

## ARTICLE XIII

### Standards for Special Exception and Other Selected Uses

#### Section 1300 Requirements of Specific Standards

It is the intent of this Article to provide special controls and regulations for particular uses that may be permitted by right or by Special Exception within the various Zoning Districts established in this Ordinance. This Article provides both the general standards for all special exceptions and, where applicable, sets forth that shall be applied to each individual use. These standards must be satisfied prior to approval of any application for special exception and/or issuance of a zoning permit. The applicant shall be required to demonstrate compliance with these standards and must furnish whatever evidence is necessary to demonstrate such compliance. These particular controls and requirements are additional to those imposed by the District Regulations and by the Supplementary Regulations of this Ordinance.

a. General Standards for Special Exceptions.

1) Filing of Special Exceptions: For any use permitted by special exception, a special exception must be obtained from the Zoning Hearing Board. In addition to the information required on the building permit application, the special exception application must show:

- a) Ground floor plans and elevations of proposed structures.
- b) Names and addresses of adjoining owners.

Unless otherwise specified or extended by the Zoning Hearing Board a special exemption authorized by the Board expires if the applicant fails to obtain, where required to do so, a building permit within six (6) months of the date of the authorization of the special exception or a use certificate within one (1) year.

2) Temporary Special Exceptions: A temporary special exception must be obtained from the Borough Council for any nonconformity which is or will be seasonal or is or will be in the public interest. The Borough Council may grant a temporary special exception for a nonconforming use or structure, existing or new, which

- a) Is beneficial to the public health or general welfare, or

- b) Is necessary to promote the proper development of the community, or
- c) Is seasonal in nature.

The temporary special exception may be issued for a period not exceeding one (1) year and may be renewed for an aggregate period not exceeding three (3) years. The nonconforming structure or use must be completely removed upon the expiration of the special exception without cost to the Borough.

- 3) Referral to the Borough Planning Commission: All applications for a special exception shall be referred to the Borough Planning Commission for a recommendation if established.
- 4) Conditions: The Zoning Hearing Board in passing upon special exception applications, may attach conditions considered necessary to protect the public welfare and the Community Development Objectives, including conditions which are more restrictive than those established for other uses in the same zone.
- 5) Application of Extent-of Use Regulations: The extent-to-use regulations as set forth in this Ordinance must be followed by the Zoning Hearing Board. Where no extent-to-use regulations are set forth for the particular use, the Board must impose extent-to-use requirements as necessary to protect the public welfare and the Community Development Objectives.
- 6) General Standards: A special exception may be granted when the Zoning Hearing Board finds from a preponderance of the evidence produced at the hearing that:
  - a) The proposed use, including its nature, intensity and location, is in harmony with the orderly and appropriate development of the zone; and
  - b) That adequate water supply, sewage disposal, storm drainage, fire and police protection are or can be provided for the use; and
  - c) That the use of adjacent land and buildings will not be discouraged and the value of adjacent land and buildings will not be impaired by the location, nature and height of buildings, walls and fences; and

d) The use will have proper location with respect to existing or future streets giving access to it, and will not create traffic congestion or cause industrial or commercial traffic to use residential streets; and

e) That the specific standards set for the for each particular use for which a special exception may be granted have been met.

The applicant for a special exception shall have the burden of proff, which shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact, which are to be determined by the Zoning Hearing Board.

### Section 1301 Special Standards

In addition to the general standards for all special exceptions, the specific standards for particular uses as listed within this Article must be met prior to the granting of a special exception.

### Section 1302 Adult Bookstores and Adult Theaters

The Borough Council may approve Adult Bookstores and Adult Theaters in the Commercial District according to the procedures and requirements specified below:

- a. Purpose: The purpose of this Section is to provide for the establishment of adult bookstores within the Borough at such places, and in such manner, as is appropriate and reasonable; and to establish reasonable regulations which take into consideration the potential for adverse impact from such businesses upon adjoining property owners, occupants and uses.
- b. Interpretation and Application: This Section shall be interpreted and applied in a manner consistent with the Constitution and shall not be applied to unduly restrict or infringe upon rights guaranteed thereby.
- c. Severability: The provisions of this Section shall be severable and in the event any one thereof shall be determined to be invalid or unenforceable such determination shall not operate to repeal or invalidate the remaining provisions.
- d. As used in this Ordinance, the following terms, word and phrases shall have the meanings ascribed to them by this Section:

- 1) Adult Bookstore: An establishment open to the general public in which five (5) percent or more of the occupied sales or display area offers for sale, for rent or lease, for loan, or for view upon the premises, pictures, photographs, drawings, prints, images, sculpture, still film, motion picture film, video tape, or similar visual representations distinguished or characterized by an emphasis on sexual conduct or sexually explicit nudity, or books, pamphlets, magazines, printed matter or sound recordings containing explicit and detailed descriptions or narrative accounts distinguished or characterized by an emphasis on sexual conduct, or offers for sale of sexual devices.
  - 2) Adult Theater: A building or a room within a building open to the general public, used for presenting live entertainment, motion picture film, video tape or similar visual representation of materials distinguished or characterized by an emphasis on sexual conduct or sexually explicit nudity.
  - 3) Sexual Conduct: Ultimate sexual acts, normal or perverted, actual or simulated, involving a person or persons, or a person or persons and an animal, including acts of masturbation, sexual intercourse, fellatio, cunnilingus, analingus or physical contact with a person's nude or partially denuded genitals, pubic area, perineum, anal region, or, if such person be female, a breast.
  - 4) Sexual Device: Any artificial human penis, vagina or anus, or other device primarily designed, promoted, or marketed to physically stimulate or manipulate the human genitals, pubic area, perineum or anal area, including dildoes, penisators, vibrators, vibrillators, penis rings and erection enlargement or prolonging creams, jellies or other such chemicals or preparations.
  - 5) Sexually Explicit Nudity: The sexually oriented and explicit showing, by any means, including but not limited to, close-up views, poses or depictions in such position or manner which present or expose such areas to the following: postpubertal, full or partially developed human female breast with less than a fully opaque covering of any portion thereof below the top of the areola or nipple; the depiction of covered human male genitals in a discernible turgid state; or lewd exhibition of the human genitals, pubic area, perineum, buttocks or anal region, with less than a fully opaque covering.
- e. The use and occupancy of any land, building or structure as an adult bookstore or an adult theater shall be subject to the following:
- 1) An adult bookstore or an adult theater shall be permitted only in the Commercial District.

- 2) An adult bookstore or an adult theater shall not be permitted to be located within five hundred (500) feet of any of the following:
  - a) Any other adult book store or adult theater.
  - b) Any public or private school, public playground, or any church or other house of worship.
- 3) No materials, merchandise, or film offered for sale, rent, lease, or loan, or for view upon the premises shall be exhibited or displayed outside of a building or structure.
- 4) Any building or structure used and occupied as an adult book store or adult theater shall be windowless, or have an opaque covering over all windows or doors of any area in which materials, merchandise, live entertainment or film shall be visible from outside of the building or structure.

#### Section 1303 Bed and Breakfast Inn

- a. Maximum guest stays shall be limited to seven (7) days.
- b. Maximum of two (2) guest rooms.
- c. Breakfast shall be the only meal served to overnight lodgers.
- d. The inn must comply with local regulations regarding all applicable permits, including but not limited to: Fire, Health and Building Codes.
- e. Bed and Breakfast operations shall be conducted so as to be clearly incidental and accessory to the primary use of the site as a single-family dwelling.

#### Section 1304 Cellular Communication Towers and Antennas

- a. General requirements for Communications Antennas and Communications Buildings
  - 1) Building mounted Communications Antennas shall not be located on any residential structure.

- 2) Building mounted Communications Antennas shall be permitted to exceed the height limitations of the applicable zoning districts by no more than twenty (20) feet.
- 3) Omnidirectional or whip Communications Antennas shall not exceed twenty (20) feet in height and seven (7) inches in diameter.
- 4) Directional or panel Communications Antennas shall not exceed five (5) feet in height and three (3) feet in width.
- 5) Any applicant proposing Communications Antennas to be mounted on a building or other structure shall submit evidence from a Pennsylvania registered professional engineer certifying that the proposed installation will not exceed the structural capacity of the building or other structure, considering wind and other loads associated with the antenna location.
- 6) Any applicant proposing Communications Antennas to be mounted on a building or structure shall submit detailed construction and elevation drawings indicating how the antennas will be mounted on the structure for review by the Borough Engineer.
- 7) Any applicant proposing Communications Antennas to be mounted on a building or structure shall submit evidence of agreements and/or easements necessary to provide access to the building or structure on which the antennas are to be mounted so that installation and maintenance of the antennas and Communications Equipment can be accomplished.
- 8) Communications Antennas shall comply with all applicable standards established by the Federal Communications Commission governing human exposure to electromagnetic radiation.
- 9) Communications Antennas shall not cause radio frequency interference with other communications facilities located within Felton Borough.
- 10) A Communications Equipment Building shall be subject to the height and setback requirements of the applicable Zoning District for an accessory building.
- 11) The owner and operator of Communications Antennas shall be licensed by the Communications Commission to operate such antennas, and shall provide a copy of such license to the Borough.

b. General requirements for Communications Towers

- 1) The applicant shall be required to submit to the Borough evidence of the need for the Communications Tower and that all alternatives have been exhausted to constructing the Communications Tower in the Borough. Applicants are required to prove need by:
  - a) Providing evidence, including coverage diagrams and technical reports, that, in terms of location and construction, there are no existing towers, Communications Towers, buildings or structures able to provide the platform for the necessary equipment for one or more of the following reasons:
    - (1) Planned equipment would exceed the structural capacity of the existing Communications Towers, buildings or structures, and existing Communications Towers, buildings or structures, cannot be reinforced to accommodate planned or equivalent equipment at a reasonable cost.
    - (2) Planned equipment will cause interference with other existing or planned equipment for that Communications Tower, building or structure and the interference cannot be prevented at a reasonable cost.
    - (3) Existing or approved Communications Towers, buildings or structures do not have the space on which planned equipment can be placed so it can function effectively and at least be in parity with other similar equipment in place or planned.
    - (4) Other reasons make it impractical to place the equipment by the applicant on existing and approved Communications Towers.
- 2) No Communications Tower shall be permitted within Felton Borough that is of a height that would require attached lighting as required by standards of the Federal Aviation Administration (FAA). Other lighting shall be permitted in accordance with the provisions contained elsewhere in this Ordinance.
- 3) Communications Towers may not be located on a lot that is listed on a historic register or in an officially designated state or federal historic district.
- 4) Communications Towers shall be no closer than one thousand (1,000) feet from another Communications Tower, such distance being measured as a horizontal distance from tower to tower.
- 5) The applicant for a Communications Tower must execute an agreement with the Borough, in a recorded instrument legally sufficient to the Borough,

reviewed by the Solicitor, requiring the removal of the Communications Tower within one (1) year after the Communications Tower ceases to function as such. Removal of the Communications Tower shall include the tower, all appurtenances or component parts thereof, including any associated buildings or structures.

a) Responsibility of Owner and Occupant of Premises for Removal:

No person, firm, or corporation owning or occupying any property within Felton Borough shall permit, leave or cause to be left any Communications Tower, appurtenances, or component part thereof, including any associated buildings or structures on said property on and after the aforesaid one year period. A Communications Tower, all appurtenances or component part thereof, including any associated buildings or structures so remaining on the premises after the prescribed removal date shall be deemed in violation of the provisions of this section.

b) Notice to Conform:

Felton Borough is hereby authorized, and directed to give notice, by a personal service or US mail to the owner or occupant, or both, as the case may be, by certified mail of the violation of the provisions of this Ordinance, and directing and requiring said owner or occupant to conform with the requirements of this Ordinance within 30 days after issuance of such notice.

c) Violations and Penalties:

In case any person, firm or corporation shall neglect, fail or refuse to comply with said notice within the period of time stated therein, Felton Borough may enter the premise and remove the Communications Tower, all appurtenances or component part thereof, including any associated buildings or structures. In such event all costs associated with the removal, together with reasonable attorney's fees and any additional payment authorized by law, may be collected by Felton Borough, from such person, firm or corporation in the manner provided by law for collection of municipal claims or by an action of assumpsit

- 6) A security fence and gate, of approved design, of not less than eight (8) feet, including barbed wire at the top, shall completely enclose the Communications Tower and anchor locations of guy wire (if used). This fencing shall be designed to be compatible with surrounding land uses.



- 7) The applicant shall submit a landscaping plan. Landscaping requirements shall be in accordance with the requirements of this Ordinance.
  - a) Landscaping, consisting of approved evergreen trees, shall be required at the perimeter of the security fencing.
  - b) This requirement may be waived by the Borough if there is existing acceptable vegetation along the property lines.
- 8) A minimum of one (1) parking space shall be required. Spaces shall meet requirements of this Ordinance. Parking spaces may be surfaced with a durable and dustless gravel surface.
- 9) Access shall be provided to the Communications Tower and Communications Equipment Building by means of a public street or easement of twenty (20) feet in width and shall be improved to a width of at least twelve (12) feet.
- 10) Internal access to the Communications Tower shall be provided by a minimum twelve (12) foot width driveway with a durable and dustless surface, such as concrete or a bituminous surface, for a minimum of thirty-five (35) feet from the centerline of any public street. The length of the driveway beyond this thirty-five feet shall, at a minimum be surfaced with a durable and dustless gravel.
- 11) Communications Towers shall be fully automated and unattended on a daily basis. The site shall be visited only for periodic maintenance.
- 12) The Communications Equipment Building shall be identified as an accessory building, and the applicable regulations for the host zoning district shall apply.
- 13) Guy wires, if utilized, may not be anchored in any setback area of the host zoning district. Guy wires shall not cross or encroach any overhead telephone or electric power lines.
- 14) Tower height shall be measured from the top of the foundation to the top of the tower and/or antenna which ever is higher.
- 15) A security gate shall be required to be installed a minimum of forty-five feet (45) from the centerline of the public or private roadway.
- 16) The applicant shall be required to have control over any land that is within a required setback area of this Ordinance. This control, submitted in writing,

may be either in the form of ownership, lease, or recorded easement, as reviewed by the solicitor.

- 17) The applicant shall submit a copy of its current Federal Communications Commission license: the name, address and emergency telephone number for the operator of the Communications Tower; and a Certificate of Insurance evidencing general liability coverage in the minimum amount of \$1,000,000 per occurrence and property damage coverage in the amount \$1,000,000 per occurrence covering the Communications Tower and Communications Antennas.
- 18) No more than ten thousand (10,000) square feet of clear-cutting of wooded areas shall be allowed for the site area of the Communications Tower.
- 19) Setbacks shall be no less than fifty percent (50%) of the tower height from adjacent property lines and public road right-of-way lines. Such distance shall be in a straight line from the Communications Tower to the appropriate line. This set back shall be increased to one hundred fifty (150) feet if any Residential Zone abuts the property in which the Communications Tower is located.

c. General Requirements for Co-Location of Facilities

The applicant for the Co-Location of Facilities shall be required to submit a Building Permit application for approval.

Section 1304 Cemetery

- a. All burial plots or facilities shall be located at least 10 feet from all property or street lines.
- b. Assurances must be provided that water supplies of surrounding properties will not be contaminated by burial activity within the proposed activity.
- c. No burial plots or facilities are permitted on floodplain land.
- d. Buffers and screens shall be provided as necessary to adequately protect neighboring properties.
- e. Pet cemeteries must meet all of the above applicable requirements.

Section 1306 Chemical Manufacturing, Processing and Storage Operations

- a. All buildings must be set back at least 75 feet from the street line.
- b. A buffer yard at least 50 feet wide must be located on the terminal site in all situations where the site adjoins the Residential Zoning District or residential use. This yard shall be naturally landscaped, have no impervious cover, and shall not be used for parking, building, loading or storage purposes.
- c. Satisfactory provisions shall be made to minimize harmful or unpleasant effects (noise, odors, fumes, glare, vibration, and smoke).

Section 1307 Club

- a. Buffers and screens shall be provided as necessary to adequately protect neighboring properties.
- b. The use shall not constitute a public or private nuisance.

Section 1308 Convalescent Home, Nursing Home, or Hospital

- a. All buildings shall be located at least 50 feet from all property or street lines.
- b. Public sewer approved by the Pennsylvania Department of Environmental Protection must be utilized.
- c. Buffers and screens shall be provided as necessary to adequately protect neighboring properties.

Section 1309 Conversion Apartments

- a. Supplemental Regulations
  - 1) Conversion of an existing single family detached dwelling to provide one or more additional dwelling units.
  - 2) Each apartment shall be provided with off-street parking in accordance with Article XI.
  - 3) Each apartment shall be provided with complete kitchen and bathroom facilities, and shall meet minimum habitable floor area as identified in Section 916.

- 4) There shall be no evidence of change in the building.
- b. Fire escapes shall be provided for each unit and shall be located at the rear or an interior side of the building.

Section 1310 Day Care Facility or Nursery School

- a. The use shall meet all requirements for certification by the State of Pennsylvania where required.
- b. Outdoor play areas shall be sufficiently screened so as to protect the neighborhood from inappropriate noise and other disturbances.

Section 1311 Family Day Care

- a. All family day care homes shall be conducted within a detached single family dwelling
- b. All family day care homes with enrollment of more than three (3) minors shall furnish a valid Registration Certificate for the proposed use, issued by the PA Department of Public Welfare; and
- c. Passenger “drop-off” and “pick-up” areas shall be provided on site and arranged so that passengers do not have to cross traffic lanes on or adjacent to the site.

Section 1312 Farm Occupation

For the purposes of this Ordinance, farm occupations may involve the following uses:

- a. Facilities for the service and repair of farm machinery and equipment, and small engines;
- b. Facilities contributing to the agrarian lifestyle characteristic of the residents of Felton Borough;
- c. No more than two (2) acres of land shall be devoted to such use including areas used for structures, parking, storage, display, setbacks, landscaping, and etc. However, any lane serving the farm related business and a home and/or farm contained upon the same lot shall not be included as lot area devoted to the farm related business;

- d. At least one owner of the farm occupation must live on the property on which the farm occupation is conducted;
- e. All farm occupations shall be conducted upon the same lot as an actively farmed parcel;
- f. Any outdoor storage of supplies, materials or products shall be located behind the building in which the farm occupation is located. Such outdoor storage shall also be screened from adjoining roads and properties;
- g. Any activities that produce noxious dust, odor, light or noise, perceptible at the property line are prohibited; and
- h. The Zoning Hearing Board may attach additional conditions upon a farm occupation to preserve the agricultural character of the area, and protect adjoining uses.

#### Section 1313 Home Business

- a. Purpose. It is the intent of this Section to establish regulations which will permit home businesses in a manner which will preserve the peace, quiet, and tranquility of residential neighborhoods and to ensure the compatibility of such uses with other uses permitted within the same zoning district.
- b. General Regulations. All home businesses shall comply with the following:
  - 1) The person primarily responsible for the home business shall be a full-time resident of the premises.
  - 2) The business shall employ no more than two employees other than family members residing in the dwelling.
  - 3) No more than thirty-three (33%) percent of the gross floor area of the dwelling unit and existing accessory buildings may be used for the practice of a home business.
  - 4) No displays or change in the building facade, including the dwelling and all accessory buildings, shall indicate from the exterior that the dwelling is being utilized for purposes other than a dwelling.

- 5) Storage of materials, products, or machinery used for the home occupation or home business shall be wholly enclosed by the dwelling or accessory building(s), within the maximum floor area previously defined, and shall not be visible from any adjacent lot or street.
- 6) A home business shall not produce noise, obnoxious odors, vibrations, lighting glare, fumes, or smoke detectable to normal sensory perception on any adjacent lots or streets or electrical interference.
- 7) Home businesses utilizing, or proposing to utilize, explosive or highly flammable materials shall require proof of fire department notification and compliance with applicable building codes prior to using such materials.

#### Section 1314 Intensive Agricultural Operation

Intensive agricultural activities include, but are not limited to, mushroom farms, poultry and egg production, and dry lot farms, wherein the character of the activity involves a more intense use of the land than found in normal farming operation.

- a. Intensive agricultural activities shall not be located within 1,500 feet of another zoning district or existing residence located within the Agricultural or any other zoning district.
- b. A minimum lot of five acres is required for intensive agricultural activities; which shall be so located on the lot as to provide front, side and rear yards of 100 feet. The maximum height of buildings used for intensive agricultural use is 35 feet or 2 1/2 stores, excluding appurtenances.
- c. Commercial composting is prohibited. Any on-site composting shall be limited for use on the premises on which such composting is made and produced.
- d. Solid and liquid wastes shall be disposed of in a manner to avoid creating insect or rodent problems, or a public nuisance. No emission of noxious, unpleasant gases shall be permitted in such quantities as to be offensive outside the lot lines of the tract occupied by an intensive agricultural user.
- e. Dry lot feeding stations shall be permanently paved.

#### Section 1315 Kennel, Animal Hospital

- a. All buildings, dog runs, fenced enclosures and similar structures shall be located at least 100 feet from all property or street lines.
- b. All animals must be housed within a structure.

Section 1316 Manufactured Home Parks

- a. Public sewer approved by the Pennsylvania Department of Environmental Protection must be utilized.
- b. Buffers and screens shall be provided as accessory to adequately protect neighboring properties.
- c. The Zoning Hearing Board may require additional suitable screen planting, or may further restrict the proximity of manufactured homes or other improvements to adjoining properties, or may attach such other conditions or safeguards to the use of land for a manufactured home park as the Board may deem necessary to protect the general welfare.
- d. A manufactured home park and extension thereof shall also comply with all applicable state and/or municipal regulations now in effect or hereafter enacted.

Section 1317 Park, Playground, or Recreation Area

- a. The Zoning Hearing Board shall decide the appropriateness of the design of parking, lighting, and similar features of the proposed use to minimize adverse impacts on adjacent properties.

Section 1318 Public Building

- a. Setbacks- All buildings and facilities shall be set back at least 25 feet from any property line and 50 feet from a street line.

Section 1319 Public Utility Building

- a. The permitted building shall not include the storage of vehicles or equipment used in the maintenance of any utility and no equipment causing unreasonable noise, vibration, smoke, odor, or hazardous effect shall be installed.

- b. Unhoused equipment shall be enclosed with a fence or wall not less than six feet in height that shall be so constructed as not to have openings, holes or gaps larger than six inches in any dimension.
- c. When the equipment is totally enclosed within a building, no fence or screen planting shall be required and the yard shall be maintained in conformity with the zone in which the building is located.

#### Section 1320 Quarries And Mining Activities

Sandpits, gravel pits, removal of topsoil and landfill and the excavation, extraction or removal of any natural resource from the land or ground for any purpose, where permitted shall be subject to the following conditions:

- a. Quarry areas including abandoned lands or future reserves and active quarry areas shall be adequately fenced to insure public safety.
- b. Access to quarries shall be controlled to insure public safety.
- c. Quarries shall be operated during normal daylight hours.
- d. Access roads to quarries shall connect to the collector or major roads network.
- e. The proposed operation shall not adversely affect soil fertility, drainage, and lateral support of abutting land or other properties, nor shall it contribute to soil erosion.
- f. All operations shall comply with the provisions of the Pennsylvania Surface Mining Conservation and Reclamation Act.

#### Section 1321 Research Laboratory

- a. Buffers and screens shall be provided as necessary to adequately protect neighboring properties.
- b. Satisfactory provisions shall be made to minimize harmful or unpleasant effects. Toxic materials may only be stored or disposed of in a manner that will not be a public health hazard or public nuisance.

#### Section 1322 Salvage/Junk Yard



As regulated by Felton Borough Ordinance No. 1988-1.

Section 1323 Sawmill Operation

- a. No saw or other machinery shall be less than 50 feet from any property line.
- b. All power saws and machinery will be secured against tampering and locked when not in use.

Section 1324 Truck or Motor Freight Terminal

- a. A buffer yard at least 50 feet wide must be located on the terminal site in all situations where the site adjoins the Residential Zoning District or residential use. This yard shall be naturally landscaped, have no impervious cover, and shall not be used for parking, building, loading or storage purposes.
- b. Satisfactory provisions shall be made to minimize harmful or unpleasant effects (noise, odors, fumes, glare, vibration, and smoke).