

ORDINANCE NO. 70-0003

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE TOWNSHIP OF UPPER BERN TO PERMIT NO-IMPACT HOME-BASED BUSINESSES IN ALL RESIDENTIAL ZONES AND TO AMEND THE PROCEDURES FOR LANDOWNER CURATIVE AMENDMENTS AND HEARINGS BEFORE THE ZONING HEARING BOARD

WHEREAS, the Pennsylvania legislature, by and through Act 43 of 2002, enacted certain changes to the Pennsylvania Municipalities Planning Code (which is formally known as the Act of July 31, 1968 (P.L. 805, No. 247) ("Municipalities Planning Code"); and

WHEREAS, the above-referenced changes to the Municipalities Planning Code are to take effect on December 1, 2002; and

WHEREAS, the Board of Supervisors of the Township of Upper Bern deems it necessary to implement certain changes to its Zoning Ordinance in order to comply with the changes mandated by Act 43 of 2002.

NOW, THEREFORE, be and it is hereby resolved by the Board of Supervisors of the Township of Upper Bern, Berks County, Pennsylvania, as follows:

SECTION 1: No-Impact Home-Based Businesses Permitted Use By Right:

A. Section 403.2 of the Zoning Ordinance of the Township of Upper Bern (the "Zoning Ordinance") is hereby amended to add a new Section 403.2(H), which shall state in full: "No-impact home-based businesses, as such term is defined in Section 107(a) of the Pennsylvania Municipalities Planning Code, as amended, except that such permitted use shall not supercede the rights of any deed restriction, covenant or agreement restricting the use of land, nor any master deed, bylaw or other document applicable to a common interest ownership community."

B. Section 404.2 of the Zoning Ordinance is hereby amended to add a new Section 404.2(F), which shall state in full: "No-impact home-based businesses, as such term is defined in Section 107(a) of the Pennsylvania Municipalities Planning Code, as amended, except that such permitted use shall not supercede the rights of any deed restriction, covenant or agreement restricting the use of land, nor any master deed, bylaw or other document applicable to a common interest ownership community."

SECTION 2: Procedure For Landowner Curative Amendments:

Section 1108.1(D) of the Zoning Ordinance is hereby amended to state in full: "The hearing shall be conducted in accordance with procedures established in Section 908 of Act 247, as amended, provided, however, that the deemed approval provisions of Section 908(1.2) and (9) shall not apply and the provisions of Section 916.1 of the MPC, 53 P.S. § 10916.1, shall control."

SECTION 3: Revisions to Rules for Zoning Hearing Board Hearings:

A. Section 1106.1(C) of the Zoning Ordinance of the Township of Upper Bern is hereby amended to state in full: "The first hearing before the board hearing officer shall be commenced within sixty (60) days from the date of receipt of the applicant's request, unless the applicant has agreed in writing to an extension of time. Each subsequent hearing before the board or hearing officer shall be held within forty five (45) days of the prior hearing, unless otherwise agreed to by the applicant in writing or on the record. Any party aggrieved by the schedule or progress of the hearings may apply to the Court of Common Pleas for judicial relief. The hearing(s) shall be completed no later than one hundred (100) days after the completion of the applicant's case-in-chief, unless extended for good cause upon application to the Court of Common Pleas. An applicant shall complete the presentation of his case-in-chief within 100 days of the first hearing. Upon the request of the applicant, the board or hearing officer shall assure that the applicant receives at least seven hours of hearings within the 100 days, including the first hearing. Persons opposed to the application shall complete the presentation of their opposition to the application within 100 days of the first hearing held after the completion of the applicant's case-in-chief. An applicant may, upon request, be granted additional hearings to complete his case-in-chief, provided the persons opposed to the application are granted an equal number of additional hearings. Persons opposed to the application may, upon the written consent or consent on the record by the applicant and municipality, be granted additional hearings to complete their opposition to the application provided the applicant is granted an equal number of additional hearings for rebuttal."

B. Section 1106.1(K) of the Zoning Ordinance is hereby amended to replace the fifth sentence thereof (beginning with the words "Where the Board") with the words: "Except for challenges filed under Section 916.1 of the MPC, 53 P.S. § 10916.1, where the board fails to render the decision within the period required by this subsection, fails to commence, conduct or complete the required hearing within sixty (60) days from the date of the applicant's request for a hearing or fails to complete the hearing within one hundred (100) days after the completion of the applicant's case in chief, 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 or such period has been extended for good cause upon application to the Court of Common Pleas as provided in Section 908(1.2) of the MPC, 53 P.S. § 10908(1.2)."

SECTION 4: Further Amendments to Zoning Ordinance: Any resolution, ordinance or part of any resolution or ordinance inconsistent herewith and any amendments thereof are hereby expressly repealed except as provided for in this Ordinance. However, it is expressly provided that the provisions of this Ordinance shall not affect the validity of and shall be construed consistently with the Zoning Ordinance, as amended. If there is a conflict, the more restrictive provision shall control.

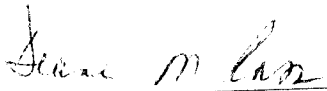
SECTION 5: Severability: Should any clause, section or other part of this Ordinance be held invalid or unconstitutional by any Court of competent jurisdiction, then the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

SECTION 6: Effective Date: This Ordinance shall become effective immediately upon adoption by the Township Council of the Township of Upper Bern.

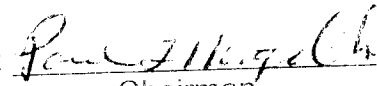
DULY ENACTED AND ORDAINED this 6 day of November, 2003, by the Board of Township Supervisors of the Township of Upper Bern in public session duly assembled.

ATTEST:

BOARD OF SUPERVISORS OF THE
TOWNSHIP OF UPPER BERN,
PENNSYLVANIA



Secretary

By: 

Chairman