

BOROUGH OF CLARKS SUMMIT

LACKAWANNA COUNTY, PENNSYLVANIA

ORDINANCE NO. 2009 - 13

AN ORDINANCE OF THE BOROUGH OF CLARKS SUMMIT TO AMEND THE BOROUGH OF CLARKS SUMMIT ZONING ORDINANCE OF JANUARY 30, 2002 (ORDINANCE 2002-01) TO

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BE IT HEREBY ORDAINED AND ENACTED by the Borough Council of the Borough of Clarks Summit, Lackawanna County, Pennsylvania, by the authority of and pursuant to the provisions of Act of July 31, 1968, P.L. 805, No. 247 of the General Assembly of the Commonwealth of Pennsylvania, as reenacted and amended, known and cited as the *Pennsylvania Municipalities Planning Code*; that the Borough of Clark Summit Zoning Ordinance of January 30, 2002 (Ordinance 2002-01), as amended, is hereby amended as follows:

ITEM 1 - ADD AND AMEND THE FOLLOWING DEFINITIONS:

Add to read as follows:

Contractor Yard: Any premises used as the base of operation by any tradesman or contractor (e.g., builder, excavation company, etc.) for the storage of equipment, vehicles and/or supplies.

Massage Facility, Therapeutic: A service establishment that meets all of the following criteria:

- A. Massages are conducted (see definition); and,
- B. The person conducting the massage is licensed by the state as a health care professional or a therapeutic massage therapist, or is certified by a recognized therapeutic massage organization that requires substantial professional training.

Parking Area: Any public or private area, under or outside of a building or structure, designed and used for parking motor vehicles, including parking lots, garages, private driveways, and legally designated areas of public streets.

Restaurant, Take-Out: An establishment where food and/or beverages are sold in a form ready for consumption, where no counter, seating, tables or other provision for the consumption are located on the premises, and where all of the consumption takes place outside the confines of the establishment. A "Restaurant, Take-Out" shall be considered a "Retail Business" for the purpose of this Ordinance.

Amend to read as follows:

Parking Area, Private: A parking area for the exclusive use of the owners of the lot on which the parking area is located or whomever else the owner permits to use the parking area.

Parking Area, Public: A parking area available to the general public (as opposed to clients or customers), with or without payment of a fee.

Patio: An open, uncovered recreational area or structure, constructed no higher than six (6) inches from the ground level and resting directly on the ground. It may be attached to or detached from the principal building and may be constructed using wood, masonry, pavement, stone, or other material suitable for that purpose.

ITEM 2 - ADD CONTRACTOR YARDS TO THE HC - HIGHWAY COMMERCIAL DISTRICT AS A CONDITIONAL USE.**ITEM 3 - AMEND §501.5 TO READ AS FOLLOWS:**501.5 Extension of Non-Conforming Setbacks

See §910.5.

ITEM 4 - AMEND §501.6 TO READ AS FOLLOWS:501.6 Projections Into Yards

Projections into required yards shall be permitted as follows; however, in no case shall a projection be less than seven (7) feet from any side or rear lot line or ten (10) feet from any public road right-of-way.

- A. Bay windows, fire places, fire escapes, chimneys, uncovered stairs and landings, and balconies and cornices, canopies, eaves, or other architectural features not required for structural support may project into the required front or rear yard not more than a total of three (3) feet provided it does not interfere with pedestrian or vehicular traffic.
- B. Unenclosed decks and porches may project into the required front and rear yards up to ten (10) feet.
- C. Uncovered patios may be located in the required side and rear yards not less than seven (7) feet to any adjacent property line, and may project into front yards up to ten (10) feet.
- D. See §503.6 for outdoor swimming pools.

ITEM 5 - AMEND §503.1 TO READ AS FOLLOWS:503.1 Accessory Structures

All accessory structures shall conform to the minimum regulations established in Article IV except as permitted below: (See also §501.6 for allowed projections.)

- A. Unattached Accessory Structures - All unattached accessory structures shall comply with yard requirements for principal structures, except that accessory structures which are not attached to a principal structure and do not exceed ten (10) feet in height and one-hundred (100) square feet in total floor area may be erected within the required side and rear yards of a principal structure, provided that no side or rear yard is reduced to less than five (5) feet. In the case of corner lots, the full yard as specified in §502.2 shall be maintained.

- B. Attached Accessory Structures - An accessory structure attached to a principal building shall be considered to be a part of the principal building and shall conform to the setbacks for principal structures.

ITEM 6 - AMEND §503.2 TO READ AS FOLLOWS:

503.2 Fences and Walls

The erection of any fence or wall (including retaining walls) in all Districts shall require a zoning permit, and shall be subject to the following provisions:

- A. Clear Sight Triangles - All fences and walls shall comply with §502.3 of this Ordinance for clear sight triangles.
- B. Not More Than Four Feet in Height
1. Fences and walls not more than four (4) feet in height may be erected in front setback areas; however, no such fence or wall shall encroach upon any public right-of-way.
 2. Fences and walls not more than four (4) feet in height may be erected up to the property line of adjoining properties.
- C. More Than Four Feet in Height - Fences and walls more than four (4) feet in height may be erected on a side or rear property line provided said property line is clearly located and physically marked on the lots by lot line markers placed in accord with a survey conducted by a Registered Land Surveyor, and the owners of said lots present to the Borough a written document executed between said owners establishing agreement for erection of the subject fence or wall.
- D. Not Located on the Property Line - Fences or walls which are not located on the property line in accord with Sub-section C above shall maintain the required front yard setback (for the front end of the fence) and shall be set back from side and rear lot lines by at least fifty (50) percent of the height of the fence or wall, but in no case less than five (5) feet. In the event of a dispute concerning the location of a boundary line between properties, the requirement of a setback in this Ordinance and the placement of a fence in accordance with this section should not be deemed evidence that the placement of the subject fence is evidence of the location of the boundary.
- E. Posts/Supports - All fence posts and other structural supports shall be located on the side of said fence towards the interior of the property owned by the person erecting the subject fence.
- F. Prohibitions - The following fences and fencing materials are prohibited:
1. Barbed wire except that surmounting a "man-proof" fence and said barbed wire is at least six (6) feet above ground level.
 2. Electrically charged fences.
 3. Broken glass surmounting a wall.
 4. Fabric, junk, junk vehicles, sheet metal, appliances, tanks, barrels or similar material.
 5. Fences which exceed District maximum height requirements.

ITEM 7- AMEND THE OPENING PARAGRAPH OF §503.5 TO READ AS FOLLOWS:

503.5 Home Occupations

It is the intent of this subsection to regulate the operation of home occupations so that the average neighbor, under normal circumstances, will not be aware of the existence of the home occupation. The burden of proof shall be on the applicant to demonstrate that the standards will be met.

ITEM 8 - AMEND §503.7 TO READ AS FOLLOWS:**503.7 Private Outdoor Swimming Pools**

A permit shall be required for all pools except those noted in §503.6,E, and the following standards shall apply:

- A. A single private outdoor swimming pool per dwelling unit is permitted as an accessory use to a residential structure, provided that such swimming pool is for the private use of the residents of the dwelling unit or for their guests, and provided that the pool is not located closer than ten (10) feet to any property line nor located between any principal structure and a public street. Decks around pools shall comply with setbacks for accessory structures. (See §501.6 and §503.1.)
- B. The swimming pool shall be secured by a fence, wall or other enclosure in accord with Uniform Construction Code requirements.
- C. Access to all pools shall be restricted when the pool is not in use whether by fence, wall or integrated in the design of the pool.
- D. A zoning permit or fence shall not be required for wading pools where the water does not exceed eighteen (118) inches in depth and which are not normally filled on a constant basis.
- E. See also Chapter 23 of the Code of the Borough of Clarks Summit.

ITEM 9 - AMEND §504.5 TO READ AS FOLLOWS:**504.5 Off-Street Parking in Designated Areas of the CC Central Business District**

Off-street parking shall not be required for any new or expanded nonresidential use in the CC Central Business District which fronts on any of the following:

- State Street from East Grove Street north to the Borough municipal boundary
- Depot Street
- Davis Street
- the 100 Block of Colburn Street
- the 100 Block of Main Street
- the 100 Block of Stone Street
- the 100 Block of Claremont Street
- the 400 Block of Zimmerman Street
- the 400 Block of Barrett Street

However, no existing parking area shall be reduced in size unless the parking area, when reduced in the number of spaces, complies with the number of spaces required for the use as specified in §504.6. If off-street parking is proposed for new construction in the areas of the CC Central Business District designated in this §504.5, such parking shall be provided to the rear of the principal structure.

ITEM 10 - ADD THE FOLLOWING §504.6,E:

- E. The required number of parking spaces may be reduced subject to special exception approval by the Zoning Hearing Board. Any conditional use approval to permit such decrease shall be subject to the following criteria:
 1. Ordinance and Plan Consistency - The project design and parking space decrease shall be consistent with the purposes contained in this Ordinance and the goals and objectives of the Borough Comprehensive Plan.

2. Quality of Design - The applicant shall demonstrate to the Zoning Hearing Board that the proposed decrease will result in an adequate number of parking spaces for the use based on a specific study of the parking demands for the proposed use or empirical data reported by a generally accepted source such as the Institute of Transportation Engineers, the Urban Land Institute, the American Planning Association, or similar entity.
3. Local Conditions - In making its determination the Zoning Hearing Board shall also consider, among others, the demographics and character of the neighborhood, demographics of targeted customers and employees, availability of mass transit, existing on-street parking conditions, and any employer instituted transportation demand management programs.
4. Burden; Conditions - If the Zoning Hearing Board, in its sole discretion, determines that the applicant has met the burden of proof, it may grant a conditional use for the decrease. The Zoning Hearing Board may impose such conditions as will, in its judgment, secure the objectives and purposes of this Ordinance.

ITEM 11 - AMEND §809.2, A, (related to communication/reception antennas) TO READ AS FOLLOWS:

809.2 Use Regulations

- A. Existing Structures - An antenna site with an antenna that is attached to an existing communications tower, smoke stack, water tower, or other tall structure shall be considered a principal permitted use and conditional use approval shall not be required. The height of the antenna shall not exceed the height of the existing structure by more than fifteen (15).

ITEM 12 - AMEND §809.3,B, (related to communication/reception antennas) TO READ AS FOLLOWS:

809.3 Standards

- B. New Tower - If the applicant proposes to build a tower (as opposed to mounting the antenna on an existing structure), the Borough may require the applicant to demonstrate that it contacted the owners of tall structures within a two-mile radius of the site proposed, asked for permission to install the antenna on those structures, and was denied for reasons other than economic ones. This would include smoke stacks, water towers, tall buildings, antenna support structures of other cellular phone companies, other communications towers (fire, police, etc.) and other tall structures. The Borough may deny the application to construct a new tower if the applicant has not made a good faith effort to mount the antenna on an existing structure.

ITEM 13 - ADD §910.5 TO READ AS FOLLOWS:

910.5 Extension of Non-Conforming Setbacks

A one-time alteration of a structure shall be permitted to extend along the non-conforming setback line a distance not to exceed fifty (50) percent of the nonconforming length of the structure as it existed at the effective date of this Ordinance. However, the height of any such extension shall not exceed the lesser of the existing height of the non-conforming structure or the applicable district maximum height.

SEVERABILITY

Should any section, subsection, clause, provision or other portion of this Ordinance be declared invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance; the Board of Supervisors having adopted this Ordinance as if such invalid portions had not been included therein.

EFFECTIVE DATE

This Ordinance shall become effective immediately upon adoption.

ADOPTION

ORDINANCE ORDAINED AND ENACTED this 7th day of October, 2009, by the Borough Council of the Borough of Clarks Summit, Lackawanna County, Pennsylvania, to be effective immediately.

BOROUGH OF CLARKS SUMMIT

By: _____
Council President

ATTEST:

Borough Secretary

APPROVED this 7th day of October, 2009