Article II — Definitions and Usage

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§ 21-201 Word Usage.

For the purposes of this Chapter, unless otherwise expressly stated, certain words and terms used herein shall be interpreted as follows:

(a) Words used in the present tense include the future.

(b) The singular includes the plural, and the plural includes the singular.

(c) The word "person" includes a corporation, partnership, trust, organization, association, or any other legal entity, as well as an individual.

(d) The word "lot" includes the word "plot," "parcel," "tract," "land" or "piece of ground."

(e) The word "shall" is always mandatory; the word "may" is permissive.

(f) The word "structure" includes the word "building."

(g) The words "used" and "occupied" include the words "intended, arranged, or designed to be used or occupied."

(h) The word "Borough" means the Borough of Alburtis, Lehigh County, Pennsylvania.

(i) The term "Council" means the Borough Council of Alburtis.

(j) The term "Planning Commission" means the Planning Commission of the Borough of Alburtis.

(k) The term "Board" means the Zoning Hearing Board of the Borough of Alburtis.

(l) Any word or term not defined herein shall be used with a meaning of standard usage.

§ 21-202 Definitions—In General.

For purposes of this Chapter, the terms defined in the remaining Sections of this Article II shall have the meanings indicated, whether with or without initial capital letters, unless the context in which they are used clearly indicates a different meaning.

§ 21-203 Accessory Building, Structure, or Use.

The term "Accessory Building, Structure, or Use" shall mean a building, structure, or use or portion of a building, structure, or use customarily incidental or subordinate to the principal building, structure, or use and located on the same lot as such building, structure, or use. "Accessory buildings, structures, or uses" include, but may not be limited to, a private garage, garden shed or barn, private playhouse, private greenhouse, private swimming pool, and the like.

§ 21-204 Adult Book Store.

The term "Adult Book Store" shall mean a commercial establishment having as a substantial or significant portion of its stock and trade, books, magazines, photographs, pamphlets, newspapers, films or other materials which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas, or an establishment with a segment or section devoted to the sale or display of such material.

§ 21-205 Adult Motion Picture Theater.

The term "Adult Motion Picture Theater" shall mean a building or establishment used in whole or in part for presenting motion pictures distinguished or characterized by an emphasis on matter depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas, for observation by patrons therein.

§ 21-206 Alley.

The term "Alley" shall mean a public thoroughfare having a right-of-way width of twenty (20) feet or less, regardless of how named.

§ 21-207 Alteration.

The term "Alteration", as applied to a building or structure, shall mean a change or rearrangement in the load-bearing and non-load-bearing structural members, resulting in the extension of any side or the increase in height. The moving of the building or structure from one location or position to another, or the conversion of one use to another by virtue of interior change, shall also constitute an "alteration" of a building or structure.

§ 21-208 Animal Husbandry.

The term "Animal Husbandry" shall mean concerning the domestic affairs and breeding of animals, which may include the raising and keeping of livestock and poultry.

§ 21-209 Basement.

The term "Basement" shall mean a story partly underground but having one-half (1/2) or more of its height (measured from floor to ceiling) above the average level of the adjoining ground. A "basement" shall be counted as a story for the purpose of height measurement or determining square footage only if the vertical distance between the ceiling and the average level of the adjoining ground is more than five (5) feet, or if it is used for business or as a dwelling unit.

§ 21-210 Bed and Breakfast.

The term "Bed and Breakfast" shall mean the use and occupancy of a single family detached dwelling for accommodating transient guests for rent.

§ 21-211 Boarding and Rooming House.

The term "Boarding and Rooming House" shall mean a building, other than a hotel or motel, containing a single dwelling unit where lodging is provided, with or without meals, for

three (3) or more persons who are not members of the operator's family, and by prearrangement for definite periods of time and for compensation, whether direct or indirect, but not to include rest homes or homes for the aged.

§ 21-212 Building.

The term "Building" shall mean any structure having a roof supported by columns, piers, or walls, including storage sheds (but not structures on wheels or originally designed with wheels), and any unroofed platform, terrace, or porch having a vertical face higher than three (3) feet above the level of the ground from which the height of the building is measured.

§ 21-213 Building and Structure Height.

The "Height" of a building or structure shall mean a vertical distance measured at the front of the building to a point midway between the highest and lowest points of the roof, *provided that* the chimneys, spires, towers, elevator penthouses, tanks, and similar projections shall not be included in calculating the height. Public utility lines are exempt from height restrictions in this chapter.

§ 21-214 Building Area.

The "Area" of a building shall mean the aggregate of the floor areas of all enclosed and roofed spaces of the principal building and all accessory buildings. Such areas shall be computed by using outside building dimensions measured on a horizontal plane at ground level.

§ 21-215 Building Configuration.

The term "Building Configuration" shall mean the arrangement of a building or group of buildings in one of following manners:

(a) Detached — A structure with enclosing walls but no common or party wall.

(b) Semi-detached — A structure with enclosing walls and one (1) party wall in common with an adjacent building.

(c) Attached — A structure with enclosing walls as well as two (2) party walls in common with adjacent buildings.

§ 21-216 Building Coverage.

The term "Building Coverage" shall mean the percentage of the lot area covered by the building area.

§ 21-217 Building Setback Line.

The term "Building Setback Line" shall mean the line parallel to the street right-of-way line at a distance equal to the minimum depth of the front yard required for the district in which the lot is located.

§ 21-218 Business Office.

The term "Business Office" shall mean a business establishment which does not offer on the premises a product or merchandise for sale to the public, but offers a service to the public. However, personal services such as barber and beauty shops and repair services are not to be included within the definition of "business offices."

§ 21-219 Cabaret.

The term "Cabaret" shall mean a club, restaurant, bar, tavern, theater, hall, or similar place or establishment which features male/female entertainers, including, but not limited to, topless or bottomless dancers, entertainers, strippers, or employees, whose performance or activities include, even though not limited to, simulated sex acts, live or actual sex acts, or other Specified Sexual Activities, and/or reveal or display Specified Anatomical Areas for observation by patrons.

§ 21-220 Car Wash.

The term "Car Wash" shall mean a building or portion thereof where automobiles are cleaned, using a conveyor, blower, steam-cleaning equipment, or other device.

§ 21-221 Cellar.

The term "Cellar" shall mean a story partly underground and having more than one-half (1/2) of its height (measured from floor to ceiling) below the average level of the adjoining ground. A "cellar" shall not be considered a "story" in determining the permissible number of stories.

§ 21-222 Center Line of Street or Road.

The term "Center Line of Street or Road" shall mean a line equidistant from and parallel to the street right-of-way or property lines on each side of the street or road.

§ 21-223 Church.

The term "Church" shall mean a building or group of buildings, including customary accessory buildings, designed or intended for public worship. For the purpose of this Chapter, the word "church" shall include: chapels, cathedrals, temples, and similar designations, as well as parish houses, convents, and such accessory uses.

§ 21-224 Club, Lodge, or Social Building.

The term "Club, Lodge, or Social Building" shall mean a building to house a club or social organization not conducted for private profit, and which is not an adjunct to or operated by or in connection with, a public tavern, café, or other public place.

§ 21-225 Commercial Motor Vehicle.

The term "Commercial Motor Vehicle" shall mean any vehicle other than a passenger car, station wagon, motorcycle, or similar vehicle, and pickup or other truck less than eighty (80) inches in width, one hundred ninety-six (196) inches in length, and gross vehicle weight range of ten thousand (10,000) pounds. Construction or other similar vehicles or equipment not designed and intended for passenger use or for on-the-road hauling shall be deemed "commercial motor vehicles."

§ 21-226 Composting Facility.

The term "Composting Facility" shall mean a facility using land for processing of municipal waste by composting. The term includes land thereby affected during the lifetime of the operations, including, but not limited to, areas where composting actually occurs, support facilities, borrow areas, offices, equipment sheds, air and water pollution control and treatment systems, access roads, associated onsite or contiguous collection, transportation, and storage facilities, closure and postclosure care and maintenance activities, and other activities in which the natural land surface has been disturbed as a result of or incidental to operation of the facility. The term does not include a facility for composting residential municipal waste that is located at the site where the waste was generated.

§ 21-227 Comprehensive Plan.

The term "Comprehensive Plan" shall mean the official Comprehensive Plan for the Borough of Alburtis, Pennsylvania, including recommendations for land use, transportation, and community facilities.

§ 21-228 Conditional Use.

The term "Conditional Use" shall mean a use or structure which requires the review of the proposed use or structure by the Planning Commission, the submission of the Planning Commission's recommendations to the Council, and the final approval of the proposed use or structure by the Council.

§ 21-229 Council.

The term "Council" shall mean the Borough Council of the Borough of Alburtis, Pennsylvania.

§ 21-230 Court.

The term "Court" shall mean an unobstructed open area bounded on three (3) or more sides by the walls of a building or buildings. It does not include any such area with no windows opening upon it.

§ 21-231 Day-Care Center.

The term "Day-Care Center" shall mean any premises in which child day care is provided simultaneously for children who are not relatives of the operator. Nursery schools are deemed to be "day-care centers."

§ 21-232 Density.

The term "Density" shall mean gross density as determined by dividing the total number of dwelling units by the gross land area.

§ 21-233 Dormitory.

The term "Dormitory" shall mean a building or portion thereof which contains living quarters for students, staff, or members of a college, university, boarding school, theological school, hospital, religious order, or comparable organization; *provided that* said building is either owned or managed by said organization and contains not more than one (1) cooking and eating area.

§ 21-234 Drive-In Service Places.

The term "Drive-In Service Places" shall mean an establishment or activity where patrons are served with food, soft drinks, ice cream, and similar confections, or where patrons are provided with professional or personal services for consumption outside the confines of the principal building or in vehicles parked upon the premises, regardless of whether or not, in addition

thereto, seats or other accommodations are provided for the patrons. Drive-in theater shall not be included.

§ 21-235 Dwelling.

(a) Dwelling. The term "Dwelling" shall mean a building containing one (1) or more dwelling units.

(b) Dwelling Unit. The term "Dwelling Unit" shall mean any room or group of rooms located within a residential building and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating by one (1) family.

(c) Single-Family Detached Dwelling. The term "Single-Family Detached Dwelling" shall mean a building, commonly known as a "single-family house," designed for and occupied exclusively as a residence having only one (1) dwelling unit from ground to roof, independent outside access, and open space on all sides. Where a private garage is structurally attached to such a dwelling, it shall be considered as a part thereof. Each building shall be on-site conventionally constructed.

(d) Two-Family Detached Dwelling. The term "Two-Family Detached Dwelling" shall mean a single building, commonly known as a "twin" or "duplex," intended and designed to be occupied as a residence by two (2) families living independently of each other as separate housekeeping units. Each building shall be on-site conventionally constructed.

(e) Single-Family Attached Dwelling. The term "Single-Family Attached Dwelling" shall mean a building, commonly known as a "townhouse" or "row house," designed for and occupied exclusively as a residence for only one (1) family and having only one (1) dwelling unit from ground to roof, two (2) points of independent outside access, at least two (2) other dwellings built in conjunction therewith, and any portion of one (1) or two (2) unpierced party walls in common with an adjoining dwelling. Each building shall be on-site conventionally constructed.

(f) Multifamily Dwelling. The term "Multifamily Dwelling" shall mean a building, commonly known as an "apartment," containing three (3) or more dwelling units and designed to be occupied by three (3) or more families living independently of one another. Each building shall be on-site conventionally constructed.

§ 21-236 Elderly Housing.

(a) In General. The term "Elderly Housing" shall mean a housing facility or community (within the meaning of subsection (b)), which satisfies either the requirements of subsection (c) (relating to 62 and Over Housing) or the requirements of subsection (d) (relating to 55 and Over Housing).

(b) Housing Facility or Community. For purposes of this Section, the term "housing facility or community" means a dwelling or group of dwelling units governed by a common set of rules, regulations, or restrictions, including but not limited to a condominium association, a cooperative, a property governed by a homeowners' or resident association, a leased property under

common private ownership, a mobile home park, and a manufactured housing community, *provided* that a portion or portions of a single building shall not constitute a "housing facility or community."

(c) 62 and Over Housing.

(1) In General. Except as provided in paragraph (2), housing satisfies the requirements of this subsection (c) if it is intended for, and *solely* occupied by, persons sixty-two (62) years of age or older.

(2) Exceptions. Housing still satisfies the requirements of this subsection (c) even though—

(A) there are unoccupied units, *provided* that such units are reserved for occupancy by persons sixty-two (62) years of age or older;

(B) there are units occupied by persons under sixty-two (62) years of age who are employees of the housing or family members of such employees residing in the same unit, *provided* the employees perform substantial duties directly related to the management or maintenance of the housing; and/or

(C) there are persons under sixty-two (62) years of age residing in such housing who have continuously resided in such housing since September 13, 1988 or earlier.

(d) 55 and Over Housing. Housing satisfies the requirements of this subsection (d) if—

(1) at least eighty percent (80%) of its occupied units are occupied by at least one person fifty-five (55) years of age or older (as further described in subsection (e) and with the exceptions provided in subsection (e));

(2) the housing facility or community published and adheres to policies and procedures that demonstrate its intent to operate as housing for persons fifty-five (55) years of age or older in accordance with this subsection (d) (as further described in subsection (f)); **and**

(3) the housing facility or community must be able to produce verification of compliance with paragraph (1) and subsection (e) through reliable surveys and affidavits whenever required in response to a request by the Borough or a complaint filed under title 24 of the Code of Federal Regulations (as further described in subsection (g)).

(e) 80% Occupancy. For purposes of subsection (d)(1)—

(1) Occupied Unit. The term "occupied unit" means—

(A) a dwelling unit that is actually occupied by one or more persons; or

(B) a temporarily vacant unit, if the primary occupant has resided in the unit during the past year and intends to return on a periodic basis.

(2) Occupied by a Person 55 and Over. A dwelling unit is considered to be occupied by at least one person fifty-five (55) years of age or older if—

(A) at least one occupant of the dwelling unit is fifty-five (55) years of age or older; or

(B) the dwelling unit is temporarily vacant, and at least one of the occupants of the dwelling unit immediately prior to the date on which it was temporarily vacated was fifty-five (55) years of age or older.

(3) Newly Constructed Housing. Newly constructed housing for first occupancy after March 12, 1989 need not comply with the requirements of subsection (d)(1) until at least twenty-five percent (25%) of the units are occupied. "Newly constructed housing" includes a facility or community that has been wholly unoccupied for at least ninety (90) days prior to re-occupancy due to renovation or rehabilitation.

(4) Exceptions. Housing still satisfies the requirements of subsection (d)(1) even though—

(A) there are unoccupied units, *provided* that at least eighty percent (80%) of the occupied units are occupied by at least one person fifty-five (55) years of age or older;

(B) there are units occupied by persons under fifty-five (55) years of age who are employees of the housing facility or community or family members of such employees residing in the same unit, *provided* the employees perform substantial duties directly related to the management or maintenance of the housing facility or community;

(C) there are units occupied by persons under the age of fifty-five (55) who are necessary to provide a reasonable accommodation to disabled residents as required by 24 C.F.R. § 100.204; and/or

(D) the housing was in existence on September 13, 1988, and at that time under eighty percent (80%) of the occupied units were occupied by at least one person fifty-five (55) years of age or older, *provided* that at least eighty percent (80%) of the units occupied by new occupants after September 13, 1988 are occupied by at least one person fifty-five (55) years of age or older.

(5) Fractions of a Unit. Where application of the eighty percent (80%) rule results in a fraction of a unit, that unit shall be considered to be included in the units that must be occupied by at least one person fifty-five (55) years of age or older.

(6) Age Restrictions for Units Not Occupied By At Least One Person Age 55 or Over. The housing facility or community may determine the age restriction, if any, for units that are not occupied by at least one person fifty-five (55) years of age or older, so long as the housing facility or community complies with the provisions of subsection (f).

(f) Intent to Operate as 55 and Over Housing. For purposes of subsection (d)(2):

(1) The following factors, among others, are considered relevant in determining whether a housing facility or community has complied with the requirements of subsection (d)(2):

(A) The manner in which the housing facility or community is described to prospective residents;

(B) Any advertising designed to attract prospective residents;

(C) Lease provisions;

(D) Written rules, regulations, covenants, deed or other restrictions;

(E) The maintenance and consistent application of relevant procedures;

(F) Actual practices of the housing facility or community; and

(G) Public posting in common areas of statements describing the facility or community as housing for persons fifty-five (55) years of age or older.

(2) Phrases such as "adult living", "adult community", or similar statements in any written advertisement or prospectus are not consistent with the intent that the housing facility or community intends to operate as housing for persons fifty-five (55) years of age or older.

(3) A housing facility or community may allow occupancy by families with children as long as it meets the requirements of subsections (d)(1), (d)(2), (e), and (f)(1).

(g) Verification of Occupancy. For purposes of demonstrating compliance with subsection (d)(3)—

(1) A housing facility or community must have procedures for routinely determining the occupancy of each unit, including the identification of whether at least one occupant of each unit is fifty-five (55) years of age or older. Such procedures may be part of a normal leasing or purchasing arrangement, and must provide for regular updates (at least once every two years), through surveys or other means, of the initial information supplied by the occupants of the housing facility or community. A survey may include information regarding whether any units are occupied by persons described in subsection (e)(4)(B), (C), and (D).

(2) Any of the following documents are considered reliable documentation of the age of the occupants of the housing facility or community: driver's license; birth certificate; passport; immigration card; military identification; any other state, local, national, or international official documents containing a birth date of comparable reliability; or a certification in a lease, application, affidavit, or other document signed by any member of the household age eighteen (18) or older asserting that at least one person in the unit is fifty-five (55) years of age or older. A housing facility or community shall consider any one of these forms of verification as adequate for verification of age, provided that it contains specific information about current age or date of birth.

(3) The housing facility or community must establish and maintain appropriate policies to require that occupants comply with the age verification procedures required by this subsection (g).

(4) If the occupants of a particular dwelling unit refuse to comply with the age verification procedures, the housing facility or community may, if it has sufficient evidence, consider the unit to be occupied by at least one person fifty-five (55) years of age or older. Such evidence may include:

(A) Government records or documents, such as a local household census;

(B) Prior forms or applications; or

(C) A statement from an individual who has personal knowledge of the age of the occupants. The individual's statement must set forth the basis for such knowledge and be signed under the penalty of perjury.

(5) A summary of occupancy surveys shall be available for inspection upon reasonable notice and request by any person.

(h) Construction. The definition provided by this Section is included in order to *expand* the opportunities for residential uses primarily occupied by older persons. Thus, other provisions of this Chapter may permit Elderly Housing under certain conditions and in certain loca-

tions even though similar residential uses which do not qualify as Elderly Housing would not be so permitted. However, nothing in this Chapter shall be construed to prohibit any residential use which satisfies all applicable requirements of this Chapter merely because that use also qualifies as Elderly Housing. For example, an Elderly Housing development of single-family detached dwellings is permitted in the R-1 Low Density Residential Zoning District so long as it satisfies all applicable requirements for single-family detached dwellings in that zoning district.

§ 21-237 Electric Substation.

The term "Electric Substation" shall mean an assemblage of equipment for transforming electric power rather than for its generation or utilization.

§ 21-238 Essential Utilities.

The term "Essential Utilities" includes sewerage, water, gas, and electric lines and related appurtenances used to serve development within the Borough, but not including cross-country transmission lines or other utilities not required to serve the Borough.

§ 21-239 Extractive Operation.

The term "Extractive Operation" means any operation designed to remove any portion of the earth's composition by digging, borrowing, burrowing, quarrying, stripping, scouring, mining, or the like.

§ 21-240 Facade.

The term "Facade" shall mean the total wall surface, including door and window area, of a building's principal face. In the case of corner buildings which front on more than one (1) street, only one (1) face shall be used to calculate "facade" area.

§ 21-241 Family.

The term "Family" shall mean two (2) or more persons living together as a single housekeeping unit.

§ 21-242 Fence.

The term "Fence" shall mean an artificially constructed barrier of wood, masonry, stone, wire, metal, or other manufactured material or combination of materials erected.

§ 21-243 Garage.

(a) Public Parking Garage. The term "Public Parking Garage" shall mean a garage operated at a profit for the convenience of the general public in which no servicing, repairs, washing, or reconditioning of motor vehicles is carried on.

(b) Private Garage. The term "Private Garage" shall mean any accessory building adapted for the storage of motor vehicles owned and used by the owner or tenant and in which no business or other use is carried on and no service is rendered to the general public.

(c) Municipal Parking Facility. The term "Municipal Parking Facility" shall mean a facility owned and run by and for the benefit of the municipality for the parking of automobiles.

(d) Service Garage. The term "Service Garage" shall mean any garage other than a public parking garage, private garage, or municipal parking facility. A "service garage" may include servicing, repairs, washing, or reconditioning of motor vehicles and filling station facilities.

§ 21-244 Gasoline Service Station.

The term "Gasoline Service Station" shall mean buildings and premises where gasoline, oil, grease, batteries, tires, and automobile accessories, or any combination thereof, are stored and sold at retail and normal mechanical service repairs are conducted, but not including body work, painting, spraying, or welding, or storage of automobiles not in operating condition and not on the premises for normal mechanical repairs.

§ 21-245 Governmental Uses.

The term "Governmental Uses" shall mean municipal, county, state or federal government buildings or facilities designed and intended to be occupied by the government or designed and intended for public use sponsored by such governments.

§ 21-246 Gross Habitable Floor Area.

The term "Gross Habitable Floor Area" shall mean the sum of the gross horizontal areas of the floor or floors of a building which are enclosed and usable for human occupancy. Said areas shall be measured between the inside faces of exterior walls.

§ 21-247 Home Office or Business.

(a) In General. The term "Home Office or Business" shall mean a business or office conducted in the home or principal buildings of a lot used for residential purposes by members of the resident family, *provided* that:

(1) no person may be employed in a "home office or business" who is not a member of the resident family if the "home office or business" is located in a residential District (R-1, R-2, or R-3);

(2) at least eight hundred (800) square feet of the habitable floor space of the home shall be preserved free from all business or office use;

(3) the use is clearly incidental and secondary to the residential use of the home and does not change the residential character of the home;

(4) signs indicating products made or services rendered shall be in accord with this Chapter;

(5) adequate space for off-street parking and loading shall be provided if adjacent on-street parking is not ordinarily sufficient;

(6) if the use does not qualify as "Non-Intrusive" under subsection (b) below, no more than a total of two (2) vehicles shall be utilized by the home offices or businesses conducted on the property (regardless of whether such vehicles are also used for other purposes);

(7) there shall be no change in the outside appearance of the building or premises or other visible evidence of the conduct of such "home office or business" other than a sign;

(8) no machinery or equipment that would produce noise, odor, vibration, light, or electrical interference beyond the bounds of the immediate property (or outside of the dwelling unit, in the case of multifamily dwellings) shall be permitted; and

(9) no hazardous materials shall be present on the property at any time in connection with the home office or business.

(A) For purposes of this paragraph (9), the term "hazardous materials" shall mean any material described in clauses (I), (II), or (III), *unless* they are excluded under subparagraph (B):

(I) any source, byproduct, or special nuclear material, as defined in the Atomic Energy Act of 1954, 42 U.S.C. § 2011 *et seq.*;

(II) any substance designated as a hazardous substance by the U.S. Environmental Protection Agency and listed in Table 302.4 under 40 C.F.R. § 302.4 or the appendices to 40 C.F.R. § 302.4, if present in a quantity greater than or equal to the reportable quantity for such substance under 40 C.F.R. §§ 304.4 and 304.5; or

(III) any substance(s) which is/are or may become, when used in the home office or business, a solid waste (as defined in 40 C.F.R. § 261.2, other than a waste excluded under 40 C.F.R. § 261.4(b)) which exhibits or will exhibit any of the characteristics of a hazardous waste identified in 40 C.F.R. § 261.21 (relating to ignitability), 40 C.F.R. § 261.22 (relating to corrosivity), 40 C.F.R. § 261.23 (relating to reactivity), or 40 C.F.R. § 261.24 (relating to toxicity), if present or if will be present in a quantity greater than or equal to the reportable quantity for such substance(s) under 40 C.F.R. §§ 304.4 and 304.5;

(B) Notwithstanding subparagraph (A), none of the following shall be considered "hazardous materials" for purposes of this paragraph (9):

(I) food, drugs, cosmetics, or alcoholic beverages, if (i) contained in the packaging used for sale of such materials to consumers, (ii) intended for personal consumption

by residents of the property, or (iii) used on the property in the same manner as in normal consumer use;

(II) any "consumer product" as defined under the Consumer Product Safety Act, 15 U.S.C. § 2051 *et seq.*, or "hazardous substance" as defined under the Federal Hazardous Substances Act, 15 U.S.C. § 1261 *et seq.*, if (i) contained in the packaging used for sale of such materials to consumers, (ii) intended for personal consumption by residents of the property, or (iii) used on the property in the same manner as in normal consumer/household use;

(III) motor oil or used motor oil.

A "hobby" shall be considered to be a "business" subject to the restrictions of this Chapter, and not an accessory use to residential uses, if consideration in excess of One Thousand Dollars ($1,000.00) per year, exclusive of the cost of materials, is charged or received by the resident(s) operating the hobby/business related to activities conducted at the residence.

(b) Non-Intrusive Home Office or Business. A Home Office or Business shall be considered "Non-Intrusive" if—

(1) no signs indicating products made or services rendered by the office or business are displayed on or in relation to the property; and

(2) the amount of traffic from customers or suppliers of the office or business does not increase the amount of traffic associated with the property beyond the amount of traffic normally associated with a residential dwelling unit.

(c) Intrusive Home Office or Business. A Home Office or Business shall be considered "Intrusive" if it does not qualify as a "Non-Intrusive" use under subsection (b).

§ 21-248 Hospital; Community Medical Center.

The terms "Hospital" or "Community Medical Center" shall mean a building used for the medical diagnosis, treatment, or other care of human ailments.

§ 21-249 Hotel, Motel, Motor Inn.

The terms "Hotel", "Motel", and "Motor Inn" shall mean a building containing ten (10) or more guest rooms, or a group of such buildings, especially designed for the temporary lodging of transient guests, *provided that* no room shall have cooking facilities of any kind. Such establishment shall furnish to the occupants customary hotel services, such as maid service and the furnishing and laundering of linen. Eating and drinking facilities may be accessory to the "hotel" or "motel."

§ 21-250 Household Pets.

The term "Household Pets" shall mean domestic animals normally considered to be kept in or in conjunction with a dwelling unit for the pleasure of the resident family, such as dogs, cats, small birds, gerbils, and other similar pets normally sold by retail pet stores.

§ 21-251 Junkyard.

The term "Junkyard" shall mean any place where discarded materials or articles, including but not limited to scrap metal, scrapped or abandoned or junked motor vehicles, machinery, equipment, paper, glass containers, and structures, are stored, disposed of, or accumulated.

§ 21-252 Kennel.

The term "Kennel" shall mean a place where three (3) or more household pets are kept, boarded, trained, raised, or bred for compensation.

§ 21-253 Landowner.

The term "Landowner" shall mean the legal or beneficial owner or owners of land, including the holder of an option or contract to purchase (whether or not such option or contract is subject to any condition), a lessee, if he is authorized under the lease to exercise the rights of the landowner, or other person having a proprietary interest in land.

§ 21-254 Lot.

(a) In General. The term "Lot" means a parcel of land used or set aside and available for use as the site of one (1) or more buildings and buildings accessory thereto or for any other purpose, in one (1) ownership, and not divided by a street, nor including any land within the limits of a public or private way upon which said lot abuts, even if the ownership to such way is in the owner of the lot. A "lot" for the purpose of this Chapter may or may not coincide with a "lot" of record. When there is doubt as to whether a tract is comprised of more than one (1) "lot," recourse may be had to the nature of the recorded description of the tract.

(b) Corner Lot. The term "Corner Lot" shall mean a lot which has an interior angle of less than one hundred thirty-five degrees (135°) at the intersection of two (2) street lines. A lot abutting upon a curved street or streets shall be considered a "corner lot" if the tangents to the curve at the points beginning with the lot or at the points of intersection of the side lot lines with the street right-of-way lines intersect at an interior angle of less than one hundred thirty-five degrees (135°).

(c) Interior Lot. The term "Interior Lot" shall mean a lot fronting on a street but having side lot lines in common with adjacent lots.

(d) Lot Coverage. The term "Lot Coverage" shall mean the percentage of the lot area that is occupied by the building area.

(e) Lot Depth. The term "Lot Depth" shall mean the distance along a straight line drawn from the midpoint of the front lot line to the midpoint of the rear lot line.

(f) Lot Width. The term "Lot Width" shall mean the distance between the midpoints of straight lines connecting front and rear lot lines at each side of the lot, which may also be meas-

ured across the rear of the required front yard (setback line); *provided*, however, that width between side lot lines at their foremost points (where they intersect with the street line) shall not be less than eighty percent (80%) of the required lot width, except in the case of lots on the turning circle of culs-de-sac, where the eighty-percent requirement shall not apply.

§ 21-255 Lot Line.

(a) In General. The term "Lot Line" shall mean any boundary line of a lot. (*See* § 21-254(a) for the definition of a lot. Note, for example, that certain boundary line(s) of a lot whose recorded description includes area within a street right-of-way are the street line(s) rather than the property lines in the recorded description of the tract.)

(b) Front. The term "Front Lot Line" shall mean a lot line which is also a street line. (Note that an alley having a right-of-way width of twenty (20) feet or less is not a "street" under § 21-285(a) and so does not form a "street line.")

(c) Rear. The term "Rear Lot Line" shall mean any lot line which is parallel to or within forty-five degrees (45°) of being parallel to a front lot line, except for a lot line that is itself a front lot line, and except that in the case of a corner lot there shall be no rear lot lines, only front lot lines and side lot lines. In the case of a lot having no street frontage or a lot of an odd shape, the landowner may designate any lot line or group of connected lot lines which together constitute at least twenty percent (20%) of the circumference of the lot as the "Rear Lot Line(s)" of the lot.

(d) Side. The term "Side Lot Line" shall mean any lot line which is not a front lot line or a rear lot line.

§ 21-256 Massage; Certain Health Care Professions Utilizing Massage.

(a) Massage. The term "Massage" shall mean any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external parts of the human body with the hands or the aid of any mechanical or electrical apparatus or appliances, with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointment, or other such similar preparations commonly used in the practice of massage, under such circumstances that it is reasonably expected that the person to whom the treatment is provided, or some third party on his or her behalf, will pay money or give any other consideration or any gratuity therefor.

(b) Massage Therapy. The term "Massage Therapy" shall mean a profession dealing with those practices using the application of a system of structured touch to the human body, which may include, but is not limited to, holding, pressure, positioning , and causing movement of the body by manual means. The term includes complementary methods, including the external application of water, heat, cold, lubricants, or other topical preparations; and electromechanical devices that mimic or enhance the actions possible by the hands. The term does not include the diagnosis of illness or disease, medical procedures, chiropractic adjustment, electrical stimulation, ultrasound, prescription of medicines or the use of modalities for which a license to

practice medicine, chiropractic, physical therapy, occupational therapy, podiatry, or other practice of the healing arts is required.

(c) Movement Education. The term "Movement Education" shall mean the art and science of teaching self-awareness and habitual movement patters by verbally and physically guiding the student in the self-discovery of alternative and improved postures, coordination, and choices of behavior.

(d) Reflexology. The term "Reflexology" shall mean a science based on the premise that there are zones and reflex areas in the feet and hands which correspond to all glands, organs, parts, and systems of the body. The term incorporates the physical act of applying specific pressure using thumb, finger, and hand techniques to these reflex areas. The term does not include the diagnosis of illness or disease, medical procedures, chiropractic adjustment, electrical stimulation, ultrasound, prescription of medicines or the use of modalities for which a license to practice medicine, chiropractic, physical therapy, occupational therapy, podiatry, or other practice of the healing arts is required.

(e) Somatic Practices. The term "Somatic Practices" shall mean complementary health care practice systems of activities including, but not limited to, touch, verbal interaction, and movement in order to assess and assist an individual in making changes in breathing, movement, and lifestyle patterns. The term does not include the diagnosis of illness or disease, medical procedures, chiropractic adjustment, electrical stimulation, ultrasound, prescription of medicines or the use of modalities for which a license to practice medicine, chiropractic, physical therapy, occupational therapy, podiatry, or other practice of the healing arts is required.

(f) Medically-Related Professions. For purposes of this Chapter, practitioners of message therapy, movement education, reflexology, or somatic practices who are licensed or certified by the Commonwealth of Pennsylvania to so practice shall be considered professionals in a medically-related profession.

§ 21-257 Massage Parlor.

The term "Massage Parlor" shall mean any establishment having a source of income or compensation derived from the practice of massage, and which has a fixed place of business, where any person, firm, association, or corporation engages in or carries on the practice of massage; *provided*, however, that this definition shall not be construed to include a hospital, nursing home, or medical clinic, or the office of a physician, surgeon, chiropractor, osteopath, or physical therapist, or practitioner of message therapy, movement education, reflexology, or somatic practices, duly licensed or certified by the Commonwealth of Pennsylvania, nor barber shops or beauty salons in which massages are administered only to the scalp, face, neck, or the shoulders. In addition, this definition shall not be construed to include a volunteer fire department, a volunteer rescue squad, or a nonprofit organization operating a community center, swimming pool, tennis court, or other educational, cultural, recreational, or athletic facilities, and facilities for the welfare of the residents of the area.

§ 21-258 Minimum Habitable Floor Area.

The term "Minimum Habitable Floor Area" shall mean the minimum required floor area of a dwelling unit which is enclosed and usable for human occupancy. Said areas shall be measured from the inside face of all walls and shall not include areas not normally used as dwelling spaces, such as cellars and garages, air shafts, plumbing shafts, and mechanical equipment rooms.

§ 21-259 Mobile Home.

The term "Mobile Home" shall mean a transportable, single family dwelling intended for permanent occupancy, contained in one (1) unit or in two (2) or more units designed to be joined into one (1) integral unit capable of again being separated for repeated towing, which arrives at a site complete and ready for occupancy, except for minor and incidental unpacking and assembly operations, and constructed so that it may be used without a permanent foundation. For purposes of this Chapter, excluded from the definition of Mobile Home are travel trailers. Further, a Mobile Home shall not be construed as a temporary structure.

§ 21-260 Mobile Home Lot.

The term "Mobile Home Lot" shall mean a parcel of land in a mobile home park, improved with the necessary utility connections and other appurtenances necessary for the erection thereon of a single mobile home.

§ 21-261 Mobile Home Park.

The term "Mobile Home Park" shall mean a parcel or contiguous parcels of land which has been so designated and improved that it contains two (2) or more mobile home lots for the placement thereon of mobile homes.

§ 21-262 Motor Vehicle Repair Shop.

The term "Motor Vehicle Repair Shop" shall mean a building, structure, or enclosure in which the general business of the major repairing of motor vehicles is conducted, including painting of the vehicle.

§ 21-263 Municipal Waste.

The term "Municipal Waste" shall mean any garbage, refuse, industrial lunchroom or office waste, and other material, including solid, liquid, semisolid, or contained gaseous material, resulting from operation of residential, municipal, commercial, or institutional establishments and from community activities and any sludge not meeting the definition of residual or hazardous waste in the Solid Waste Management Act, 35 PA. STAT. ANN. § 6018.101 *et seq.*, from a

municipal, commercial, or institutional water supply treatment plant, wastewater treatment plant, or air pollution control facility. The term does not include source-separated recyclable materials.

§ 21-264 Municipal Waste Landfill.

The term "Municipal Waste Landfill" shall mean a facility using land for disposing of municipal waste. The facility includes land affected during the lifetime of operations including, but not limited to, areas where disposal or processing activities actually occur, support facilities, borrow areas, offices, equipment sheds, air and water pollution control and treatment systems, access roads, associated onsite and contiguous collection, transportation and storage facilities, closure and postclosure care and maintenance activities, and other activities in which the natural land surface has been disturbed as a result of or incidental to operation of the facility. The term does not include a construction/demolition waste landfill or a facility for the land application of sewage sludge.

§ 21-265 Nonconforming.

(a) Nonconforming Lot. The term "Nonconforming Lot" shall mean a lot that does not conform to the dimensional regulations prescribed by this Chapter for the district in which it is located, but which lot was in existence at the effective date of this Chapter and was lawful at the time it was established.

(b) Nonconforming Sign. The term "Nonconforming Sign" shall mean a sign which does not conform to the controls regulating signs in this Chapter for the district in which it is located, but which was in existence at the effective date of this Chapter and was lawful at the time it was established.

(c) Nonconforming Structure. The term "Nonconforming Structure" shall mean a structure that does not conform to the dimensional regulation prescribed by this Chapter for the district in which it is located or to regulations for off-street parking, off-street loading, or accessory buildings, but which structure was in existence at the effective date of this Chapter and was lawful at the time it was established.

(d) Nonconforming Use. The term "Nonconforming Use" shall mean a use of a building or lot that does not conform to the use regulations prescribed by this Chapter for the district in which it is located, but which was in existence at the effective date of this Chapter and was lawful at the time it was established.

§ 21-266 Official Map.

The term "Official Map" shall mean a map adopted by the Borough of Alburtis showing the exact location of the lines of existing and proposed public streets, watercourses, and public grounds, including widenings, narrowings, extensions, diminutions, openings, or closings of the same for the whole of the municipality.

§ 21-267 Official Review Agency.

The term "Official Review Agency" shall mean an agency appointed by Council to review certain proposals.

§ 21-268 Open Space or Area.

The terms "Open Space" or "Open Area" shall mean the total horizontal area of all uncovered open space, and includes recreation areas, pedestrian use areas, steep slopes, floodplains, and easements free of paving and structures. It does not include parking areas, streets, drives, and yard areas of not less than twenty (20) feet around all buildings.

§ 21-269 Parking.

(a) Parking Space. The term "Parking Space" shall mean any area not less than one hundred eighty (180) square feet for the parking of motor vehicles, for which there is practical access.

(b) Parking Area. The term "Parking Area" shall mean an area set aside for the parking of three (3) or more motor vehicles.

§ 21-270 Personal Service Establishment.

The term "Personal Service Establishment" shall mean a place primarily providing services, which do not involve retail sales or professional advisory services, oriented to serving personal needs, such as barber and beauty shops, shoe repair shops, household appliance repair shops, dry-cleaning and laundry pickups, shoeshine parlors, and other similar establishments.

§ 21-271 Plan (Certified)

The term "Plan" or "Certified Plan" shall mean a plan prepared by a registered professional engineer, architect, landscape architect, or surveyor.

§ 21-272 Planned Neighborhood Convenience Center.

The term "Planned Neighborhood Convenience Center" shall mean a totally planned commercial development on contiguous land under single ownership or control, intended and planned to primarily serve the daily and convenient shopping and personal needs of nearby residential developments.

§ 21-273 Planning Commission.

The term "Planning Commission" shall mean the Planning Commission of the Borough of Alburtis.

§ 21-274 Plat.

The term "Plat" shall mean the map or plan of a subdivision or land development, whether preliminary or final.

§ 21-275 Public Notice.

The term "Public Notice" shall mean a notice published once each week for two (2) successive weeks in a newspaper of general circulation in the Borough. Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing. The first publication shall not be more than thirty (30) days and the second publication shall not be less than seven (7) days before the date of the hearing.

§ 21-276 Recreation Space.

The term "Recreation Space" shall mean space and/or land devoted to diversional amusement, possibly encompassing athletic facilities.

§ 21-277 Recreational Vehicle or Unit.

The term "Recreational Vehicle" or "Recreational Unit" shall mean a vehicle or piece of equipment, whether self-powered or designed to be pulled or carried, intended primarily for leisure-time or recreational use. "Recreational vehicles or units" include travel trailers, truck-mounted campers, motor homes, folding tent campers, autos, busses or trucks adapted for vacation use, and other vehicles not suitable for daily conventional family transportation. Snowmobiles, minibikes, all-terrain vehicles, go-carts, and boat trailers are also deemed "recreational vehicles."

§ 21-278 Sectional or Modular House.

The term "Sectional House" or "Modular House" shall mean a single-family detached dwelling unit manufactured in two (2) or more sections, designed for permanent occupancy, with the appearance of conventionally constructed on-site single-family homes and transported to a building site in sections which are fastened together and mounted on a permanent foundation which provides a crawl space or cellar, ready for occupancy except for minor and incidental unpacking and assembly operation. For purposes of this Chapter, "sectional houses" include modu-

lar, prefabricated, and other similar types, but mobile homes and travel trailers are not considered as "sectional or modular houses."

§ 21-279 Setback Line.

The term "Setback Line" shall mean a line which, between it and the street or lot line, no building or other structure or portion thereof, except as provided in this Chapter, may be erected above grade level. The "setback line" is considered to be a vertical surface intersecting the ground on such line.

§ 21-280 Sign.

(a) In General. The term "Sign" shall mean any permanent or temporary structure or part thereof, or any device attached, painted, or represented, directly or indirectly, on a structure or other surface, that shall display or include any letter, word, insignia, flag or representation used as or which is in the nature of an advertisement, announcement, visual communication, or direction, or which is designed to attract the eye or bring the subject to the attention of the public. Flags of any governmental unit or branch thereof, or any charitable or religious organization, interior signs not visible from a public right-of-way or adjoining property, and cornerstones built into or attached to a wall of a building, are excluded.

(b) On-Premises Sign. The term "On-Premises Sign" shall mean a sign which directs attention to a person, business, profession, home occupation, or activity conducted on the same lot.

(c) Off-Premises Sign. The term "Off-Premises Sign" shall mean a sign which directs attention to a person, business, profession, product, home occupation, or activity not conducted on the same lot.

§ 21-281 Special Exception.

The term "Special Exception" shall mean a use permitted in a particular district by the Zoning Hearing Board pursuant to standards set forth in this Chapter and Articles VI and IX of the Pennsylvania Municipalities Planning Code, 53 PA. STAT. ANN. § 10601 *et seq.* and § 10901 *et seq.*, when such use is not permitted by right under this Chapter.

§ 21-282 Specified Anatomical Areas.

The term "Specified Anatomical Areas" shall mean:

(a) Less than completely or opaquely covered human genitals, pubic region, buttocks, or female breast below a point immediately above the top of the areola; or

(b) Human male genitals in a discernibly turgid state, even if completely or opaquely covered.

§ 21-283 Specified Sexual Activities.

The term "Specified Sexual Activities" shall mean:

(a) Human genitals in a state of sexual stimulation or arousal;

(b) Acts of human masturbation, sexual intercourse, or sodomy; or

(c) Fondling or other erotic touching of human genitals, pubic region, buttocks, or female breast(s).

§ 21-284 Story.

The term "Story" shall mean that portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between any floor and the ceiling next above it. A basement, but not a cellar, shall be deemed a "story" in accordance with the provisions in §§ 21-209 and 21-221.

§ 21-285 Street.

(a) In General. The term "Street" shall mean a public or private way having a right-of-way width of more than twenty (20) feet, used or intended to be used for passage or travel by automotive vehicles. If private, such way must be used or intended to be used as the principal means of access to an abutting lot or lots or to more than two (2) dwellings on a lot on which a private way is exclusively used.

(b) Arterial Street or Highway. The term "Arterial Street" or "Arterial Highway" shall mean a major regional highway designed to carry heavy vehicular traffic into, out of, or through the regional area. There are no arterial streets or highways within the Borough of Alburtis.

(c) Collector Street. The term "Collector Street" shall mean a street which is designed or functions to carry a moderate volume of traffic, to intercept local streets, to provide routes to arterial roads and to community facilities, and to provide a limited amount of access to the abutting properties. Within the Borough of Alburtis, the following streets, at a minimum, function as "collector streets": Franklin Street; Main Street (from Franklin Street north to the Borough line); East Penn Avenue; West Penn Avenue; West Front Street; and Church Street.

(d) Local Street. The term "Local Street" means a street which provides access to the abutting properties and a route to collector streets.

§ 21-286 Street Line.

The term "Street Line" shall mean the dividing line between the street and the lot. The "street line" shall be the same as the legal right-of-way line, *provided* that the street right-of-way line shall be not less than sixteen and one-half (16 1/2) feet from the center line of any existing road or street, and that where a future right-of-way width for a road or street has been officially

established, then the street right-of-way line shall be the side line of the future right-of-way so established.

§ 21-287 Structure.

The term "Structure" shall mean a combination of materials assembled, constructed, or erected at a fixed location, including a building, the use of which requires location on the ground or attachment to something having location on the ground.

§ 21-288 Swimming Pool.

(a) In General. The term "Swimming Pool" shall mean any receptacle or artificially constructed pool for water, including spas, whirlpools, and jacuzzis, whether constructed on-site or preconstructed, having a walled depth of two (2) feet or more at any point within its perimeter, intended or adapted for the purposes of immersion or partial immersion of human beings therein, and including all appurtenant equipment.

(b) Noncommercial. The term "Noncommercial Swimming Pool" shall mean any swimming pool used or intended to be used for swimming or bathing by any family or persons residing on the premises and their guests. Such a pool shall not be operated for gain and shall be located on a lot only as an accessory use to the dwelling or dwellings, hotel, motel, private club, or fraternal or social organization.

(c) Commercial. The term "Commercial Swimming Pool" shall mean any swimming pool which is not a noncommercial swimming pool under subsection (b).

§ 21-289 Tilling of the Soil.

The term "Tilling of the Soil" shall mean the cultivation of soil and the raising and harvesting of products of the soil, including horticulture, nurserying, forestry, and the raising and keeping of field and truck crops.

§ 21-290 Trade School.

The term "Trade School" shall mean a commercial educational institution where trades are taught.

§ 21-291 Trash Management Facility.

The term "Trash Management Facility" shall mean a composting facility, municipal waste landfill, or a trash transfer facility.

§ 21-292 Trash Transfer Facility.

The term "Trash Transfer Facility" shall mean a facility which receives and temporarily stores solid waste at a location other than the generation site, and which facilitates the bulk transfer of accumulated solid waste to a facility for further processing or disposal. The term includes land affected during the lifetime of the operations, including, but not limited to, areas where storage or transfer actually occurs, support facilities, borrow areas, offices, equipment sheds, air and water pollution control and treatment systems, access roads, associated onsite or contiguous collection and transportation facilities, closure and postclosure care and maintenance activities, and other activities in which the natural surface has been disturbed as a result of or incidental to operation of a transfer station. A facility is a transfer facility regardless of whether it reduces the bulk or volume of waste. The term does not include portable storage containers used for the collection of municipal waste other than special handling waste.

§ 21-293 Travel Trailer.

The term "Travel Trailer" shall mean a vehicular portable structure built on a chassis, designed as a temporary dwelling for travel, recreation, vacation, and other short-term uses, and having a body width not exceeding eight (8) feet and a body length not exceeding thirty-two (32) feet.

§ 21-294 Use.

(a) In General. The term "Use" shall mean any activity, occupation, business, or operation carried on or intended to be carried on in a building or other structure or on a tract of land.

(b) Accessory Use. The term "Accessory Use" shall mean a use located on the same lot with a principal use and clearly incidental or subordinate to, and customary in connection with, the principal use.

(c) Principal Use. The term "Principal Use" shall mean the main use on a lot.

§ 21-295 Variance.

The term "Variance" shall mean a waiver from the terms and conditions of this Chapter, granted by the Zoning Hearing Board, pursuant to § 21-1809, and Articles VI and IX of the Pennsylvania Municipalities Planning Code, 53 PA. STAT. ANN. § 10601 *et seq.* and § 10901 *et seq.*

§ 21-296 Veterinary Office; Animal Hospital.

The terms "Veterinary Office" and "Animal Hospital" shall mean any building used for the treatment, housing, or limited boarding of small domestic animals, such as dogs, cats, goats, rabbits, birds, or fowl, by a veterinarian.

§ 21-297 Yard.

(a) In General. The term "Yard" shall mean an open space unobstructed from the ground up, on the same lot with a structure, extending along a lot line and inward to the structure. The size of a required "yard" shall be measured as the shortest distance between the structure and a lot line, exclusive of overhanging eaves, gutters, cornices, and open steps.

(b) Front Yard. The term "Front Yard" shall mean a required yard between a structure and a front lot line, and extending the entire length of the front lot line. In the case of a lot that fronts on more than one (1) street, the yards extending along all streets are "front yards."

(c) Rear Yard. The term "Rear Yard" shall mean a required yard between a structure and a rear lot line, and extending the entire length of the rear lot line and unoccupied except for accessory buildings and open porches, which, in the aggregate, shall occupy not more than the percent coverage for designated districts in which the lot is located.

(d) Side Yard. The term "Side Yard" shall mean a required yard between a structure and a side lot line, except for any area within a front yard or a rear yard.

§ 21-298 Zoning/Building Permit.

The term "Zoning/Building Permit," whether titled "Zoning Permit" or "Building Permit," shall mean the same or each other.

§ 21-299 Zoning Officer.

The term "Zoning Officer" shall mean the duly appointed and designated official of the Borough responsible for administering and enforcing the provisions of this Chapter.

§ 21-300 Definitions Relating to Commercial Communications Towers/Antennae.

(a) Alternate Site. With respect to a proposed Commercial Communications Tower or Commercial Communications Antenna at a particular location (the "**proposed site**"), the term "Alternate Site" means a location where a Commercial Communications Antenna can be sited (either on an existing or proposed building or structure) such that, alone or in combination with other Alternate Sites:

(1) the proposed telecommunications services can be provided to the Essential Service Area at a commercially equivalent (or superior) level of quality to that which can be provided from the proposed site; and

(2) it is still economically feasible to provide the proposed telecommunications services to the Essential Service Area (recognizing that the costs of acquiring the right to use and of using the Alternate Site(s) may be considerably higher than the costs associated with the proposed site, yet low enough that it is still economically feasible to provide the services from the Alternate Site(s)).

(b) Alternative Tower Structure. The term "Alternative Tower Structure" includes, but is not limited to, man-made trees, clock towers, bell steeples, light poles, and similar alternative design mounting structures that camouflage or conceal the presence of Commercial Communications Towers and Commercial Communications Antennas.

(c) Commercial Communications Antenna. The term "Commercial Communications Antenna" means any device used for the transmission or reception of radio, television, wireless telephone, pager, commercial mobile radio service, or any other wireless communications signals or personal wireless service, including, without limitation, omnidirectional or whip antennas and directional or panel antennas, owned or operated by any person or entity which is required to be licensed by the FCC to operate such device. This definition shall not include:

(1) private residence mounted satellite dishes or television antennas or amateur radio equipment including, without limitation, ham or citizen band ratio antennas; or

(2) devices attached to or located in motor vehicles.

(d) Commercial Communications Tower. The term "Commercial Communications Tower" means a structure other than a building, such as a monopole, self-supporting, or guyed tower, used or intended to be used to support Commercial Communications Antennas.

(e) Emergency Communications Services. The term "Emergency Communications Services" means transmission and/or reception of emergency communications by a police department, fire company, emergency medical service, and other similar public safety organizations.

(f) Essential. With respect to an application to establish or modify a Commercial Communications Tower or Commercial Communications Antenna at a particular location, the facility is "Essential" if—

(1) it is to be used to provide Personal Wireless Services, and a failure by Borough Council to grant approval to the application (subject to any reasonable conditions imposed by Borough Council), coupled with a failure to grant conditional approval to *any* application for a Commercial Communications Tower(s) and/or Commercial Communications Antenna(s) at an Alternate Site(s) (if any Alternate Sites exist), would have the effect of—

(A) prohibiting the provision of Personal Wireless Services in a particular geographical area, *or*

(B) unreasonably discriminating among providers of functionally equivalent services;

(2) it is to be used to provide Emergency Communications Services; *or*

(3) it to be used to provide only services *other than* Personal Wireless Services or Emergency Communications Services (or to establish or modify a Commercial Communications Tower or Commercial Communications Antenna to be used to provide services in addition to Personal Wireless Services and/or Emergency Communications Services and which requires a more extensive facility to provide the additional services than would be required to provide only Personal Wireless Services and/or Emergency Communications Services), and a failure by Borough Council to grant approval to the application (subject to any reasonable conditions imposed by Borough Council), coupled with a failure to grant conditional approval to *any* application for

a Commercial Communications Tower(s) and/or Commercial Communications Antenna(s) at an Alternate Site(s) (if any Alternate Sites exist), would violate federal law.

(g) Essential Service Area. The term "Essential Service Areas" means that portion of the geographical area to be served by a Commercial Communications Antenna (or, with respect to a Commercial Communications Tower, the Commercial Communications Antennas located on the Tower) for which any such Antenna is Essential.

(h) Fall Zone. The term "Fall Zone" means the area on the ground within a prescribed radius from the base of a Commercial Communications Tower. The "Fall Zone" is the area within which there is a potential hazard from falling debris or the collapsing of the Commercial Communications Tower. The radius of the Fall Zone shall be presumed to be no less than the height of the Commercial Communications Tower, unless the Tower is designed to collapse upon itself in the event of tower failure. Each person who proposes to install a Commercial Communications Tower shall submit an initial determination of the Fall Zone for that Tower prepared and certified by a professional engineer experienced in tower structures together with supporting documentation, as part of the application to establish the use, but the final determination of the Fall Zone shall be made by the Borough Council after considering all evidence presented at the hearing on the use.

(i) FCC. The term "FCC" means the Federal Communications Commission.

(j) Height of Commercial Communications Antenna. The "height" of a Commercial Communications Antenna means the distance from the highest point of the Antenna to the ground level.

(k) Height of Commercial Communications Tower. The "height" of a Commercial Communications Tower means the overall height from the base of the tower to the highest point of the tower, including, but not limited to, antennas, transmitters, satellite dishes, or any other structures affixed to or otherwise placed on the tower. If the base of the tower is not on ground level, the height of the tower shall include the base of the building or structure to which the tower is attached.

(l) Personal Wireless Services. The term "Personal Wireless Services" means "Personal wireless services" within the meaning of the Communications Act of 1934, as amended, *inter alia*, by the Telecommunications Act of 1996, 47 U.S.C. § 151 *et seq.*