LOWER ALLEN TOWNSHP

ORDINANCE 2007-06

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF LOWER ALLEN TOWNSHIP, CUMBERLAND COUNTY, PENNSYLVANIA AMENDING, MODIFYING AND CHANGING THE CODE OF THE TOWNSHIP OF LOWER ALLEN, 1997, BY AMENDING CHAPTER 220 ZONING TO PERMIT FREE STANDING EATING ESTABLISHMENTS BY CONDITIONAL USE IN THE C-3 PLANNED BUSINESS CENTER DISTRICT.

BE IT ENACTED AND ORDAINED by the Board of Commissioners ("Board") of Lower Allen Township ("Township") Cumberland County, Pennsylvania, and it is hereby enacted and ordained by the same as follows:

SECTION I

Section 220-6B.of Chapter 220, Zoning, of the Code of the Township of Lower Allen, 1997, shall be amended to add the following definitions:

CONDITIONAL USE-A use permitted pursuant to the provisions of articles XXII, and XXIV; and

EATING ESTABLISHMENTS, FREE STANDING-an eating establishment which wholly occupies a given building.

SECTION II

Chapter 220, Zoning, of the Code of the Township of Lower Allen, 1997, shall be amended to add the following new section:

§ 220-117-1. Freestanding Eating establishments in C-3 Planned Business Center District. Freestanding eating establishments shall be permitted by conditional use in C-3 Planned Business Center District, subject to the following:

A. Freestanding eating establishments shall only be permitted within a business park pursuant to Section 220-113.

B. No drive-in use freestanding eating establishments shall be permitted.

C. The approved conceptual site plan for the business park or the planned business center district (C-3) development in which the business park is located must show, or the business park or the planned business center district (C-3) development in which the business park is located must have constructed and certificates of occupancy issued for, at the time of commencement of construction of such eating establishment, a minimum combined square footage of office buildings, financial establishments, day care centers, educational institutions and/or vocational schools of not less than four hundred thousand (400,000) square feet per freestanding eating establishment.

SECTION III

Chapter 220, Zoning, of the Code of Lower Allen Township shall amended at Section 220-220 to add a new subsection B for Conditional Uses. Section 220-220 shall now be titled, Special exceptions, variances and conditional uses. The current paragraph will now become subsection A and a new subsection B will be added as follows:

Conditional Uses. In this chapter, conditional uses may be granted or denied by the Board of Commissioners pursuant to expressed standards and criteria contained in this chapter. The Board of Commissioners shall hear and decide requests for such conditional uses in accordance with such standards and criteria and prescribe the application form to be used. The Board may grant approval of a conditional use, provided that the applicant complies with the following standards and that the proposed conditional use shall not be detrimental to the health, safety or welfare of the neighborhood. The burden of proof shall rest with the applicant.

1. The applicant shall establish, by credible evidence, compliance with all conditions on the conditional use contained within this chapter which give the applicant the right to seek the conditional use.

2. The applicant shall establish, by credible evidence, that the proposed conditional use shall be properly serviced by all existing public service systems. The peak traffic generated by the subject of the application shall be accommodated in a safe and efficient manner or improvements shall be made in order to effect the same. Similar responsibilities shall be assumed with respect to other public service systems, including, but not limited to police protection, fire protection, utilities, and parks and recreational facilities.

3. The applicant shall establish, by credible evidence, that the proposed conditional use shall be in and of itself properly designed with regard to internal circulation, parking, buffering and all other elements of proper design as specified in this chapter and any other governing law or regulation.

4. The applicant shall provide the Board with sufficient plans, studies or other data to demonstrate compliance with all applicable regulations.

5. For uses, structures or any development within the overlay Floodway (FW) and Flood-Fringe (FF) Districts, the applicant shall present evidence of the effect of the use, structure or development on flood levels, flood frequencies and velocities; the susceptibility of the use, structure or development to flood damage; the availability of emergency access to the use, structure or development in times of flood; the necessity of the use, structure or development to be located near the floodplain; and the compliance with the requirement that the use, structure or development will not be located in the floodplain if the use, structure or development increases the base flood elevation.

6. The applicant shall inform the Board whether any structures on the property are listed upon the National Register of Historic Places or any other registry of historic structures.

7. The proposed conditional use shall not substantially injure or detract from the use of neighboring property or from the character of the neighborhood and the use of property adjacent to the area included in the conditional use application shall be adequately safeguarded.

8. The Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of and ensure compliance with the Pennsylvania Municipalities Planning Code, as amended, Editor's Note: See 53 P.S. § 10101 et seq. and this chapter, which conditions may include plantings and buffers, harmonious designs of buildings and the elimination of noxious, offensive or hazardous elements.

9. Unless otherwise specified by the Board or by law, a conditional use shall expire if the applicant fails to commence the development project and obtain a zoning permit within two (2) years from the date of authorization thereof by the Board or by the court if such conditional use has been granted after an appeal. The Board, upon written application and for reasonable cause shown, may extend the approval for an additional period of up to one year.

10. Any site plan or plot plan presented in support of the conditional use shall become an official part of the record for said conditional use. Approval of any conditional use shall also bind the use in accordance with the submitted site plan or plot plan. Should a change in the site plan or plot plan be required as a part of the approval of the use, the applicant shall revise the site plan or plot plan prior to the issuance of a zoning permit and present such revised plan to the Zoning Officer. Any subsequent change to the use on the subject property not reflected on the originally approved site plan or the amended site plan filed with the Zoning Officer prior to the issuance of the zoning permit shall require the granting of another conditional use to authorize such change.

11. The Board of Commissioner's decision to grant a permit for a conditional use use shall be made only after public notice and public hearing. Such permit shall apply specifically to the application and plans submitted and presented at said public hearing. Any subsequent amendments or additions shall be subject to review and public hearing by the Board of Commissioners as a conditional use.

12. No application for a permit shall be granted by the Board of Commissioners for any conditional use until said Board has first received and considered an advisory report thereon from the Planning Commission with respect to the location of such use in relation to the needs and growth pattern of the Township of Lower Allen, where appropriate, with reference to the adequacy of the site area and the arrangement of buildings, driveways, parking areas, off-street loading and unloading spaces and other pertinent features of the proposal.

13. The Planning Commission shall have 30 days from the date of its receipt of the application within which to file its report thereon. In the event that the Planning Commission shall fail to file its report within 30 days, such application may be deemed to have been recommended approval by the Planning Commission. The Planning Commission may have representation at the public hearing held by the Board of Commissioners on such application. After receipt of the report, the Board of Commissioners shall hear the application in the same manner and under the same procedure as it is empowered by law and ordinance to hear cases and make exceptions to the provisions of this chapter. The Board of Commissioners may thereafter direct the Zoning Officer to issue a permit if, in its judgment, the request will not be detrimental to the health, safety and general welfare of the Township of Lower Allen.

14. A conditional use for which a permit is granted by the Board of Commissioners pursuant to the provisions of this section shall be construed to be a conforming use.

SECTION IV

Section 220-214 of Chapter 220, Zoning, of the Code of the Township of Lower Allen, 1997, shall be amended to add the following sentence at the end of section.

"Permits for construction and uses which are a conditional use shall be issued upon approval of the Board of Commissioners."

SECTION V

Section 220-78 of Chapter 220, Zoning, Code of the Township of Lower Allen, 1997, shall be amended to add a new subsection Q:

Q: Freestanding Eating Establishments by conditional use, in accordance with Section 220-220B.

SECTION V

The provisions of this Ordinance, as far as they are the same as those of ordinances in force immediately prior to the enactment of this Ordinance, are intended as a continuation of such Ordinances and not as new enactments. The provisions of this Ordinance shall not affect any act done or liability incurred, nor shall it affect any such suit or prosecution pending or to be instituted to enforce any right or penalty or to punish any offense under the authority of any ordinance repealed by this Ordinance.

SECTION VI

The provisions of this Ordinance are severable, and if any of its provisions shall be held to be unconstitutional, illegal, or invalid, such decision shall not affect the validity of any of the remaining provisions of this Ordinance. It is hereby declared as a legislative intent that this Ordinance would have been adopted had such unconstitutional, illegal or invalid provision not been included herein.

SECTION VII

This ordinance shall take effect at the earliest date allowed by law.

ENACTED AND ORDAINED into an Ordinance this 11th day of June, 2007.

Attest:
(Corporate Seal)

BOARD OF COMMISSIONERS
LOWER ALLEN TOWNSHIP

Dana S Lutes
(~~Assistant~~) Secretary

John T. Tetzel
(~~Vice~~) President