Bill No. 4-10
Introduced May 10, 2010
By Commissioner Kluck
Enacted June 14, 2010

MT. LEBANON, PENNSYLVANIA
ORDINANCE NO. 3164

AN ORDINANCE OF MT. LEBANON, PENNSYLVANIA, AMENDING THE MT. LEBANON CODE, CHAPTER XX (ZONING) PART 10, (PROCEDURES) SECTION 1002 (CONDITIONAL USES), TO AMEND SECTION 1002.4.2 (REQUIREMENT FOR PUBLIC HEARING) AND TO ADD A NEW SECTION 1002.4.2.1 (HEARINGS), TO ADD SECTION 1002.4.2.1.1 RELATED TO NOTICE OF PUBLIC HEARINGS, TO ADD SECTION 1002.4.2.1.2 RELATED TO DEADLINES FOR PUBLIC HEARINGS, TO ADD SECTION 1002.4.2.1.3 RELATED TO RENDERING DECISIONS, TO ADD SECTION 1002.4.2.1.4 RELATED TO NOTICE OF DECISIONS, TO AMEND SECTION 1002.4.4.1 RELATING TO CONDITIONS, TO AMEND SECTION 1005.4 (PROCEDURE) AND TO ADD SECTION 1006 RELATED TO OPTIONAL NOTICE OF ORDINANCE OR DECISION.

MT. LEBANON, PENNSYLVANIA hereby ordains:

Section 1. Part 10, Section 1002.4.2 Chapter XX (Zoning) is amended as follows: (new language is underlined):

1002.4.2 Requirement for Public Hearing

No Conditional Use shall be approved except after recommendations by the Planning Board and pursuant to Public Notice and hearing held on the application for any such use by the Commission.

1002.4.2.1 Hearings

The Commission shall conduct hearings and make decisions in accordance with the following requirements:

1002.4.2.1.1 Public Notice shall be given and, at least one week prior to the hearing, written notice shall be given to the Applicant, the Zoning Officer, record owners of property located within 200 feet of the proposed Conditional Use and to any person who has made timely request for the

same. In addition to the written notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one week prior to the hearing.

1002.4.2.1.2 The first hearing before the Commission or hearing officer shall be commenced within 60 days from the date of receipt of the Applicant's application, unless the Applicant has agreed in writing to an extension of time. Each subsequent hearing before the Commission hearing officer shall be held within 45 days of the prior hearing, unless otherwise agreed to by the Applicant in writing or on the record. An Applicant shall complete the presentation of his case-in-chief within 100 days of the first hearing. Upon the request of the Applicant, the Commission or hearing officer shall assure that the Applicant receives at least seven hours of hearings within the 100 days, including the first hearing. Persons opposed to the application shall complete the presentation of their opposition to the application within 100 days of the first hearing held after the completion of the Applicant's case-in chief. An Applicant may, upon request, be granted additional hearings to complete his case-in-chief provided the persons opposed to the application are granted an equal number of additional hearings. Persons opposed to the application may, upon the written consent or consent on the record by the Applicant and Municipality, be granted additional hearings to complete their opposition to the application provided the Applicant is granted an equal number of additional hearings for rebuttal.

1002.4.2.1.3 The Commission shall render a written decision or, when no decision is called for, make written findings on the conditional use application within 45 days after the last hearing before the Commission. Where the application is contested or denied, each decision shall be accompanied by findings of fact or conclusions based thereon, together with any reasons therefore. Conclusions based on any provisions of the Municipalities Planning Code or of any ordinance, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found.

1002.4.2.1.4 A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the Applicant personally or mailed to him not later than the day following its date. To all other persons who have filed their name and address with the Commission not later than the last day of the hearing, the Commission shall provide by mail or otherwise, brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined.

Section 2. Part 10, Chapter XX (Zoning), Section 1002.4.4.1 is amended as follows (new language is underlined and deleted language is bracketed):

1002.4.4.1 In granting a conditional use, the Commission may attach such reasonable conditions and safeguards, other than those related to offsite transportation or road improvements as defined in the Municipalities Planning Code, in addition to those

expressed in [the ordinance] this Chapter XX, as it may deem necessary to implement the purposes of [this chapter in the Zoning Ordinance] the Municipalities Planning Code and this Chapter XX.

Section 3 Part 10 , Chapter XX (Zoning), Section 1005.4 (Procedure) is amended as follows (new language is underlined and deleted language is bracketed):

1005.4 Procedure

1005.4.1 Hearings

[Pursuant to the Municipalities Planning Code (MPC), Section 913.3, requests for a variance may be filed with the board by any landowner or tenant with the permission of such landowner.] In conducting hearings and issuing decisions, the Zoning Hearing Board shall follow the following procedures.

1005.4.1.1 Public notice shall be given and, at least one week prior to the hearing, written notice shall be given to the Applicant, the Zoning Officer, record owners of property located within 200 feet of the property which is the subject of the hearing [such other persons as the governing body shall designated by ordinance] and to any person who has made timely request for the same. [Written notice shall be given at such time and in such manner as shall be prescribed by ordinance or, in the absence of ordinance provision, by rules of the Board.] In addition to the written notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one week prior to the hearing.

1005.4.1.2 The Commission [governing body] may prescribe reasonable fees with respect to hearings before the Zoning Hearing Board. Fees for said hearings may include compensation for the secretary and members of the Zoning Hearing Board, notice and advertising costs and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses of the Zoning Hearing Board.

Section 4. Part 10, Chapter XX (Zoning) is amended to add a new Section 1006 as follows (new language is underlined):

1006 Optional Notice of Ordinance or Decision

1006.1 It is the intent of this section to allow optional public notice of action by the Municipality in order to provide an opportunity to challenge, as authorized by the Municipalities Planning Code, as amended, the validity of an ordinance or decision on the basis that a defect in procedure resulted in a a deprivation of constitutional rights, and to establish a period of time for raising such challenges.

1006.2 Notice that action by the Municipality has been taken to adopt an ordinance or enter a decision may be provided through publication, at any time, once each week for two successive weeks in a newspaper of general circulation in the Municipality by the following:

1006.2.1 the Commission:

1006.2.2 in the case of an ordinance, any resident or landowner in the Municipality:

1006.2.3 in the case of a decision, the applicant requesting the decision or the landowner or successor in interest of the property subject to or affected by the decision.

1006.3 Each notice shall contain the following:

1006.3.1 If the notice relates to an ordinance:

1006.3.1.1 the Municipality's ordinance number;

1006.3.1.2 a brief statement of the general content of the ordinance:

1006.3.1.3 the address of the municipal building where the full text of the ordinance may be reviewed by members of the public.

1006.3.2 If the notice relates to a decision:

1006.3.2.1 the name of the applicant or the owner of the subject property;

1006.3.2.2 the street address or the location of the subject property;

1006.3.2.3 the file number or docket number of the decision;

1006.3.2.4 a brief description of the nature of the decision;

1006.3.2.5 the date upon which the decision was issued; and

1006.3.2.6 the address of the municipal building where the full text of the decision may be reviewed by members of the public.

1006.3.3 In addition to the requirements of Sections 1006.3.1 and 1006.3.2, the publication of each notice authorized by this section shall contain a statement that the publication is intended to provide notification of an ordinance or decision and that any person claiming a right to challenge the validity of the ordinance or decision must bring a legal action within 30 days of the publication of the second notice.

1006.3.4 The person providing notice as authorized by this section shall provide proof of publication to the Municipality adopting the ordinance or decision for retention with municipal records. Failure to comply with this section shall not invalidate any notice provided in accordance with this section or the applicability of the period of limitation in Section 1006.4 below.

1006.4 In order to provide certainty of the validity of an ordinance or decision, any appeal or action contesting the validity of an ordinance based on a procedural defect in the process of enactment or the validity of a decision based on a procedural or substantive defect shall be dismissed, with prejudice, as untimely if not filed within the 30th day following the second publication of the notice authorized in this section.

1006.5 Any appeal or action filed within the 30-day period referred to in Section 1006.4 shall be taken to the court of common pleas and shall be conducted in accordance with applicable provisions of the Municipalities Planning Code, as amended.

1006.6 Where no appeal or action contesting the procedural validity of an ordinance or the procedural or substantive validity of a decision is filed within the period set forth in Section 1006.4, the ordinance or decision shall be deemed to be reaffirmed and reissued on the date of the second publication of the optional notice permitted under this section.

ORDAINED AND ENACTED into an Ordinance and passed by the Commission of Mt. Lebanon, Pennsylvania on this 14th day of June, 2010.

ATTEST:

Manager/Secretary

MT. LEBANON, PENNSYLVANIA

By: D Pay

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