

## ARTICLE XX

### CONDITIONAL USE PROCESS

#### Section 2000. PROCEDURES AND CRITERIA

1. Nothing in this section shall be construed to relieve the owner or his agent, the developer, or the Applicant for a Conditional Use approval from obtaining approval in accordance with the East Pikeland Township Subdivision and Land Development Ordinance, or other applicable ordinances.
2. The requirements of this section and the standards for specific types of Conditional Uses found elsewhere in this Ordinance shall be deemed an element of the definition under which a Conditional Use permit may be granted. The failure of the Applicant to demonstrate compliance with these requirements, at the discretion of the Board of Supervisors, can be deemed either a basis for establishing conditions or limitations on an approval or the basis for a denial of a Conditional Use application.
3. General Requirements
  - A. Ownership. The tract of land under application for a Conditional Use approval shall be under one (1) ownership, or shall be the subject of an application filed jointly by the owners of the entire tract, and shall be under unified control. If the ownership of the entire tract is held under more than one (1) person or entity, the application shall identify and be filed on behalf of all of the owners. Approval of the plan shall be conditioned upon agreement by the Applicant or Applicants that the tract shall be developed under single direction in accordance with the approved plan. No site preparation or construction shall be permitted other than in accordance with the approved plan. If ownership of all or any portion of the tract changes subsequent to approval of the plan, no site preparation or construction by such new owner or owners shall be permitted unless and until such owner or owners shall review the terms and obligations of the approved plan and agree in writing to be bound thereby with respect to development of the tract.
  - B. Sewer and Water Facilities. The Applicant shall demonstrate evidence of adequate water supply and sewage disposal capability. The tract of land shall be served by a water supply system and a sewage system deemed acceptable by the Board of Supervisors upon recommendation of the Township Engineer. Such facilities shall be designed and constructed in compliance with Sections 419 and 420 of the East Pikeland Township Subdivision and Land Development Ordinance and the East Pikeland Township Sewage Facilities (Act 537) Plan.
  - C. Development Stages and Permits. The development of a tract carried out in either a single phase or in stages shall be executed in accordance with a development agreement. The owner, developer, and Township shall enter into said agreement embodying all details regarding compliance with this Ordinance to assure the binding nature thereof on the overall tract and its development, which agreement shall be recorded with the final development plan.

- D. Existing easements, rights-of-way, covenants and other encumbrances shall be stated and shown on the plans.
- E. Covenants and Restrictions. The language, terms and conditions of any proposed covenants or restrictions shall be subject to review and recommendation by the Township Solicitor.

4. Application.

- A. The application for a Conditional Use shall be filed with the Township Secretary on such forms as may be prescribed for said purpose. The application shall be accompanied by a fee as established by resolution of the Board of Supervisors. The application shall state the following:
  - (1) The name and address of the Applicant.
  - (2) The name and address of the owner of the real estate to be affected by the proposed Conditional Use application.
  - (3) Evidence of authorization to act on behalf of the property owner(s) where Applicant is other than a legal or equitable owner of the property;
  - (4) A description and location of the real estate on which the Conditional Use is proposed.
  - (5) A statement of the present zoning classifications of the real estate in question, the improvements thereon, and the present use thereof.
  - (6) A narrative description of the proposed use and a statement of the section(s) of this Ordinance that authorize(s) the Conditional Use.
  - (7) A narrative description of the site's suitability for the proposed development.
  - (8) A narrative description of the proposed development's consistency with the purposes and objectives of the East Pikeland Township Comprehensive Plan.
  - (9) A narrative description of the proposed development's consistency with the character of the surrounding uses and the Township in general.
  - (10) A staging plan and narrative, if the development is to be carried out in progressive stages that demonstrates that all of the requirements and the intent of this section are met with the completion of each stage.
- B. Development Plan. The application for Conditional Use approval shall be accompanied by a unified, overall site plan covering the entire tract, regardless of any intended phasing of development. The plan shall be prepared with sufficient detail to adequately illustrate the proposed development uses and non-development uses of the tract, including (where appropriate), reserve areas for possible future expansion; coordinated internal and external

vehicular and pedestrian circulation; well related, convenient and efficient parking and loading areas; agreeable surroundings that provide comfort, safety, and convenience for prospective residents, customers, and/or workers; and high quality design in terms of building relationship, facade treatment, signage, lighting, landscaped and planted buffers and screens, as well as other natural and constructed amenities in furtherance of the comprehensive planning objectives of East Pikeland Township.

With respect to exact building locations, shapes and dimensions, an similar requirements of the Development Plan, prescribed in the paragraph above, it is recognized that a fixed and dimensioned architectural layout, as would be required for issuance of a building permit, is not feasible, nor is it the intent of this Section of the Zoning Ordinance to require such detail in an application for Conditional Use. However, the plans, information and data, as herein required for Conditional Use approval, shall be indicated in sufficient detail to serve as a firm commitment by the Applicant to the design criteria and standards. The Development Plan shall be prepared at a scale of not more than one inch equals fifty feet (1" = 50'). Where specific Conditional Use application requirements are contained in other articles of this Ordinance and are applicable to a particular Conditional Use authorized by this Ordinance, the Applicant shall comply with such requirements which shall prevail in the event of conflict or overlap.

The Development Plan shall generally include the following elements: Site Layout Plan, Existing Conditions and Environmental Resources Plan, Proposed Grading Plan, Landscape, Screening and Buffering Plan, and Lighting Plan. Other Plans or plan information may be required at the discretion of the Planning Commission or the Board of Supervisors.

- C. Natural and Cultural Resources Analysis. The Applicant shall provide an inventory of the tract's natural features and systems, cultural resources, and visual amenities that may be impacted by the proposed Conditional Use. The inventory shall be prepared in graphic [at a scale of one (1) inch = one hundred (100) feet] and narrative form on the site or in such proximity as to be affected by the proposed Conditional Use:
- (1) Surface waters;
  - (2) Natural drainage patterns, including swales, intermittent streams, etc.;
  - (3) Flood Plain Districts as defined by Article IV of this Ordinance;
  - (4) Wetlands under the jurisdiction of the Pennsylvania Department of Environmental Protection or the U.S. Army Corps of Engineers;
  - (5) Soils with seasonably high water table;
  - (6) Soils with shallow depth to bedrock;
  - (7) Geologic formations, particularly in relation to areas of groundwater recharge;

- (8) Biotic resources as mapped and described in the East Pikeland Township Open Space, Recreation, and Environmental Resources Plan, and patterns of vegetation, including tree masses, rare or extraordinary individual species, any tree of six (6) inches or greater DBH and areas serving as habitat for wildlife (species of wildlife dependent upon the site for habitat shall be identified).
- (9) Measurable attributes of the air quality at the proposed site and the present degree to which auto emissions are contributing to degradation;
- (10) Scenic resources as mapped and described in the East Pikeland Township Open Space, Recreation, and Environmental Resources Plan, and any other visual amenities of the site (e.g., topography, vegetation, water) considered unique, scenic, and/or that should be incorporated into the design of any future use; and
- (11) Sites and structures of historical or cultural significance, including but not limited to those sites recorded in the East Pikeland Open Space, Recreation and Environmental Resources Plan, the East Pikeland Township Comprehensive Plan and the Chester County Historic Sites Survey of 1982.

The Applicant shall indicate how any or all of the inventoried resources will be affected by the proposed development, and shall describe mitigating measures to be employed in addressing these impacts. The development impacts and the proposed mitigating measures shall be described in narrative form, and their locations on the site and beyond shall be mapped at a scale of one (1) inch = one hundred (100) feet.

- D. Traffic Analysis. The Board of Supervisors, at its sole discretion, may require the Applicant to provide traffic studies demonstrating feasible compliance with the objectives of this ordinance and the East Pikeland Township Comprehensive Plan. The Township Traffic Consultant shall provide the Applicant the minimum scope of work to be included in the analysis. The Traffic Impact Study requirements of the Subdivision and Land Development Ordinance shall be followed. Such studies shall estimate traffic volumes, turning movements, and levels of service at intersections, and potentially unsafe conditions existing prior to development as well as may be reasonably expected to occur after proposed development and shall suggest action(s) to mitigate any anticipated reduction of level of service or other negative impact to traffic conditions resulting from development as proposed. In granting Conditional Use approval, the Board may attach conditions requiring specific improvements to roads to be incorporated into plans for development, to the extent necessary to maintain pre-existing levels of service, correct unsafe conditions which may be worsened by traffic impacts of development, and otherwise provide for safe and convenient access for residents, visitors, employees, and emergency service personnel and vehicles.
- E. Storm Water Management and Drainage Analysis. The application for Conditional Use approval shall be accompanied by a conceptual Storm Water Management and Drainage Analysis. The analysis shall demonstrate, conceptually, to the satisfaction of the Township Engineer that compliance with the requirements Chapter 22, Grading, Erosion and Sediment Control and Stormwater Management, of the Code of Ordinances of East Pikeland Township can be achieved. Supporting calculations for required

detention basin volumes and groundwater recharge volumes shall be required. Off-site drainage problems shall be identified and measures to improve or correct such problems shall be proposed.

- F. Fiscal Impact Assessment. The Board of Supervisors, at its sole discretion may require the Applicant to provide an assessment of the economic and fiscal impacts that will result from the proposed development. The assessment shall include a profile of the Township, County and School District revenues to be generated by the proposed development and the costs that it will impose on the Township, County and School District. The information shall be related to the initial, if staged, and completed subdivision or land development.
- G. Community Facilities and Services Assessment. The Board of Supervisors, at its sole discretion may require the Applicant to provide an assessment of the facility and service needs required for the proposed development. Where applicable, the assessment shall consider, in terms of existing capabilities and the need for additional or expanded capabilities, the following:
- (1) Schools
  - (2) Park and Recreation Areas
  - (3) Libraries
  - (4) Hospitals and Other Health Care Facilities
  - (5) Fire Protection
  - (6) Police Protection
  - (7) Emergency Medical Services
- H. Environmental Impact Assessment Report. The applicant shall provide an Environmental Impact Assessment Report in accordance with the provisions of Section 1826.
5. Procedures.
- A. Upon receipt of a complete application for Conditional Use approval per Section 2000.4, above, the Township Secretary shall submit the application for recommendation to the Planning Commission. Upon receipt of the application, the Planning Commission shall review the Conditional Use request with the Applicant at its next regularly scheduled meeting or at a special meeting at the discretion of the Planning Commission. In either case, such review shall take place within sixty (60) days of submittal to the Commission, including the forwarding of any recommendation to the Board of Supervisors. The Planning Commission may extend its period of deliberation beyond sixty days upon written authorization by the Applicant. If the Planning Commission does not transmit its recommendations to the Board of Supervisors by the date set by the Board of Supervisors for public hearing for consideration of the Conditional Use application, the Board of Supervisors shall proceed to consider such application without the recommendation of the Commission. Should the Applicant submit new or revised plans for development under the

application for Conditional Use approval during the period of review by the Planning Commission, the sixty (60) day review period shall start anew and prior plans shall be deemed withdrawn.

- B. After review by the Planning Commission, the Board of Supervisors shall hold a public hearing on the Conditional Use application in accordance with the following procedures:
- (1) Notice of the hearing shall be given to the public by publication in a newspaper of general circulation in the Township in accordance with the requirements for public notice established in the Municipalities Planning Code. Abutting property owners shall be notified in writing no less than twenty (20) days prior to the scheduled hearing. Additionally, like notice thereof shall be given to the Applicant, the Code Enforcement Officer, and to any person who has made timely written request for same. Notice of the hearing shall be conspicuously posted on the affected tract of land at least one (1) week prior to the date of the hearing. The failure of any person or entity to receive notice given pursuant to this section shall not constitute grounds for any court to invalidate the actions of the Township for which the notice was given. The Board of Supervisors shall commence its first hearing on the application within sixty (60) days from the date the application is filed with the Township Secretary, unless extended by written authorization from the Applicant.
  - (2) The parties to the hearing shall be the Township, any person affected by the application who has made timely appearance of record before the Board of Supervisors and any other person, including civic or community organizations, permitted to appear by the Board of Supervisors. The Board of Supervisors shall have the power to require that all persons who wish to be considered parties submit written requests on such forms as the Board of Supervisors may provide for that purpose.
  - (3) The Chairman or Acting Chairman of the Board of Supervisors shall have the 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.
  - (4) Formal rules of evidence shall not apply but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
  - (5) The Board of Supervisors shall keep a record of the hearing proceedings. Copies of the written or graphic material received in evidence shall be made available to any party at cost.
  - (6) The Board of Supervisors shall render a written decision within forty-five (45) days after the last hearing before the Board of Supervisors. Where the application is contested or denied, the decision shall be accompanied by findings of fact and conclusions based thereon, together with the reasons for the final decision.
  - (7) A copy of the final decision shall be delivered to the Applicant and the parties before the Board of Supervisors personally or mailed to them not later than the day following the date of the decision.

- (8) Appeals from a determination of the Board of Supervisors pursuant to any application for a Conditional Use shall be only as prescribed and within such times permitted by the applicable provisions of the Pennsylvania Municipalities Planning Code as amended.
- C. In granting Conditional Use approval, where such use is authorized under this Ordinance, the Board of Supervisors may also attach such conditions and safeguards, in addition to those expressed in this Ordinance, as it may deem necessary to implement the purpose of the Pennsylvania Municipalities Planning Code, as amended, and this Ordinance. Conditional Uses shall be subject to compliance with particular standards contained in this Ordinance and criteria defined in the application review process. The standards described shall be deemed additional and shall in no way impair any other applicable standard from this or any other Township ordinance. The Applicant shall be responsible for demonstrating compliance with all standards and criteria required for Conditional Use approval. The conditions of approval may include, but need not be limited to:
- (1) Specific modifications to area and bulk requirements as might otherwise be applicable;
  - (2) Provisions for additional utility or traffic safety facilities;
  - (3) Securing of additional easements or property to assure proper site design;
  - (4) Modification to the applicable design standards; or
  - (5) Provisions requiring that any modification, enlargement or expansion of the use as approved shall require a new Conditional Use approval.
- D. The Applicant shall have the burden to prove, by a preponderance of the evidence, that the proposed use will comply in all respects with this and other Township ordinances, County, State or Federal legislation. The Board of Supervisors may retain such consultants as necessary to review and certify the accuracy of submitted plans and documents, the reasonable and necessary charges for which shall be borne by the Applicant. When the Applicant does not provide information as required, then it shall be presumed that the proposed use is not in accordance with the requirements applicable for the granting of Conditional Use approval.
- E. Any grant of Conditional Use approval shall be deemed null and void twelve (12) months from the date of such approval if, within that period, no application is made for a building permit, a use and occupancy permit, or subdivision or land development approval, as appropriate, unless so extended by the Board of Supervisors.

Any request to extend the twelve (12) month expiration period shall be properly filed with the Zoning Officer thirty (30) days in advance of the expiration date. The request shall include the reason why the extension is required, a reasonable estimate of the time needed to obtain the necessary approvals, and a qualified statement that there has been no change in the Conditional Use application or the neighborhood in which the property is located. Failure to diligently pursue necessary approvals shall not be grounds for an

extension. The Board may grant up to one additional eighteen (18) month extension provided a reasonable argument is presented. No more than one such extension shall be granted per Conditional Use approval

6. Criteria for Review of Conditional Use Applications.

The following criteria shall be used as a guide by the Board of Supervisors in the evaluation of a proposed Conditional Use. It shall be the burden of the Applicant to demonstrate compliance with all applicable criteria:

- A. Any Applicant for Conditional Use approval shall have the burden of demonstrating to the satisfaction of the Board of Supervisors that provision is made to adequately reduce or minimize any noxious, offensive, dangerous or hazardous feature or features thereof, as the case may be. The Board of Supervisors may deny Conditional Use approval where the Applicant has failed to do so or where any use otherwise is deemed to be dangerous or potentially dangerous to the public health, welfare or safety or which constitutes or may constitute a public hazard whether by fire, explosion or otherwise.
- B. The proposed use(s) shall be limited to those authorized Conditional Uses within the District in which the lot or parcel is situated. The property subject to Conditional Use application shall be suitable for the use desired.
- C. The size, scope, extent and character of the Conditional Use desired shall be consistent with the spirit, purposes and intent of the East Pikeland Township Comprehensive Plan, Open Space, Recreation and Environmental Resources Plan, and Zoning Ordinance.
- D. The proposed use at the location set forth in the application shall be in the public interest and serve the public health, safety, moral and general welfare.
- E. Consideration of the character and the type of development in the area surrounding the location for which the request is made, and a determination that the proposed use is appropriate in the area and will not injure or detract from the use or value of the surrounding properties or from the character of the neighborhood.
- F. The development, if more than one building, will consist of a harmonious grouping of buildings or other structures.
- G. There will be no adverse affect of the proposed Conditional Use upon the logical, efficient and economical extension of public services and facilities, such as public water, sewers, police and fire protection, emergency management services, recreational opportunities, open space and public schools and, where necessary, adequate arrangements for expansion or improvement of such services and facilities are ensured.
- H. The design and use of any new construction and proposed change in use of existing buildings will be compatible with the existing designs and uses in the immediate vicinity and that the proposed design or use shall be compatible with the character of the neighborhood.

- I. If the development is to be carried out in progressive stages, each stage shall be so planned that the conditions and intent of this Ordinance shall be fully complied with at the completion of any stage.
- J. The location and layout of the proposed use is suitable with respect to probable effects upon highway traffic, and assures adequate access arrangements in order to protect major streets and highways from undue congestion and hazard. The proposed use will not lower the level of service on adjacent road segments and intersections as defined by the most recent edition of the Highway Capacity Manual from the Transportation Research Board. As a policy, proposed projects should incorporate designs that will assure safe and efficient access and maintain a level of service "C", as a minimum, on all adjacent road segments and intersections.
- K. The interior traffic circulation shall provide safe and convenient circulation for all users, including pedestrian and vehicular modes of transit. Applicant shall demonstrate that sufficient safeguards such as parking, traffic control, screening, and setbacks can be implemented to remove any potential adverse influences the use may have on adjoining uses. In addition, all emergency access design considerations shall be addressed and incorporated into the proposed plan.
- L. The adequacy of sanitation and public safety provisions, where applicable, and the necessity to provide a certificate of adequacy of sewage and water facilities from a governmental health agency in any case where required or deemed necessary.
- M. The adequacy of provisions for storm water management and drainage.
- N. Sufficient land area shall be available to be able to effectively screen the proposed Conditional Use from adjoining different uses if required by the Board of Supervisors.
- O. Consideration of any other development impacts and/or proposed mitigation identified by the submitted site analyses
- P. Consideration of likelihood of market success of proposed use(s), as indicated by market analyses, where required.
- Q. The Board of Supervisors shall consider additional standards and criteria set forth in Section 2208, Standards for Review of Special Exception, to the degree the Board of Supervisors deems such standards to be applicable to review of the Conditional Use application.
- R. Uses shall meet the provisions and requirements of the East Pikeland Township Subdivision and Land Development Ordinance and all other applicable ordinances and regulations of East Pikeland Township.
- S. The Board of Supervisors may impose such conditions, in addition to those required, as are necessary to assure that the intent of the Zoning Ordinance is complied with, which conditions may include, but are not limited to, harmonious design of buildings, planting and its maintenance as a sight or sound screen, the minimizing of noise, glare, and noxious, offensive or hazardous elements and adequate standards of parking and sanitation.

- T. If the Board of Supervisors approves the application and accompanying development plan, such approved plan shall accompany (1) any application for subdivision and land development as prescribed by the East Pikeland Township Subdivision and Land Development Ordinance and (2) any application for a building permit.