

# ZONING

## *27 Appendix A11*

### **Borough of Pottstown**

#### **APPENDIX A11 ENFORCEMENT**

##### **SECTION A1100. Enforcement by Zoning Officer.**

1. The position of Zoning Officer is created hereby. The Zoning Officer, who shall hold no elective office in the Borough, shall be appointed by Council, and he may be removed at the will of Council. Council may designate an employee as his deputy who shall exercise all the powers of the Zoning Officer during his absence or temporary disability.
2. The provisions of this Article shall be administered and enforced by the Zoning Officer in accordance with its literal terms. In no case shall a permit be granted for the construction, or use or change of use that does not conform to this Article. The Zoning Officer hereby is authorized to institute civil enforcement proceedings as a means of enforcement when acting within the scope of his employment. It shall be the duty of all code enforcement officials of the Borough to cooperate in the enforcement of this Article and to report to the Zoning Officer any violation that may come to their attention.
3. All appeals from decisions of the Zoning Officer shall be taken in the manner set forth in this Article.

##### **SECTION A1100.1. Relief from Personal Responsibility.**

The Zoning Officer, or any employee or other person charged with enforcing or otherwise carrying out the provisions of this Article, while acting for the Borough, shall not thereby render himself personally liable, and he is relieved hereby from all personal liability for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his duties. Any suit instituted against any such person because of an act performed by him in the lawful discharge of his duties shall be defended by legal representatives of the Borough. In no case shall any such person be liable for costs in any action or suit or proceeding that may be instituted in pursuance of the provisions of this Article when he performs his duties in good faith and without malice.

##### **SECTION A1101. Right of Entry.**

In the discharge of his duties, the Zoning Officer shall have the authority to enter, at any reasonable hour, any structure, building, premises, or land in the Borough to enforce the provisions of this Article.

## POTTSTOWN COEE

### **SECTION A1102. Causes of Action.**

In case any building, structure, landscaping, or land is, or is proposed to be erected, constructed, reconstructed, altered, converted, maintained, or used in violation under this Article, Borough Council, the Zoning Officer, or, with the approval of Borough Council, another official of the Borough, or any aggrieved owner or tenant of real property who shows that his property or person will be affected substantially by the alleged violation, in addition to other remedies, may institute any appropriate action or proceeding to prevent, restrain, correct, or abate such building, structure, landscaping, or land, or to prevent, in or about such premises, any act, conduct, business, or use constituting a violation. When any such action is instituted by a landowner or tenant, notice of the action shall be given to Borough Council and the Zoning Officer at least 30 days prior to the time the action is begun by serving them a copy of the complaint. No action may be maintained until such notice been given.

### **SECTION A1103. Enforcement Notice.**

1. If it appears to the Zoning Officer that a violation of this Article has occurred, he shall initiate enforcement proceedings by sending an enforcement notice to the owner of record of the parcel on which violation has occurred, to any person who has filed a written request to receive enforcement notices regarding that parcel, and to any other person requested in writing by the owner of record. Said notice shall be by certified letter or by delivery in person. If notice is given in person, the person serving the notice shall obtain a notarized affidavit stating such service was made at a place and time shown on the affidavit.
2. An enforcement notice shall state at least the following:
  - A. The name of the owner of record and any other person against whom the Zoning Officer intends to take action and the location of the property in violation.
  - B. The specific violation with a description of the requirements that have not been met, citing, in each instance, the applicable provisions of this Article.
  - C. The date before which the steps for compliance must be commenced and the date before which the steps must be completed.
  - D. That the recipient of the notice has the right to appeal to the Board within a prescribed period in accordance with the procedures set forth in this Article.
  - E. That failure to comply with the notice within time specified, unless extended by appeal to the Board, constitute a violation, with possible sanctions specified clearly.

## ZONING

### **SECTION A1104. Jurisdiction.**

District justices shall have initial jurisdiction over proceedings brought under Section A1105.

### **SECTION A1105. Enforcement Remedies.**

1. Any person, partnership, or corporation who or that has violated or permitted the violation of the provisions of this Article shall, upon being found liable therefore in a civil enforcement proceeding commenced by the Borough (or by the Zoning Officer as authorized by this Article, or, with the approval of Borough Council, another official of the Borough), pay a judgment of not more than \$500 plus all court costs, including reasonable attorney fees incurred by the Borough, as a result thereof.

No judgment shall commence or be imposed, levied, or payable until the date of the determination of a violation by the district justice. If the defendant neither pays nor appeals timely the judgment, the Borough, may enforce the judgment pursuant to the applicable rules of civil procedure. Each day a violation continues shall constitute a separate violation, unless the district justice determining there has been a violation determines further that there was a good-faith basis for the person, partnership, or corporation violating this Article to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination of a violation by the district justice and thereafter each day a violation continues shall constitute a separate violation. All judgments, costs, and reasonable attorney fees collected for the violation of this Article shall be paid over to the Borough.

2. The court of common pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem fine pending a final adjudication of violation and judgment.
3. Nothing contained in this Section shall be construed or interpreted to grant to any person or entity other than the Borough, the right to commence any action for enforcement pursuant to this Section.

### **SECTION A1106. Finances and Expenditures.**

1. Borough Council may appropriate money to finance the preparation of zoning ordinances and shall appropriate money for administration, for enforcement, and for actions to support or oppose, upon appeal to the courts, decisions of the Zoning Hearing Board. Borough Council, also, may set fees, by resolution or by ordinance, for applications or appeals, as such power is granted herein, or is granted by enabling legislation, or by any other law or regulation, expressed or implied.

## POTTSTOWN COEE

2. Borough Council shall make provision in its budget and appropriate money for the operation of the Zoning Hearing Board.
3. The Board may employ or contract for and fix the compensation of legal counsel, as the need arises. The legal counsel shall be an attorney other than the Borough Solicitor. The Board also may employ or contract for and fix compensation of experts and other staff and may contract for services as it shall deem necessary. The compensation of legal counsel, experts, and staff, and the sums expended for services shall not exceed the amount appropriated by Borough Council for this use. For these purposes, Borough Council may accept gifts and grants of money and services from private sources and from County, Commonwealth, and Federal governments.
4. Borough Council may prescribe reasonable fees with respect to the administrator of this Article and with respect to hearings before the Zoning Hearing Board. Fees for these hearings may include compensation for the secretary and members of the Board, notice and advertising costs, and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses of the Board, expenses for engineering, architectural or other technical consultants or expert witness costs.

### **SECTION A1107. Exemptions.**

These sections shall not apply to any existing or proposed building, or extension thereof, used or to be used by a public utility corporation, if, upon petition of the corporation, the Pennsylvania Public Utility Commission shall, after a public hearing, decide that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public. It shall be the responsibility of said Commission to ensure that both the corporation and the Borough have notice of the hearing and are granted an opportunity to appear, present witnesses, cross-examine witnesses presented by other parties, and otherwise exercise the rights of a party to the proceedings.