

UPPER BERN TOWNSHIP  
BERKS COUNTY  
COMMONWEALTH OF PENNSYLVANIA

118 - 2012  
ORDINANCE NO.: 5 of 2012

**AN ORDINANCE OF UPPER BERN TOWNSHIP, BERKS COUNTY,  
PENNSYLVANIA, WHICH IS INTENDED TO AMEND THE UPPER BERN  
TOWNSHIP ZONING ORDINANCE OF 2008, BY AMENDING THE PROVISIONS  
CONTAINED UNDER SECTION 202 (DEFINITIONS), SECTION 823 (COMMERCIAL  
OUTDOOR SALES) AND SECTION 917 (TEMPORARY STRUCTURES AND USES).**

BEING ENACTED AND ORDAINED by the Board of Supervisors of Upper Bern Township, Berks County, Pennsylvania (the "Township"), and it is hereby enacted and ordained by authority of the same, as follows:

WHEREAS, the Township has duly adopted and does maintain a zoning ordinance titled the "Upper Bern Township Zoning Ordinance of 2008" (the "Zoning Ordinance").

WHEREAS, Section 609 of Pennsylvania Municipalities Planning Code ("MPC") authorizes municipalities to amend their zoning ordinances.

WHEREAS, the Board of Supervisors believes it is in the best interest of the Township to further regulate commercial outdoor sales, transient retail businesses, temporary structures and temporary uses by establishing specific standards.

WHEREAS, the Board of Supervisors has considered the comments of the Berks County Planning Commission, the Upper Bern Township Planning Commission and the general public after a public hearing duly conducted in accordance with the provisions of the MPC and the Zoning Ordinance.

NOW THEREFORE, be it ordained that the Upper Bern Township Board of Supervisors does hereby approve and adopt the following amendments to the Zoning Ordinance, as follows:

**Section 1:** The following definitions shall be added to Section 202 (Specific Terms) of the Zoning Ordinance:

**Commercial Outdoor Sales:** The sale of goods, wares and/or merchandise that are typically sold on a lot containing an existing or adjacent non-residential use, which complies with the setback requirements of the zoning district on which the non-residential use is located. All such commercial outdoor sales shall comply with the provisions of Section 823 of this Zoning Ordinance.

**Seasonal Sidewalk Displays:** The sale of goods, wares and/or merchandise that are typically sold on a lot from containing an existing non-residential use, which does not necessarily comply with the setback requirements of the zoning district on which the non-residential use it is located. All such seasonal sidewalk display shall be considered as a temporary accessory use that shall comply with the provisions of Section 823.E of this Zoning Ordinance.

Special Event Sales: The sale and/or exhibition of goods, wares and/or merchandise by a community, civic or non-profit organization a conforming lot, which complies with the setback requirements of the zoning district on which the special event sale is located. All such special event sales shall be considered as a temporary accessory use that shall comply with the provisions of Section 823.F of this Zoning Ordinance.

Transient Retail Sales: The sale and/or exhibition of goods, wares and/or merchandise by a for-profit business on a conforming lot containing an existing non-residential use, which complies with the setback requirements of the zoning district on which the non-residential use it is located. All such transient retail sales shall be considered as a temporary accessory use that shall comply with the provisions of Section 823.G of this Zoning Ordinance which is an accessory component or feature.

**Section 2:** The following provisions shall amend and replace the provisions contained under Section 823 (Commercial Outdoor Sales) of the Zoning Ordinance:

Section 823: Commercial Outdoor Sales

- (A) Commercial outdoor storage of any type shall not be permitted unless such storage conforms to the normal functions and procedures conducted on the premises. Outdoor storage of any type that is not a normal function of the property or permitted use shall be prohibited, if such storage is considered as unsightly, malodorous, hazardous to the environment and potentially detrimental to the health and safety of the adjacent property owners.
- (B) Commercial outdoor sales may be permitted for those non-residential uses whose merchandise are customarily displayed outdoors, provided the use has been designated, approved and permitted as a temporary use and activity on the site.
- (C) The location of the permitted materials to be stored outside as well as any required fence enclosure shall comply with the minimum setback provisions of the zoning district in which it is located.
- (D) Any lot, land or structure, or parts thereof, used for the collection, storage, dismantling, salvage, sale, exchange and/or recycling of used and discarded materials, including, but not limited to, waste, paper, rags, glass, containers, fabric, debris, and similar material from vehicles, equipment or machinery shall be considered as a "junk yard" or "salvage yard", which as a result of being classified of such use shall conform with the provisions of this Zoning Ordinance and the Property Maintenance Code.
- (E) Seasonal Sidewalk Displays: The following provisions shall apply to seasonal sidewalk sales:
  - (1) Seasonal sidewalk displays shall be permitted as an accessory temporary use within the SV, RC and HC Zoning Districts.

- (2) Seasonal sidewalk displays may be permitted on the sidewalk or outside of the front or side of the principal building of an existing non-residential use. All such items offered for sale shall be goods, wares and/or merchandise that are typically sold by the non-residential use.
  - (3) A zoning permit shall be required to permit a seasonal sidewalk display. As part of the zoning permit application, the Board of Supervisors shall consider the request by the applicant and prescribe specific terms relating to the length of time, hours of operation and location of the seasonal sidewalk display. No seasonal sidewalk display shall exceed ninety (90) cumulative days during the course of a calendar year.
  - (4) The location of such outdoor displays shall be limited to sidewalks, under canopies, and other areas immediately in front of the building storefront. The stacking or display of such items shall be arranged to provide clear pedestrian access (sidewalk or other area) at least eight (8) feet wide.
  - (5) In no case shall the location of such seasonal sidewalk display areas occur within any area used for vehicular circulation, required parking and loading areas, or emergency vehicle access provisions (e.g., fire lanes).
  - (6) In no case shall such sidewalk display area exceed fifty (50) percent of the linear area of the storefront. For example, a storefront two hundred (200) feet long could have a sidewalk display directly in front of the store with a maximum length of one hundred (100) feet.
  - (7) No signage, except as authorized by this Zoning Ordinance, shall be permitted.
  - (8) The applicant shall submit a working plan to Upper Bern Township for the cleanup of litter and debris which may result from such outdoor display. Also, the applicant shall depict intended sidewalk display areas upon any permit applications and/or plans required by Upper Bern Township. No additional permits shall be required, unless such area is to change location or size.
- (F) Special Event Sales: The following provisions shall apply to special event sales:
- (1) Special event sales shall be permitted as a temporary accessory use within the SV, RC and HC Zoning Districts
  - (2) Special event sales shall only be permitted provided that the goods, wares and/or merchandise offered for sale is affiliated with a community, civic or non-profit organization.

- (3) A zoning permit shall be required to permit a special event sale. As part of the zoning permit application, the Board of Supervisors shall consider the request by the applicant and prescribe specific terms relating to the length of time, hours of operation and location of the special event sale. No special event sale shall exceed ninety (90) cumulative days during the course of a calendar year.
  - (4) Areas used for special event sales displays shall be sited to comply with the setback requirements for a principal use or principal structure, whichever is greater.
  - (5) The temporary sale of food and beverages within a mobile kitchen or outdoor display stand shall comply with the applicable provisions of this Zoning Ordinance and the Commonwealth of Pennsylvania
  - (6) Special event sales may be located within the parking lot, provided that such location does not contribute to congestion within the parking lot and upon the access drives that provide direct access to public roads. Within the required parking area, such display areas shall be clearly delineated from the adjoining parking lot by the use of identifiable barriers (such as tents, canopies, temporary fences, or ropes). Additionally, the location within the parking lot shall only be permitted provided that the remaining parking spaces available for use are greater than or equal to the number of such spaces required for the principal use by this Zoning Ordinance.
  - (7) The landowner of the lot occupied by the special event sale shall be responsible for the ongoing cleanup of litter and debris.
  - (8) No exterior public address or lighting systems shall be used that produce glare or noise impacts discernable at or beyond the property line.
  - (9) Signage for special event sales shall comply with the applicable requirements contained within this Zoning Ordinance.
  - (10) All special event sales shall be subject to an annual permit that shall be subject to the review and consideration by the Board of Supervisors
- (G) Transient Retail Sales: The following provisions shall apply to transient retail sales:
- (1) Transient retail sales shall be permitted as a temporary accessory use within the SV, RC and HC Zoning Districts.
  - (2) Transient retail sales shall only be permitted provided that the goods, wares and/or merchandise offered for sale is an accessory component or feature to an existing principal non-residential use.

- (3) A zoning permit shall be required to permit a transient retail use. As part of the zoning permit application, the Board of Supervisors shall consider the request by the applicant and prescribe specific terms relating to the length of time, hours of operation and location of the transient retail use. No transient retail sales shall exceed ninety (90) cumulative days during the course of a calendar year.
- (4) Areas used for transient retail sales shall be sited to comply with the setback requirements for a principal use or principal structure, whichever is greater.
- (5) The temporary sale of food and beverages within a mobile kitchen or outdoor display stand shall be considered as a transient retail use provided that is accessory to a permitted non-residential use. The sale of food and beverages shall comply with the applicable provisions of this Zoning Ordinance and the Commonwealth of Pennsylvania.
- (6) Transient retail sales may be located within the parking lot, provided that such location does not contribute to congestion within the parking lot and upon the access drives that provide direct access to public roads. Within the required parking area, such display areas shall be clearly delineated from the adjoining parking lot by the use of identifiable barriers (such as tents, canopies, temporary fences, or ropes). Additionally, the location within the parking lot shall only be permitted provided that the remaining parking spaces available for use are greater than or equal to the number of such spaces required for the principal use by this Zoning Ordinance.
- (7) The total area devoted to transient retail sales shall not exceed twenty (20) percent of the gross floor area of the principal non-residential use.
- (8) The landowner of the lot occupied by the transient retail use shall be responsible for the ongoing cleanup of litter and debris.
- (9) No exterior public address or lighting systems shall be used that produce glare or noise impacts discernable at or beyond the property line.
- (10) Signage for transient retail use shall comply with the applicable requirements contained within this Zoning Ordinance.
- (11) All transient retail sales shall be subject to an annual permit that shall be subject to the review and consideration by the Board of Supervisors.

**Section 3:** The following provisions shall amend and replace the provisions contained under Section 917 (Temporary Structures and Uses) of the Zoning Ordinance:

Section 917: Temporary Structures and Uses

- (A) A temporary permit shall be issued for the authorization of temporary structures or uses necessary during construction, special or seasonal events, renovations, remediation, moving or other special circumstances of a discontinuing nature.
- (B) A zoning permit shall be required for temporary structures and uses. As part of the zoning permit application, the Board of Supervisors shall consider the request by the applicant and prescribe specific terms relating to the length of time, hours of operation and location of the temporary structure or use. The maximum time period of the initial permit shall be one (1) year, which may be renewed for one (1) year time periods up to and not exceeding one (1) year from the time the original temporary permit was issued.
- (C) The temporary structure(s) shall be removed completely within thirty (30) days of the expiration of the permit without cost to Upper Bern Township.
- (D) The following provisions shall apply to temporary accessory uses and structures:
  - (1) Temporary accessory uses may include, but not limited to: potable on-demand storage containers (POD); clothing drop-off containers; contractor's storage area; carnivals and festivals; large volume trash containers or dumpsters; emergency management staging location; and other similar temporary accessory uses.
  - (2) The temporary accessory use shall be permitted as an accessory use within the SV, RC and HC Zoning District on a conforming lot with a permitted non-residential use.
  - (3) All temporary structures required to support a permitted temporary accessory use on which the temporary accessory use is located.
  - (4) Transient retail sales, special event sales and all other temporary sales of merchandise shall comply with the provisions specified under Section 823 of this Zoning Ordinance.
- (E) The deposit or storage of two (2) or more unlicensed, non-inspected, abandoned, wrecked or disabled vehicles shall be deemed to be a "junk yard" or "salvage yard", which as a result of being classified of such use shall conform with the provisions this Zoning Ordinance and the Property Maintenance Code.
- (F) Yard Sales: Within any zoning district, the landowner or occupant of a lot may conduct up to three (3) garage or yard sales per calendar year subject to the following standards:

- (1) No garage/yard sale shall be conducted for a period longer than three (3) consecutive days. The total number of sales may not exceed nine (9) cumulative days per calendar year.
  - (2) Garage sales may offer personal possessions for sale. No importing of materials or stocking of inventory shall be permitted.
  - (3) No more than five (5) temporary signs shall be permitted to advertise the garage/yard sale, which shall be removed within six (6) hours of the completion of the sale. All such signs shall not to exceed four (4) square feet in area and shall be removed within twenty-four (24) hours after the garage/yard sale has concluded.
  - (4) In no case shall any aspect of the garage/yard sale be conducted within the street right-of-way.
  - (5) If required by the municipality with jurisdiction, a permit shall be required for each garage sale or yard sale occurrence.
- (G) Containers or dumpsters utilized to collect large volumes of trash, debris or discarded items shall not be located within the front yard for a period of time exceeding thirty (30) cumulative days during a calendar year.

**Section 4. Repealer.** All Ordinances or Resolutions, or parts of Ordinances or Resolutions, insofar as they are inconsistent herewith, shall be and the same are hereby repealed.

**Section 5. Validity.** If any section or part of a section of this Ordinance shall be declared invalid, such invalidity shall not affect the remaining parts or sections of this Ordinance. It is hereby declared to be the legislative intent that this Ordinance would have been enacted as if such invalid section, or portion thereof, had not been included therein.

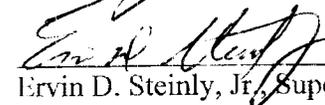
**Section 6. Effective Date.** This Ordinance shall become effective five (5) days after enactment thereof.

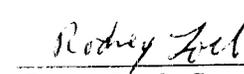
**ORDAINED AND ENACTED** this 8<sup>th</sup> day of February, 2012, by a vote of 3 Yes  
 No  Abstained  Absent.

UPPER BERN TOWNSHIP BOARD OF SUPERVISORS

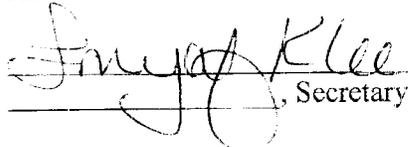
By:

  
 David Yoder, Supervisor

  
 Ervin D. Steinly, Jr., Supervisor

  
 Randy Loeb, Supervisor  
 Rodney

Attest:

  
 Janyal Klee, Secretary