

ORDINANCE 6-2
[Amended June 14, 2004]
[FORMERLY ORDINANCE 200]
[AMENDED BY FORMER ORDINANCE 239]

AN ORDINANCE REQUIRING THE APPLICATION FOR AND ISSUANCE OF A LAND USE PERMIT PRIOR TO ERECTION, REMOVAL, OR IMPROVEMENT EXCLUDING ROUTINE MAINTENANCE OF BUILDING IN THE BOROUGH OF MERCERSBURG: ESTABLISHING PROCEDURES AND STANDARDS FOR THE FLOOD PRONE AREAS: AND PROVIDING CRIMINAL PENALTIES FOR VIOLATION OF THE SAME.

BE IT ENACTED AND ORDAINED BY THE BOROUGH COUNCIL OF THE BOROUGH OF MERCERSBURG, AND IT IS HEREBY ENACTED AND ORDAINED BY THE SAME:

SECTION 1

Short Title: This ordinance shall be known as "The Mercersburg Borough Land Use Permit Ordinance."

SECTION 2

Definitions: As used herein, the following words shall have the following meanings:

1. **Borough:** The Borough of Mercersburg
2. **Building:** Any structure having a roof supported by columns or walls, or any part thereof, whether or not permanently affixed to real estate so as to the part thereof. Buildings include all manufactured homes and mobile homes.
3. **Building Frontage:** The side of the building facing the public street.
4. **Land Use Permit Officer:** Such person as shall be appointed by the Borough Council of the Borough of Mercersburg to administer this ordinance.
5. **Construction:** The erecting constructing, or placing of an addition to a building on real estate, whether or not the same be permanently affixed to the real estate so as to be a part thereof.
6. **Development:** Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, the placement of manufactured homes, streets and other paving, utilities, filling, grading, excavation, mining, dredging, or drilling operations.
7. **Exterior Building Improvements:** Any repairs, alterations, modifications or changes to an existing building which will not change the locations of its walls but which will be visible from the exterior of the building, and which will result in a change in the exterior appearance of the building.
8. **Interior Building Improvements:** Any alterations, modifications or changes in an existing building which will change the locations of its walls, and which will not be visible from the exterior of the building and will have a substantive effect on the appearance of the building.
9. **Mobile Home Park:** A parcel of land under single ownership which has been planned and improved for the placement of two (2) or more mobile/manufactured

homes for non-transient residential use. The individual mobile/manufactured homes may be individually owned. A development of mobile/manufactured homes that is subdivided into individual lots shall be regulated in the same manner as a subdivision of site-built homes, and shall not be considered to be a "mobile home park".

10. **Mobile/Manufactured Home:** Type of single family detached dwelling that meets all of the following requirements: (a) was built to be transportable, (b) is designed for permanent occupancy (c) includes one substantial piece or two (2) substantial pieces (in addition to minor added structures and components) that are designed to be joined into one integral unit, (d) arrives at a site complete and ready for occupancy except for minor and incidental unpacking and assembly operations, (e) is constructed so that it may be used with or without a permanent foundation, (f) is not a "Recreational Vehicle", and (g) includes a minimum of 300 square feet of interior floor space).
11. **Person:** One or more natural persons, a partnership, a Corporation, a joint venture, a trust, or any other entity having any ownership or leasehold interest in real estate, and any employee, officer, or agent of any of the aforesaid engaged in directing or authorizing construction of any building; any removal of any building; any interior building improvement; and/or any exterior building improvements.
12. **Plot Plan:** A schematic diagram (which need not be prepared by an engineer or surveyor if otherwise accurate) showing the boundary line of the lot and the location of buildings thereon, as the same will appear after construction or demolition.
13. **Project:** Any construction of a structure, any removal of a structure, any interior building improvement, and/or any exterior building improvement.
14. **Removal:** The demolition, relocation, or removal of any building or any part thereof from any real estate or from one part of a tract to another part of the same tract.
15. **Routine Maintenance:** Any normal repair to an existing structure that will not substantively alter the appearance of the building or increase the assessed value of the building including, but not limited to painting, roof replacement, landscaping, or other items that could reasonably be considered normal upkeep.
16. **Setback Line:** (a) The line within a lot defining the required minimum distance between any structure to be erected or use to be developed and the adjacent street right-of-way or exterior lot line (when the property is not abutted by right-of-way). Such line shall be measured at right angles from and parallel to the front lot line. (b) any building setbacks shall be measured from the foundation, exterior wall or other component of a structure that is closest to the right-of-way line or lot line from which the setback is being measured. (c) setback distances are for both accessory and principal structures.
17. **Structure:** Any man-made object having an ascertainable stationary location on, or below or in land or water, whether or not affixed to the land. A fence shall not be considered a permanent structure.
18. **Subdivision:** The division or re-division of a lot, tract, or parcel of land by any means into (2) or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purposes, whether immediate or future, of lease, partition by the court for distribution to heirs and devisees, transfer of ownership or building or lot development. The subdivision by lease of land for agricultural purposes into parcels of more than 10 acres, not involving any new street or easement of access or residential dwellings is not subdivision.

19. **Substantive:** Any activity that could reasonably result in an increase of the assessed value of a property or structure.

SECTION 3

Permit required: No person in the Borough of Mercersburg shall engage in, or permit others to engage in, on lands owned or leased by such person, any development, any construction of any building, any removal of any building, any interior building improvement, or any exterior building improvement without obtaining a Land Use Permit prior to commencing any such activity or activities, including site preparation. No Land Use Permit is required for a fence. Any person so doing shall be subject to the penalties hereinafter provided.

Except in Historic District needs HARB Approval

SECTION 4

Application Procedure-A Land Use Permit shall be applied for as follows:

- A. Each application for a Land Use Permit shall be on forms prescribed by the Borough and shall be furnished by the Borough upon request made to the Borough Office.
- B. Each applicant for a Land Use Permit shall answer all questions and supply all information requested thereon fully and accurately. The responsibility for supplying full and accurate information shall be on the applicant. No permit issued on the basis of incomplete or inaccurate information set forth by the applicant shall be valid and no person shall be entitled to rely on such permit if revoked.
- C. Each applicant shall provide all applicable information as specified on the Land Use Permit application.
- D. Each applicant whose project will involve the removal of a building shall also supply:
1. A plot plan
 2. A performance bond with sufficient surety in an amount to be established by the Borough, in favor of the Borough, conditioned for the removal of all debris, the filling-in of all excavations, and the completion of the project within sixty working days, unless a longer time be granted by the Land Use Permit Officer as a variance because of the difficulty of the project. This sub-paragraph shall not apply to the removal of mobile home by means of wheels.
- E. At the time of filing the application, each applicant shall pay such filing fee as may be established by Borough Council from time to time. Such filing fee shall not be refundable.
- F. On or before the application date, in the case of new construction or removal of an existing structure, the applicant shall post a copy of the Land Use Permit application on the real estate at least five working days prior to issuance of the permit. Such notice shall be posted so as to be visible to passers-by on the street on which the property fronts.

- G. The Land Use Permit Officer shall review the application. Such review shall determine whether the project complies with all applicable ordinances of the Borough. Such review shall be completed within ten (10) working days after the application is received by the Borough. After such review, the Land Use Permit Officer shall:
1. Issue the Land Use Permit (or)
 2. Deny the Land Use Permit setting forth the reasons for the denial in writing to the property owner at the address shown on the application (or)
 3. Defer action pending receipt and consideration of required additional information.
- H. In case of new construction or removal of any structure, any person who believes that the application should not be approved because the same is not in conformity with one or more ordinances of the Borough may state such objections in writing to the Land Use Permit Officer within five (5) working days after the application is filed. Such person shall receive a written copy of the decision of the Land Use Permit Officer.
- I. Any person adversely affected by a decision of the Land Use Permit Officer may appeal such decision to the Borough Council. If the appeal is from the granting of a Land Use Permit, the Land Use Permit shall be withdrawn pending a decision by the Borough Council.

An appeal shall be taken as follows:

1. The appeal shall be filed in writing with the Land Use Permit Officer within five calendar days in the case of an appeal from the issuance of a Land Use Permit, or within sixty calendar days in the case of an appeal from the denial of a Land Use Permit.
 2. The appeal shall be heard at the next regularly scheduled Borough Council meeting, if not less than seven days prior to filing of the appeal.
 3. Written notice of the date of the meeting shall be given to all parties.
- J. Notwithstanding the appeal provisions of this ordinance, an applicant whose application has been denied, or requires a non-substantive amendment, may re-submit his application with such amendments as may be necessary. Such amended application must be submitted within ninety days from the date of the original application, and no additional filing fee shall be charged. Only one amended application may be submitted, but a new application may be submitted anytime. Notice of the amended application shall be posted as of aforesaid and all the provisions of this ordinance shall apply to the amended application as if it was an original application.
- K. Upon receipt of a Land Use Permit, a copy of the same shall be posted on the real estate. Such copy shall be posted so as to be visible to passers-by on the street on which the property fronts and remain posted until the project is completed.

SECTION 5

Revocation Procedure: A Land Use Permit may be revoked as follows:

- A. The Land Use Permit Officer shall deliver a cease and desist, and notice of an intention to revoke the permit to the applicant and property owner either:
 1. By handing it to the applicant;
 2. By handing it to any workman on the site if any
- B. Said notice shall contain a statement of the reasons for the proposed revocation of the Land Use Permit.
- C. The said notice shall set forth the time, date, and place of hearing to be conducted by the Land Use Permit Officer to determine whether or not the Land Use Permit should be permanently revoked. Such hearing shall be held not less than three days nor more than seven days after:
 1. The delivery of the notice to the applicant and property owner or;
 2. Delivery of the notice to the workman on the site and/or the mailing of the notice to the applicant
- D. If, after such hearing, the Land Use Permit officer determines that the Land Use Permit should be revoked, the posted copy of the Land Use Permit shall be removed until such time as a new Land Use Permit for the project shall be issued.
- E. Any person aggrieved by the revocation of a Land Use Permit shall have a right to appeal to Borough Council using the same procedure as prescribed in Section 4 Sub-Section (I) of this ordinance for appeals from the denial of a Land Use Permit.

SECTION 6

Expiration of Permit:

A Land Use Permit shall expire one year from date of issuance. ~~The permit maybe renewed one time only upon written request for such renewal setting forth the reason for the delay in completion of the project unless the Land Use Permit officer finds that:~~

1. The applicant has not made a good faith effort to complete the project, and
2. The renewal of the Permit would violate an ordinance in effect on the date on which such renewal is requested. Application renewal shall proceed according to the procedure established for original application in Section 4, Sub-section G, H, I, of this ordinance.
3. ~~Upon expiration of a renewed permit should the project not be completed, a new permit shall be required.~~

SECTION 7

Penalties for Violations:

Any person who fails to comply with any or all of the requirements or provisions of this ordinance or who fails or refuses to comply with any notice, order or direction issued pursuant thereto shall be guilty of a summary offense, and upon conviction, shall pay a fine of not more than \$1,000 plus costs of prosecution. In default of such payment, such person shall be imprisoned in county prison for a period not to exceed (30) days. Any

violation continuing after a written notice to the offender by the Land Use Permit officer shall be considered a separate violation for each day the violation continues. In addition to the above penalties all other actions are hereby reserved including an action I equity for the proper enforcement of this ordinance.

The imposition of a fine or penalty for any violation of, or non-compliance with, this ordinance shall not excuse the violation or noncompliance or permit it to continue. Any structure or building constructed, reconstructed, enlarged, altered, or re-located, in non-compliance with this ordinance may be declared by the Borough Council to be a public nuisance and abatable as such.

SECTION 8

Severability and Abrogation: If any section of this Ordinance shall be found to be invalid, the other sections of this Ordinance shall not be affected thereby. This Ordinance supersedes any conflicting provisions of another ordinance which may be in effect in identified flood plain areas. However, any provisions of another ordinance shall remain in full force and effect to the extent that those provisions are more restrictive.

SECTION 9

Denial of Liability: The grant of a Land Use Permit in the identified flood-prone areas shall not constitute a representation, guarantee, or warranty of any kind by the Borough or by any official or employee thereof of the practicability of safety of the proposed use, or that the project is in compliance with laws or regulations of governmental bodies other than the Borough or that other permits need not to be obtained from such other governmental bodies, and shall create no liability upon the Borough, its officials or employees.

Enacted and ordained as an ordinance this 1st day of July, 2004.

Joshua Meyers
President of Borough Council

James C. Zeger
Mayor

Attest:

Steven N. Mellott
Borough Secretary