

The Plan recommends that these areas provide for low density, single-family residential development with significant preserved open space. They also serve as a transition area between the RA district and more developed parts of the region.

Throughout the region, whenever there would be use of an on-lot septic system, a lot size of one acre or more would be required. A slight reduction is proposed if a developer installs a central water system.

The LDR district is proposed to allow 20,000 square feet (1/2 acre) lots if public water and sewage services are provided. If the Open Space Development Option would be used, the lot size could be reduced to 10,000 square feet (1/4 acre), if 40 percent of the tract is preserved.

LDR-B Low Density Residential - Boyertown District

In Boyertown Borough, this district would mainly allow for single family detached houses on 9,000 square feet lots (slightly less than 1/4 acre).

MDR Medium Density Residential District

This district would allow for medium density development, including single-family detached houses on 6,000 square feet lots or twin home or townhouse development. that averages a maximum of 6 homes per acre.

GR General Residential District

The Plan recommends that these areas provide for a variety of housing types in Boyertown Borough and Colebrookdale Township. A minimum lot size of 5,000 square feet would apply for single family detached houses. Other types of housing would be allowed at a maximum of 7 to 8 housing units per acre.

GR/O General Residential/Office

Currently, offices are allowed in Boyertown along Philadelphia Ave. This policy would be continued through this district. In other ways, this district would be the same as the GR district.

VC Village Commercial District

This district would allow a mix of lighter types of commercial uses and homes. For example, it would allow offices, personal services, retail sales and day care centers. It would prohibiting drive through restaurants, gas stations and other heavy commercial uses.

TC Town Center District

This district would include the Downtown of Boyertown and other older commercial areas that are near homes. It is intended to provide for a mix of housing and lighter commercial uses, while prohibiting drive-through restaurants, gas stations, auto sales, and similar uses that would intrude into the character of the downtown.

New apartments would only be allowed if there was a street level commercial use on the lot.

GC General Commercial District

These areas are intended to provide for a wide range of commercial uses, in areas with few homes and that are not historic in character.

LI Light Industrial District

The Plan recommends providing for a campus-style, planned business developments in Colebrookdale Township and Boyertown Borough.

Based upon the Plan, these areas would provide for offices, research facilities, light industrial uses and flex space, preferably within a business park constructed with extensive landscaping and buffers next to residential areas. We also have proposed allowing some complementary commercial uses in this district, such as exercise clubs, banks, and day care centers.

GI/Q General Industrial / Quarry District

This district would meet obligations under State law to have locations that allow for all types of industries, including heavier uses and quarrying. The heavier uses can be controlled through the special exception process, additional setbacks and larger lot size requirements. Particular attention needs to be focused upon quarries, landfills, trash transfer stations, chemical plants, asphalt plants, and other high impact industrial uses.

Environmental Conservation

In cooperation with the Brandywine Conservancy, a full set of environmental protection provisions are proposed in the two townships, including the following topics.

Forestry

Forestry must be allowed as a by right use. However, regulations should include prohibiting clear cutting on steep slopes and areas close to creeks.

Creek Conservation

A set of “riparian buffer” provisions would be used to protect areas along creeks. The goal is to maintain conservation buffers of thick vegetation along the creek. Thick vegetation helps to screen eroded soil and other pollutants from stormwater runoff before they enter creeks. These green corridors also help to maintain quality habitats for fish and provide corridors for movement of wildlife. The closer a location is to a creek, the less disturbance is proposed to be allowed.

There are already regulations in place that limit the construction of buildings with floodprone areas. The 100 year floodplain is the area expected to be flooded during the worst flood in an average 100 year period. The Federal government has provided maps that estimate the extent of these floodplains. In the townships, we recommend making sure that no buildings or parking areas are allowed in the floodplain.

Groundwater

The ordinance can include provisions requiring a study if a large withdrawal of water is proposed for water bottling operations. Provisions can require a professional hydrogeological study before any large withdrawal of water is made. Care is needed to protect the watersheds of the public water supplies from uses most likely to cause contamination.

Wetland Buffers

A buffer is proposed around delineated wetlands.

Steep slope protection.

The draft ordinance includes limits on the amounts of steeply sloped areas that can be disturbed and re-graded.

Historic Preservation

The Comprehensive Plan includes a map of historic buildings. We recommend that the municipalities require zoning approval before an important historic building could be demolished. The municipalities can decide whether some or all of these buildings are regulated, but State law says that a zoning ordinance must include some type of provision.

The Plan recommends allowing certain uses within historic properties that would otherwise be prohibited in residential areas (e.g. bed and breakfast, small crafts sales, small office use).

Signs

Updated sign provisions are in the draft. The sign provisions mainly address height, size and location of various types of signs. There would be stricter sign provisions in the downtown than in the general

commercial areas. The draft encourages older styles of projecting signs (that project vertically from the building) in the center of downtown Boyertown. Those signs increase visibility for motorists and pedestrians, particularly when there is not room for a freestanding sign. In the Borough, temporary sidewalk signs would be allowed, such as restaurant menu boards.

Every municipality in Pennsylvania must permit billboards in at least one zoning district. It is important to have a large separation distance between billboards and large setbacks from residential districts. Most new billboards would be limited to 300 square feet. Most existing billboards are 300 or 674 square feet billboards.

The draft would carefully regulate electronically changing billboards, animated signs and other types of video displays on signs. The new trend is to place electronic video screens on billboards that change every 6 seconds. We believe that is overly distracting to motorists.

The draft ordinance was written to not to over-regulate political signs, in response to a number of legal challenges that have been filed in Federal court against municipalities.

Lighting

Additional controls are proposed to limit excessive lighting and to make sure that lighting is properly directed so that it does not cause glare for neighbors and motorists. Lighting is typically controlled by "spillover" onto residential lots.

Landscaping

The draft ordinance emphasizes landscaping in new development. This is the best way to improve the appearance of development – particularly because a municipality cannot control architecture. Shade trees would be required within and around parking lots and along streets, wherever existing woods will not be preserved. Street trees should be required along all new roads. A green strip would be required between new businesses and streets, outside of the downtown. Any overnight outdoor storage of multiple trucks would required to be screened by plants from view from streets.

Please contact us if there are any questions or comments.