

**ARTICLE 16 -
ADMINISTRATION & ENFORCEMENT**

Section 1600 Applicability of this Ordinance

- A. This Zoning Ordinance shall apply throughout Mount Holly Springs Borough. Any activity regulated by this Ordinance shall only occur in such a way that conforms with the regulations of this Ordinance.

Section 1601 Administration

- A. The provisions of this Ordinance shall be enforced by an agent, to be appointed by the Mount Holly Springs Borough Council who shall be known as the Zoning Officer. The Zoning Officer may have designated an employee of Mount Holly Springs Borough as his Assistant, who shall exercise all the powers of the Zoning Officer during the temporary absence or disability of the Zoning Officer.
- B. The duties of the Zoning Officer shall be:
1. Administer the Zoning Ordinance;
 2. To receive, examine and process all applications and permits as provided by the terms of this Ordinance. The Zoning Officer shall also issue zoning permits for special exception and conditional uses, or for variances after the same have been approved;
 3. To record and file all applications for zoning permits or certificates of occupancy, and accompanying plans and documents, and keep them for public record;
 4. To inspect properties to determine compliance with all provisions of this Ordinance as well as conditions attached to the approval of variances, special exceptions, conditional uses and curative amendments;
 5. Determine the date before which steps for compliance must be commenced and the date before which the steps must be completed. The Zoning Officer shall determine an appropriate duration of time for compliance of the specified activity. Extensions up to a total of 90 days from the date of receipt of the enforcement notice may be granted at the discretion of the Zoning Officer if applied for in writing;
 6. Upon the request of the Mount Holly Springs Borough Council or the Zoning Hearing Board, present to such bodies facts, records, and any similar information on specific requests, to assist such bodies in reaching their decisions;
 7. To be responsible for keeping this Ordinance and the Official Zoning Map up to date, including any amendments thereto;
 8. To revoke a permit or approval issued under the provisions of this Ordinance in case of any false statement or misrepresentation of fact in the application or on the plans on which the permit or approval was based or for any other cause set forth in the Zoning Ordinance, or otherwise permitted by law;
 9. To review proposed subdivisions and land developments for compliance with this Ordinance; and
 10. To take enforcement actions as provided by the State Municipalities Planning Code, as amended.

Section 1602 Permits & Certificates

- A. A Zoning Permit indicates that a zoning application complies with this Ordinance to the best knowledge of the Zoning Officer or his/her designee. No zoning permit or certificate of use and occupancy shall be granted by him/her for any purpose except in compliance with the literal provisions of this Ordinance. The Zoning Officer may be authorized to institute civil enforcement proceedings as a means of enforcement when acting within his/her scope of employment.
1. A Zoning Permit is required to be issued prior to the start of any of the following activities:
 - a. Change of the type of use or expansion of the use of a structure or area of land;
 - b. Creation of a new use.
 2. A Zoning Permit may be requested to verify that the use of a property or the structures on a property is in conformity with the terms of the Zoning Ordinance.
 3. A Building Permit is required to be issued prior to the start of any of the following activities:
 - a. Erection, construction, movement, placement, razing, demolition, removal, alteration or expansion (vertical or horizontal) of a structure, building or sign;
 - b. Other activities required to have a permit by this Ordinance;
 - c. The alteration or development of any improvement or unimproved real estate, including, but not limited to, mining, dredging, filling, grading, paving, excavation or drilling operations for underground utilities provided the final grade is not altered;
 - d. The erection or alteration of any signs specified in Article 13 of this Ordinance;
 - e. The construction or installation of animal waste impoundments, lakes, ponds, dams, or other water retention basins;
 - f. No building permit shall be required for repairs or maintenance of any structure or land provided such repairs do not change the use or the exterior dimensions of the structure, or otherwise violate the provisions of this Ordinance.
 4. Mount Holly Springs Borough may, at its option, issue combined or separate Building Permits and Zoning Permits and/or may utilize a single or separate application for the permits.
 5. The only determination by the Zoning Officer that shall be official shall be a written determination after the Zoning Officer receives a duly submitted written official application.
 6. All permits shall be granted or refused within ninety (90) days from date of application.
 7. No permit shall be issued except in conformity with:
 - a. All applicable regulations of this Ordinance;
 - b. Any conditions imposed upon the site by the Zoning Hearing Board or the Mount Holly Springs Borough Council; and
 - c. Any recorded subdivision or land development plan.

8. In all instances in which the Zoning Officer expresses a reasonable doubt as to the ability of a proposed use to meet all of the above-described requirements, it will be incumbent upon the applicant to furnish adequate evidence in support of his application. If such evidence is not presented, the zoning permit will be denied.
9. Application for a permit shall be made by the Owner or Lessee of any building or structure, or the agent of either; provided, however, that if the application is made by a person other than the Owner or Lessee, it shall be accompanied by a written authorization of the Owner or the qualified person making the application. The full names and addresses of the Owner, Lessee, Applicant, and of the responsible officers, if the Owner or Lessee is a corporate body, shall be stated in the application.
10. The Zoning Officer may call upon other Mount Holly Springs Borough staff and/or municipal appointed consultants in the review of submitted materials for applications;
11. Where a building permit is required by this Ordinance, but the work is commenced or changed prior to obtaining such permit, and after notice by Mount Holly Springs Borough the fees set by ordinance or resolution of the Mount Holly Springs Borough Council for such permit shall be doubled. The doubling of the permit fee shall be required to reflect the additional expense incurred by Mount Holly Springs Borough resulting from the need to inspect the property, respond to any complaints, and issue any enforcement notices and/or process the application as soon as it is received. The payment of such increased permit fee shall not relieve any person from complying with all requirements of this Ordinance or any other applicable Mount Holly Springs Borough ordinances or from any penalties or enforcement actions authorized by this Ordinance.
12. Issuance of Permits. Upon receiving the application, the Zoning Officer shall examine the same within a reasonable time after filing. If the application does not conform to the provisions of all pertinent local laws, he shall reject such application in writing, stating the reasons therefore. He shall inform the applicant of his right to appeal to the Zoning Hearing Board in the event such application is rejected. If satisfied that the use, structure and/or proposed work conforms to the provisions of the Zoning Ordinance and all laws and ordinances applicable thereto, he shall issue a permit therefore as soon as practical but not later than ninety (90) days from receipt of the application.
13. Reconsideration of Application. An applicant whose request for a permit has been denied by the Zoning Officer may make a later application for a permit provided all deficiencies which were the basis for the prior denial of the permit have been eliminated. Additional fees may apply as set by the Mount Holly Springs Borough Council.
14. Expiration of Permits.
 - a. A zoning permit shall not expire except for a zoning permit issued for a nonconforming use which has thereafter been abandoned for more than one (1) year; provided, however, that the same may be extended one time for one (1) additional year, upon written request by the applicant.
 - b. A building permit shall expire after one (1) year from the date of issuance; provided, however, that the same may be extended one time for one (1) additional year, upon written request by the applicant.
15. Compliance with Ordinance.

- a. Zoning Permit. The zoning permit shall be a license to conduct the use and confirmation that the use set forth on the permit and all structures on the property are in conformity with, or are existing nonconformities according to, the Zoning Ordinance.
 - b. Building Permit. The building permit shall be a license to proceed with the work and should not be construed as authority to violate, cancel, or set aside any of the provisions of the Zoning Ordinance, except as stipulated by the Zoning Hearing Board or Mount Holly Springs Borough Council.
16. Compliance with Permit and Plot Plan. All work or uses shall conform to the approved application and plans for which the permit has been issued as well as the approved plot plan.
 17. Display of Building Permit. All approved building permits shall be prominently displayed on the subject property during construction, renovation, reconstruction, repair, remodeling or the conduct of other site improvements. Such permit displays shall occur within five (5) days of permit issuance, or prior to the commencement of actual work on the site, whichever occurs first. Such permit display shall be continuous until the site receives its certificate of occupancy.
 18. Inspections. Inspections of the property in question by the Zoning Officer or other duly appointed official may be required at various intervals during the construction process. By submitting an application for a building permit, the landowner authorizes Mount Holly Springs Borough to perform such inspections as required.

Section 1603 Certificate of Use and Occupancy

- A. It shall be unlawful to use and/or occupy any structure, sign, land area or portion thereof for which a Zoning Permit is required until a Certificate of Use and Occupancy for such activity has been issued by the Zoning Officer.
- B. The Mount Holly Springs Borough staff may permit the Zoning Permit application to serve as the application for the Certificate of Use and Occupancy.
- C. The Certificate of Use and Occupancy shall only be issued by the Zoning Officer, or his designated representative, if he determines that the activity complies with this Ordinance, to the best of his knowledge.
- D. The applicant shall keep a copy of the Certificate of Use and Occupancy available for inspection.
- E. Upon request of the applicant, the Zoning Officer may issue a temporary Certificate of Use and Occupancy. Such temporary Certificate may permit an activity to occur in all or part of a structure before the entire work covered by the zoning permit has been completed.
 1. However, such temporary Certificate shall only be issued if the applicant proves to the Zoning Officer that the activity or occupancy can occur safely without endangering public health or safety.
 2. The temporary Certificate shall establish in writing a maximum time period under which it is valid. A 6 month maximum time period shall apply if not otherwise specified.
 3. Failure to receive a permanent Certificate of Use and Occupancy within such time period shall be a violation of this Ordinance.

4. The temporary Certificate may be conditioned upon compliance with certain specific requirements within certain time periods.
- F. The Zoning Officer or his designee shall inspect any structure, building, or sign upon notification that the proposed work that was listed under a zoning permit has been completed and if satisfied that the work is in conformity and compliance with the work listed in the issued permit and all other pertinent laws, he shall issue a Certificate of Use and Occupancy for the intended use listed in the original application. Where a building permit is required under the Uniform Construction Code, a certificate of use shall not be issued until a final inspection by the Building Code Official is complete and found to be satisfactory.

Section 1604 Zoning Permit for Temporary Uses and Structures

- A. A Zoning Permit for a temporary use or structure may be issued by the Zoning Officer for any of the following:
1. Customary, routine and accessory short-term special events, provided that only a well-established nonprofit organization or a permitted place of worship proposing a temporary use demonstrates clearly that the proposed use will primarily serve a charitable, public service or religious purpose in order to be eligible to receive approval for commercial-type activities in a district where a commercial use would not otherwise be permitted;
 2. Temporary storage and office trailers that are necessary to serve on-site construction, while such construction is actively underway;
 3. Such other activities that the applicant proves are routine, customary and temporary.

- B. Time Period. The Zoning Officer shall state a reasonable maximum time period on the temporary permit. If no time limit is stated, then a 6 month maximum period shall apply. A temporary permit may be renewed for just cause.

Section 1605 Types of Uses

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

Section 1606 Applications for Zoning Permits

- A. Submittal. All applications for a Zoning Permit shall be made in writing on a form provided by Mount Holly Springs Borough. Such completed application, with required fees, shall be submitted to a designated Mount Holly Springs Borough employee.
- B. Site Plan. The applicant shall submit a minimum of 2 copies of a site plan with the application if the request involves use of a structure or the conformity of any structure to the Zoning Ordinance. The site plan shall be drawn to scale and show the following:
 - 1. Locations, dimensions and uses of existing and proposed structures, parking and loading areas, and location of existing and proposed uses of areas of land, with existing features clearly distinguished from proposed features.
 - 2. Notes showing the distances of all structures from lot lines and street rights-of way;
 - 3. Location of any watercourses and any 100 year flood boundary;
 - 4. Lot areas, lot widths and other applicable dimensional requirements; and
 - 5. Locations and widths of existing and proposed sidewalks.
- C. Additional Information. A Zoning Permit application under this Ordinance shall include the following information, unless the Zoning Officer determines such information is unnecessary to determine compliance with this Ordinance:
 - 1. Address of the lot and the Cumberland County Tax Parcel Identification Number (PIN).
 - 2. Name and address of the applicant, and of the owner of the property if different from the applicant.

3. Description of the existing and proposed use of the property.
4. All other applicable information listed on the official Mount Holly Springs Borough application form.
5. Such additional information that the Zoning Officer may determine is reasonably necessary to determine compliance with this Ordinance.

Section 1607 Applications for Building Permits

- A. **Submittal.** All applications for a Building Permit shall be made in writing on a form provided by Mount Holly Springs Borough. Such completed application, with required fees, shall be submitted to a designated Mount Holly Springs Borough employee.
- B. **Site Plan.** The applicant shall submit a minimum of 2 copies of a site plan with the application if the application involves a new structure, expansion of a structure or addition of 3 or more parking spaces. The site plan shall be drawn to scale and show the following:
 1. Locations, dimensions and uses of existing and proposed structures, parking and loading areas, and location of existing and proposed uses of areas of land, with existing features clearly distinguished from proposed features.
 2. Notes showing the distances of all structures from lot lines and street rights-of way;
 3. Location of any watercourses and any 100 year flood boundary;
 4. Lot areas, lot widths and other applicable dimensional requirements; and
 5. Locations and widths of existing and proposed sidewalks.
- C. **Additional Information.** A Building Permit application under this Ordinance shall include the following information, unless the Zoning Officer determines such information is unnecessary to determine compliance with this Ordinance:
 1. Address of the lot and the Cumberland County Tax Parcel Identification Number (PIN);
 2. Name and address of the applicant, and of the owner of the property if different from the applicant;
 3. Description of the proposed use of the property;
 4. All other applicable information listed on the official Mount Holly Springs Borough application form; and
 5. Such additional information that the Zoning Officer may determine is reasonably necessary to determine compliance with this Ordinance.
- D. **Application for Building Permits in All Commercial and Industrial Zones (excluding demolition permits)** shall include the following:
 1. A location plan showing the tract to be developed, zone boundaries, adjoining tracts, significant natural features, and streets for a distance of two hundred feet (200') from all tract boundaries;

2. A plot plan certified by a professional surveyor or engineer of the lot showing the location of all existing and proposed buildings, driveways, parking lots showing access drives, circulation patterns, curb cut accesses, parking stalls, access from streets, screening fences and walls, waste disposal fields or other methods of sewage disposal, other construction features on the lot, and the location of all topographical features;
 3. A description of the operations proposed in sufficient detail to indicate the effects of those operations in producing traffic congestion, noise, glare, air pollution, water pollution, vibration, fire hazards, safety hazards, or the emission of any potentially harmful or obnoxious matter or radiation;
 4. Evidence that the disposal of materials and wastes will be accomplished in a manner that complies with State and Federal regulations. Such evidence shall, at a minimum, include copies of contracts with waste haulers licensed to operate within Cumberland County which have been contracted to dispose of the materials used and wastes generated on-site. Should the nature of the use change in the future such that the materials used or wastes generated change significantly, either in type or amount, the owner shall so inform the Zoning Officer, and shall provide additional evidence demonstrating continued compliance with the requirements of this section;
 5. Engineering plans for the handling of traffic, noise, glare, air pollution, water pollution, vibration, fire hazards, or safety hazards, smoke, or emission of any potentially harmful or obnoxious matter or radiation;
 6. Designation of the manner by which sanitary sewage and storm water shall be disposed and water supply obtained; and
 7. Submission, approval and recordation of a Subdivision or Land Development plan, as required.
- E. Areas Subject to Flooding. If the proposed development, excavation or construction is located within an area subject to regulation by the Mount Holly Springs Borough Floodplain Ordinance, the following information is specifically required to accompany a Building Permit application, as prepared by a licensed professional:
1. The accurate location and elevation of the floodplain and floodway;
 2. The elevation, in relation to the National Geodetic Vertical Datum of 1929 (NGV D), of the lowest floor, including basements;
 3. The elevation, in relation to the NGVD, to which all structures and utilities will be flood-proofed or elevated;
 4. Where flood proofing is proposed to be utilized for a particular structure, the building permit application shall be accompanied by a document certified by a licensed professional engineer registered by the Commonwealth of Pennsylvania, or a licensed professional architect registered by the Commonwealth of Pennsylvania certifying that the flood-proofing methods used meet all applicable codes and ordinances.

- F. Submittals for Special Exception or Conditional Uses. In addition to the information listed above, an application for a Special Exception or Conditional Use requiring a site plan and action by the Zoning Hearing Board or Mount Holly Springs Borough Council shall also include the following information, unless the Zoning Officer determines that such information is not necessary to determine compliance with this Ordinance:
1. Present zoning district and all applicable lot requirements.
 2. For non-residential use:
 - 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.
 - b. Maximum hours of operation.
 3. Existing directions of stormwater flow (and any proposed revisions) and any proposed methods of stormwater management.
 4. Listing of any sections of this Ordinance from which a Variance is being requested.
 5. Approximate locations of principal buildings and locations of streets and alleys and zoning district boundaries within 100 feet of the boundaries of the tract, and description of uses of adjoining properties (such as “drug store” or “single-family detached dwelling”).
 6. Heights, locations, methods of illumination and intensity of exterior lighting and sign lighting.
 7. Name and address of person who prepared the site plan.
 8. Signed acknowledgement of the site plan by the applicant.
 9. Such additional information required under applicable sections of this Ordinance.

Section 1608 Issuance of Permits

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

Section 1609 Revocation of Permits; Appeal of Permit or Approval

- A. Revocation. The Zoning Officer shall revoke, withhold or suspend a permit or approval issued under the provisions of this Ordinance in the case of one or more of the following:
 1. Any false statement or misrepresentation of fact in the application or on the plans on which the permit or approval was based. (Note: The Pennsylvania Criminal Code provides for penalties for providing false information to a municipal employee in the carrying out of his/her duties).

2. Upon violation of any condition lawfully imposed by the Zoning Hearing Board for a Special Exception Use or a Variance.
 3. Upon violation of any condition lawfully imposed by the Mount Holly Springs Borough Council for a Conditional Use.
 4. Any work being accomplished or use of land or structures in such a way that does not comply with this Ordinance or an approved site plan or approved permit application.
 5. Any other just cause set forth in this Ordinance.
- B. Appeals. A party with legitimate standing, or as otherwise provided by State law, may appeal decisions made under this Ordinance within the provisions of the Pennsylvania Municipalities Planning Code (MPC). Such appeal shall occur within the time period established by the MPC.

Section 1610 Compliance with Mount Holly Springs Borough Subdivision and Land Development Ordinance

- A. If an application under this Ordinance would also be regulated by the Mount Holly Springs Borough Subdivision and Land Development Ordinance (“SALDO”), then any permit or approval under this Zoning Ordinance shall automatically be conditioned upon compliance with the SALDO.
1. For example, if an applicant applies for a permit for a single-family detached dwelling on a proposed new lot, the construction permit for such dwelling shall not be valid until after the lot is granted final subdivision and land development approval and the lot is officially recorded by the County Recorder of Deeds.

Section 1611 General Procedure for Permits

- A. After receiving a proper application, the Zoning Officer shall either (1) issue the applicable permit(s); or (2) deny the application(s) as submitted, indicating one or more reasons in writing to the applicant.
- B. After the permit under this Ordinance has been issued, the applicant may undertake the action specified in the permit, in compliance with other Mount Holly Springs Borough 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.

Section 1612 Interpretation and Uses Not Regulated

- A. Minimum Requirements. Where more than one provision of this Ordinance controls a particular matter, the provision that is less restrictive upon uses and structures shall apply. The provisions of this Ordinance are in addition to any other applicable Mount Holly Springs Borough Ordinance.
- B. Uses Not Specifically Regulated. If a use clearly is not permitted By Right, Conditional Use or as a Special Exception Use by this Ordinance within any Zoning District, the Borough Council may permit such use as a Conditional Use if the applicant specifically proves to the Borough Council that all of the following conditions would be met:
1. Proposed use would be less or as intensive in external impacts and nuisances than uses that are permitted in the Zoning District.
 2. Proposed use would be closely similar in impacts and character to uses permitted in that zoning district.

3. Use would meet the standards that would apply for a Special Exception use.
4. Use is not specifically prohibited in that Zoning District.

C. Interpretation of Ordinance Text and Boundaries

1. The Zoning Officer shall apply the wording of this Ordinance and the location of all Zoning District boundaries to applications. In any case, the Zoning Officer may also request an advisory opinion from the Mount Holly Springs Borough Solicitor or the Zoning Hearing Board Solicitor to aid in the Zoning Officer's determination.
2. If an applicant disagrees with the Zoning Officer's determination and believes that the Ordinance should be interpreted in the applicant's favor, the applicant may appeal to the Zoning Hearing Board.

Section 1613 Interpretation of Zoning Boundaries

The following rules shall apply where uncertainty exists as to boundaries of any district as shown on the Zoning Map:

- A. District boundary lines are intended to follow or be parallel to the center line of street rights-of-way, creeks, railroads and lot lines (according to official County records) as they existed at the time of the adoption of this Ordinance, unless such District boundary lines are fixed by dimensions as shown on the Official Zoning Map.
- B. Where a district boundary is not fixed by dimensions and where it approximately follows lot lines, such boundary shall be construed to follow such lot lines unless specifically shown otherwise.
- C. The location of a district boundary that divides a lot shall be determined by the use of the scale appearing on the Zoning Map unless indicated otherwise by dimensions.
- D. Where a municipal boundary divides a lot, the minimum lot area shall be regulated by the municipality in which the principal use(s) are located, unless otherwise provided by applicable case law. The land area within each municipality shall be regulated by the use regulations and other applicable regulations of each municipality.

Section 1614 Enforcement, Violations and Penalties

All of the enforcement, violations and penalty provisions of the Pennsylvania Municipalities Planning Code, as amended, are hereby incorporated into this Ordinance by reference.

- A. Violations. Any person who shall commit or who shall permit any of the following actions violates this Ordinance:
 1. Failure to secure a Zoning Permit prior to a change in use of land or structure, or the erection, construction or alteration of any structure or portion thereof, or the excavation of land to prepare for the erection, construction or alteration of any structure or portion thereof.
 2. Placement of false statements on or omitting relevant information from an application for a Zoning Permit.
 3. Undertaking any action in a manner which does not comply with an approved Zoning Permit.

4. Violation of any conditions imposed by a decision of the Zoning Hearing Board in granting a Variance, Special Exception or other approval.
5. Violation of any condition imposed by a decision of the Mount Holly Springs Borough Council in granting a Conditional Use.

B. Causes of Action; Enforcement; Remedies

1. Enforcement. If it appears to Mount Holly Springs Borough that a violation of this Zoning Ordinance has occurred, Mount Holly Springs Borough shall initiate enforcement proceedings by sending an enforcement notice. Prior to sending an official enforcement notice, the Zoning Officer may at his/her option informally request compliance.
2. Enforcement Notice. The enforcement notice shall be sent to the owner of record of the parcel on which the violation has occurred, to any person who has filed a written request to receive enforcement notices regarding that parcel, and to any other person requested in writing by the owner of record. An enforcement notice shall state the following, at minimum:
 - a. The name of the owner of record and any other person against whom the municipality intends to take action.
 - b. The location of the property in violation.
 - c. The specific violation with a description of the requirements which have not been met, citing in each instance the applicable provisions of the Zoning Ordinance.
 - d. The date before which the steps for compliance must be commenced and the date before which the steps must be completed.
 - e. That the recipient of the notice has the right to appeal to the Zoning Hearing Board within a prescribed period of time in accordance with procedures set forth in this Ordinance.
 - f. That failure to comply with the notice within the time specified, unless extended by the Zoning Officer, constitutes a violation, with possible sanctions clearly described.
3. Evidence & Fees. In any appeal of an enforcement notice to the Zoning Hearing Board, Mount Holly Springs Borough shall have the responsibility of presenting its evidence first. Any filing fees paid by a party to an appeal to an enforcement notice to the Zoning Hearing Board shall be returned to the appealing party by Mount Holly Springs Borough if the Zoning Hearing Board, or any court in a subsequent appeal, rules in the appealing party's favor.
4. Cause of Action. If the enforcement notice is not complied with, within the specified time period, the Zoning Officer shall notify the Mount Holly Springs Borough Council. The Mount Holly Springs Borough Council may institute any appropriate action or proceeding to prevent, restrain, correct or abate such building, structure, landscaping or land, or to prevent in or about such premises, any act, conduct, business or use constituting a violation.
5. Violations and Penalties. Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of this Ordinance shall, upon being found liable therefore in a civil enforcement proceeding commenced by Mount Holly Springs Borough, pay a judgment of not more than five hundred dollars (\$500) plus all court costs, including the reasonable attorney's fees incurred by Mount Holly Springs Borough as a result thereof. No

judgment shall commence or be imposed, levied or be payable until the date of the determination of a violation by the Magisterial District Judge. If the defendant neither pays nor timely appeals the judgment, Mount Holly Springs Borough may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless a Magisterial District Judge determines 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, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination by the Magisterial District Judge, and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable attorney's fees collected for the violation of this Ordinance shall be paid over to Mount Holly Springs Borough. Imprisonment shall not be authorized by this Ordinance.

Section 1615 Fees

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

Section 1616 Amendments

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

6. Adjournment of Public Hearing. If during the public hearing process, the Mount Holly Springs Borough Council needs additional time to understand the proposal, inform the public, receive public comment, and/or render a decision, it may adjourn the public hearing to a specific time and place; and,
 7. Within thirty (30) days after enactment, a copy of the amendment to the Zoning Ordinance shall be forwarded to the County Planning Commission;
- C. Amendment Initiated by the Mount Holly Springs Borough Planning Commission. When an amendment, supplement, change or repeal is initiated by the Mount Holly Springs Borough Planning Commission, the proposal shall be presented to the Mount Holly Springs Borough Council which shall then proceed in the same manner as with a petition to the Mount Holly Springs Borough Council which has already been reviewed by the Mount Holly Springs Borough Planning Commission;
 - D. Amendment Initiated by the Mount Holly Springs Borough Council. When an amendment, supplement, change or repeal is initiated by the Mount Holly Springs Borough Council, such amendment, supplement, change or repeal shall follow the procedure prescribed for a petition under Section 1615 above.
 - E. Amendment Initiated by a Petition from an Interested Party. A petition for amendment, supplement, change or repeal for a portion of this Ordinance shall include an accurate legal description and surveyed plan of any land to be rezoned, and all of the reasons supporting the petition to be considered. The petition shall also be signed by at least one record owner of the property in question whose signature shall be notarized attesting the truth and correctness of all the facts and information presented in the petition. A fee to be established by Mount Holly Springs Borough Council shall be paid upon the filing of such petition for change and for the purpose of defraying the costs of the proceedings prescribed herein. The Mount Holly Springs Borough Council may require duplicate sets of petition materials.
 - F. Curative Amendment by a Landowner. A landowner, who desires to challenge on substantive grounds the validity of this Ordinance or the Official Zoning Map or any provision thereof which prohibits or restricts the use or development of land in which he has an interest, may submit a curative amendment to the Mount Holly Springs Borough Council, including all of the reasons supporting the request to be considered, with a written request that his challenge and proposed amendment be heard and decided as provided in the PA Municipalities Planning Code, as amended. The Mount Holly Springs Borough Council shall commence a hearing thereon within sixty (60) days of the request. The curative amendment shall be referred to the County Planning Commission as provided for in Section 1615 and public notice of the hearing shall be provided as defined herein.
 1. In reviewing the curative amendment, the Mount Holly Springs Borough Council may deny the request, accept the request as submitted, or may adopt an alternative amendment which will cure the challenged defects. The Mount Holly Springs Borough Council shall consider the curative amendments, plans and explanatory material submitted by the landowner and shall also consider;
 - a. The impact of the proposal upon roads, parking, sewer facilities, water supplies, schools and other public service facilities;
 - b. If the proposal is for a residential use, the impact of the proposal upon regional housing needs and the effectiveness of the proposal in providing housing units of a type actually available to and affordable by classes of persons otherwise unlawfully excluded by the challenged provisions of the Ordinance or map;
 - c. The suitability of the site for the intensity of use proposed by the site's soils, slopes, woodland, wetlands, floodplains, aquifers, natural resources and other natural features;

- d. The impact of the proposed use on the site's soils, slopes, woodlands, wetlands, floodplains, natural resources and natural features, the degree to which these are protected or destroyed, the tolerance of the resources to development and any adverse environmental impacts; and,
 - e. The impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare;
2. The Mount Holly Springs Borough Council shall render its decision within forty-five (45) days after the conclusion of the last hearing;
3. If the Mount Holly Springs Borough Council fails to act on the landowner's request within the time limits referred to above, a denial of the request is deemed to have occurred on the 46th day after the close of the last hearing;
4. Public notice of the hearing shall include notice that the validity of the Ordinance or Zoning Map is in question and shall give the place where and the times when a copy of the request including any plans, explanatory material or proposed amendments may be examined by the public;
5. The challenge shall be deemed denied when:
 - a. The Mount Holly Springs Borough Council fails to commence the hearing within sixty (60) days;
 - b. The Mount Holly Springs Borough Council notified the landowner that it will not adopt the curative amendment;
 - c. The Mount Holly Springs Borough Council adopts another curative amendment which is unacceptable to the landowner; or
 - d. The Mount Holly Springs Borough Council fails to act on the request forty-five (45) days after the close of the last hearing on the request, unless the time is extended by mutual consent by the landowner and municipality;
6. Where, curative amendment proposal is approved by the grant of a curative amendment application by the Mount Holly Springs Borough Council pursuant to this section or a validity challenge is sustained by the Zoning Hearing Board or the court acts finally on appeal from denial of a curative amendment proposal or a validity challenge, and the proposal or challenge so approved requires a further application for subdivision or land development, the developer shall have two years from the date of such approval for a subdivision, land development or planned residential development. Within the two-year period, no subsequent change or amendment in the zoning, subdivision or other governing ordinance or plan shall be applied in any manner which adversely affects the rights of the applicant as granted in the curative amendment or the sustained validity challenge. Upon the filing of the preliminary or tentative plan, the provisions of the PA Municipalities Planning Code shall apply; and,
7. Where the proposal appended to the curative amendment application or the validity challenge is approved but does not require further application under any subdivision or land development Ordinance, the developer shall have one year within which to file for a zoning permit. Within the one-year period, no subsequent change or amendment in the zoning, subdivision or other governing Ordinance or plan shall be applied in any manner which adversely affects the rights of applicant as granted in the curative amendment or the sustained validity challenge. During these

protected periods, the court shall retain or assume jurisdiction for the purposes of awarding such supplemental relief as may be necessary;

G. Curative Amendment by the Mount Holly Springs Borough Council

1. The Mount Holly Springs Borough Council, by formal action, may declare this Ordinance or portions thereof substantively invalid and propose to prepare a curative amendment to overcome such invalidity. Within thirty (30) days following such declaration proposal, the Mount Holly Springs Borough Council shall:
 - a. By resolution, make specific findings setting forth the declared invalidity of the Ordinance or portions thereof which may include:
 - (1) references to specific uses which are either not permitted or not permitted in sufficient quantity;
 - (2) references to a class of use or uses which require revision; or
 - (3) references to the entire Ordinance which requires revisions.
 - b. Begin to prepare and consider a curative amendment to the Ordinance to correct the declared invalidity.
2. Within one hundred eighty (180) days from the date of the declaration and proposal, the Mount Holly Springs Borough Council shall enact a curative amendment to validate or reaffirm the validity of this Ordinance pursuant to the provisions required by the PA Municipalities Planning Code in order to cure the declared invalidity of the Ordinance;
3. Upon the date of the declaration and proposal, the Mount Holly Springs Borough Council shall not be required to entertain or consider any curative amendment filed by a landowner. Nor shall the Zoning Hearing Board be required to give a report, upon request, for a challenge to the validity of the Ordinance subsequent to the declaration and proposal, based upon the grounds identical to or substantially similar to those specified in the resolution required by this Section. Upon the enactment of a curative amendment to, or the reaffirmation of the validity of this Ordinance, no rights to a cure by amendment or challenge shall, from the date of the declaration and proposal, accrue to any landowner on the basis of the substantive invalidity of the unamended Zoning Ordinance for which the Mount Holly Springs Borough Council propose to prepare a curative amendment; and,
4. The Mount Holly Springs Borough Council, having utilized the procedures as set forth in this Section, may not again utilize said procedures for a thirty-six (36) month period following the date of the enactment of a curative amendment, or reaffirmation of the validity of the Ordinance; provided however, that if after the date of declaration and proposal there is a substantially new duty or obligation imposed upon Mount Holly Springs Borough by virtue of a decision by any Court of competent jurisdiction, the Mount Holly Springs Borough Council may utilize the provisions of this Section to prepare a curative amendment to the Ordinance to fulfill this duty or obligation.

H. Authentication of Official Zoning Map. Whenever there has been a change in the boundary of a zone or a reclassification of the zone adopted by the Mount Holly Springs Borough Council in accordance with the above, the change on the Official Zoning Map shall be made, and shall be duly certified by the Mount Holly Springs Borough Secretary and shall thereafter be refiled as part of the permanent records of Mount

Holly Springs Borough. Upon adoption, a notification of the map change shall be forwarded to the Cumberland County Planning Commission.

Section 1617 Zoning Hearing Board

A. Establishment and Membership

There shall be a Zoning Hearing Board which shall consist of three (3) members who shall be appointed by resolution by the Mount Holly Springs Borough Council. The membership of the Zoning Hearing Board shall consist of residents of Mount Holly Springs Borough. Their terms of office shall be three (3) years and shall be so fixed that the term of office of one member shall expire each year. The Zoning Hearing Board shall promptly notify Mount Holly Springs Borough of any vacancies which occur. Appointments to fill vacancies shall hold no other office in Mount Holly Springs Borough. Any member of the Zoning Hearing Board may be removed for malfeasance, misfeasance, or nonfeasance in office or for other just cause by a majority vote of the Mount Holly Springs Borough Council taken after the member has received fifteen (15) days advance notice of the intent to take such a vote. A hearing shall be held in connection with the vote if the member shall request it in writing.

The Mount Holly Springs Borough Council may appoint by resolution at least one (1) but no more than three (3) residents of the municipality to serve as alternate members of the Zoning Hearing Board. The term of office of an alternate member shall be three (3) years. When seated pursuant to the provisions of this Section, an alternate shall be entitled to participate in all proceedings and discussions of the Zoning Hearing Board to the same and full extent as provided by law for Zoning Hearing Board members, including specifically the right to cast a vote as a voting member during the proceedings, and shall have all the powers and duties set forth in this Ordinance and as otherwise provided by law. Alternates shall hold no other office in Mount Holly Springs Borough, including membership on the Planning Commission and Zoning Officer. Any alternate may participate in any proceeding or discussion of the Zoning Hearing Board but shall not be entitled to vote as a member of the Zoning Hearing Board nor be compensated, unless designated as a voting alternate member pursuant to this Article.

B. Organization of Zoning Hearing Board

The Zoning Hearing Board shall elect from its own membership its officers, who shall serve annual terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all members of the Zoning Hearing Board, but the Zoning Hearing Board may appoint a hearing officer from its own membership to conduct any hearing on its behalf and the parties may waive further action by the Zoning Hearing Board as provided in Section 1616.D. If, by reason of absence or disqualification of a member, a quorum is not reached, the Chairman of the Zoning Hearing Board shall designate as many alternate members of the Zoning Hearing Board to sit on the Zoning Hearing Board as may be needed to provide a quorum. Any alternate member of the Zoning Hearing Board shall continue to serve on the Zoning Hearing Board in all proceedings involving the matter or case for which the alternate was initially appointed until the Zoning Hearing Board has made a final determination of the matter or case. Designation of an alternate pursuant to this section shall be made on a case-by-case basis in rotation according to declining seniority among all alternates. The Zoning Hearing Board may make, alter, and rescind rules and forms for its procedure, consistent with Ordinances of Mount Holly Springs Borough and laws of the Commonwealth. The Zoning Hearing Board shall keep full public records of its business, which records shall be the property of Mount Holly Springs Borough, and shall submit a report of its activities to the Mount Holly Springs Borough Council upon request.

C. Expenditures for Services

Within the limits of funds appropriated by the Mount Holly Springs Borough Council, the Zoning Hearing Board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services. Members of the Zoning Hearing Board may receive compensation for the performance of their duties, as may be fixed by the Mount Holly Springs Borough Council. Alternate members of the Zoning Hearing Board may receive compensation, as may be fixed by the Mount Holly Springs Borough Council, for the performance of their duties when designated as alternate members pursuant to Section 1616(A), but in no case shall such compensation exceed the rate of compensation authorized to be paid to the members by the Mount Holly Springs Borough Council.

D. Hearings

1. The Zoning Hearing Board shall conduct hearings and make decisions in accordance with the following requirements:
 - a. Public notice (as defined herein) shall be provided. In addition, the Zoning Hearing Board shall notify by mail the Zoning Officer, Mount Holly Springs Borough Secretary, each member of the Mount Holly Springs Borough Council, Secretary of the Planning Commission, and every other person or organization who shall have registered with the Zoning Hearing Board for the purposes of receiving such notices. Such mailed notices shall state the location of the site and the nature of the request. It shall also state the time, date, and location of the proposed hearing. In addition to the written notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one week prior to the hearing;
 - b. The Mount Holly Springs Borough Council may prescribe reasonable fees with respect to hearing before the Zoning Hearing Board. Fees for said hearings may include compensation for the secretary and members of the Zoning Hearing Board, notice and advertising costs and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses of the Zoning Hearing Board, expenses for engineering, architectural or other technical consultants or expert witness costs;
 - c. The first hearing before the Zoning Hearing Board or hearing officer shall be commenced within sixty (60) days from the date of receipt of the applicant's application, unless the applicant has agreed in writing to an extension of time. Each subsequent hearing before the Zoning Hearing Board or hearing officer shall be held within forty-five (45) days of the prior hearing, unless otherwise agreed to by the applicant in writing or on the record. An applicant shall complete the presentation of its case-in-chief within one hundred (100) days of the first hearing. Upon the request of the applicant, the Zoning Hearing Board or hearing officer shall assure that the applicant receives at least seven (7) hours of hearing within the one hundred (100) days, including the first hearing. Persons opposed to the application shall complete the presentation of their opposition to the application within one hundred (100) days of the first hearing held after the completion of the applicant's case-in-chief. An applicant may, upon request, be granted additional hearings to complete its case-in-chief provided the persons opposed to the application are granted an equal number of additional hearings to complete their opposition to the application provided the applicant is granted an equal number of additional hearings for rebuttal.
2. The hearings shall be conducted by the Zoning Hearing Board or the Zoning Hearing Board may appoint any member or an independent attorney as a hearing officer. The decision, or, where no

decision is called for, the findings shall be made by the Zoning Hearing Board; however, the appellant or the applicant, as the case may be, in addition to Mount Holly Springs Borough, may, prior to the decision of the hearing, waive decisions or findings by the Zoning Hearing Board and accept the decision or findings of the hearing officer as final;

3. The parties to the hearing shall be Mount Holly Springs Borough, any person affected by the application who has made timely appearance of record before the Zoning Hearing Board, and any other person including civic or community organizations permitted to appear by the Zoning Hearing Board. The Zoning Hearing Board shall have power to require that all persons who wish to be considered parties enter appearances in writing on forms provided by the Zoning Hearing Board for that purpose;
4. The Chairman or Acting Chairman of the Zoning Hearing Board or the hearing officer presiding shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses and documents requested by the parties;
5. The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues;
6. Formal rules of evidence shall not apply, but irrelevant, immaterial, and unduly repetitious evidence may be excluded;
7. The Zoning Hearing Board or the hearing officer, as the case may be, shall keep a stenographic record of the proceedings. The appearance fee for a stenographer shall be shared equally by the applicant and the Zoning Hearing Board. The cost of the original transcript shall be paid by the Zoning Hearing Board if the transcript is ordered by the Zoning Hearing Board or hearing officer; or shall be paid by the person appealing the decision of the Zoning Hearing Board if such appeal is made, and in either event the cost of additional copies shall be paid by the person requesting such copy or copies. In other cases the party requesting the original transcript shall bear the cost thereof;
8. The Zoning Hearing Board or the hearing officer shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials, except advice from their solicitor, unless the parties are afforded an opportunity to contest the materials so noticed and shall not inspect the site or its surroundings after the commencement of hearings with any party or his representative unless all parties are given an opportunity to be present;
9. The Zoning Hearing Board or the hearing officer, as the case may be, shall render a written decision or, when no decision is called for, make written findings on the application within forty-five (45) days after the last hearing before the Zoning Hearing Board or hearing officer. Where the application is contested or denied, each decision shall be accompanied by the findings of fact and conclusions based thereon together with the reasons therefore. Conclusions based on any provisions of this or of any ordinance, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in light of the facts found. If the hearing is conducted by a hearing officer, and there has been no stipulation that his decision or findings are final the Zoning Hearing Board shall make his report and recommendations available to the parties within forty-five (45) days and the parties shall be entitled to make written representations thereon to the Zoning Hearing Board prior to final decision or entry of findings, and the Zoning Hearing Board's decision shall be entered no later than thirty (30) days

after the report of the hearing officer. Except for challenges filed under Article IX of the PA MPC, where the Zoning Hearing Board fails to render the decision within the period required by this subsection or fails to commence, conduct or complete the required hearing as provided in Section 1616(D) of this Ordinance, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the Zoning Hearing Board to meet or render a decision as hereinabove provided, the Zoning Hearing Board shall give public notice of said decision with ten (10) days from the last day it could have met to render a decision in the same manner as provided in Section 1616(D) of this Ordinance. If the Zoning Hearing Board shall fail to provide such notice, the applicant may do so. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal.

10. A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to him not later than the next business day following its date. To all other persons who have filed their name and address with the Zoning Hearing Board not later than the last day of the hearing, the Zoning Hearing Board shall provide by mail or otherwise, brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined; and,

E. Zoning Hearing Board's Functions

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

1. Substantive Challenges to the Validity of the Zoning Ordinance, except those brought before the Mount Holly Springs Borough Council pursuant to Section 916.1(a)(2) of the PA MPC.
 - a. If a challenge heard by a Zoning Hearing Board is found to have merit, the decision of the Zoning Hearing Board shall include recommended amendments to the challenged Ordinance which will cure the defects found. In reaching its decision, the Zoning Hearing Board shall consider the amendments, plans and explanatory material submitted by the landowner and shall also consider:
 - (1) The impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities;
 - (2) If the proposal is for a residential use, the impact of the proposal upon regional housing needs and the effectiveness of the proposal in providing housing units of a type actually available to and affordable by classes of persons otherwise unlawfully excluded by the challenged provisions of the Ordinance or Zoning Map;
 - (3) The suitability of the site for the intensity of use proposed by the site's soils, slopes, woodland, wetlands, floodplains, aquifers, natural resources and other natural features;
 - (4) The impact of the proposed use on the site's soils, slopes, woodlands, wetlands, floodplains, natural resources and nature features, the degree to which these are protected or destroyed, the tolerance of the resources to development and any adverse environmental impacts; and,
 - (5) The impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare;

- b. Public notice of the hearing shall be provided as specified in Section 1616(D) of this Ordinance.
 - c. The Zoning Hearing Board shall commence its hearings within sixty (60) days after the request is filed unless the landowner requests or consents to an extension of time; and,
 - d. The Zoning Hearing Board, shall render its decision with forty-five (45) days after the conclusion of the last hearing. If the Board fails to act on the landowner's request within this time limit a denial of the request is deemed to have occurred on the 46th day after the close of the last hearing;
2. Challenges to the Validity of the Zoning Ordinance, raising procedural questions or alleged defects in the process of enactment or adoption which challenges shall be raised by an appeal taken within thirty (30) days after the effective date of the Ordinance;
3. Special Exceptions as provided for in this Ordinance and subject to all applicable requirements, including, but not limited to:
- a. Filing Requirements. In addition to the required zoning permit information, each Special Exception application shall include the following:
 - (1) Ground floor plans and elevations or proposed structures;
 - (2) Names and address of adjoining property owners including properties directly across a public right-of-way;
 - (3) A scaled drawing (site plan) of the site with sufficient detail and accuracy to demonstrate compliance with all applicable provisions of this Ordinance; and,
 - (4) A written description of the proposed use in sufficient detail to demonstrate compliance with all applicable provisions of this Ordinance;
 - b. General Criteria. Each applicant must demonstrate compliance with the following:
 - (1) The proposed use shall be consistent with the purpose and intent of the Zoning Ordinance;
 - (2) The proposed use shall not detract from the use and enjoyment of adjoining or nearby properties;
 - (3) The proposed use will not substantially change the character of the subject property's neighborhood;
 - (4) Adequate public facilities are available to serve the proposed use (e.g., schools, fire, police and ambulance protection, sewer, water and other utilities, vehicular access, etc.);
 - (5) The proposed use complies with the Mount Holly Springs Borough Floodplain Ordinance;
 - (6) The proposed use shall comply with those criteria specifically listed in Article 12 of this Ordinance. In addition, the proposed use must comply with all other applicable regulations contained in this Ordinance; and,

- (7) The proposed use will not substantially impair the integrity of the (municipality's) Comprehensive Plan;
 - c. Conditions. The Zoning Hearing Board in approving Special Exception applications, may attach conditions considered necessary to protect the public welfare and the purposes listed above, including conditions which are more restrictive than those established for other uses in the same zone. The conditions shall be enforceable by the Zoning Officer and failure to comply with such conditions shall constitute a violation of this Ordinance and,
 - d. Site Plan Approval. Any site plan presented in support of the Special Exception pursuant to Section 1616(E) (3) shall become an official part of the record for said Special Exception. Approval of any Special Exception will also bind the use generally in accordance with the submitted site plan as may be modified during and land development approval. Any subsequent change to the use on the subject property not reflected on the originally approved site plan, shall require the obtainment of another Special Exception Approval;
4. Variances. The Zoning Hearing Board shall hear requests for Variances where it is alleged that the provisions of this Ordinance inflict unnecessary hardship upon the applicant. The Zoning Hearing Board may, by rule, prescribe the form of application to the Zoning Hearing Board secretary. The Zoning Hearing Board may grant a Variance, provided that all of the following findings are made where relevant in a given case:
- a. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of this Ordinance in the neighborhood or zone in which the property is located;
 - b. That because of such physical circumstances or conditions, there is not a possibility that the property can be developed in strict conformity with the provisions of this Ordinance and that the authorization of a Variance is therefore necessary to enable reasonable use of the property;
 - c. That such unnecessary hardship has not been created by the appellant;
 - d. That the Variance, if authorized, will not alter the essential character of the zone or neighborhood in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, not be detrimental to the public welfare;
 - e. That the Variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulations in issue;
 - f. The proposed use complied with the Mount Holly Springs Borough Floodplain Ordinance;
 - g. In granting any variance, the Zoning Hearing Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Ordinance. These conditions shall be enforceable by the Zoning Officer and failure to comply with such conditions shall constitute a violation of this Ordinance;

- h. Filing Requirements. In addition to the required zoning permit each variance application shall include the following:
 - (1) Ground floor plans and elevations of existing and/or proposed structures;
 - (2) Names and addresses of adjoining property owners, including properties directly across a public right-of-way;
 - (3) A scaled drawing (site plan) of the site with sufficient detail and accuracy to demonstrate compliance with all applicable provisions of this Ordinance; and,
 - (4) A written description of the proposed use in sufficient detail to demonstrate compliance with all applicable provisions of this Ordinance;
 - i. Conditions. The Zoning Hearing Board, in approving Variance applications, may attach conditions considered necessary to protect the public welfare and the purposes listed above, including conditions which are more restrictive than those established for other uses in the same zone. These conditions shall be enforceable by the Zoning Officer and failure to comply with such conditions will constitute a violation of this Ordinance; and,
 - j. Site Plan Approval. Any site plan presented in support of a Variance shall become an official part of the record for said Variance. Approval of any Variance will also bind the use generally in accordance with the submitted site plan;
- 5. Appeals from the determination of the Zoning Officer, including, but not limited to, the granting or denial of any permit, or failure to act on the application therefore, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot;
 - 6. Appeals from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provisions of the Zoning Ordinance;
 - 7. Appeals from the Zoning Officer's determination under Section 916.2 (and any subsequent amendments) of the PA Municipalities Planning Code; and,
 - 8. Appeals from the determination of the Zoning Officer or municipal engineer in the administration of any land use Ordinance with reference to sedimentation and erosion control, and/or storm water management for applications not involving a subdivision/land development, nor a planned residential development as regulated in Article V and VII of the PA Municipalities Planning Code.

F. Parties Appellant before the Zoning Hearing Board

Appeals under Sections 1616(E)(4)(d), 1616(E)(4)(e); 1616(E)(4)(f); 1616(E)(4)(g);and 1616(E)(4)(h) and proceedings to challenge this Ordinance under Section 1616(E) may be filed with the Zoning Hearing Board in writing by the landowner affected, any officer or agency of Mount Holly Springs Borough, or any person aggrieved. Requests for a variance or a special exception may be filed with the Zoning Hearing Board by any landowner or any tenant with the permission of such landowner. Any appeal shall state:

- 1. The name and address of the appellant and applicant;
- 2. The name and address of the landowner of the real estate to be affected;

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

G. Time Limitations

No person shall be allowed to file any proceeding with the Zoning Hearing Board later than thirty (30) days after an application for development, preliminary or final, has been approved by the Zoning Officer or the agency responsible for granting such approval if such proceeding is designed to secure reversal or to limit the approval in any manner unless such person alleges and proves that he had no notice or knowledge, or reason to believe that such approval had been given. If such person has succeeded to his interest after such approval, he shall be bound by the knowledge of his predecessor in interest.

The failure of anyone other than the landowner to appeal from an adverse decision by the Zoning Officer a challenge to the validity of this Ordinance or the Official Zoning Map pursuant to Section 916.2 of the PA Municipalities Planning Code, as amended, shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved tentative preliminary approval.

H. Stay of Proceeding

1. Upon filing of any proceeding referred to in Section F above and during its pendency before the Zoning Hearing Board, all land development pursuant to any challenged Ordinance, order or approval of the Zoning Officer or of any agency or body, and all official action thereunder, shall be stayed unless the Zoning Officer or any other appropriate agency or body certifies to the Zoning Hearing Board facts indicating that such stay would cause imminent peril to life or property, in which case, the development or official action shall not be stayed otherwise than by a restraining order, which may be granted by the Zoning Hearing Board or by the court having jurisdiction of zoning appeals on petition after notice to the Zoning Office or other appropriate agency or body. When an application for development, preliminary or final, has been duly approved and proceedings designed to reverse or limit the approval are filed with the Zoning Hearing Board by person other than the applicant, the applicant may petition the court having jurisdiction of zoning appeals to order such person to post bond as a condition to continuing the proceedings before the Zoning Hearing Board. After the petition is presented, the court shall hold a hearing to determine if the filing of the appeal is frivolous. At the hearing, evidence may be presented on the merits of the case. It shall be the burden of the applicant to prove the appeal is frivolous. After consideration of all evidence presented, if the court determines that the appeal is frivolous it shall grant the petition for a bond. The right to petition the court to order the appellants to post bond may be waived by the appellee but such waiver may be revoked by him if an appeal is taken from a final decision of the court. The question whether or not such petition should be granted and the amount of the bond shall be within the sound discretion of the court. An order denying a petition for bond shall be interlocutory. An order directing the responding party to post a bond shall be interlocutory.
2. If an appeal is taken by a respondent to the petition for a bond from an order of the court dismissing a zoning appeal for refusal to post a bond and the appellant court sustains the order of the court below to post a bond, the respondent to the petition for a bond, upon motion of the

petitioner and after hearing in the court having jurisdiction of zoning appeals, shall be liable for all reasonable costs, expenses, and attorney fees incurred by the petitioner.

I. Appeal

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

Section 1618 Conditional Uses

A. Filing of Conditional Use. For any use permitted by Conditional Use, a conditional use must be obtained from the Mount Holly Springs Borough Council. In addition to the information required on the zoning permit application, the Conditional Use application must show:

1. Ground floor plans and elevations of proposed structures;
2. Names and addresses of adjoining property owners including properties directly across a public right-of-way;
3. A scaled drawing (site plan) of the site with sufficient detail and accuracy to demonstrate compliance with all applicable provisions of this Ordinance; and,

B. General Criteria. Each applicant must demonstrate compliance with the following:

1. The proposed use shall be consistent with the purpose and intent of the Zoning Ordinance;
2. The proposed use shall not detract from the use and enjoyment of adjoining or nearby properties;
3. The proposed use will not effect a change in the character of the subject property's neighborhood;
4. Adequate public facilities are available to serve the proposed use (e.g. schools, fire, police and ambulance protection, sewer, water, and other utilities, vehicular access, etc.);
5. The proposed use complies with the Mount Holly Springs Borough Floodplain Ordinance;
6. The proposed use shall comply with those criteria specifically listed in Article 12 of this Ordinance. In addition, the proposed use must comply with all other applicable regulations of this Ordinance; and,
7. The proposed use will not substantially impair the integrity of the Mount Holly Springs Borough Comprehensive Plan;

- C. Conditions. The Mount Holly Springs Borough Council in approving Conditional Use applications, may attach conditions considered necessary to protect the public welfare and the purposes listed above, including conditions which are more restrictive than those established for other uses in the same zone. These conditions shall be enforceable by the Zoning Officer and failure to comply with such conditions shall constitute a violation of this Ordinance;
- D. Site Plan Approval. Any site plan presented in support of the Conditional Use shall become an official part of the record for said Conditional Use. Approval of any Conditional Use will also bind the use generally in accordance with the submitted site plan as may be modified during any land development approval. Any subsequent change to the use on the subject property not reflected on the originally approved site plan shall require the obtainment of another Conditional Use approval;
- E. Hearing Procedures:
1. Before voting on the approval of a Conditional Use, the Mount Holly Springs Borough Council shall hold a public hearing thereon, pursuant to public notice. The Mount Holly Springs Borough Council shall submit each such application to the Mount Holly Springs Borough Planning Commission at least thirty (30) days prior to the hearing held upon an application to provide the Mount Holly Springs Borough Planning Commission an opportunity to submit recommendations. If, after any public hearing held upon an application, the proposed application is revised, the Board of Supervisors shall hold another public hearing, pursuant to public notice, before proceeding to vote on the application;
 2. Public notice as defined herein, and written notice shall be given to the applicant, the Zoning Officer, such other persons as the Board of Supervisors shall designate by Ordinance, and to any person who has made timely request for the same. Written notices shall be given at such time and in such manner as shall be prescribed by Ordinance or, in the absence of Ordinance provisions, by rules of the Mount Holly Springs Borough Council. In addition to the written notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one week prior to the hearing;
 3. The Mount Holly Springs Borough Council may prescribe reasonable fees with respect to hearings. Fees for said hearings may include compensation for the secretary, notice and advertising costs, and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses, expenses for engineering, architectural, or other technical consultants, or expert witness costs;
 4. The parties to the hearing shall be Mount Holly Springs Borough, any person affected by the application who has made timely appearance of record before the Mount Holly Springs Borough Council, and any other person, including civic or community organizations permitted to appear by the Mount Holly Springs Borough Council. The Mount Holly Springs Borough Council shall have power to require that all persons who wish to be considered parties enter appearance in writing on forms provided by the Mount Holly Springs Borough Council for that purpose;
 5. The Chairman or Acting Chairman of the Mount Holly Springs Borough Council shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and paper, including witnesses and documents requested by the parties;
 6. The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues;

7. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded;
8. The Mount Holly Springs Borough Council may keep a stenographic record of the proceedings. The appearance fee for a stenographer shall be shared equally by the applicant and the Mount Holly Springs Borough Council. The cost of the original transcript shall be paid by the Mount Holly Springs Borough Council if the transcript is ordered by the Mount Holly Springs Borough Council; or shall be paid by the person appealing the decision of the Mount Holly Springs Borough Council if such appeal is made, and in either event, the cost of additional copies shall be paid by the person requesting such copy or copies. In other cases the party requesting the original transcript shall bear the cost thereof; and,
9. The Mount Holly Springs Borough Council shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials, except advice from their solicitor, unless parties are afforded an opportunity to contest the material so noticed and shall not inspect the site or its surroundings after the commencement of hearings with any party or his representative unless all parties are given an opportunity to be present,
10. The hearing shall be conducted by the Mount Holly Springs Borough Council or the Mount Holly Springs Borough Council may appoint any member or an independent attorney as a hearing officer. The decision, or, where there is no decision, the findings shall be made by the Mount Holly Springs Borough Council. However, the appellant or the applicant, as the case may be, in addition to Mount Holly Springs Borough, may, prior to the decision of the hearing, waive decision or findings by the Mount Holly Springs Borough Council and accept the decision or findings of the hearing officer as final.
11. The Mount Holly Springs Borough Council shall render a written decision or, when no decision is called for, make written finds on the Conditional Use application within forty-five (45) days after the last hearing before the Mount Holly Springs Borough Council. Where the application is contested or denied, each decision shall be accompanied by findings of fact or conclusions based thereon, together with any reasons therefore. Conclusions based on any provisions of this ordinance or of any ordinance, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found.
12. Where the Mount Holly Springs Borough Council fails to render the decision within the period required by this Article or fails to commence, conduct or complete the required hearing as provided in Section 1617.E.1 of this Ordinance, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record of an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the Mount Holly Springs Borough Council to meet or render a decision as hereinabove provided, the Mount Holly Springs Borough Council shall give public notice of the decision within ten (10) days from the last day it could have met to render a decision in the same manner as required by the public notice requirements of this Article. If the Mount Holly Springs Borough Council shall fail to provide such notice, the applicant may do so.