

ARTICLE 10

ADMINISTRATION AND ENFORCEMENT

§ 208-1001. Administration and Enforcement.

A. Administration.

- (1) Township Zoning Officer. The provisions of this Chapter shall be administered by a Township Zoning Officer to be appointed by the LMT BOC. The Township Zoning Officer shall meet qualifications established by LMT and shall not hold any elective office in LMT. The LMT BOC may designate a Deputy or Assistant Zoning Officer who may exercise all of the powers and duties of the Township Zoning Officer during the temporary absence or disability of the Township Zoning Officer.
- (2) Duties and Responsibilities. The duties and responsibilities of the Township Zoning Officer shall be:
 - (a) Process Applications. To receive, examine and process all applications and permits as provided by the terms of this Chapter. The Township Zoning Officer shall also issue zoning permits for special exception and conditional uses, or for variances after the same have been approved.
 - (b) Maintain Official Records. To maintain and be responsible for all pertinent records on zoning matters in Lower Moreland Township. These records shall include, but not be limited to, all applications received, copies of all zoning permits and zoning certificates issued, copies of orders and findings of the LMT ZHB, written complaints of alleged violations, records of all inspections made, a copy of the most recent version of this Chapter, and all amending ordinances, the Official Zoning Map, and all other pertinent information. The records of the Township Zoning Officer shall be available for the use of the Township of Lower Moreland and for inspection of any interested party during office hours in accordance with the Pennsylvania Right-to-Know Law.
 - (c) Inspections. Before issuing any zoning permit or zoning certificate at his discretion, to inspect or cause to be inspected all buildings, structures, signs, or land and portions thereof for which an application has been filed for a zoning permit or a zoning certificate. Thereafter, he may make such inspections during the completion of the work for which a zoning permit has been issued. Upon completion of such work and before issuing a zoning certificate, a final inspection shall be made and all violations of the approved plans or zoning permit shall be noted and the holder of the zoning permit shall be notified of the discrepancies. The Township Zoning Officer shall have the right to enter any building or structure or enter upon any land at any reasonable hour in the course of his duties to inspect properties to determine compliance with all provisions of this Chapter as well as conditions attached to the approval of variances, special exceptions, conditional uses and curative amendments.

- (d) Inspect or Register Nonconformities. Upon request by a landowner or the direction of the LMT BOC, to inspect nonconforming uses, structures, and lots and to keep a filed record of such nonconforming uses and structures, together with the reasons why the Township Zoning Officer identified them as nonconformities, as a public record and to examine them periodically, with the view of eliminating the nonconforming uses under the existing laws and regulations.
 - (e) Assist Local Officials. Upon the request of the LMT BOC, LMT PC, or the LMT ZHB, present to such bodies facts, records, and any similar information on specific requests, to assist such bodies in reaching their decisions.
 - (f) Maintain Up-to-Date Chapter. To be responsible for keeping this Chapter and the Official Zoning Map up-to-date, including any amendments thereto.
 - (g) Preliminary Opinion. To render a preliminary opinion regarding a proposed land use in accordance with Section 916.2. of the MPC.
 - (h) Investigate Complaints. When in receipt of a written complaint or verbal non-anonymous complaint, stating fully the cause and basis thereof, to investigate alleged violations of this Chapter, where appropriate. A written report of all investigations of this Chapter shall be prepared and filed by the Township Zoning Officer. If after the investigation the Township Zoning Officer determines that a violation has occurred, he shall take action as provided for by this Chapter.
 - (i) Prosecute Violations. To institute civil enforcement proceedings, where appropriate, as a means of enforcement when anyone undertakes deliberate actions that are contrary to the terms of this Chapter, and any conditions placed upon the approval of special exceptions, variances and conditional uses or any other approvals authorized under this Chapter.
- B. Enforcement. This Chapter shall be enforced by the Township Zoning Officer of the Township of Lower Moreland. No zoning permit or zoning certificate shall be granted by him for any purpose except in compliance with the literal provisions of this Chapter. The Township Zoning Officer is authorized to institute civil enforcement proceedings as a means of enforcement when acting within his scope of employment.
- C. Violations. Failure to secure a zoning permit prior to a change in use of land or structure, or the erection, construction or alteration of any structure, shall be a violation of this Chapter. It shall also be a violation of this Chapter to undertake other deliberate actions which are contrary to the terms of the Chapter and any conditions placed upon the approval of special exceptions, variances, and conditional uses. Each day that a violation is continued shall constitute a separate offense.
- D. Enforcement Notice. If it appears to the Township of Lower Moreland that a violation of this Chapter has occurred, the Township of Lower Moreland may initiate enforcement proceedings by sending an enforcement notice as provided in the following. Prior to sending an official enforcement notice, the Township Zoning Officer may at his option informally request compliance.

- (1) The enforcement notice shall be sent via first (1st) class mail to the owner of record of the parcel on which the violation has occurred to the address the owner of record has provided to the Township of Lower Moreland, or, if none given, to the most recent address as evidenced by the tax records within possession of the Township of Lower Moreland, to any person who has filed a written request to receive enforcement notices regarding that parcel, and to any other person requested in writing by the owner of record.
 - (2) An enforcement notice shall state at least the following:
 - (a) The name of the owner of record and any other person against whom the Township of Lower Moreland intends to take action.
 - (b) The location of the property in violation.
 - (c) The specific violation with a description of the requirements that have not been met, citing in each instance the applicable provisions of this Chapter.
 - (d) The date before which the steps for compliance shall be commenced and the date before which the steps shall be completed.
 - (e) That the recipient of the notice has the right to appeal to the LMT ZHB within a prescribed period of time in accordance with procedures set forth in Article 9 of this Chapter relating to *Appeals from the Determination of the Township Zoning Officer in Zoning Hearing Board's Functions (§ 208-905.D.)*.
 - (f) That failure to comply with the notice within the time specified, unless extended by appeal to the LMT ZHB, constitutes a violation, with possible sanctions clearly described.
- E. Enforcement Remedies. Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of this Chapter shall, upon being found liable therefore in a civil enforcement proceeding commenced by the Township of Lower Moreland, pay a judgment of not more than five hundred (500) dollars plus all court costs, including reasonable attorney fees incurred by the Township of Lower Moreland as a result thereof. No judgment shall commence or be imposed, levied or be payable until the date of the determination of a violation by the district justice/magisterial district judge. If the defendant neither pays nor timely appeals the judgment, the Township of Lower Moreland may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the district justice/magisterial district judge, determining that there has been a violation further determines that there was a good faith basis for the person, partnership or corporation violating this Chapter to have believed that there was no such violation, in which event there shall be deemed to have been only one (1) such violation until the fifth (5th) day following the date of the determination of a violation by the district justice/magisterial district judge 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 this Chapter shall be paid over to the Township of Lower Moreland.

- F. 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 Chapter, the LMT BOC or, with the approval of the LMT BOC, an officer of the Township of Lower Moreland, 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 that action shall be served upon the Township of Lower Moreland at least thirty (30) days prior to the time the action is begun by serving a copy of the complaint on the LMT BOC. No such action may be maintained until such notice has been given.

§ 208-1002. Zoning Permits.

A. General Requirements for Zoning Permits.

- (1) Actions Requiring Zoning Permits. A zoning permit shall be required prior to:
- (a) Improvement involving:
 - (i) Construction of Accessory Structures not requiring a building permit per the PA UCC.
 - (ii) Construction or placement of Signs not exempt from zoning permit requirements § 208-704 *Signs Exempt from Zoning Permit Requirements.*
 - (iii) Fences and Decorative walls not requiring a building permit per the PA UCC.
 - (iv) Satellite dish antennas that are greater than forty (40) inches in diameter.
- (2) Action Upon Application. The Zoning Officer, or his designee, shall inspect any accessory structure (not requiring a building permit), sign, fence, decorative wall or satellite dish antenna within ten (10) days after notification that the proposed work that was listed under the zoning permit application has been completed. If the Zoning Officer is satisfied that the:
- (a) Work is in conformity and compliance with the work listed in the issued zoning permit;
 - (b) Work is in conformity and compliance with other pertinent local laws;

He shall issue a Final Approval for the intended use listed in the approved application. If the Zoning Officer finds that the work has not been performed in accordance with this Chapter or the approved application, the Zoning Officer shall refuse to issue the Final Approval and shall give in writing the reasons for such refusal. The Zoning Officer shall inform the zoning permit holder of his right of appeal to the LMT ZHB set forth in Article 9 of this Chapter relating to *Appeals from the Determination of the Township Zoning Officer in Zoning Hearing Board's Functions (§ 208-905.D.)*.

- (3) Zoning Permit Exemptions. No zoning permit shall be required for repairs or routine maintenance of any accessory structure, sign, fence, and decorative wall or satellite dish antennas provided such repairs or maintenance does not change its use or exterior dimensions.
- (4) Form of Application.
 - (a) Application for a zoning permit shall be made on forms provided by the Township.
 - (b) The Township may, at its option, issue combined or separate zoning permits and building permits, and may utilize a combined or separate application for the permits.
- (5) Zoning Permit Review Deadline. Such zoning permits shall be issued or rejected within thirty (30) calendar days from date of application.
- (6) Zoning Permit Conformity. No zoning permit shall be issued except in conformity with the regulations of this Chapter, except after written order from the LMT ZHB or the Courts.
- (7) Zoning Permit Revocation. The Township Zoning Officer may revoke a zoning permit or approval, in case of any false statement or misrepresentation of fact in the application or on the plans on which the zoning permit or approval was based or for any other cause set forth in this Chapter.
- (8) Required Zoning Permit Fees. No zoning permit shall be issued until the fees prescribed by the LMT BOC and approved by resolution shall be paid to the Township.
- (9) Zoning Permit Time Period. A permit becomes invalid unless the authorized work begins within 180 days after the permit's issuance or if the authorized work is suspended or abandoned for 180 days after the work has commenced. A permit holder may submit a written request for an extension of time to commence work for just cause. The Zoning Officer may grant an extension of time to commence construction in writing. A permit may be valid for no more than 1 year from its issuance date.
- (10) Compliance with this Chapter. The zoning permit shall be a license to proceed with the work and should not be construed as authority to violate, cancel, or set aside any of the provisions of this Chapter, except as stipulated by the LMT ZHB through the issuance of an approved variance under Article 9 of this Chapter related to *Variances in Zoning Hearing Board's Functions (§ 208-905.C.)*.
- (11) Compliance with Zoning Permit and Plot/Site Plan. All work or uses shall conform to the approved application and plans for which the zoning permit has been issued, as well as the approved plot/site plan.
- (12) Display of Zoning Permit. All approved zoning permits shall be prominently displayed on

the subject property during construction or the conduct of other site improvements.

(13) Temporary Zoning Permits.

- (a) Temporary Zoning permits may be issued for a limited period of time under the following circumstances:
 - (i) Special Events, provided that only a well-established non-profit organization proposing a temporary use demonstrates clearly that the proposed use will primarily serve a charitable, public service or religious purpose in order to be eligible to receive approval for commercial or business type activities in a zoning district where a commercial or business use would not otherwise be permitted.
 - (ii) Temporary construction buildings and trailers that are necessary to serve on-site construction, while such construction is actively underway.
 - (iii) Temporary display and sales for commercial or business type activities in a zoning district where a commercial or business use would not otherwise be permitted.
 - (iv) Such other activities that the applicant proves are routine, customary, and temporary, including those specific “temporary” uses and structures set forth in Article 5 and Article 8 of this Chapter.
- (b) Time Period. The Zoning Officer shall state a reasonable maximum time period for the temporary zoning permit. If no time limit is stated or otherwise specifically provided in Article 5 or Article 8 of this Chapter, then a maximum time period of thirty (30) days shall apply. Such temporary zoning permit may be extended a maximum of one (1) time for an additional maximum time period of thirty (30) days.
- (c) Revocation of Temporary Zoning Permits. The Zoning Officer, at his discretion, may revoke a temporary zoning permit issued under the provisions of this Chapter for violations of public health, safety or welfare are occurring, or failure to operate in compliance with this Chapter and the approved zoning permit.

§ 208-1003. Zoning Certificate.

A. Use and Occupancy Certificate

- (1) A Use and Occupancy Certificate shall be required prior to any of the following:
 - (a) Each change of occupancy of a non-residential building, structure and facility, and units therein, where a building permit is not required.

- (i) Application for a Use and Occupancy Certificate shall be made on forms provided by the Township.
 - (ii) An approved Fire Inspection conducted by the Township Fire Marshal shall be obtained prior to occupancy. The Fire Marshal may at his discretion request the assistance of Township staff and consultants in determining compliance.
 - (iii) An approved Zoning Review conducted by the Zoning Officer shall be obtained prior to occupancy. If the application fails to comply with the provisions of the Chapter or any conditions or approvals established by the BOC or ZHB, the Zoning Officer shall reject the application.
- (b) Use of land or change in the use thereof.
 - (c) Change in use of any nonconforming use where a building permit is not required.
- (2) A Use and Occupancy Certificate shall be issued after the following:
- (a) Issuance of a Final Inspection Report, per the requirements of Article 4 of the PA UCC, indicating that construction meets the PA UCC.
- (3) A Use and Occupancy Certificate may be revoked per Article 4 of the PA UCC for failure to comply with the requirements of the PA UCC. An owner shall have the right to appeal such revocation per the requirements of Article 4 of the PA UCC.

§ 208-1004. Fees.

- A. The LMT BOC shall establish by resolution a schedule of fees, charges, and expenses and collection procedures for applications for zoning permits, use and occupancy certificates, special exceptions, conditional uses, variances, appeals, amendments, and other matters pertaining to this Chapter.
- B. The schedule of fees shall be available for inspection of any interested party during office hours in accordance with the Pennsylvania Right-to-Know Law and may be altered or amended by resolution of the LMT BOC.
- C. Until all application fees, charges, and expenses have been paid in full, the application or appeal shall not be considered complete. Therefore, no proceedings related to any such application or appeal shall be initiated, no established time elements shall begin to accrue, and no action shall be taken on any such application or appeal.

§ 208-1005 Amendments.

- A. Power of Amendment. The LMT BOC may from time to time, amend, supplement, change or repeal this Chapter including the Official Zoning Map. Any amendment, supplement, change or repeal may be initiated by the LMT PC, the LMT BOC, or by a petition to the LMT BOC by an interested party. The Township of Lower Moreland is under no obligation to consider any zoning amendment other than curative amendments submitted under the subsections below relating to

Curative Amendment by a Landowner (§ 208-1005.F.) and Curative Amendment by the LMT BOC (§ 208-1005.G.).

B. Hearing and Enactment Procedures for Zoning Amendments.

- (1) Public Hearing. Before hearing and enacting on any amendment to this Chapter or Official Zoning Map, the LMT BOC shall conduct a public hearing to inform the general public of the nature of the amendment, and to obtain public comment. Such public hearing shall be conducted after public notice as described in the subsection immediately below relating to *Public Notice (§ 208-1005.B.(2))*, and mailed notice and electronic notice to any owner of a tract or parcel of land located with Lower Moreland Township, or an owner of the mineral rights of a tract or parcel of land within Lower Moreland Township who has made a timely request in accordance with Section 109 of the MPC, has been given.
- (2) Public Notice. Before conducting a public hearing, the LMT BOC shall provide public notice as follows:
 - (a) Notice shall be published once each week for two (2) successive weeks in a newspaper of general circulation in Lower Moreland Township. 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 (1st) publication shall not be more than thirty (30) days, and the second (2nd) publication shall not be less than seven (7) days from the date of the hearing. Publication of the proposed amendment shall include either the full text thereof or the title and brief summary, prepared by the Township Solicitor and setting forth all the provisions in reasonable detail. If the full text is not included:
 - [1] A copy of the full text shall be supplied to a newspaper of general circulation in Lower Moreland Township at the time the public notice is published; and
 - [2] An attested copy of the proposed ordinance shall be filed in the County Law Library or other County office designated by the Montgomery County Board of Commissioners, who may impose a fee no greater than that necessary to cover the actual costs of storing said ordinances.
 - (b) Official Zoning Map Amendments.
 - [1] Public notice shall also include the posting of a sign at conspicuous locations along the perimeter of the subject property deemed sufficient by the Township of Lower Moreland to notify potentially interested citizens. This sign(s) shall be posted at least one (1) week prior to the hearing and will exhibit the nature, date, time and location of the hearing. The sign posting requirement shall not apply when the rezoning constitutes a comprehensive rezoning.
 - [2] In addition, notice of the public hearing shall be sent by first (1st) class mail by the Township of Lower Moreland at least thirty (30) days prior to

the date of the public hearing by first (1st) class mail to the addressees to which real estate tax bills are sent for real property to be rezoned, as evidenced by the tax records within possession of the Township of Lower Moreland. Such notice shall include the location, date and time of the public hearing. The first (1st) class mail notice requirement shall not apply when the rezoning constitutes a comprehensive rezoning.

- (c) For curative amendments, public notice shall also indicate that the validity of this Chapter or Official Zoning Map is in question, and shall give the place where, and the times when, a copy of the request, including any plans, explanatory material or proposed amendments, may be examined by the public.
 - (d) If, after any public hearing held upon an amendment, the proposed amendment is changed substantially, or is revised, to include land previously not affected by it, the LMT BOC shall hold another public hearing, pursuant to public notice, and mailed notice and electronic notice to any owner of a tract or parcel of land located with Lower Moreland Township, or an owner of the mineral rights of a tract or parcel of land within Lower Moreland Township who has made a timely request in accordance with Section 109 of the MPC before proceeding to vote on the amendment.
- (3) Enactment Notice. The LMT BOC shall publish a reference to the time and place of the meeting at which passage of this Chapter or amendment will be considered, and a reference to a place within the Township of Lower Moreland where copies of the proposed ordinance or amendment may be examined without charge, or obtained for a charge not greater than the cost thereof. Enactment notice shall be published at least once in one (1) newspaper of general circulation in Lower Moreland Township not more than sixty (60) days nor less than seven (7) days prior to passage. The published content of the enactment notice shall be the same as that required for public notice described in the subsection above relating to *Public Notice (§ 208-1005.B.(2))* and may be published as part of the same notice.
- (4) LMT PC Referrals.
- (a) For amendments proposed by parties other than the LMT PC, the LMT BOC shall submit each amendment to the LMT PC at least thirty (30) days prior to the public hearing on such amendment.
 - (b) A report of the review by the LMT PC, together with any recommendations, may be given to the LMT BOC within thirty (30) days from the date of said referral. The recommendation of the LMT PC may include a specific statement as to whether or not the proposed action is in accordance with the intent of this Chapter and the most recent version of the Lower Moreland Township community development objectives or any applicable plan adopted by the LMT BOC set forth in Article 1 of this Chapter relating to *Purpose of Enactment (§ 208-103.)*.
- (5) MCPC Referrals. All proposed amendments shall be submitted to the MCPC at least forty-five (45) days prior to the public hearing on such amendments. The Commission may

submit recommendations to the LMT BOC; however, if the MCPC fails to act within forty-five (45) days, the LMT BOC may proceed without its recommendations.

- (6) Adjournment of Public Hearing. If, during the public hearing process, the LMT BOC needs additional time to understand the proposal, inform the public, receive public comment, or render a decision, it may adjourn the public hearing to a certain time and place.
 - (7) Copies of Adopted Amendments. Within thirty (30) days after enactment, a copy of the amendment to this Chapter or Official Zoning Map shall be forwarded to the MCPC.
- C. Amendments Initiated by the LMT PC. When an amendment, supplement, change, or repeal is initiated by the LMT PC, the proposal shall be presented to the LMT BOC which shall then proceed in the same manner as with a petition to the LMT BOC which has already been reviewed by the LMT PC.
- D. Amendment Initiated by the LMT BOC. When an amendment, supplement, change, or repeal is initiated by the LMT BOC, such amendment, supplement, change, or repeal shall follow the procedure prescribed for a petition in the subsection above relating to *Hearing and Enactment Procedures for Zoning Amendments (§ 208-1005.B.)*.
- E. Amendment Initiated by a Petition from an Interested Party. A petition for amendment, supplement, change, or repeal for a portion of this Chapter shall include the following:
- (1) Name and address of landowner.
 - (2) Name and address of landowner's professional consultants involved in the rezoning request.
 - (3) Address and tax parcel identification number of tracts or parcel of land to be considered for rezoning.
 - (4) An accurate legal description of any land to be rezoned.
 - (5) Existing zoning district and the proposed zoning district.
 - (6) Existing use of the land or buildings and the proposed use of the land or buildings.
 - (7) Existing and proposed utilities serving the property, especially water and sewer.
 - (8) A legibly drawn to scale plot/site plan of the lot on a minimum eight and one half by eleven (8½ x 11) inch sheet size showing the following:
 - (a) Property lines, actual dimensions, and shape of lot to be built-upon.
 - (b) Location on the lot of buildings, structures, and areas of land use, existing or proposed, and extensions thereto.
 - (c) Minimum required setbacks and yards.

- (d) Location of lot access, driveways, and curbcuts.
 - (e) Parking and loading spaces and access thereto.
 - (f) General description of the existing land uses adjacent to the property, including across the street.
 - (g) Current zoning district of properties adjacent to the property, including across the street.
 - (h) Water courses and bodies of water.
- (9) A schematic architectural drawing of the principal building's front façade.
- (10) A detailed description of:
- (a) Why the proposed amendment would be in the best interests of Lower Moreland Township.
 - (b) How the proposed amendment is in accordance with the intent of this Chapter.
 - (c) How the proposed amendment furthers the objectives of the most recent version of the Lower Moreland Township community development objectives or any applicable plan adopted by the LMT BOC set forth in Article 1 of this Chapter relating to *Purpose of Enactment (§ 208-103.)*.

The petition shall also be signed by at least one (1) record owner of the property in question whose signature shall be notarized attesting to the truth and correctness of all the facts and information presented in the petition. A fee to be established by the LMT BOC shall be paid upon the filing of such petition for change and for the purpose of defraying the costs of the proceedings prescribed in. The Township of Lower Moreland reserves the right to require duplicate sets of petition materials and request additional information in order to evaluate the applicability of the petition.

F. Curative Amendment by a Landowner. A landowner, who desires to challenge on substantive grounds the validity of this Chapter or the Official Zoning Map or any provision thereof which prohibits or restricts the use or development of land in which he has an interest, may submit a curative amendment to the LMT BOC (including all of the reasons supporting the request to be considered) with a written request that his challenge and proposed amendment be heard and decided, as provided in Sections 609.1. and 916.1 of the MPC. The LMT BOC shall commence a hearing thereon within sixty (60) days of the request. The curative amendment shall be referred to the LMT PC and the MCPC, as provided for in the subsection above relating to *Hearing and Enactment Procedures for Zoning Amendments (§ 208-1005.B.)*, and public notice of the hearing shall be provided as described in the subsection above relating to *Public Notice (§ 208-1005.B.(2))*.

- (1) In reviewing the curative amendment, the LMT BOC may deny the request, accept the request as submitted, or may adopt an alternative amendment which will cure the

challenged defects. The LMT BOC shall consider the curative amendments, plans and explanatory material submitted by the landowner, and shall also consider:

- (a) The impact of the proposal upon roads, sewer facilities, water supplies, schools, and other public service facilities.
 - (b) If the proposal is for a residential use, the impact of the proposal upon regional housing needs, and the effectiveness of the proposal in providing housing units of a type actually available to, and affordable by classes of persons otherwise unlawfully excluded by the challenged provisions of this Chapter or Official Zoning Map.
 - (c) The suitability of the site for the intensity of use proposed by the site's soils, slopes, woodland, wetlands, floodplains, aquifers, natural resources, and other natural features.
 - (d) The impact of the proposed use on the site's soils, slopes, woodlands, wetlands, floodplains, natural resources, and natural features, the degree to which these are protected or destroyed, the tolerance of the resources to development and any adverse environmental impacts.
 - (e) The impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare.
- (2) The LMT BOC shall render its decision within forty-five (45) days after the conclusion of the last hearing.
 - (3) If the LMT BOC fails to act on the landowner's request within the time limits referred to in the subsection immediately above (§ 208-1005.F.(2)), a denial of the request is deemed to have occurred on the forty-sixth (46th) day after the close of the last hearing.
 - (4) Public notice of the hearing shall include notice that the validity of this Chapter or Official Zoning Map is in question and shall give the place where, and the times when, a copy of the request, including any plans, explanatory material or proposed amendments, may be examined by the public.
 - (5) The challenge shall be deemed denied when:
 - (a) The LMT BOC fails to commence the hearing within sixty (60) days.
 - (b) The LMT BOC notifies the landowner that it will not adopt the curative amendment.
 - (c) The LMT BOC adopts another curative amendment which is unacceptable to the landowner; or
 - (d) The LMT BOC fails to act on the request forty-five (45) days after the close of the last hearing on the request, unless the time is extended by mutual consent by the landowner and the Township of Lower Moreland.

- (6) Where, after the effective date of the MPC, a curative amendment proposal is approved by the grant of a curative amendment application by the LMT BOC pursuant to this subsection relating to *Curative Amendment by a Landowner (§ 208-1005.F.)*, or a validity challenge is sustained by the LMT ZHB pursuant to Article 9 of this Chapter relating to *Substantive in Challenges to the Validity of this Chapter in Zoning Hearing Board's Functions (§ 208-905.A.)*, or the court acts finally on appeal from denial of a curative amendment proposal or a validity challenge, and the proposal or challenge so approved requires a further application for subdivision or land development, the developer shall have two (2) years from the date of such approval to file an application for preliminary or tentative approval for a subdivision or land development, or planned residential development. Within the two (2) year period, no subsequent change or amendment in the zoning, subdivision and land development, or other governing ordinance or plan shall be applied in any manner which adversely affects the rights of the applicant as granted in the curative amendment or the sustained validity challenge. Upon the filing of the preliminary or tentative plan, the provisions of Section 508 (4) of the MPC shall apply.
- (7) Where the proposal appended to the curative amendment application or the validity challenge is approved but does not require further application under Chapter 180 of the LMT Codified Ordinances relating to Subdivision of Land, the developer shall have one (1) year within which to file for a zoning permit. Within the one (1) year period, no subsequent change or amendment in the zoning, subdivision or land development, or other governing ordinance or plan shall be applied in any manner which adversely affects the rights of the applicant as granted in the curative amendment or the sustained validity challenge. During these protected periods, the court shall retain or assume jurisdiction for the purpose of awarding such supplemental relief as may be necessary.

G. Curative Amendment by the LMT BOC.

- (1) The LMT BOC, by formal action, may declare this Chapter or portions thereof substantively invalid and propose to prepare a curative amendment to overcome such invalidity. Within thirty (30) days following such declaration and proposal, the LMT BOC shall:
 - (a) By resolution, make specific findings setting forth the declared invalidity of this Chapter or portions thereof which may include:
 - [1] References to specific uses which are either not permitted or not permitted in sufficient quantity.
 - [2] References to a class of use or uses which require revision; or
 - [3] References to this entire Chapter which requires revisions.
 - (b) Begin to prepare and consider a curative amendment to this Chapter to correct the declared invalidity.
- (2) Within one hundred eighty (180) days from the date of the declaration and proposal, the

LMT BOC shall enact a curative amendment to validate or reaffirm the validity of this Chapter pursuant to the provisions required by Section 609 of the MPC in order to cure the declared invalidity of this Chapter.

- (3) Upon the date of the declaration and proposal, the LMT BOC shall not be required to entertain or consider any curative amendment filed by a landowner. Nor shall the LMT ZHB be required to give a report, upon request, for a challenge to the validity of this Chapter under Article 9 of this Chapter relating to *Substantive in Challenges to the Validity of this Chapter in Zoning Hearing Board's Functions (§ 208-905.A.)*, subsequent to the declaration and proposal, based upon the grounds identical to, or substantially similar to, those specified in the resolution required by this subsection relating to *Curative Amendment by the LMT BOC (§ 208-1005.G.)*. Upon the enactment of a curative amendment to, or the reaffirmation of the validity of, this Chapter, no rights to a cure by amendment or challenge shall, from the date of the declaration and proposal, accrue to any landowner on the basis of the substantive invalidity of the unamended Chapter for which the LMT BOC propose to prepare a curative amendment.
 - (4) The LMT BOC, having utilized the procedures as set forth in this subsection relating to *Curative Amendment by the LMT BOC (§ 208-1005.G.)*, may not again utilize said procedures for a thirty-six (36) month period following the date of the enactment of a curative amendment, or reaffirmation of the validity of this Chapter; provided, however, if after the date of declaration and proposal there is a substantially new duty or obligation imposed upon the Township of Lower Moreland by virtue of a decision by any court of competent jurisdiction, the LMT BOC may utilize the provisions of this subsection relating to *Curative Amendment by the LMT BOC (§ 208-1005.G.)* to prepare a curative amendment to this Chapter to fulfill this duty or obligation.
- H. Authentication of Official Zoning Map. Whenever there has been a change in the boundary of a zoning district or a reclassification of the zoning district adopted in accordance with the above, the change on the Official Zoning Map shall be made, and shall be duly certified by the Township Secretary, and shall thereafter be refiled as part of the permanent records of the Township of Lower Moreland.
- I. Amendment Request Format. Any applicant requesting an amendment to this Chapter or Official Zoning Map shall submit information about such request that complies with this Chapter and justifies the request. In addition, the applicant shall submit, in a format that can be adopted by the LMT BOC, the necessary amendments that make the most recent version of the Lower Moreland Township community development objectives or any applicable plan adopted by the LMT BOC set forth in Article 1 of this Chapter relating to *Purpose of Enactment (§ 208-103.)*, generally consistent with the requested amendment.

§ 208-1006. Conditional Uses.

- A. Filing of Conditional Use. The LMT BOC shall hear and act upon applications for conditional uses, specifically authorized by this Chapter. The granting of a conditional use shall be subject to the following standards and criteria. The applicant for a conditional use shall demonstrate, by credible evidence, compliance with these criteria and those criteria specified elsewhere in this Chapter for

the use in question. The conditional use application shall include the following:

- (1) Ground floor plans and schematic architectural drawing of the principal building's façade and elevations of proposed structures.
- (2) Names and addresses of adjoining property owners including properties directly across a public right-of-way.
- (3) A legibly drawn to scale plot/site plan of the site in accordance with Article 10 of this Chapter relating to *Application for All Zoning Permits in Zoning Permits (§ 208-1002.B.)* with sufficient detail and accuracy to demonstrate compliance with all applicable provisions of this Chapter.
- (4) A written description of the proposed use in sufficient detail to demonstrate compliance with all applicable provisions of this Chapter.

B. General Criteria. Each applicant shall demonstrate, by credible evidence, the proposed use complies with the following:

- (1) The proposed use shall be consistent with the purpose and intent of this Chapter, and such use is specifically authorized as a use by conditional use within the applicable zoning district for which the applicant seeks approval.
- (2) The proposed use shall not detract from the use and enjoyment of adjacent properties.
- (3) The proposed use shall not substantially cause a change in the character of the subject property's neighborhood, nor adversely affect the character of the general neighborhood, the conservation of property values, the health and safety of residents or workers on adjacent properties and in the neighborhood, nor the reasonable use of neighboring properties. The use of adjacent properties shall be adequately safeguarded.
- (4) Buildings, driveways, parking areas, loading areas, outdoor activity areas, light sources, storage, refuse collection containers/stations areas and other potential related nuisances shall be located and designed to minimize adverse impacts on adjoining residential lots.
- (5) Adequate public facilities are available to serve the proposed use, and the proposed use shall not have an adverse effect upon the logical and economic extension of such public services and facilities (e.g., schools; fire, police and ambulance protection; sewer, water, and other utilities; parks and recreation; solid waste disposal; vehicular access, etc.).
- (6) The proposed use will not have deleterious impact on adjacent properties or the neighborhood due to impacts or by-products of the proposed use, such as noise, dust, odor, smoke, litter, glare, heat, radiation, electromagnetic interference, etc.
- (7) The proposed use will not substantially impair the integrity of the most recent version of the Lower Moreland Township community development objectives or any applicable plan adopted by the LMT BOC set forth in Article 1 of this Chapter relating to *Purpose of Enactment (§ 208-103.)*.

C. Specific Criteria. Each applicant shall demonstrate, by credible evidence, the proposed use

complies with the following applicable specific criteria listed in:

- (1) Article 3 of this Chapter relating to the following specific requirements and regulations:
 - (a) Permitted use;
 - (b) Density and dimensional (lot, setback, and bulk); and
 - (c) Additional layout, design, and other standards.
- (2) Article 4 of this Chapter relating to specific overlay zoning district requirements and regulations;
- (3) Article 5 of this Chapter relating to the following specific requirements and regulations:
 - (a) Accessory uses and structures;
 - (b) Compliance with applicable laws, regulations, codes, and licensing requirements;
 - (c) Hours of operation;
 - (d) Landscaping, buffer yards, and screening;
 - (e) Mechanical appurtenances and equipment; and
 - (f) Sewage and water systems standards.
- (4) Article 6 of this Chapter relating to the following specific requirements and regulations:
 - (a) Driveways;
 - (b) Parking;
 - (c) Loading; and
 - (d) Vehicle stacking.
- (5) Article 7 of this Chapter relating to specific sign requirements and regulations; and
- (6) Article 8 of this Chapter relating to specific use requirements and regulations.
- (7) Calculations and distance, separation, or spacing requirements.

In addition, the proposed use shall comply with all other applicable general and specific requirements and regulations of this Chapter.

D. Conditions and Alternative Site Layouts.

- (1) The LMT BOC in approving conditional use applications may attach conditions considered

necessary to protect the public welfare and the purposes listed above, including conditions which are more restrictive than those established for other uses in the same zoning district. These conditions shall be enforceable by the Township Zoning Officer, and failure to comply with such conditions shall constitute a violation of this Chapter and be subject to the penalties described in Article 10 of this Chapter.

- (2) The LMT BOC may require alternative site layouts, including increased setbacks from residential lot lines, different locations of buildings, parking areas, driveways, parking areas, loading areas, outdoor activity areas, light sources, storage, refuse collection containers/stations, or increased landscaping, buffer yards, or screening, in order to minimize adverse impacts of the proposed use on adjoining residential lots.
- E. Plot/Site Plan Approval. Any plot/site plan presented in support of the conditional use pursuant to the subsection above relating to *Filing of Conditional Use (§ 208-1006.A.)* shall become an official part of the record for said conditional use. Approval of any conditional use will also bind the use in accordance with the submitted plot/site plan; therefore, should a change in the plot/site plan be required as part of the approval of the use, the applicant shall revise the plot/site plan prior to the issuance of a zoning permit. Any subsequent change to the use on the subject property not reflected on the originally approved plot/site plan shall require the obtainment of another conditional use approval.
- F. Time Limitations for Conditional Uses. An approved conditional use shall be bound by the time period limitations listed in Article 10 of this Chapter relating to *Time Limitation on Conditional Use Decisions in Conditional Uses (§ 208-1006.H.)*.
- G. Hearing Procedures.
- (1) Before voting on the approval of a conditional use, the LMT BOC shall hold a public hearing thereon, pursuant to public notice. If, after any public hearing held upon an application, the proposed application is revised, the LMT BOC, or Hearing Officer, shall hold another public hearing, pursuant to public notice, before proceeding to vote on the application. As an alternative, the LMT BOC may appoint any one (1) of its members, or an independent attorney, to act as a Hearing Officer. The decision, or, where no decision is called for, the findings shall be made by the LMT BOC; however, the appellant or the applicant, as the case may be, in addition to the Township of Lower Moreland, may, prior to the decision of the hearing, waive the decision or findings by the LMT BOC and accept the decision or findings of the Hearing Officer as final.
 - (2) The LMT BOC shall submit each such application to the LMT PC at least thirty (30) days prior to the hearing on such application to provide the LMT PC an opportunity to submit recommendations.
 - (3) Public notice and written notice shall be given to the applicant, the Township Zoning Officer, such other persons as the LMT BOC shall designate by ordinance, and to any person who has made timely request for the same. Written notices shall be given at such time and in such manner as shall be prescribed by ordinance or, in the absence of the ordinance provision, by rules of the LMT BOC. In addition to the written notice provided in, written notice of said hearing shall be conspicuously posted on the affected tract of

land at least one (1) week prior to the hearing, and will exhibit the nature, date, time, and location of the hearing.

- (4) The LMT BOC may prescribe reasonable fees with respect to hearings. Fees for said hearings may include compensation for the secretary, notice and advertising costs, and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses, expenses for engineering, architectural, or other technical consultants, or expert witness costs.
- (5) The parties to the hearing shall be the Township of Lower Moreland, any person affected by the application who has made timely appearance of record before the LMT BOC or Hearing Officer, and any other person, including civic or community organizations permitted to appear by the LMT BOC or Hearing Officer. The LMT BOC or Hearing Officer shall have power to require that all persons who wish to be considered parties enter appearances in writing on forms provided by the LMT BOC or Hearing Officer for that purpose.
- (6) The Chairman or Acting Chairman of the LMT BOC or Hearing Officer shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses and documents requested by the parties.
- (7) 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.
- (8) Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
- (9) The LMT BOC or Hearing Officer may keep a stenographic record of the proceedings. The appearance fee for a stenographer shall be shared equally by the applicant and the LMT BOC. The cost of the original transcript shall be paid by the LMT BOC if the transcript is ordered by the LMT BOC or Hearing Officer, or shall be paid by the person appealing the decision of the LMT BOC or Hearing Officer 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.
- (10) The LMT BOC or Hearing Officer shall not communicate, directly or indirectly, with any party or his representative in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials, except advice from their solicitor, unless the parties are afforded an opportunity to contest the 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.
- (11) The LMT BOC shall render a written decision or, when no decision is called for, make written findings on the conditional use application within forty-five (45) days after the last hearing before the LMT BOC. However, the applicant and the Township of Lower

Moreland, may, prior to the decision of the hearing, waive the decision or findings by the LMT BOC and accept the decision or findings of the Hearing Officer as final. Where the application is contested or denied, each decision shall be accompanied by findings of fact or conclusions based thereon, together with any reasons therefore. Conclusions based on any provisions of the MPC or of any ordinance, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found.

- (12) Where the LMT BOC or Hearing Officer fails to render the decision within the period required by the subsection immediately above (*§ 208-1006.G.(11)*), or fails to commence the required hearing within sixty (60) days from the date of the applicant's request for a hearing, or fails to complete the hearing no later than one hundred (100) days after completion of the applicant's case in chief, unless extended for good cause upon application to the Court of Common Pleas, 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 LMT BOC or Hearing Officer to meet or render a decision as in above provided, the LMT BOC or Hearing Officer shall give public notice of the decision within ten (10) days from the last day it could have met to render a decision in the same manner as required by the public notice requirements of this act. If the LMT BOC or Hearing Officer shall fail to provide such notice, the applicant may do so.
- (13) Nothing in the subsection above relating to *Hearing Procedures (§ 208-1006.G.)* shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction. 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 no later than the day following its date.

H. Time Limitation on Conditional Use Decisions.

- (1) A conditional use granted by the LMT BOC in accordance with this Chapter shall expire at the end of one (1) year from the date of the decision, unless the applicant or owner has commenced construction or otherwise been granted a building or zoning permit necessary to implement the grant of approval.
- (2) In the event that the applicant anticipates that more than one (1) year will be necessary to implement the grant of conditional use, the applicant may request in its initial application to the LMT BOC, that the LMT BOC grant an extension of the time period limitation. In requesting an extension of the one (1)-year time period, the applicant shall establish a specific time table within which either a zoning permit, building permit, or application for subdivision and land development would be filed under applicable Township of Lower Moreland ordinances. Additionally, the applicant shall establish a time period within which the construction project would be completed.