

ORDINANCE NO. 285

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE TOWNSHIP OF LOWER POTTS GROVE, MONTGOMERY COUNTY, PENNSYLVANIA AMENDING PART 2: DEFINITIONS, AND REPEALING AND REPLACING IN ITS ENTIRETY §3011 EXPIRATION OF SPECIAL EXCEPTIONS AND VARIANCES, OF THE LOWER POTTS GROVE TOWNSHIP ZONING ORDINANCE

WHEREAS, the Township created The Code of Ordinances of the Township of Lower Pottsgrove by Ordinance 192 adopted 3/23/1995 which has been amended from time to time (the “Code of Ordinances”); and

WHEREAS, it is the intention of the Board of Commissioners (the “Board”) that all references to any provision within the Code of Ordinances shall include the Ordinances adopted by the Board pursuant to which such provision became part of the Code of Ordinances; and

WHEREAS, the Lower Pottsgrove Township Zoning Ordinance, as originally enacted and amended from time to time is contained in Chapter 27 of the Code of Ordinances (the “Zoning Ordinance”); and

WHEREAS, the Board has determined that it is in the best interests of the Township to amend the Zoning Ordinance to include new and revised definitions to further clarify the intent of the Township’s Zoning Ordinance; and

WHEREAS, the Board has determined that it is in the best interests of the Township to amend the Zoning Ordinance to provide clarification to provisions relating to expiration of special exceptions and variance; and

NOW THEREFORE, BE IT ORDAINED AND ENACTED AND IT IS HEREBY ORDAINED AND ENACTED by the Board of Commissioners of Lower Pottsgrove Township, Montgomery County, Pennsylvania as follows:

Section 1. Part 2. Repealed Definitions. It is the intent of this Ordinance to repeal, in their entirety, the following terms and their definitions from Part 2: Definitions, of the Zoning Ordinance.

1. Hotel
2. Motor Court or Motel
3. Uses

Section 2. Part 2. New Definitions. It is the intent of this Ordinance to incorporate the following terms and their definitions into Part 2: Definitions, of the Zoning Ordinance:

AGE-RESTRICTED HOUSING – A community of not less than 10 residential units that, at a minimum, meets Federal laws, regulations and guidelines for age-restricted housing, including all of the following criteria:

1. is intended and operated for occupancy by persons 55 years of age or older;
2. has at least 80 percent of the units occupied by at least one person who is 55 years of age or older;
3. provides for age verification in accordance with all applicable laws and regulations; and
4. publishes and adheres to policies and procedures that demonstrate its intent to qualify as age-restricted housing, pursuant to all applicable laws and regulations; and
5. adopts restrictive covenants in accordance with §3313 of the Township Zoning Ordinance.

AGE-RESTRICTED HOUSING ACCESSORY STRUCTURES – such uses may include the following, provided they are not an independent, freestanding commercial use and are for the exclusive use of the residents of the community and their guests:

1. Community or recreation centers, such as kitchen, dining and banquet facilities; lobby(ies) or other common gathering areas; meeting rooms; locker rooms and exercise facilities; restrooms; administrative/management offices
2. Recreational amenities, such as gazebos or pavilions
3. Gatehouses, security facilities and appurtenances thereto (gates, automated card readers, and similar facilities)
4. Storage or maintenance buildings
5. Carports or detached garages
6. Waste collection facilities
7. Public transportation shelters
8. Any structures similar to the uses outlined in this definition.

COMMUNITY ACTIVITY CENTER – A public or quasi-public institution devoted exclusively to one or more of a variety of group activities, civic, social, recreational, educational or cultural, and maintaining the premises and facilities appropriate to such activity.

DOMESTIC ANIMAL SHELTER – Structures and equipment used for the keeping of cattle, sheep, goats, or other large animals, not including horses; or for the outdoor keeping or housing of small domestic animals. This use shall not be done in conjunction with any associated agricultural or commercial activity.

FAÇADE ARTICULATION – Changes of planes on the face of a building, such as by decks, bays, and other projections or recesses.

HOTEL — Any building or group of buildings in which there are five (5) or more guest rooms used, designed or intended to be used, let or hired out for the purpose of offering to the general public lodging on a day-to-day basis typically not to exceed 30 consecutive calendar days, where the primary entrance is through a lobby or foyer and also that in which there are no provisions for cooking in any individual room or suite. A hotel may include additional facilities and services, such as restaurants, meeting rooms, entertainment, personal services and recreational facilities.

IN-LAW SUITE – Temporary living quarters for relatives or household employees which may be a separate unit attached to the primary dwelling or as an accessory unit which shall not be used as an income-generating unit for the primary dwelling unit.

MOTEL or MOTOR COURT — A building or group of two or more detached or semidetached buildings, containing five (5) or more individual dwelling or sleeping units, each with a separate exterior entrance, with or without cooking facilities, designed for or used temporarily by the public for rent on a day-to-day basis typically not intended to exceed 30 consecutive calendar days and is suitable for occupancy all seasons of the year.

NONRESIDENTIAL ACCESSORY STRUCTURES – A detached accessory building or structure for uses customarily incidental to those permitted in non-residential zoning districts and legally established as the principal use of the premises. Such uses may include storage or maintenance buildings, waste collection facilities, gazebos or pavilions, gatehouses or security facilities, public transportation shelters, or any structures similar to those outlined in this definition provided they are not an independent, freestanding commercial use.

PRIVATE STABLES – Structures and equipment used for the boarding and caring for of horses owned by the landowner. This use shall not be permitted in conjunction with any associated commercial equestrian activity.

USE – The purpose or activity for which land or buildings are designed, arranged or intended or for which land or buildings are occupied or maintained. Unless otherwise stated, only one principal use shall be permitted on any lot and said one principal use shall be designated by any applicant at the time of filing any application with the Township

1. USE, ACCESSORY – A use of land or a building or portion thereof customarily incidental and subordinate to the principal use of the land or building and located on the same lot with the principal use.
2. USE, COMMERCIAL OFFICE – Activity involving the administrative, professional or clerical operations of a business, Incidental uses, such as medical or dental testing or diagnostic services, are permitted in conjunction with medical and dental offices.
3. USE, COMMERCIAL/RETAIL – Activity involving the sale of goods and/or services carried out for pecuniary gain.
4. USE, CONDITIONAL – A use permitted in a particular zoning district when it is shown that such a use in a specified location will comply with all the conditions and standards for the location or operation of the use as specified in this Ordinance and authorized by the Board of Commissioners.
5. USE, EXISTING – The use of a lot or structure at the time of the enactment of an applicable zoning ordinance.
6. USE, INSTITUTIONAL – A nonprofit, religious or public use, such as a religious building, library, public or private school, hospital or government-owned or operated building, structure or land used for public purpose.
7. USE, INDUSTRIAL – A use that requires manufacturing of goods and is often accompanied by warehouses, freight yards, docks, etc.
8. USE, PERMITTED – Any use allowed in a zoning district by this Ordinance and subject to the restrictions applicable to that zoning district.
9. USE, PRINCIPAL – The primary or predominant use of any lot or parcel.
10. USE, RELIGIOUS – A structure or place of worship, ceremonies, rituals, and education pertaining to a particular system of beliefs.

11. USE, RESIDENTIAL – Land used for the habitation of people.

12. USE, TEMPORARY – A use established for a limited duration with the intent to discontinue such use upon the expiration of the time period or event.

VEGETATED ROOF – A vegetated roof is a roof of a building that is at least eighty percent (80%) covered with an engineered, multilayered roofing system sustaining growing, living vegetation and soil, or a growing medium, planted over a waterproofing membrane that protects the integrity of the underlying structure. The components of a vegetated roof consist of a waterproofing membrane, a root barrier, drainage layer, retention layer, growing medium and plants. It may also include an irrigation system. Container gardens on roofs, where plants are maintained in pots or containers, are not vegetated roofs for the purposes of this ordinance. The Township shall make the final determination of a roof being a Vegetated Roof based on professionally accepted vegetated green roof standards of design and practice.

Section 3. §3011. Expiration of special exceptions and variances. It is the intent of this Ordinance to provide clarification to provisions relating to expiration of special exceptions and variances, as set forth below.

§3011. Expiration of special exceptions and variances.

- A. A special exception and/or variance shall expire within twelve (12) months from the exception/variance authorization date (as defined in subsection E) unless the applicant:
1. Obtains all Township permits as may be required for the construction and/or use permitted by the special exception or variance; or
 2. Obtains an extension for the special exception or variance pursuant to subsection C below.
- B. In the case of a special exception or variance authorization granted pursuant to a pending subdivision application and where the applicant proves to the satisfaction of the Zoning Hearing Board that the applicant does not intend to commence any construction within twelve (12) months, then the special exception and/or variance shall expire if the applicant does not obtain preliminary subdivision approval from the Board of Commissioners within twelve (12) months of the special exception/variance authorization.
- C. The Zoning Hearing Board, upon application, for good cause shown and after notice and hearing, may extend the twelve (12) month period of time set forth in subsection A or B above for such time as the Zoning Hearing Board may deem appropriate, subject to the following:
1. In no event shall such extension, or the total of such extensions if there are more than one, exceed twenty-four (24) months.
 2. The Zoning Hearing Board may grant an extension at any time prior to the expiration of the special exception or variance, as provided in this section, but not thereafter.

3. An application for an extension may be considered and granted by the Zoning Hearing Board as part of the proceedings and decision in which it considers and grants the special exception or variance, or in subsequent separate proceedings and decision.
- D. Upon the expiration of a special exception or variance, the special exception or variance shall become null and void and of no effect without any action of the Township or the Zoning Hearing Board first being required. In such event, the applicant or other person having standing shall be required to reapply to the Zoning Hearing Board in the same manner as a new applicant for such special exception or variance.
- E. For the purposes of subsections A and B the “special exception/variance authorization date” shall have the following meanings:
1. Where the special exception or variance is granted by affirmative decision of the Zoning Hearing Board with or without conditions attached, the “special exception/variance authorization date,” subject to subsection E.3.b., shall be the date on which the written decision of the Zoning Hearing Board is either personally delivered or mailed to the applicant.
 2. Where the special exception or variance is allowed by deemed decision of the Zoning Hearing Board because of its failure to hold a hearing or render a decision as provided by the Municipalities Planning Code and this ordinance, the “special exception/variance authorization date,” subject to subsection E.3.b., shall be the date on which the decision of the Zoning Hearing Board is deemed to have been rendered in favor of the applicant.
 3. In the cases of the following appeals to court, the “special exception/variance authorization date” shall be the date of the final court order which finally determines and concludes the appeal litigation without remand to the Zoning Hearing Board for further hearings and decision, unless such court order or prior court order affirmed thereby provides otherwise:
 - a. An appeal from the decision of the Zoning Hearing Board denying the special exception or variance, in which the court ultimately reverses the decision of the Zoning Hearing Board and grants the special exception or variance with or without conditions attached.
 - b. An appeal from the affirmative or deemed decision of the Zoning Hearing Board granting or allowing the special exception or variance, including an appeal challenging a condition attached by the Zoning Hearing Board to such grant, in which the court ultimately affirms or does not entirely set aside the special exception or variance, regardless of whether or not the court attached conditions to or otherwise modifies the special exception or variance, and/or affirms, sets aside or modifies a condition attached thereto by the Zoning Hearing Board.
- F. A use permitted by special exception or variance shall expire if the use authorized is abandoned. If such use permitted by special exception or variance is discontinued by nonuse, unlawful use or a change of use to one not authorized by the previously obtained special exception or variance for a continuous period of six months or more, the abandonment of

such use shall be presumed, and any subsequent use of such building or land must comply with the provisions of this Chapter.

Section 4. Severability. The invalidity of any section or provision of this Ordinance shall not invalidate other sections or provisions thereof.

Section 5. Savings and Repealer. The remaining provisions of the Lower Pottsgrove Township Zoning Ordinance in force immediately before the enactment of this Ordinance are intended to be continued and, to the extent not inconsistent herewith, are hereby re-enacted and re-ordained; any provisions inconsistent with this Ordinance are hereby repealed as referenced.

Section 6. Effective Date. This Ordinance shall become effective immediately upon enactment.

ENACTED AND ORDAINED, this 1st day of December, A.D. 2008 by the Board of Commissioners of Lower Pottsgrove Township, Montgomery County, Pennsylvania.

**LOWER POTTS GROVE TOWNSHIP
BOARD OF COMMISSIONERS**

BY: _____
Bruce L. Foltz, President

ATTEST: _____
Michele M. Cappelletti, Secretary