

ORDINANCE NO. 23
Mill Village Borough
Erie County, PA

An ordinance to adopt the Zoning Ordinance of the Mill Village Borough in accordance with PA Act 247 of 1968 as amended.

WHEREAS, the Borough of Mill Village applied for and received grant funds from the Pennsylvania Department of Community Affairs (PA DCA) through the Small Communities Planning Assistance Program portion of the Community Development Block Grant Program; and

WHEREAS, the Borough of Mill Village entered into an agreement with the PA DCA and the Erie County Department of Planning (ECDP) to develop a zoning ordinance; and

WHEREAS, the Borough Planning Commission and the ECDP, which have developed documents as set forth in Section 1 of this Ordinance, have recommended that the Zoning Ordinance be adopted; and

WHEREAS, after due and timely notice by publication, as required by law, a public hearing upon the proposed adoption has been held by the Bough Council and the Borough Planning Commission.

NOW THEREFORE, be it enacted by the Council of Mill Village Borough, Erie County, PA that the Zoning Ordinance is adopted as follows:

SECTION 1 That the accompanying Exhibit A document, known as the Mill Village Zoning Ordinance be adopted.

SECTION 2 If any section, subsection, or clause, phrase or portion of its application to any person or circumstances if for any reason be held invalid or unconstitutional by any court, such holding shall not be construed to affect the validity of any of the remaining provisions or application thereof by this plan for such portion shall be deemed a separate, distinct and independent provision from the remaining provisions, it is hereby declared that the legislative intent and this Ordinance would have been adopted had such invalid or unconstitutional provisions of its application not been included herein.

SECTION 3 Enacted and effective this 15th day of December, 1994.

Joseph Sam

Mayor

Linda L. Falconer

President of Council

Mary S. Powell

Borough Secretary

EXHIBIT A
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MILL VILLAGE BOROUGH
ZONING ORDINANCE
ADOPTED DECEMBER 15, 1994

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ZONING ORDINANCE
MILL VILLAGE BOROUGH

ORDINANCE NO. 23

An Ordinance dividing the Borough into various zoning districts and regulating the construction, alteration and use of structures and land within each such district. Be it hereby ordained by the governing body of Mill Village Borough, Erie County, Pennsylvania that:

Article 1

General Provisions

101 TITLE: The official title of this Ordinance shall be the “Zoning Ordinance of the Borough of Mill Village.”

102 EFFECTIVE DATE. This Ordinance shall take effect on December 15, 1994.

103 PURPOSE AND AUTHORITY: This Ordinance is adopted by virtue of the authority granted to the Borough under Article VI of the Pennsylvania Municipalities Planning Code, Act 247 of 1968, as amended. The provisions of the Zoning Ordinance are designed:

- (a) To promote, protect and facilitate one or more of the following: the public health, safety, morals, general welfare, coordinated and practical community development, proper density of population, civil defense, disaster evacuation, airports, and national defense facilities, the provision of adequate light and air, police protection, vehicle parking and loading space, transportation, water, sewage, schools, public grounds and other public requirements, as well as,
- (b) To prevent one or more of the following: overcrowding of land, blight, danger and congestion in travel and transportation, loss of health, life or property from fire, flood, panic or other dangers.
- (c) To be in accordance with an overall plan and with consideration for the rural character of the municipality, its various parts and suitability of the various parts for particular uses and structures.

104 COMMUNITY DEVELOPMENT OBJECTIVES: The zoning regulations and districts set forth in this Ordinance are made in accordance with a comprehensive plan for the general welfare of the Borough and are intended to achieve, among others, the following purposes:

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- (a) To lessen congestion in the streets;
- (b) To secure safety from fire and other dangers;
- (c) To provide adequate light and air;
- (d) To prevent the overcrowding of the land and to avoid undue concentration of population;
- (e) To facilitate the adequate provision of transportation, water, sewage, schools, parks and other public requirements, as well as the conservation of the value of land and buildings;
- (f) Reserve development opportunities for Routes 6/6N, 19 and 97;
- (g) Preserve agricultural and related uses to the extent possible; and
- (h) To strengthen the basic tax base of the municipality.

105 COMPLIANCE: No structure shall be located, erected, demolished, constructed, moved, altered externally, converted, or enlarged, nor shall any structure or land be used or be designed to be used, except in full compliance with all the provisions of this Ordinance, and after the lawful issuance of all permits and certifications required by this Ordinance. Except that the Borough of Mill Village will be exempt from the provisions of this Ordinance in the exercise of its municipal functions. Any use not specifically permitted in a district is prohibited. Every use is permitted in at least one district.

106 INTERPRETATION OF REGULATIONS: Whenever the provisions of this Ordinance are at variance with any other lawfully adopted rules, regulations, or ordinances the more restrictive requirements shall govern.

107 SEVERABILITY: Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance than the one so declared.

108 REPEAL: Any resolution or ordinance, or any part of any resolution or ordinance conflicting with the provisions of this Ordinance is hereby repealed to the extent of such conflict.

109 MUNICIPAL RESPONSIBILITY AND LIABILITY: The provisions within this Ordinance are designed to fulfill the objectives cited in Section 104. The degree of protection sought by the conditions and requirements of this Ordinance for the present and future residents and land owners in the municipality is considered reasonable for regulatory purposes in the various zoning districts. This Ordinance does not imply that compliance with the minimum requirements or that land uses permitted within such districts will be free from inconvenience, conflicts, dangers or damages. Therefore, this Ordinance shall not create liability on

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the part of individual members of the governing body or any officer, appointee or employee of the municipality for any damages that may result from reliance on this Ordinance or any administrative decision lawfully made thereunder.

110 LANDOWNER/DEVELOPER RESPONSIBILITY: An applicant under the administration of this ordinance, which is the owner of land or structures and/or the developer of land or structures, in the municipality is responsible for compliance with all federal, state, county or other authority laws, rules and regulations. The municipality is responsible only for compliance with those laws, rules and regulations that it adopts.

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Article 2

Definitions

201 INTERPRETATION: For the purpose of this Ordinance, words used in the present tense shall include the future. The singular number shall include the plural and the plural shall include the singular. The masculine shall include the feminine and the neuter. The work "shall" is always mandatory. The word "building" includes "structure" and shall be construed as if followed by the words "or any part thereof." The phrase "used for" includes "arranged for," "person" includes an individual, corporation, partnership, incorporated association, or any other legal entity. The word "includes" or "including" shall not limit the term to the specified example, but is intended to extend its meaning to all other instances of like kind and character. Except as defined within this Ordinance, all words and phrases shall have their normal meaning and usage.

202 SPECIFIC TERMS: The following words and phrases shall have the meaning given in this section.

Accessory Building - a subordinate building, incidental to and located on the same lot as principal building, and used for an accessory use.

Accessory Use - a use incidental and subordinate to and located on the same lot occupied by the principal use to which it relates, and includes fences, parking areas, signs, etc.

Agricultural Uses - all production of crops and livestock, both outdoors and indoor, including forestry, fishing, hunting and trapping, excluding agricultural business services and industries.

Applicant - a landowner or developer, as hereinafter defined, who has filed an application for development including his heirs, successors and assigns.

Application for Development - every application, whether preliminary, tentative or final, required to be filed and approved prior to start of construction or development including but not limited to an application for a building permit, for the approval of a subdivision plat or plan or for the approval of a development plan.

Authority - a body politic and corporate created pursuant to the act of May 2, 1945 (P.L.382, No.1641, known as the Municipality Authorities Act of 1945).

Board - any body granted jurisdiction under a land use ordinance or under this act to render final adjudications.

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Business Unit - a building or portion thereof containing one (1) or more rooms for a business enterprise accessible from the outdoors either directly or through an entrance hall shared with other business units, and used or intended to be used by one (1) business.

Commercial Businesses - all enterprises primarily related to: retail trade, wholesale trade, services, finance, insurance, real estate, etc.

Decision - final adjudication of any board or other body granted jurisdiction under any land use ordinance or this act to do so, either by reason of the grant of exclusive jurisdiction or by reason of appeals from determinations. All decisions shall be appealable to the court of common pleas of the county and judicial district wherein the municipality lies.

Determination - final action by an officer, body or agency charged with the administration of any land use ordinance or application thereunder, except the following: the governing body; the zoning hearing board; or the planning agency, only if and to the extent the planning agency is charged with final decision on preliminary or final plans under the subdivision and land development ordinance or planned residential development provisions. Determinations shall be appealable only to the boards designated as having jurisdiction for such appeal.

Developer - any landowner, agent of such landowner, or tenant with the permission of such landowner, who makes or causes to be made a subdivision of land or a land development.

Dwelling - a building arranged, intended, designed or used as the living quarters for one or more families living independently of each other upon the premises. The term "dwelling" includes "home occupation."

- (a) Single family dwelling - a detached building containing only one (1) dwelling unit.
- (b) Multi-family dwelling - a building containing two or more dwelling units, including apartment houses, townhouses, flats, condominiums, duplexes, etc.

Dwelling Unit - a building or portion thereof containing one (1) or more rooms for living purposes together with separate and exclusive cooking and sanitary facilities, accessible from the outdoors either directly or through an entrance hall shared with other dwelling units, and used or intended to be used by one (1) family.

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Essential Services - The erection, construction, alteration or maintenance by public utilities or municipal or other governmental agencies of: underground or overhead gas; electrical, steam or water transmission or distribution systems, collection, communication, supply or disposal systems, including poles, wires, mains, drains, sewers, pipes, conduit cables, fire alarm boxes, police call boxes, traffic signals, hydrants, and other similar equipment and accessories in connection thereof; reasonably necessary for the furnishing of adequate services by such public utilities or municipal or other governmental agencies or for the public health or safety or general welfare, including structures; which are designated as tax exempt property by the Erie County Tax Assessment Bureau.

Governing Body - the council in cities, boroughs and incorporated towns; the board of commissioners in townships of the first class; the board of supervisors in townships of the second class; the board of commissioners in counties of the second class A through eighth classes or as may be designated in the law providing for the form of government.

Home Occupation - any use customarily carried on entirely within a dwelling by the occupants thereof, which use is clearly incidental and subordinate to the use of the dwelling for dwelling purposes and does not change the residential character thereof.

Industrial Businesses - all enterprises primarily related to: manufacturing, transportation, construction, private utilities (such as communication towers), disposal and/or storage (such as landfills, injection wells and junkyards), etc., and all other businesses not considered commercial by the governing body.

Institutional Services - all public land and buildings related to : governments, education, health, religion, recreation, utilities, etc., and non-profit organizations; which are designated as tax exempt property by the Erie County Tax Assessment Bureau.

Landowner - the legal or beneficial owner or owners of land including the holder of an option or contract to purchase (whether or not such option or contract is subject to any condition), a lessee if he is authorized under the lease to exercise the rights of the landowner, or other person having a proprietary interest in land.

Lot - a designated parcel, tract or area of land established by a plat or otherwise as permitted by law and to be used, developed or built upon as a unit.

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Mobilehome - a transportable, single family dwelling intended for permanent occupancy, contained in one unit, or in two or more units designed to be joined into one integral unit capable of again being separated for repeated towing, which arrives at a site complete and ready for occupancy except for minor and incidental unpacking and assembly operations, and constructed so that it may be used without a permanent foundation..

Mobilehome Lot - a parcel of land in a mobilehome park, improved with the necessary utility connections and other appurtenances necessary for the erections thereon of a single mobilehome.

Mobilehome Park - a parcel or contiguous parcels of land which has been so designated and improved that it contains two or more mobilehome lots for the placement thereon of mobilehomes.

Municipal Authority - a body politic and corporate created pursuant to the act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945.

Municipality - any city of the second class A or third class, borough incorporated town, township of the first or second class, county of the second class A through eighth class, home rule municipality, or any similar general purpose unit of government which shall hereafter be created by the General Assembly.

Natural Resource Extraction - all mining operations related to: removing solids, liquids, and/or gases from the surface of or below ground.

Nonconforming Lot - a lot the area or dimension of which was lawful prior to the adoption or amendment of this zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption or amendment.

Nonconforming Structure - a structure or part of a structure manifestly not designed to comply with the applicable use or extent of use provisions of this zoning ordinance or amendment heretofore or hereafter enacted, where such structure lawfully existed prior to the enactment of such ordinance or amendment or prior to the application of such ordinance or amendment to its location by reason of annexation. Such nonconforming structures include, but are not limited to, nonconforming signs.

Nonconforming Use - a use, whether of land or structure, which does not comply with the applicable use provisions in a zoning ordinance or amendment heretofore or hereafter enacted, where such use was lawfully in existence prior to the enactment of such ordinance or amendment, or prior to the application of such ordinance or amendment to its location by reason of annexation.

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Open Land Uses - these recreational uses involve the need for large areas of open land and include: golf courses, country clubs, fairgrounds, fishing and hunting and bird watching clubs and/or preserves, state game lands, cross-county skiing and/or hiking, riding stables, campgrounds, etc.

Public Hearing - a formal meeting held pursuant to public notice by the governing body or planning agency, intended to inform and obtain public comment, prior to taking action in accordance with this act.

Public Meeting - a forum held pursuant to notice under the act of July 3, 1986 (P.L.388, No.841, known as the Sunshine Act.

Public Notice - notice published once each week for two successive weeks in a newspaper of general circulation in the municipality. 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 30 days and the second publication shall not be less than seven days from the date of the hearing.

Report - any letter, review, memorandum, compilation or similar writing made by any body, board, officer or consultant other than a solicitor to any other body, board, officer or consultant for the purpose of assisting the recipient of such report in the rendering of any decision or determination. All reports shall be deemed recommendatory and advisory only and shall not be binding upon the recipient, board, officer, body or agency, nor shall any appeal lie therefrom. Any report used, received or considered by the body, board, officer of agency rendering a determination or decision shall be made available for inspection to the applicant and all other parties to any proceeding upon request, and copies thereof shall be provided at cost of reproduction.

Sign - any structure, building, wall, or other outdoor surface, or any device or part thereof, which displays or includes any letter, word, model, banner, flag, pennant, insignia, device, or other representation used for announcement, direction, advertisement or identification.

Street - includes street, avenue, boulevard, road, highway, freeway, parkway, lane, alley, viaduct and any other ways used or intended to be used by vehicular traffic or pedestrians whether public or private.

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Structure - any man-made object having an ascertainable stationary location on or in land or water, whether or not affixed to the land.

(a) Fence - A boundary or barrier of posts, wire mesh or other building materials used to protect or enclose which is under six (6) feet for residential and eight (8) feet business. Good side shall face neighbor. Will require a normal fee of \$25.00.

(b) Screen Planting - screen planting shall mean an evergreen hedge at least six (6) feet high, planted in such a way that it will block a line of sight. The screening may consist of either one (1) or multiple rows of evergreen bushes or trees. No fee required at this time but Zoning Officer will be paid \$20.00 for required permit.

(c) Screening - Screening shall mean a fence, screen planting or wall at least six (6) feet high, provided in such a way that it will block a line of sight. Requirements as specified in definitions.

(d) Wall - Upright structure of stone, brick, wood or other building materials that supports, encloses, protects or divides which is under six (6) feet for residential and eight (8) feet business. Good side shall face neighbor. Will require a normal fee of \$25.00.

Yard - that portion of a lot which is unoccupied and open to the sky and extends from the lot line to the yard line.

Yard, Front - a yard between an adjacent right-of-way and the building line and extending for the full width of the lot.

Yard, Rear - a yard between the rear lot line and a line drawn parallel thereto at such distance therefrom as may be specified herein for any zoning district, and extending for the full width of the lot.

Yard, Side - an open yard space between the side lot line and parallel thereto extending from the front lot line to the rear lot line.

Zoning Officer - the Zoning Officer of the Borough of Mill Village, or its authorized representative.

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Article 3

District Regulations

301 ZONING MAP: A map entitled the “Zoning Map of Mill Village Borough” The Zoning Map shall be kept on file and be available for examination at the Borough Office. is hereby adopted as part of this Ordinance.

302 ZONING DISTRICTS: The Borough is divided into the districts set forth by the Zoning Map. Due to the very rural nature of the Borough, and all types of public/institutional and related uses will be accommodated throughout the Borough. Lot area reductions are allowed with the use of public or group utilities. In addition to the above uses, the following districts will allow other land uses as designated:

302.10 R Residential DISTRICT: Large lot single family residential uses, and all types of agricultural and related uses.

302.20 CB Central Business DISTRICT: All types of residential and related uses and all types of commercial and related uses located in the heart of the Borough.

302.30 C Commercial DISTRICT: All types of commercial and related uses located along the major thoroughfare on medium sized lots.

302.40 I Industrial DISTRICT: In addition to all types of commercial uses, all types of industrial and related uses located along and in the vicinity of the major thoroughfares on large sized l o t s .

303 ANNEXED AREAS: Any territory hereafter annexed by the Borough of Mill Village will be automatically zoned H, until otherwise classified by the governing body.

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304 DISTRICT BOUNDARIES: District boundaries that are shown between the lines of streets, streams, and transportation right-of-ways shall be deemed to follow the centerline. When the Zoning Officer cannot definitely determine the location of a district boundary by such centerlines, by the scale of dimensions stated on the Zoning Map, or by the fact that it clearly coincides with a property line, he shall refuse action, and shall interpret the location of the district boundary with reference to the scale of the Zoning map and the purpose set forth in all relevant provisions of this Ordinance.

305 ZONING DISTRICT CHANGES: All approved changes to Zoning Districts shall be promptly recorded on the Zoning Map by the Zoning Officer.

306 PERMITTED USES: The Permitted Uses for each District are shown in the following table (Section 306.10) and are considered principal uses unless clearly noted. Uses in each category shall be according to the common meaning of the term or according to definitions set forth in Article 2. Uses not specifically listed or defined shall not be permitted.

TABLE 306.10
ZONING DISTRICTS/PERMITTED USES TABLE

<u>Use</u>	<u>District</u>			
	Residential	Central Business	Commercial	Industrial
Accessory Buildings & Uses	X	X	X	X
Essential Services	X	X	X	X
Institutional Services	X	X	X	X
Agricultural Uses	X			
Open Land Uses	X			
Single Family Dwellings	X	X		
Multi-Family Dwellings		X	X	
Commercial Businesses		X	X	X
Natural Resource Extraction			X	X
Industrial Resource Extraction				X

307 LOT AND YARD REQUIREMENTS: The minimum lot area, minimum lot area per family, minimum depth of front yard, minimum depth of rear yard, side yard requirements, for each District shall be as specified in Table 307.10.

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SECTION 307.10 LOT AND YARD REQUIREMENT TABLE

<u>ZONING DISTRICT</u>	<u>Min. Lot Areas (1) (Sq. Ft. or Acres)</u>	<u>Min. Lot Width (2) (Feet)</u>	<u>Min. Front Yard (3) (Feet)</u>
A RESIDENTIAL			
Single Family	30,000	90	35
All Other Uses	1 Acre	105	35
CB CENTRAL BUSINESS			
Single Family	20,000	70	35
Multi-Family	15,000	50	35
All Other Uses	30,000	90	35
C COMMERCIAL			
Multi-Family	20,000	70	50
All Other Uses	1 Acre	105	50
I INDUSTRIAL			
All Uses	1 Acre	105	50

<u>ZONING DISTRICT</u>	<u>Min. Each Side Yard (4) (Feet)</u>	<u>Min. Rear Yard (5) (Feet)</u>	<u>Max. Lot Coverage (6) (Percent)</u>
A RESIDENTIAL			
Single Family	10	40	20
All Other Uses	25	40	20
CB CENTRAL BUSINESS			
Single Family	10	20	30
Multi-Family	15	30	30
All Other Uses	25	40	30
C COMMERCIAL			
Multi-Family	15	30	40
All Other Uses	25	40	40
I INDUSTRIAL			
All Uses	25	40	50

(1) Lot area is measured exclusive of a public road right-of-way or private street.

(1) (2) Lot area and lot width requirements: are for each dwelling unit or business unit; may be reduced for two or more dwelling units or business units by one quarter the requirement for each of the following state/county approved facilities: a sewage collection/treatment system, or a water supply/treatment system.

(2) (3) Lot width and front yard are measured: at the public road right-of-way; or along the front of the lots along a private street in a private development, such as a subdivision, apartment complex, mobilehome park, plaza, industrial park, etc. See also Section 407.

(3) (4) (5) Front, side and rear yard requirements are for all accessory and principal structures and buildings, not for accessory uses such as fences, crops, livestock, lawns, parking areas, etc. No structure or building shall be closer to the side and rear lot lines than its total height.

(6) Lot coverage is the total ground floor area for all accessory and principal structures and buildings.

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Article 4

Supplementary Regulations

401 NONCONFORMING USES AND STRUCTURES: The following provisions shall apply to all nonconforming uses and structures. It is the intention of Mill Village Borough that all legal nonconforming uses and structures shall be able to continue; however, all changes in such uses shall only be as allowed in this Article.

401.10 Any nonconforming use may be continued, or may be changed to a use of the same or a more restrictive classification, but may not be extended or expanded unless to a conforming use, except as permitted by the Board in accordance with the provisions of this Ordinance.

401.20 Any nonconforming building which has been damaged or destroyed by fire or any other means may be reconstructed and used as before, if such reconstruction is performed within six (6) months of discontinuance of use and if the restored building covers no greater area and contains no greater cubic content. If approved by the Board, a reconstructed structure may exceed its original lot coverage and cubic content but must meet the minimum yard requirements of the district in which the structure is located, and it must meet the off-street parking and loading requirements of this Ordinance.

401.30 In the event that any nonconforming use, conducted in a structure or otherwise, ceases, for whatever reasons, for a period of one (1) year, such nonconforming use shall not be resumed and any further use shall be in conformity with the provisions of this Ordinance.

401.40 The nonconforming use of a building may be extended throughout those parts thereof which were manifestly arranged or designed for such use at the time of adoption of this Ordinance. A nonconforming building or structure may, with the approval of the Board, be extended, enlarged or replaced if such expansion does not occupy an area greater than fifty percent (50%) more than the structure occupied prior to such expansion, enlargement or reconstruction. Furthermore, such activities must meet the minimum yard regulations and height restrictions of the district in which the structure is located, and must meet all off-street parking and loading requirements of this Ordinance.

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401.50 Nothing contained herein shall require any change in the overall layout, plans, construction, size or designated use of any development, building, structure or part thereof for which official approval and required permits have been granted prior to the effective date of this Ordinance and where construction is complete within six (6) months from the date of issuance of the permit.

401.60 Once changed to a conforming use, no structure or land shall be permitted to revert to a nonconforming use.

401.70 Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another of a different classification, this Article shall also apply to any uses which thereby become nonconforming.

402 EXISTING LOTS OF RECORD: Any lot of record existing at the effective date of this Ordinance, and held in separate ownership different from the ownership of adjoining lots, may be used for the erection of a structure conforming to the use regulations of the district in which it is located even though its lot area and width are less than the minimum required by this Ordinance, however, such lot must comply with the yard, height and coverage standards of the zoning district wherein it is located.

403 APPLICATION OF YARD REGULATIONS:

403.1 Where a structure exists on an adjacent lot and is within one hundred fifty (150) feet of the proposed structure, and existing structure has a front yard less than the minimum depth required, the minimum front yard shall be the average depth of the front yard of the existing structure on the adjacent lot and the minimum depth required for the district; where structures exist on both adjacent lots, the minimum depth of the front yard shall be the average depth of the front yards of the existing adjacent structures.

403.2: All structures, whether attached to the principal structure or not, and whether open or enclosed, including porches, carports, balconies or platforms above normal grade level, shall not project into any minimum front, side or rear yards except as noted in Section 403.3 and Section 403.4.

403.3 A wall or fence under six (6) feet in height and paved terraces without walls, roofs or other enclosures may be erected within the limits of any yard. Retaining walls and fences required for screening under this Ordinance are not subject to the six (6) foot high limitation.

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404 TEMPORARY STRUCTURES: Temporary structures in conjunction with construction work shall be permitted only during the period that the construction work is in progress.

405 FLOOD HAZARD AREAS: The Borough of Mill Village has adopted an ordinance regulating development within floodplains. All development within designated areas are required to follow the regulations contained in said ordinance.

406 PERMANENT FOUNDATIONS: All structures, which are not considered temporary structures or accessory buildings, shall be placed on permanent foundations of steel, concrete, concrete block or pressure treated wood extending below the frost line, and properly anchored. All above-ground structures shall be properly skirted with durable materials of masonry, fiberglass, aluminum, rigid plastic or other weatherproof building materials.

407 BUILT-UP AREAS: In the built-up areas of Mill Village Borough, where the front yard and side yard lines are already established, the minimum front yard or side yard need not be greater than the average of those located for a distance of 200 feet on both sides of the lot for which a zoning certificate is being requested. All other lot and yard requirements apply.

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Article 5

Administration, Enforcement and Appeals

501 ZONING OFFICER: The governing body shall appoint the Zoning Officer who shall do so in accordance with the provisions of this Ordinance, and shall do so in accordance with the provisions of this Ordinance and of the Pennsylvania Municipalities Planning Code. The Zoning Officer shall not hold any elective office in the Borough.

502 DUTIES OF THE ZONING OFFICER: The Zoning Officer shall administer this Ordinance in accordance with its literal terms, and shall not have the power to permit any construction or any use or change of use which does not conform to this Ordinance. The Officer shall be considered as qualified to perform his duties by meeting the qualifications established by the Borough. In addition, the Zoning Officer's duties, obligations and responsibilities include the following:

502.1 Application for Building/Zoning Permits: The Zoning Officer shall receive applications for Building/Zoning Permits. A Building/Zoning Permit is an application filed prior to the start of construction/development by a developer to describe the proposed activity in sufficient detail to determine whether or not it meets the requirements of this and other applicable Borough ordinances. Applications conforming to such ordinances shall be approved, those not conforming to such ordinances shall be denied.

502.2 Inspections: The Zoning Officer or a duly appointed assistant may examine, or cause to be examined, all structures and/or land for which an application for a Building/Zoning Permit or a Zoning Certificate has been requested. Such inspections may be made from time to time during construction and shall be made upon the termination of construction and prior to the issuance of a Certificate of Occupancy.

502.3 Permits, Applications, Appeal and Certificates: The Zoning Officer shall issue or deny such permits or certificates as required by this Ordinance where no other body is involved; shall receive all applications for Variances and forward same to the appropriate body. In addition, the Zoning Officer shall receive all applications for appeals prior to forwarding same to the Zoning Hearing Board.

502.4 Enforcement: The Zoning Officer is authorized to institute civil enforcement proceedings as a means of enforcing this Ordinance.

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503 PERMITS AND CERTIFICATES:

503.1 Building/Zoning Permits : An application for a Building/Zoning Permit will be to show compliance with this and other appropriate Borough ordinances. Applications shall contain information relative to the proposed construction and use in sufficient detail to inform the Zoning Officer of the scope and extent of the proposed development. The exact details required, including sketches, plat plans as well as the number of copies, time limits and fees for such applications shall be determined by the governing body.

503.2 Certificate of Occupancy: A Certificate of Occupancy shall be required prior to the occupancy or use of any vacant land prior to the occupancy or use of any structure hereafter constructed, reconstructed, moved, altered or enlarged. The purpose of the Certificate of Occupancy is to confirm that the development described in the Building/Zoning Permit Application has been completed in compliance with the application and this . Ordinance. Certificates of Occupancy shall also be required for a change of use of a structure or land to a different use and changes to a nonconforming use or structure.

503.3 Zoning Certificate: The Zoning Certificate shall be issued upon request to confirm that the use of land or a building within the Borough is in compliance with this Ordinance. The exact form of the Certificate and fees charged shall be determined by the governing body.

503.4 Sign Permit: A sign permit shall be required prior to the erection or alteration of any sign, which sign shall not intrude upon any right-of-way or private street.

504 APPEALS AND VARIANCES: The Zoning Officer shall receive all Appeals, applications for Variances. Said applications shall be on forms as approved by the governing body shall be accompanied by a fee as set by the governing body. It is the intent of the Ordinance that all appeal processes should follow the Pennsylvania Municipalities Planning Code or other appropriate State law.

505 VIOLATIONS:

505.1 Enforcement Notice: When it appears to the governing body and/or the Zoning Officer that a violation has occurred, the Zoning Officer shall send an 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 the parcel, and to any other person requested in writing by the owner of record. The enforcement notice shall state the following:

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- (a) The name of the owner of record and any other person against whom the governing body 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 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 appeal to the Zoning Hearing Board, constitutes a violation, with possible sanctions clearly described.

505.2 Causes of Action: In case any building, structure, landscaping or land is, or is proposed to be, erected, constructed, reconstructed, altered, converted, maintained or used in violation of this Ordinance, the governing body, the Zoning Officer of the Borough, or any aggrieved owner or tenant of real property who shows that his property or person will be substantially affected by the alleged violation, in addition to other remedies, 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. When any such action is instituted by a landowner or tenant, notice of the action shall be served upon the Borough at least thirty (3) days prior to the time the action is begun by serving a copy of the complaint on the governing body of Mill Village Borough. No such action may be maintained until such notice has been given.

505.3 Jurisdiction: District justices shall have initial jurisdiction over proceedings brought under this section.

505.4 Enforcement Remedies: Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of this Zoning Ordinance shall, upon being found liable therefore in a civil enforcement proceeding commenced by the governing body, pay a **judgement** of not more than five

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hundred (\$500) dollars plus all court costs, including reasonable attorney fees incurred by the Borough as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by the district justice. If the defendant neither pays nor timely appeals the **judgement**, the township may enforce the **judgement** pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the district justice determining 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 of a violation continues shall constitute a separate violation by the district justice and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable attorney fees collected for the violation of zoning ordinances shall be paid over to the township. Nothing contained in this section shall be construed or interpreted to grant any person or entity other than the Borough and its Zoning Officer the right to commence any action for enforcement pursuant to this section.

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Article 6

Zoning Hearing Board

601 CREATION: There is hereby created a Zoning Hearing Board herein after referred to as the "Board," consisting of three (3) residents of the Borough appointed by the governing body pursuant to the Pennsylvania Municipalities Planning Code, as amended. Said Board shall perform all the duties, and exercise all powers prescribed by said Code and as herein further provided.

602 APPOINTMENT: The terms of office of the Board shall be three (3) years and shall be so fixed that the term of office of one (1) member shall expire each year. The Board shall promptly notify the governing body of any vacancies which occur. Appointments to fill vacancies shall be only for the unexpired portion of the term. Members of the Board shall hold no other office in the Borough, nor be a member of the Planning Commission. The governing body shall also appoint one (1) alternate member to the Board. The appointment, rights and duties of the alternate shall be in accordance with Article IX of the Pennsylvania Municipalities Planning Code.

603 REMOVAL OF MEMBERS: Any Board member may be removed for misfeasance or nonfeasance in office, or for other just cause, by a majority vote of the governing body, 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.

604 ORGANIZATION OF BOARD: The 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 or taking of any action, a quorum shall be not less than the majority of all the members of the Board, but where two (2) members are disqualified to act in a particular matter, the alternate member shall be seated. the Board may appoint a hearing officer from its own membership to conduct any hearing on its behalf, and the parties may waive further action by the Board as provided in Section 908 of the Planning Code. The Board may make, alter and rescind rules and forms for its procedure, consistent with Borough ordinances and laws of the Commonwealth. The Board shall keep full public records of its business and shall submit a report of its activities to the governing body as requested by the governing body.

605 EXPENDITURES FOR SERVICES: Within the limits of funds appropriate by the governing body, the Board may employ or

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contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services. Members of the Board may receive compensation for the performance of their duties, as may be fixed from time to time by the governing body, but in no case shall it exceed the rate of compensation authorized to be paid to the members of the governing body.

606 LEGAL COUNSEL: Where legal counsel is desired, an attorney, other than the Borough Solicitor, shall be used.

607 HEARINGS: The Board shall conduct hearings and make decisions in accordance with the following requirements.

- (a) Notice shall be given to the public by notice published one each week for two (2) successive weeks in a newspaper of general circulation in the 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 be not more than thirty (30) days or less than seven (7) days from the date of the hearing. Written notice shall be given to the applicant, the Zoning Officer, and to any person who has made timely request for the same. Written notices shall be prescribed by rules of the Board. In addition to the notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one (1) week prior to the hearing.
- (b) The governing body may prescribe reasonable fees with respect to hearings 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 Hearing shall be held within sixty (60) days from the date of the applicant's request, unless the applicant has agreed in writing to an extension of time.
- (d) The hearings shall be conducted by the Board or the Board may appoint any member as a hearing officer. The decision, or, where no decision is called for, the findings shall be made by the Board, but the parties may waive decision or findings by the Board and accept the decision or findings of the hearing officer as final.

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- (e) The parties to the hearing shall be the Borough, any person affected by the application who has made timely appearance of record before the Board, and any other person including civic or community organizations permitted to appear by the Board. The Board shall have power to require that all persons who wish to be considered parties enter appearances in writing on forms provided by the Board for that purpose.
- (f) The chairman or, acting chairman of the Board or the hearing officer presiding shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and production of relevant documents and papers, including witnesses and documents requested by the parties.
- (g) 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.
- (h) Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
- (i) The 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 Board. The cost of the original transcript shall be paid by the Board if the transcript is ordered by the board or hearing officer or shall be paid by the person appealing from the decision of the 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.
- (j) The 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, except that advice from the Board's Solicitor is exempt from this restriction; shall not take notice of any communication, reports, staff memoranda, or other materials unless the 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.

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- (k) The 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 Board or hearing officer. Where application is contested or denied, each decision shall be accompanied by findings of fact and conclusions based thereon together with the reasons therefor. Conclusions based on any provisions of this Ordinance or the Planning Code, or any 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. If the hearing is conducted by a hearing officer, and there has been no stipulation that his decision or findings are final, the 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 Board prior to final decision or entry of findings, and the Board's decision shall be entered no later than thirty (30) days after the report of the hearing officer. Where the Board fails to render the decision within the period required by this Ordinance or the Planning Code, or fails to hold the required hearing within sixty (60) days from the date of the applicant's request for a hearing, 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 Board to meet or render a decision as hereinabove provided, the Board shall give public notice of said decision within ten (10) days in the same manner as provided in Subsection 607(1) of the Pennsylvania Municipalities Planning Code. Nothing in this subsection shall prejudice the right of any party to appeal the decision to a court of competent jurisdiction.
- (l) 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 day following its date. To all other persons who have filed their name and address with the Board nor later than the last day of the hearing, the Board shall provide by mail or otherwise, a brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined.

608 BOARD'S FUNCTIONS:

- (a) Substantive challenges to the validity of any land use ordinance, except those brought before the governing body pursuant to Section 609.1 and 916.1(a) of the Planning Code.

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- (b) Challenges to the validity of a land use ordinance raising procedural questions or alleged defects in the process of enactment of adoption which challenges shall be raised by an appeal take within thirty (30) days after the effective date of said ordinance. Where the ordinance appealed from is the initial zoning ordinance of the Borough and a zoning hearing board has not been previously established, the appeal raising procedural questions shall be taken directly to court.
- (c) 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 thereof, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure of lot.
- (d) Appeals from a determination by the Borough engineer or the Zoning Officer with reference to the administration of any floodplain or flood hazard ordinance or such provisions within a land use ordinance.
- (e) Applications for variances from the terms of the zoning ordinance and flood hazard ordinance or such provisions within a land use ordinance, pursuant to Section 910.2 of the Planning Code and Section 60b(h) of this Ordinance.
- (f) Appeals from the Zoning Officer's determination under Section 916.2 of the planning Code.
- (g) Appeals from the determination of the Zoning Officer or municipal engineer in the administration of any land use ordinance or provision thereof with reference to sedimentation and erosion control and storm water management insofar as the same relate to development not involving Article V or V I 1 applications of the Planning Code.
- (h) Variances: The Board shall hear requests for variances where it is alleged that the provisions of this Ordinance inflict unnecessary hardship upon the applicant. The Board may be rule prescribe the form of application and may require preliminary application to the Zoning Officer. The Board may grant a variance provided that all of the following findings are made where relevant in a given case:

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- (1) 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 that the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of this Ordinance in the neighborhood or district in which the property is located;
- (2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this Ordinance and that the authorization of a variance is **therefor** necessary to enable the reasonable use of the property;
- (3) That such unnecessary hardship has not been created by the applicant;
- (4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare; and
- (5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the **the** least modification possible of the regulation in issue.

In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purpose of this Ordinance.

609 PARTIES APPELLANT BEFORE BOARD: Appeals under Section 608 and proceedings to challenge the Ordinance under Section 608 may be filed with the Board in writing by the landowner affected, any officer or agency of the Borough, or any person aggrieved. Requests for a variance under Section 608 may be filed with the Board by any landowner or any tenant with the permission of such landowner.

610 TINE LIMITATIONS; PERSONS AGGRIEVED: No person shall be allowed to file any proceeding with the Board later than thirty (3) days after an application for development, preliminary or final, has been approved by an appropriate Borough officer, agency or body if such proceeding is designed to secure reversal or to limit the approval in any manner unless such person alleges and

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proves that he had no notice, 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. See also Section 914.1 of the Planning Code.

611 STAY OF PROCEEDINGS: Upon filing of any proceeding referred to in Section 608 and during its pendency before the 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 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 Board or by the court having jurisdiction of zoning appeals on petition after notice to the Zoning Officer or other appropriate agency or body. See also Section 915.1 of the Planning Code.

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Article 7

Amendments

701 GENERAL: The governing body may introduce and/or consider amendments to the text of this Ordinance and to the Zoning Map, as proposed by a member of the governing body, the Planning Commission, or by a petition of a person or persons residing or owning property within the Borough.

702 PETITIONS: Petitions for amendments shall be filed with the Planning Commission; and the petitioners, upon such filing, shall pay an advertising deposit and a filing fee, in accordance with a fee schedule affixed by the governing body.

703 REFERRAL: Any proposed amendment presented to the governing body without written findings and recommendations from the Mill Village Borough Planning Commission and the Erie County Planning Department, shall be referred to these agencies for their review and recommendations prior to the public hearing by the governing body. The governing body shall not hold a public hearing upon such amendments until required reviews and recommendations are received or the expiration of thirty (30) days from the date that such proposed amendments were submitted to the Borough and County Planning agencies.

704 ACTION: Before acting upon a proposed amendment, the governing body shall hold a public hearing thereon. Public notice of such hearing is required and shall contain a brief summary of the proposed amendment and reference to the place where copies of the same be examined, shall be published in accordance with the provisions of the Pennsylvania Municipalities Planning Code. If the proposed amendment involves a change to the Zoning Map, notice of the public hearing shall be posted at the affected tract in accordance with Section 609 of the Planning Code at least one (1) week prior to the date of the hearing.

705 CURATIVE AMENDMENTS: A landowner who desires to challenge of substantive grounds the validity of this Zoning Ordinance or 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 governing body with a written request that his challenge and proposed amendment be heard and decided as provided in Section 916.1 of the Pennsylvania Municipalities Planning Code (Act 2471, as amended). The governing body shall commence a hearing thereon within sixty (60) days. As with other proposed amendments, the Curative Amendment shall be referred to the Borough of Mill Village Planning Commission and the Erie County

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Planning Department at least thirty (30) days before the hearing is conducted by the governing body. Public notice shall be given in accordance with applicable provision of the Planning Code. The hearings shall be conducted in accordance with instructions as set forth by Section 916.1 of the Planning Code. The findings, actions and considerations of the governing body shall be in accordance with Section 609.1 of the Planning Code. The hearings shall be conducted in accordance with instructions as set forth by Section 916.1 of the Planning Code. The findings, actions and considerations of the governing body shall be in accordance with Section 609.1 of the Planning Code.

The governing body may institute a Municipal Curative Amendment in accordance with Section 609.2 of the Planning Code.

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