

BOROUGH OF KUTZTOWN
Berks County, Pennsylvania

ORDINANCE NO. _____-2006

AN ORDINANCE OF THE BOROUGH OF KUTZTOWN, COUNTY OF BERKS, COMMONWEALTH OF PENNSYLVANIA AMENDING AND RESTATING CERTAIN SECTIONS OF CHAPTER 225, ENTITLED "ZONING" OF THE CODE OF THE BOROUGH OF KUTZTOWN AND PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES OR PARTS THEREOF.

WHEREAS, the Code of the Borough of Kutztown enacted by Ordinance No. 12-1995, which was enacted on December 26, 1995 and approved on December 30, 1995, as previously amended from time to time, includes Chapter 225, entitled "Zoning" (hereinafter in this Ordinance, as previously amended, "Chapter 225"), which is also known as the "Borough of Kutztown Zoning Ordinance of 1990"; and

WHEREAS, the Borough Council of the Borough of Kutztown desires, by enacting this ordinance, to amend certain provisions of the aforesaid Chapter 225 of the Code of the Borough of Kutztown.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Borough Council of the Borough of Kutztown, County of Berks, Commonwealth of Pennsylvania and it is hereby ENACTED AND ORDAINED by the authority of same as follows:

SECTION 1. Section 225-5, entitled "Word usage, definitions" of Chapter 225 is hereby amended so as to either (a) add or (b) amend and restate in full, the following definitions, which shall be inserted in the aforesaid Section 225-5 in alphabetical order:

AGRICULTURAL OPERATION - An enterprise that is actively engaged in the commercial production and preparation for market of crops, livestock and livestock products and in the production, harvesting, and preparation for market or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities; the term includes an enterprise that implements changes in production practices and procedures of types of crops, livestock, livestock products or commodities produced consistent with practices and procedures that are normally engaged by farmers or are consistent with technological development within the agricultural industry.

APPLICANT - A landowner or developer who has filed an application for any of the following: permit, development, variance, special exception or any other relief provided for by this Chapter, the term includes the heirs, successors and/or assignees of the landowner or developer.

BOARDING HOUSE - A one (1) family dwelling occupied by the landowner thereof, and the landowner's family, if applicable, in which building the

landowner lets or provides for compensation rooms for the lodging of not more than two (2) individuals and the total number of such persons residing in the building, including the landowner, the family of the landowner, and boarders, exceeds three (3) persons.

CENTER FOR LOCAL GOVERNMENT SERVICE - The Governor's Center for Local Government Services located within the Commonwealth of Pennsylvania Department of Community and Economic Development.

COMMON OPEN SPACE - A parcel or parcels of land or an area of water or a combination of land and water within a development site or lot designed and intended for use or enjoyment of residents of a development or lot, not including streets, off street parking areas or parking lots and areas set aside for public facilities.

CONSISTENCY - An agreement or correspondence between matters being compared which denotes a reasonable, rational, similar connection or relationship.

COUNTY COMPREHENSIVE PLAN - A land use and growth management plan prepared by the Berks County Planning Commission and adopted by the County of Berks Commissioners which establishes broad goals and criteria for municipalities to use in preparation of their comprehensive plans and land use regulations.

DAY-CARE FACILITY - A facility which provides:

(1) child care and/or instruction for seven or more children unrelated to the care giver for less than 24 hours a day and where tuition, fees or other form of compensation is charged or assistance received and which is subject to licensing and/or approval by the Commonwealth of Pennsylvania;

(2) Adult Day Care Center – A single-family dwelling for not more than 5 persons, 18 years of age or older, at any give time, who do not require care for chronic, convalescent, medical, or nursing issues, beyond care normally provided in a home setting, but require supervision due to physical and/or mental disabilities, that clearly provides for the normal care and safety of such persons within the facility for periods of less than 24 hours; or;

(3) Any combination of (1) and (2) above.

DIVIDER —

(1) With respect to an Industrial District a divider shall mean a five (5) foot wide unpaved area along the perimeter of the lot which has centered in

such area either a fence not less than four feet nor more than six feet in height or a hedge not less than six feet in height; or

(2) With respect to a Commercial or Residential District a divider shall mean a three-foot wide unpaved area along the perimeter of the lot which has centered in such area either a fence not less than four feet nor more than six feet in height or a hedge not less than four feet in height.

DWELLING — A building arranged, intended, designed or used as the living quarters for one or more families living independently of each other within the building. The term "dwelling" shall not be deemed to include hotel, motel, rooming house or tourist home.

(1) **SEMIDETACHED** — A building which has one adjacent wall or portion thereof in common situated on two adjacent lots, arranged, designed and intended for and occupied by two families living independently of each other and having separate cooking and sanitary facilities.

(2) **SINGLE-FAMILY** — A building arranged, designed or intended for and occupied exclusively by one family and having separate cooking and sanitary facilities for said family.

(3) **TWO-FAMILY and/or DUPLEX** — A building situated on one lot arranged, designed and intended for and occupied by two families living independently of each other and each having separate cooking and sanitary facilities therein.

(4) **MULTI-FAMILY** — A building situated on one lot, arranged, designed and intended for occupancy by three or more families living independently of each other and each having separate cooking and sanitary facilities therein, no more than three (3) stories in height.

(a) **LOW-RISE APARTMENT HOUSE** — A building not exceeding three stories in height, containing three or more separate dwelling units. The term "low-rise apartment house" shall not be construed to include row houses or townhouses.

(b) **LOW-RISE APARTMENT HOUSE FOR THE ELDERLY** — A building in which at least one resident in each dwelling unit therein shall be at least 60 years of age.

(c) **HIGH-RISE APARTMENT HOUSE** — A detached building four stories or more in height, containing one or more common entranceways for all dwelling units contained therein, which has a common

hallway for all dwelling units on the same floor. Each "high-rise apartment house" must be served between floors by one or more elevators.

FORESTRY - The harvesting of more than twenty-five (25) live trees with a trunk width of 6 inches or more at a height of 4.5 feet above the average ground level on any tract or lot within a calendar year. This term shall not apply to the following, which are permitted by right uses in zoning districts: 1) routine "thinning of woods" involving dispersed selective cutting of trees that involve less than 20 percent of all trees on one (1) or more abutting lots with a trunk width of greater than 6 inches, 2) cutting of trees with a trunk width less than six inches, 3) cutting of fewer than twenty-five (25) such trees in a calendar year, 4) Christmas tree farms or 5) clearing of portions of a lot that is clearly the minimum necessary for construction.

GENERAL CONSISTENCY/GENERALLY CONSISTENT - That which exhibits consistency.

GRADE - The average finished ground elevation or level adjoining the building or structure.

HEDGE - A row of closely planted evergreen shrubs, bushes or trees of one type forming a continuous barrier or fence so as to restrict passage and visibility.

HOME OCCUPATION — A use customarily conducted entirely within a dwelling unit and carried on by any resident thereof which is clearly incidental and secondary to the use of the dwelling unit and does not change the character thereof or have any exterior evidence of such secondary use other than a small nameplate sign. The definition of Home Occupation shall exclude any activity which falls within the definition of No-Impact Home-Based Business.

MINERALS - Any aggregate or mass of mineral matter whether or not coherent. The term includes, but is not limited to, limestone and dolomite, sand and gravel, rock and stone, earth, fill, slag, iron ore, zinc ore, vermiculite and clay, anthracite and bituminous coal, coal refuse, peat and crude oil and natural gas.

NO-IMPACT HOME-BASED BUSINESS - A business or commercial activity administered or conducted as an accessory use which is clearly secondary to the use as a residential dwelling and which involves no customer, client or patient traffic, whether vehicular or pedestrian, pickup, delivery or removal functions to or from the premises, in excess of those normally associated with residential use. The business or commercial activity must satisfy the following requirements:

- (1) The business activity shall be compatible with the residential use of the property and surrounding residential uses.
- (2) The business shall employ no employees other than family members residing in the dwelling.
- (3) There shall be no display or sale of retail goods and no stockpiling or inventory of a substantial nature.
- (4) There shall be no outside appearance of a business use, including, but not limited to, parking, signs or lights.
- (5) The business activity may not use any equipment or process which creates noise, vibration, glare, fumes, odors or electrical or electronic interference, including interference with radio or television reception, which is detectable in the neighborhood.
- (6) The business activity may not generate any solid waste or sewage discharge, in volume or type, which is not normally associated with residential use in the neighborhood.
- (7) The business activity shall be conducted only within the dwelling and may not occupy more than 25% of the habitable floor area.
- (8) The business may not involve any illegal activity.

Provided however that the no-impact home-based business shall not be deemed to include any use when such use is otherwise prohibited or restricted by virtue of any deed restriction, covenant or agreement restricting the use of land, or by any master deed, by-law or other document applicable to a common interest ownership community.

PARKING LOT- An off-street paved area designed solely for the parking of four (4) or more motor vehicles, including driveways, passageways and maneuvering space appurtenant thereto.

PA UCC – Shall mean the Pennsylvania Construction Code Act, also known as the “Pennsylvania Uniform Construction Code, Act 45 of 1999”, as amended by Act 158 of 2004, 35 P.S. §§ 7210.101-7210.1103, and its regulations, as amended, restated, supplemented or replaced from time to time.

PRESERVATION OR PROTECTION - When used in connection with natural and historic resources, shall include means to conserve and safeguard these resources from wasteful or destructive use, but shall not be interpreted to authorize the unreasonable restriction of forestry, mining or other lawful uses of natural resources.

PRIME AGRICULTURAL LAND - Land use for agricultural purposes that contain soils of the first second or third class as defined by the United States Department of Agriculture Natural Resources and Conservation Services County Soil Survey.

ROOMING HOUSE - A building other than a fraternity, sorority, hotel, motel or one-family dwelling, in which the owner provides for compensation or lets rooms for lodging of four (4) or more individuals, and the owner does not reside therein.

ROOMING UNIT - A portion of a building providing rooms for sleeping, cooking and sanitary facilities for not more than five (5) persons.

SERVICE STREET – A public or private right-of-way, excluding driveways, where the cartway intended for use as means of vehicular and pedestrian circulation which provides a means of access to abutting property is identical in width and location to the right-of-way.

STREET — A public or private right-of-way, excluding driveways, intended for use as a means of vehicular and pedestrian circulation which provides a means of access to abutting property. The word "street" includes thoroughfare, avenue, boulevard, court, drive, expressway, highway, lane and road or similar terms. The word “street” shall not include “service street.”

SUBDIVISION - The division or redivision of a lot, tract or parcel of land by any means into two (2) or more lots, tracts, parcels or other divisions of land, including changes in existing lot lines, for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs or devisees, transfer of ownership or building or lot development; provided, however, that the subdivision by lease of land for agriculture purposes into parcels of more than ten (10) acres not involving any new street or easement of access or any residential dwelling shall be exempted. The term “subdivision” shall refer, as appropriate in this Chapter, to the process of subdividing land or to the land proposed to be subdivided. The term subdivision includes resubdivision.

(1) The enumerating of lots shall include as a lot that portion of the original tract remaining after other lots have been subdivided therefrom.

(2) The combining of two (2) or more recorded lots into one (1) lot via the creation of a new deed shall not constitute subdivision, provided that no existing lot is divided by any means.

USE — The specific purpose for which land or a sign, structure or building is designed, arranged or intended or for which it may be occupied or maintained or any activity, occupation, business or operation which may be carried on

thereon or therein. The term "permitted use" or its equivalent shall not be deemed to include any nonconforming use. The existence of a permit or any other authorization under another Chapter of this Code or any other authorization under any other laws or regulations shall not be deemed to constitute the actual use or the continuation of use of any land, any structure or any building, whether permitted or non-conforming for the purposes of this Chapter.

YARD FRONT - The yard adjacent to the street right-of-way and a line drawn parallel thereto, at such a distance therefrom as may be specified herein for any district or the existing distance between the street right-of-way and the front of the building or structure located thereon and extending the full width of the lot.

SECTION 2. Section 225-7, entitled "Classes of districts", is hereby amended and restated in its entirety so as to read as follows:

For the purpose of this chapter, the borough is hereby divided into classes of districts which shall be designated as follows:

- R-1 — Residential
- R-2 — Low-Density Residential
- R-3 — Medium-Density Residential
- R-4 — Medium-High-Density Residential
- R-5 — High-Density Residential
- C-C — Business Commercial Central
- C-1 — Business Commercial
- C-2 — Commercial/Residential
- C-3 — Highway Commercial
- I — Industrial Districts
- LI — Light Industrial Districts
- MI — Medium Industrial Districts
- HI — Heavy Industrial Districts

SECTION 3. Section 225-12, entitled "R-1 - Residential", is hereby amended as follows:

- (a) Section 225-12, entitled "R-1 – Residential" is hereby amended so as to change the title thereof to the following: "R-1 Agricultural/Residential".
- (b) Section 225-12A is hereby amended so as to add a new subsection 225-12A(4) to read as follows: "(4) Agricultural Operations".
- (c) Section 225-12A is hereby amended so as to add a new subsection 225-12A(5) to read as follows: "(5) Forestry".
- (d) Section 225-12B is hereby amended so as to add a new subsection 225-12B(5) to read as follows: "(5) No-Impact Home-Based Business".

SECTION 4. Section 225-13, entitled “R-2 - Low-Density Residential”, is hereby amended as follows:

- (a) Section 225-13A is hereby amended so as to add a new subsection 225-13A(8) to read as follows: “(8) Forestry”.
- (b) Section 225-13B is hereby amended so as to add a new subsection 225-13B(5) to read as follows: “(5) No-Impact Home-Based Business”.

SECTION 5. Section 225-14, entitled “R-3 - Medium Density Residential” is hereby amended as follows:

- (a) Section 225-14A is hereby amended so as to add a new subsection 225-14A(11) to read as follows: “(11) Forestry”.
- (b) Section 225-14B(1) is hereby amended and restated in its entirety so as to read as follows: “Private garages, parking spaces or parking lots”.
- (c) Section 225-14B(3) is hereby amended and restated in its entirety so as to read as follows: “Home occupations pursuant to Section 225-23”.
- (d) Section 225-14B is hereby amended so as to add a new subsection 225-14B(6) to read as follows: “(6) No-Impact Home-Based Business”.
- (e) Section 225-14C(1) is hereby amended and restated in its entirety so as to read as follows: “Accessory parking not located on the same lot with the principal as provided for in § 225-29A”.
- (f) Section 225-14C(4) is hereby amended and restated in its entirety so as to read as follows: “Low-rise apartment houses and townhouses, pursuant to Section 225-25”.
- (g) Section 225-14D is hereby amended so as to add a new subsection 225-14D(7) to read as follows: “(7) Parking lots: six thousand, two hundred fifty (6250) square feet”.
- (h) Section 225-14E is hereby amended so as to add a new subsection 225-14E(6) to read as follows: “(6) Parking lots fifty (50) feet”.
- (i) Section 225-14G is hereby amended so as to add a new subsection 225-14G(5) to read as follows: “(5) Parking lot, principal use.
 - (a) maximum paved area = 75%,
 - (b) minimum open space = 25%.”

SECTION 6. Section 225-15, entitled “R-4 – Medium-High Density Residential” is hereby amended as follows:

- (a) Sections 225-15A(1) and 225-15A(2) are hereby amended and restated in their entirety so as to read as follows:
 - “(1) Low-rise and High-rise apartments pursuant to Section 225-25.
 - (2) Townhouses pursuant to Section 225-25”.
- (b) Section 225-15A is hereby amended so as to add a new subsection 225-15A(3) to read: “(3) Forestry”.
- (c) Section 225-15B(1) is hereby amended and restated in its entirety so as to read as follows: “(1) Private garages, parking spaces or parking lots”.
- (d) Section 225-15B(3) is hereby amended and restated in its entirety so as to read as follows: “(3) Home occupations pursuant to Section 225-23”.
- (e) Section 225-15B is hereby amended so as to add a new subsection 225-15B(6) to read as follows: “(6) No-Impact Home-Based Business”.

SECTION 7. Section 225-16, entitled “R-5 – High-Density Residential”, is hereby amended as follows:

- (a) Section 225-16.A, entitled “Permitted uses”, is hereby amended so as to read as follows:
 - ”A. Permitted uses:
 - (1) Low-rise and High-rise apartments pursuant to Section 225-25.
 - (2) Mobile home parks, pursuant to Section 225-32.
 - (3) No-Impact Home-Based Business”...
- (b) Section 225-16A is hereby amended so as to add a new subsection 225-16A(5) to read: “(5) Forestry”.
- (c) Section 225-16B(1) is hereby amended and restated in its entirety so as to read as follows: “(1) Private garages, parking spaces or parking lots”.
- (d) Section 225-16B is hereby amended so as to add a new subsection 225-16B(5) to read: “(5) No-Impact Home-Based Business”.

SECTION 8. Section 225-17, entitled “C-C - Business Commercial Central” is hereby amended as follows:

- (a) Section 225-17A is hereby amended so as to add a new subsection 225-17A(11) to read as follows: “(11) Forestry”.

- (b) Section 225-17A is hereby amended so as to add a new subsection 225-17A(15) to read as follows: “(15) Low-rise apartment houses, pursuant to Section 225-25”.
- (c) Section 225-17A is hereby amended so as to add a new subsection 225-17A(16) to read as follows: “(16) Multi-family dwelling”.
- (d) Section 225-17B is hereby amended so as to add a new subsection 225-17B to read as follows: “(5) Private garages, parking spaces or parking lots”.
- (e) Section 225-17B is hereby amended so as to add a new subsection 225-17B(6) to read as follows: “(6) No-Impact Home-Based Business”.
- (f) Section 225-17C(1) is hereby amended and restated in its entirety so as to read as follows: “Accessory parking not located on the same lot with the principal use, pursuant to Section 225-29A”.
- (g) Section 225-17C(3) is hereby amended and restated in its entirety so as to read as follows: (3) High-rise apartment houses, pursuant to Section 225-25”.
- (h) Section 225-17C(4) is hereby amended and restated in its entirety so as to read as follows: “Commercial parking lots, garages or accessory parking as provided for in §225-29A”.
- (i) Section 225-17D(1)(b) is hereby amended and restated in its entirety so as to read as follows: “Area per use: two thousand (2000) square feet.”
- (j) Section 225-17D(2)(b) is hereby amended and restated in its entirety so as to read as follows: “Area per commercial use: two thousand (2000) square feet”.
- (k) Section 225-17D(2)(c) is hereby amended and restated in its entirety so as to read as follows: “Area, residential, per dwelling unit in addition to minimum commercial area: one thousand (1000) square feet”.
- (l) Section 225-17D(3)(f) is hereby amended and restated in its entirety so as to read as follows: “Rooming house: five thousand (5000) square feet, per rooming unit”.
- (m) Section 225-17D(3)(g) is hereby amended and restated in its entirety so as to read as follows: “Multi-family: 1500 square feet”.
- (n) Section 225-17D(3)(h) is hereby amended and restated in its entirety so as to read as follows: “Low-rise apartment house, pursuant to Section 225-25”.

- (o) Section 225-17D(3)(i) is hereby amended and restated in its entirety so as to read as follows: “High-rise apartment house, pursuant to Section 225-25”.
- (p) Section 225-17D is hereby amended so as to add a new subsection 225-17D(5) to read as follows:
 - (5) Parking lots as permitted by special exception.
 - (a) Area: five thousand (5,000) square feet.
- (q) Sections 225-17E(1) and (2) are hereby amended and restated in their entirety so as to read as follows:
 - (1) Commercial building and/or use forty (40) feet.
 - (2) Commercial and residential building in combination: forty (40) feet”.
- (r) Sections 225-17E(11) and (12) are hereby amended and restated in their entirety so as to read as follows:
 - (11) Non commercial/non residential buildings: fifty (50) feet.
 - (12) Parking lots as permitted by special exception.
 - (a) Width: fifty (50) feet.
- (s) Section 225-17F is hereby amended so as to add a new subsection 225-17F(3) to read as follows: “Parking lots shall comply with §225-29A.”
- (t) Section 225-17G is hereby amended so as to add a new subsection 225-17(G)(6) to read as follows:
 - (6) Parking lots as permitted by special exception.
 - (a) Maximum paved area: 90%
 - (b) Minimum open space: 10%

SECTION 9. Section 225-18, entitled “C1 - Business Commercial” is hereby amended as follows:

- (a) Section 225-18A(13) is hereby amended and restated in its entirety so as to read as follows: “(13) Day-care facility and nursery school, pursuant to Section 225-33.1.”
- (b) Section 225-18A is hereby amended so as to add a new subsection 225-18A(14) to read as follows: “(14) Forestry”.

- (c) Section 225-18A is hereby amended so as to add a new subsection 225-18A(15) to read as follows: (15) Multi-family buildings.
- (d) Section 225-18B is hereby amended so as to add a new subsection 225-18B(5) to read as follows: “(5) No-Impact Home-Based Business”.
- (e) Section 225-18C(3) is hereby amended and restated in its entirety so as to read as follows: “(3) Low-rise apartment houses, pursuant to Section 225-25”.
- (f) Section 225-18D(1)(b) is hereby amended and restated in its entirety so as to read as follows: “area per use: two thousand (2000) square feet”.
- (g) Section 225-18D(2)(b) is hereby amended and restated in its entirety so as to read as follows: “area per use: two thousand (2000) square feet”.
- (h) Section 225-18D(2)(c) is hereby amended and restated in its entirety so as to read as follows: “Area, residential, per dwelling unit in addition to minimum commercial area 1000 square feet”.
- (i) Section 225-18D(3)(f) is hereby amended and restated in its entirety so as to read as follows: “Multi family: 2000 square feet”.
- (j) Section 225-18D(3) is hereby amended to add a new subsection 225-18D(3)(g) to read as follows: “(g) Rooming house: 5,000 square feet per rooming unit.”
- (k) Section 225-18D(4) is hereby amended and restated in its entirety so as to read as follows: “Noncommercial/non-residential building and parking lots.
- (l) Section 225-18D is hereby amended so as to add a new subsection 225-18D(5) to read as follows:
 - (5) Parking lots as permitted by special exception.
 - (a) Area: 5000 square feet”
- (m) Section 225-18D is hereby amended so as to add a new subsection 225-18G(3) to read as follows: “(3) Parking lots shall comply with §225-29A”.
- (n) Section 225-18D is hereby amended so as to add a new subsection 225-18D(6) to read as follows: “(6) Parking lots as permitted by special exception.
 - (a) Maximum paved area: 90%
 - (b) Minimum open space: 10%”

- (o) Section 225-18E(1) is hereby amended and restated in its entirety so as to read as follows: “Commercial building and/or use: 40 feet”.
- (p) Section 225-18E(2) is hereby amended and restated in its entirety so as to read as follows: “Commercial and Residential building in combination: 40 feet.”
- (q) Section 225-18E(8) is hereby amended and restated in its entirety so as to read as follows: “Rooming house: fifty (50) feet”.
- (r) Section 225-18E is hereby amended so as to add a new subsection 225-18E(9) to read as follows: “(9) Noncommercial/non residential buildings: 50 feet”.
- (s) Section 225-18E is hereby amended so as to add a new subsection 225-18E(10) to read as follows: “(10) Multi-family: fifty (50) feet.”
- (t) Section 225-18G is hereby amended so as to add a new subsection 225-18G(6) to read as follows: “(6) Parking lots shall comply with Section 225-29A”.
- (u) Section 225-18G hereby amended to add a new subsection 225-18G(7) to read as follows:
 - (7) Parking lot as permitted by special exception
 - (a) Width fifty (50) feet.
- (v) Section 225-18G is hereby amended so as to add a new subsection 225-18G(8) to read as follows: “(8) Maximum paved area parking lot principal use: 90%.”
- (w) Section 225-18G is hereby amended so as to add a new subsection 225-18G(9) to read as follows: “(9) Minimum open space parking lot principal use: 10%”.

SECTION 10. Section 225-19, entitled “C-2 - Commercial/Residential” is hereby amended as follows:

- (a) Section 225-19A (1) is hereby deleted.
- (b) Section 225-19A (6) is hereby deleted.
- (c) Section 225-19B is hereby amended to add a new subsection 225-19B(5) to read as follows: “(5) No-Impact Home-Based Business”.

- (d) Section 225-19A is hereby amended so as to add a new subsection 225-19A(7) to read as follows: “(7) Business, professional or government offices”.
- (e) Section 225-19A is hereby amended so as to add a new subsection 225-19A(8) to read as follows: “(8) Day care facilities and nursery schools as provided for in §225-33.1”.
- (f) Section 225-19A is hereby amended so as to add a new subsection 225-19A(9) to read as follows: “(9) Dwelling units in combination with uses permitted by §225-19A(4), (7) and (8)”.
- (g) Section 225-19A is hereby amended so as to add a new subsection 225-19A(10) to read as follows: “(10) Forestry”.
- (h) Section 225-19C is hereby amended so as to add a new subsection 225-19C(2) to read as follows: “(2) Accessory parking lots not located on the same lot as a principal use”.
- (i) Section 225-19D(4) is hereby amended and restated in its entirety so as to read as follows: “(4) Retail Service establishments, business, professional or government offices”.
- (j) Section 225-19F(4) is hereby amended and restated in its entirety so as to read as follows: “(4) Minimum open space: 5%; 25% where the only use on the lot is in accordance with Section 225-19C(2)”.
- (k) Section 225-19F is hereby amended so as to add a new subsection 225-19F(6) to read as follows:
 - (6) Parking lots principal use:
 - (a) maximum paved area= 90%
 - (b) minimum open space= 10%”

SECTION 11. Section 225-20, entitled “C-3 - Highway Commercial” is hereby amended as follows:

- (a) Section 225-20A is hereby amended so as to add a new subsection 225-20A (10) to read as follows: “(10) Forestry”.
- (b) Section 225-20A(8) is hereby amended and restated in its entirety so as to read as follows: “(8) Shopping centers, pursuant to Section 225-26”.
- (c) Section 225-20A(9) is hereby amended and restated in its entirety so as to read as follows: “(9) Day-care facility and nursery school, pursuant to Section 225-33.1”.

- (d) Section 225-20B (1) is hereby amended and restated in its entirety so as to read as follows: “(1) Off-street parking spaces or lots”.
- (e) Section 225-20C is hereby amended so as to add a new subsection 225-20C(6) to read as follows: “(6) Accessory parking lot not located on same lot as principal use.”
- (f) Section 225-20G is hereby amended so as to add a new subsection 225-20G(6) to read as follows:
 - (6) Parking lot, principal use:
 - (a) maximum paved area=90%
 - (b) minimum open space=10%

SECTION 12. Section 225-21, entitled “I - Industrial,” is hereby amended and restated in its entirety so as to read as follows:

A. Industrial Zoning Districts.

- (1) The Industrial Zoning District shall consist of the following three (3) types of districts:
 - (a) LI - Light Industrial District
 - (b) MI - Medium Industrial District
 - (c) HI - Heavy Industrial District
- (2) Each industrial use shall be located in an appropriate industrial zone based upon the utilization limits set forth in this §225-21.
- (3) An industrial use which exceeds a single limit in an Industrial District must be located in the next higher Industrial District, except that in a LI District an industrial use may exceed two listed limits, but shall not exceed any limits set-forth in the MI District.
- (4) An industrial use that exceeds any limit set forth in MI District or has any condition within the HI District, shall only be permitted in the HI District.

B. Industrial Utilization Regulations;

(1) LIMITATION	LIGHT (L1)	MEDIUM(M1)	HEAVY (H1)
Employees	less than 100	100-250	more than 250
Noise level	60 dba (1)	65 dba (1)	70dba
	50 dba (2)	60 dba (2)	70 dba

Water usage	3000 gpd	7500 gpd	15,000 gpm
Sewage discharge	2000 gpd	5000 gpd	10,000 gpm
Sewage treatment	municipal	municipal/ pretreatment	pre-treatment
Traffic volume (trips)	250 (3)	500	1000
Air filtration	non-required	non-toxic dust control	required
3 or more axle trucks (trips per day)	10	20 (4)	more than 20
Building height	2 story or 35 feet	4 story or 50 feet	4 story or 50 feet
Lot size	2 acres	5 acres	10 acres
Lot width	150 feet	200 feet	250 feet
Lot coverage	35%	40%	45%
Paved area	35%	40%	45%
Yards Front	40	40	30
Side	30	20	20
Rear	40	20	20

- (2) All industrial uses abutting other zoning districts shall have a minimum yard of 40 feet abutting such zone and shall provide a minimum landscape area of five (5) feet.

Open Space	30%	20%	10%
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- (1) Times: ½ hour after sunrise to ½ hour prior to sunset, Sundays and holidays
(2) Times: other than noted in (1) above
(3) Three or more axle trucks not included, see below
(4) Truck terminals excluded

C. Permit Uses

- (1) Industrial uses in conformity with the regulations of this section.
(2) Commercial uses in conformity with the regulations of this section.
(3) Business offices on conformity with the regulations of this section.
(4) Public structures owned or operated by any federal, state, county government agency or the borough or municipal authority authorized by the borough.

D. Permitted accessory uses: located on the same lot as a permitted use.

- (1) Off-street parking facilities
 - (2) Signs
 - (3) Restaurants, cafeterias, or recreational facilities for employees of permitted use. Not to be open to the general public.
 - (4) Day Care facilities an/or nursery school operated in conjunction with and for the sole use by subsection (1), (2), or (3) of Section 225-21.C. of this Chapter.
 - (5) Accessory uses, structures or buildings.
 - (6) Essential services
- E. Uses permitted only by special exception
- (1) Mobile home parks pursuant to §225-32 of this Chapter
 - (2) Accessory uses not located on the same lot as the principle use
- F. Additional regulations for permitted uses
- (1) Odor. No emission of unpleasant gases or other odorous matter shall be permitted in such quantities as to be offensive outside the lot lines of the lot on which such gases or odors originate.
 - (2) Toxic gases. The emission of noxious, toxic or corrosive gases or fumes injurious to persons, property or vegetation beyond the lot lines occupied by the use is prohibited.
 - (3) Glare and heat. Glare and heat generated from any process shall not produce glare which is visible, or objectionable heat, beyond the lot lines of the lot on which the operation is located. Direct glare from incandescent exposed lights shall not be visible from adjoining streets or properties.
 - (4) Liquid wastes or sewage. No discharge is permitted into a reservoir, sewage or storm disposal system, stream, open body of water or into the ground of any materials in such a way or of such nature or temperature as could contaminate any water supply or damage or be detrimental to any sewage system or any sewage treatment plant or otherwise cause the emission of dangerous objectionable elements unless treated so that thin soluble substances, such as oils, grease, acids, alkalines and other

chemicals, are in accordance with the standards as approved by Water Pollution Control Boards, appropriate agencies of the Commonwealth of Pennsylvania and/or the United States of America, other borough regulations or other agencies having jurisdiction.

- (5) Vibration. Vibration perceptible beyond the lot lines of the lot on or in which said vibrations originate shall not be permitted.
- (6) Noise. No noise shall be audible beyond the lot lines of the lot on which said noise originates exceeding the noise levels provided for in subsection 225-21.B. (1) of this Chapter. Objectionable noises due to intermittence, heat, frequency or shrillness shall be muffled.
- (7) Smoke, soot or dust. The emission of gray smoke at a density greater than No. 1 on a Ringelmann Chart, published by the United States Bureau of Mines, shall not be permitted, except that gray smoke of a shade not darker than No. 2 may be emitted for not more than four (4) minutes in any thirty-minute period.
- (8) Electric or electronic interference. Electric or electronic devices shall be shielded in such a manner as not to interfere with radio or television reception or transmissions of any kind.

SECTION 13. Section 225-22, entitled “Additional Regulations” is hereby amended as follows:

- (a) Section 225-22A is hereby amended so as to replace the words “twenty-five (25) feet” with the words “fifty (50) feet”.
- (b) Section 225-22B is hereby amended so as to add a new subsection 225-22B(5) to read as follows: “(5)No portion of any fence, free standing wall, retaining wall or hedge shall be placed or permitted to grow within two (2) feet of the right-of-way line of any street and within five (5) feet of the right-of-way line of any service street.”
- (c) Section 225-22F is hereby amended and restated in its entirety so as to read as follows: “Front yard exception. Whenever an unimproved or approved lot is situated between two (2) improved lots with a front yard set-back less than those required for the zoning district in which the lot is located, the front yard required may be reduced to a depth equal to the average of the two adjacent lots. For the purpose of this subsection an improved lot shall be one on which a permitted principle building is erected.”

- (d) Section 225-22I(1) is hereby amended and restated in its entirety so as to read as follows: “Terraces, patios, decks or open porches, provided that such terraces, patios, decks or open porches are not roofed or otherwise enclosed and are not closer than three (3) feet to any adjacent lot line or as required by the PA UCC.”
- (e) Section 225-22I(2) is hereby amended and restated in its entirety so as to read as follows: “Projecting or freestanding features, including but not limited to bay windows, cornices, eaves, fireplaces, chimneys, window sills, air conditioners, transformers, antennas or other similar features, provided that no single feature exceeds one hundred and twenty (120) square feet in external area. No such projecting nor freestanding feature shall be placed or located within three (3) feet of an adjacent lot line or as required by the PA UCC.”
- (f) Section 225-22I(3) is hereby amended and restated in its entirety so as to read as follows: “Uncovered stairs and landings, provided such stairs or landings do not exceed three (3) foot, six (6) inches in height nor closer than three (3) feet to any adjacent lot line or as required by the PA UCC.”
- (g) Section 225-22 is hereby amended so as to add a new subsection 225-22K to read as follows: “K. No building or structure of any kind shall be constructed within five (5) feet of any utility easement or other right of way, except where such other right of way or utility easement provides direct services to said building or structure.
- (h) Section 225-22 is hereby amended so as to add a new subsection 225-22L to read as follows: “(L) More than one principal use shall not be permitted on a single lot unless the provisions of this Chapter applicable to the Zoning District in which a lot is located permit the existence of more than one principal use on such lot.

SECTION 14. § 225-24, entitled “Accessory Uses, Buildings and Structures” is hereby amended to as follows:

- (a) Section 225-A(1) Is hereby amended and restated in its entirety so as to read as follows: “(1) All accessory buildings and structures shall be securely anchored to the ground except is as otherwise required by the PA UCC. No accessory building or structure, and no addition to any accessory building or structure, shall be erected or placed in any required front or side yard and no detached accessory building or structure shall be erected or placed closer than five feet to any other building or structure located on the same lot except if a greater distance is required by the PA UCC. Where no side yard is required in accordance with this Chapter, accessory uses, buildings and structures shall be constructed in accordance with the fire protection requirements of Chapter 75 of the Kutztown Code.

- (b) Section 225-24A(2)(c) shall be amended so as to replace the word “much” with the word “such”.
- (c) Section 225-24A(2)(f) is hereby amended and restated in its entirety so as to read as follows: “Notwithstanding the above, all uses, buildings and/or structures shall be erected or placed a minimum distance of five (5) feet from any and all utility easements and/or other rights-of-way except those serving such uses, buildings or structures.”
- (d) Section 225-24C is hereby amended and restated in its entirety so as to read as follows: “No nonresidential uses shall be permitted in any residential district except no impact home occupations and those permitted by home occupation regulations, § 225-23 of this Chapter.

SECTION 15.

- (a) Section 225-25, entitled “Multifamily dwellings and townhouse developments” is hereby amended as follows:
- (b) Section 225-25 is hereby amended so as to change the title from “Multifamily dwellings and townhouse developments” to “Low-rise apartments, high-rise apartments and townhouse developments”.
- (c) Section 225-25 A(1) is hereby amended and restated in its entirety so as to read as follows: “A development or project of low-rise apartments, high-rise apartments or townhouse developments and accessory buildings shall consist solely of residential dwelling units and recreational and parking facilities; provided, however, that coin-operated washing and drying machines and vending machines dispensing or containing beverages, food, cigarettes or newspapers shall be permitted, provided that these are located within a building and shall be available only for the use of the persons residing therein.”
- (d) Section 225-25A(2) is hereby amended and restated in its entirety so as to read as follows: “One office per project for the purpose of administering and renting the dwelling units in a development and one sample apartment or townhouse for display purposes shall be permitted for each type to be constructed.”
- (e) Section 225-25B(11) is amended and restated in its entirety so as to read as follows:

(11) Maximum height	7 stories	75 feet	3 stories
	35 feet	3 stories	35 feet
- (f) Section 225-25C(1)(a) is hereby amended and restated in its entirety so as to read as follows: “There shall be no group of townhouses consisting of more than six (6) attached dwelling units.

- (g) Section 225-25 is hereby amended so as to add a new subsection 225-25I to read as follows: “In any case where the occupancy and use of any low rise apartment, high rise apartment or townhouse development is not restricted by virtue of a deed restriction, covenant or agreement restricting use of land, or by any master deed by-law or other document applicable to a common interest ownership community, so as to prevent such low rise apartment, high rise apartment or townhouse development from being utilized as a “Student Home,” as defined in Section 225-25.1(B), then the following additional requirements shall be met:
- (1) An on-site property manager shall be present on the property at all times.
 - (2) An office or other suitable permanent facility shall be provided on the property.
 - (3) An appropriate electronic security system shall be sufficient to permit the on-site manager to monitor the security of the entire property, both, interior and exterior public areas on a real-time basis.”

SECTION 16. Section 225-26, entitled “Shopping Centers” is hereby amended as follows:

- (a) Section 225-26D is amended so as to add new subsection 225-26D(7) to as to read as follows:
- “(7) Maximum paved area=90%
Minimum open space=10%.”

SECTION 17. Section 225-28, entitled, “Sign Regulations” is hereby amended as follows:

- (a) Section 225-28B(5) is hereby amended and restated in its entirety so as to read as follows: “Temporary signs, directional signs indicating the contractors, consultants and artisans performing services on new construction sites or renovation sites are permitted, provided that they shall be removed within seven (7) days after completion of the construction work, and not more than one sign shall be placed by each contractor, consultant and artisan on each street frontage of the construction site.” Section 225-28E (3) is hereby amended and restated in its entirety so as to read as follows: “If an establishment has walls fronting on two or more streets, the sign area for each fronting wall shall not exceed the applicable maximum sign area established by this chapter. Each sign shall be placed on the side used in the computation.”

- (b) Section 225-28F is hereby amended and restated in its entirety so as to read as follows: All signs shall be constructed in accordance with the PA UCC.”
- (c) Section 225-28F is hereby amended so as to add a new subsection 225-28F(11) to read as follows: “(11) Abandonment. A business or identification sign shall be removed within thirty (30) days of the termination of the use for which such signage was erected.

SECTION 18. Section 225-29, entitled “Parking and truck loading/unloading requirements” is hereby amended as follows:

- (a) Section 225-29A(1)(a) is hereby amended and restated in its entirety so as to read as follows: “The minimum parking requirements for the buildings, structures and uses listed below shall be provided on the lot upon which such building, structure or use is located or maintained; provided, however, that the minimum parking requirements may be provided, subject to the provisions of Subsection A(1)(c) of this §225-29 and the regulations of this Chapter 225 for the district in which such lot is located, on another lot located within 50 feet of the lot upon which is located such building, structure or use (such two hundred foot distance to be determined by measuring the most direct route for pedestrian travel along streets), if such other lot is owned at all times by the same person or persons that own the lot upon which is located such building, structure or use for which such minimum off-street parking is required.
- (b) Section 225-29A(1)(a)[5] is hereby amended and restated in its entirety so as to read as follows: “Rooming units: one (1) off-street parking space for each roomer, plus one (1) additional space for visitors.”
- (c) Section 225-29A(1)(a)[10] is hereby amended and restated in its entirety so as to read as follows: “Offices and retail services; one (1) parking space for each four hundred (400) square feet of net floor area.”
- (d) Section 225-29A(1)(a)[16] is hereby amended and restated in its entirety so as to read as follows: “Size of off-street parking space. An off-street parking space shall have minimum dimensions of nine (9) feet by eighteen (18) feet, except parallel type spaces which shall have minimum dimensions of nine (9) feet by twenty two (22) feet, in each case exclusive of aisles and driveways. All such spaces on a paved lot shall be clearly marked on the paved surface. None of the aforementioned minimum dimensions or parking spaces shall be closer than five (5) feet to any street or services street right-of-way line.”
- (e) Section 225-29A(1)(a) is hereby amended so as to add a new subsection 225-29A(1)(a)[17] to read as follows: “Daycare must comply with §225-33.I(b).”

- (f) Section 225-29A(1)(a) is hereby amended so as to add a new subsection 225-29A(1)(a)[18] to read as follows: “[18] Home occupations must comply with §225-23(3).”
- (g) Section 225-29A(1)(c) is hereby amended and restated in its entirety so as to read as follows: “Notwithstanding anything to the contrary set forth herein, the minimum parking requirements of subsection A(1) of this § 225-29 shall not be satisfied as to any lot by the provision of parking on a second lot within 50 feet (measured as provided in Subsection A(1)(a) of this § 225-29) if the effect thereof is to reduce the remaining number of parking spaces on the second lot to a number less than the minimum parking spaces required for the buildings, structures and uses located on the second lot”.
- (h) Section 225-29A(1) is hereby amended so as to add a new subsection 225-29A(1)(d) to read as follows: “(d) All parking spaces required by this Chapter shall have free access to and from a public street or public service street, unobstructed by other parked vehicles or spaces available for parking. End to end parking does not constitute an permitted parking space.”
- (i) Section 225-29A(1)(3) is hereby amended and restated in its entirety so as to read as follows: “Fractional space. When required minimum parking computations result in fractions, any fraction shall be construed to require an additional full space.
- (j) Section 225-29A(6)(a) is hereby amended and restated in its entirety so as to read as follows: Automotive vehicles or trailers of any kind or type without current license plates and valid inspection shall not be parked or stored on any public street or public service street, nor on any residentially zoned or used property other than in a completely enclosed building.”
- (k) Section 225-29A(6)(b) is hereby amended and restated in its entirety so as to read as follows: “In commercial and industrial districts, vehicles or trailers of any kind or type without current license plate and valid inspection shall not be parked or stored on any public street or public service street or on any property, unless parked or stored within completely enclosed buildings, unless the vehicles or trailers are for sale at a sales agency dealing in vehicles or trailers.”
- (l) Section 225-29A(8) is hereby amended and restated in its entirety so as to read as follows: “Services: No repair to or maintenance of vehicles or trailers of any kind shall be permitted in any parking space, area or lot except in such districts where such repairs and maintenance are permitted.”

- (m) Section 225-29A(9)(b) is hereby amended and restated in its entirety so as to read as follows: “A divider shall be required along the perimeter of a parking lot, excluding driveways. Such divider shall not occupy or be permitted within the adjacent street right-of-way.”
- (n) Section 229-29A(9)(e) is hereby amended and restated in its entirety so as to read as follows: “Entrance and exit ways shall have a minimum width of ten (10) feet and maximum width of twelve(12) feet for each lane of traffic entering or leaving the parking lot.”
- (o) Sections 225-29(B)(1) and (2) are hereby amended and restated in their entirety so as to read as follows: “Off-street loading/unloading.
 - (1) Required loading/unloading spaces. Every building, structure or lot located in a Business Commercial (C-1) District, a Commercial/Residential (C-2) District, a Highway Commercial (C-3) District or an Industrial (I) District used for commercial or industrial purposes shall provide one (1) off-street truck loading/unloading space for the first ten thousand (10,000) square feet or less of gross floor area, plus a minimum of one (1) additional off-street truck loading/unloading space for each additional ten thousand (10,000) square feet of gross floor area.
 - (2) Size of truck loading and/or unloading space. An off-street truck space shall be a minimum of twelve (12) feet in width, a minimum fifty-five (55) feet in depth (length) and have a minimum clear height of sixteen (16) feet.
- (p) Section 225-29B is hereby amended so as to add a new subsection 225-29B(4) to read as follows: “(4) Additional spaces shall be required for the parking and storage of trucks or trailers in addition to loading and/or unloading spaces as set forth in §225-29B(1) and other parking requirements set forth in 225-29A(1).”
- (q) Section 225-29F is hereby amended so as to add a new subsection 225-29F(11) to read as follows: “(11) Signs for uses abandoned for a period exceeding thirty (30) days shall be removed.”

SECTION 19. Section 225-33.2, entitled “Commercial communications facilities”, is hereby amended as follows:

- (a) Section 225-33.2F shall be amended so as to add after Table 1 the following” “A maximum of two (2) communication towers may be placed within the enclosed facility (as delineated by the fence required by subsection 225-33.2 D(2)(e)), provided such towers have a maximum separation distance of two hundred (200) feet.”

- (b) Section 225-33.2D(2)(d) is hereby amended and restated in its entirety so as to read as follows: “A minimum of two (2) off-street parking spaces shall be provided for a commercial communications facility, per commercial communications antenna.”
- (c) Section 225-33.2D is hereby amended so as to add a new subsection 225-33.2D(3) to read as follows: “Communication towers shall be artificially lighted as required by the Borough of Kutztown.”
- (d) Section 225-33.2I(1)(b) is hereby deleted in its entirety and in its place is inserted the word “Reserved”.
- (e) Section 225-33.2I(3) is hereby amended and restated in its entirety so as to read as follows: “Certification from a registered professional engineer that the tower and associated facilities meet or exceed the construction standards of Chapter 77 of this Code.”

SECTION 20. Section 225-37, entitled “Non-conforming structure or building”, is hereby amended as follows:

- (a) Section 225-37B is hereby amended and restated in its entirety so as to read as follows: “Damage or destruction. A nonconforming structure or building which is destroyed or partially destroyed, whether voluntarily or involuntarily, by fire, explosion or by any other means to an extent of seventy-five percent (75%) or more of the fair market value thereof immediately prior to such damage or destruction shall not be repaired or restored to a nonconforming status but shall be reconstructed in conformity with the provisions of this Chapter.”

SECTION 21. Section 225-43B, entitled "Expiration of application and zoning permit", is hereby amended so as to add a new subsection 225-43B (3) to read as follows:

- (1) An application for a Special Exception which would constitute a land development or a subdivision is approved, the applicant is entitled for a period of six (6) months, or a longer period of time if approved, to proceed with the submittal of plans in accordance with the regulations of the Subdivision Chapter as they stood at the time the application was filed.

SECTION 22. Section 225-46, entitled “Amendments” is hereby amended as follows:

- (a) Section 225-46A(4) is hereby amended and restated in its entirety so as to read as follows:
 - “(a) Before voting on the enactment of an amendment, the Borough Council shall hold a public hearing thereon, pursuant to public notice. In addition, if the proposed amendment involves a change on the Official Zoning Map, notice of said public hearing shall be conspicuously posted

by the Borough at points deemed sufficient by the Borough along the perimeter of the tract to notify potentially interested citizens. The affected tract or area shall be posted at least one (1) week prior to the date of the public hearing.

(b) In addition to the requirement that notice be posted, where the proposed amendment involves a zoning map change, notice of the public hearing shall be mailed by the Borough at least thirty (30) prior to the date of the hearing by first class mail to the addressees to which real estate tax bills are sent for all real property located within the area being rezoned, as evidenced by tax records within the possession of the Borough. The notice shall include the location, date and time of the public hearing. A good faith effort and substantial compliance shall satisfy the requirements of this subsection. Proposed action shall not be taken until Planning Commission and Berks County Planning Commission recommendations are made. If, however, the Planning Commission and Berks County Planning Commission fail to act within thirty (30) days, the governing body shall proceed without such recommendation.

§§ 225-46A(4)(a) and (b) shall not apply when the rezoning constitutes a comprehensive rezoning.”

- (a) Section 225-46A(5)(b) is hereby amended and restated in its entirety so as to read as follows: “The public hearing shall be conducted in accordance with Section 908 of the Pennsylvania Municipalities Planning Code, as amended, and all references therein to the Zoning Hearing Board shall, for purposes of this section be references to the governing body, provided, however, that the deemed approval provisions of Section 908 shall not apply and the provisions of Section 915.1 shall control. If the Borough does not accept a landowner’s curative amendment brought in accordance with this subsection and a court subsequently rules that the challenge has merit, the court’s decision shall not result in a declaration of invalidity for the entire Zoning Ordinance and Official Zoning Map, but only for those provisions which specifically relate to the landowner’s curative amendment and challenge. Section 908(1.2) pertaining to hearing procedures and Section 908(9) pertaining to decision, findings and deemed approval shall not apply to landowner curative amendments and that the corresponding provisions in Section 916.1(c), (d) and (f) shall control.

SECTION 23. Section 225-49B, entitled "Appointment" is hereby amended as follows:

- (a) Section 225-49B is hereby amended so that the last sentence thereof is deleted and in its place is inserted the following: "Members of the Board shall hold no other elected or appointed office in the Borough nor shall any member be an employee of the Borough."
- (b) Section 225-49B(2) is amended so as to add the following to the end thereof: "Alternates shall hold no other elected or appointed office in the Borough, including service as a member of the Planning Commission or as the zoning officer, nor may any alternate be an employee of the Borough."

SECTION 24. Section 225-50, entitled "Hearings" is hereby amended as follows:

- (a) Section 225-50A is hereby amended and restated in its entirety so as to read as follows: "Public notice shall be given and written notice shall be given to the applicant, the Zoning Officer, the Planning Commission, adjacent property owners (including those owners of property directly across a street or alley from the subject property), the governing body and the Solicitor of the Borough. Written notice shall be given by the Board, or such person designated by the Board, not less than seven (7) days prior to the scheduled hearing, by first class United States mail with postage paid. In addition to the written notice provided for herein, notice of said hearing shall be conspicuously posted on the affected tract of land at least one (1) week prior to the hearing. The first hearing shall be commenced within sixty (60) days from the date of the applicant's request, unless the applicant has agreed in writing to an extension of time. Each subsequent hearing shall be held within forty five (45) days of the prior hearing, unless otherwise agreed to by the applicant. Any party aggrieved by the schedule or progress of the hearings may apply to the court of common pleas for judicial relief. The hearing 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."
- (b) Section 225-50B(1) is hereby amended and restated in its entirety so as to read as follows: "The hearing shall be conducted by the Board or the Board may appoint any member or an independent attorney as a hearing officer. The decision or, when no decision is called for, the finding shall be made by the Board; however, the appellant or the applicant, as the case may be, in addition to the Borough, may prior to the decision of the hearing, waive decision or findings by the Board and accept the decision or findings of the hearing officer as final."
- (c) Section 225-50B(8) is hereby amended and restated in its entirety so as to read as follows: "The Board or the hearing officer, as the case may be,

shall render a written decision or, when no decision is called for, make written findings on the application within forty-five (45) days after the last hearing before the Board or hearing officer. When the application is contested or denied, each decision shall be accompanied by the findings of fact and conclusions based thereon together with the reasons therefore. Conclusions based on any provisions of the Pennsylvania Municipalities Planning Code, as amended, or of this Zoning chapter or of any other ordinance, rule or regulation of the Borough shall contain a reference to the provisions relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found. If the hearing is conducted by a hearing officer and there has been no stipulation that his decision or findings are final, the Board shall make his report and recommendations available to the parties within forty-five (45) days, and the parties shall be entitled to make written representations thereon to the Board prior to final decision or entry of findings, and the Board's decision shall be entered no later than thirty (30) days after the report of the hearing officer. Where the Board fails to render the decision within the period required by this subsection or fails to commence or complete the required hearing as provided for in § 225-50A, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing to or on record to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the Board to meet or render a decision as hereinabove provided, the Board shall give public notice of said decision within ten (10) days from the last day it could have met to render a decision in the same manner as provided in subsection A of this section. If the Board shall fail to provide such notice, the applicant may do so. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

SECTION 25. § 225-51C, entitled "Functions of Zoning Hearing Board" is hereby amended as follows:

- (a) Section 225-51C(1) is hereby amended so as to add a new subsection 225-51C(1)(h) to read as follows: "(h) When application for a special exception has been filed with the Zoning Hearing Board and the subject matter of such application would ultimately constitute either a "land development" or "subdivision" as defined in §225-5, no change or amendment of the zoning, subdivision or other governing ordinance or plans shall affect the decision on such application adversely to the applicant and the applicant shall be entitled to a decision in accordance with the provisions of the governing ordinances or plans as they stood at the time the application was duly filed. Provided, further, should such an application be approved by the Zoning Hearing Board, the applicant shall be entitled to proceed with the submission of either land development or subdivision plans within a period of six (6) months or longer or as may be approved by the Zoning Hearing Board following the date of such

approval in accordance with the provisions of the governing ordinances or plans as they stood at the time the application was duly filed before the Zoning Hearing Board. If either a land development or subdivision plan is so filed within said period, such plan shall subject to the provisions of Section 508 (1) through (4), and specifically to the time limitations of Section 508 (4) of the Pennsylvania Municipalities Planning Code, which shall commence as of the date of filing such land development or subdivision plan.

SECTION 26. All ordinances or resolution or parts of ordinances or resolutions, insofar as they are inconsistent with this Ordinance are hereby repealed.

SECTION 27. If any provision, sentence, clause section or parts of this ordinance shall for any reason be found unconstitutional, illegal or invalid, such determination shall not effect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance and is hereby declared to be the intent of the Borough Council that this Ordinance would have been adopted had such unconstitutional, illegal or invalid provision, sentence, clause, section or part not been included herein.

SECTION 28. This Ordinance shall become effective on the earliest date allowed by law.

ENACTED AND ORDAINED as an Ordinance of the Borough of Kutztown, County of Berks, Commonwealth of Pennsylvania by the Borough Council this _____ day of _____, 2006 in lawful session duly assembled.

BOROUGH OF KUTZTOWN

By: _____
Carl W. Mantz, President of Council

Attest _____
Bonnie Bray, Secretary of the Borough

APPROVED as an Ordinance this _____ day of _____, 2006.

Sandra K. Green, Mayor