

ORDINANCE NO. 267

AIRPORT DISTRICT OVERLAY ORDINANCE

AN ORDINANCE OF CAERNARVON TOWNSHIP SETTING FORTH ITS AUTHORITY TO ESTABLISH AN “AIRPORT DISTRICT OVERLAY” TO INCLUDE: PURPOSES OF THE DISTRICT, DEFINITIONS, AIRPORT ZONES, AIRPORT ZONE HEIGHT LIMITATIONS; PERMITS REQUIRED; USE RESTRICTIONS; NONCONFORMING USES; VARIANCES; CONFLICTING REGULATIONS; AND AMENDING THE OFFICIAL ZONING MAP BY THE ADOPTION OF AN OFFICIAL SUPPLEMENTARY AIRPORT OVERLAY ZONING MAP.

WHEREAS, certain airport hazards, as defined, in effect reduce the size of the area available for landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of *Airport* and the public investment therein, and

WHEREAS, the creation or establishment of an airport hazard, as defined, is a public nuisance and may injure the region served by the Morgantown Airport; and

WHEREAS, it is necessary in the interest of public health, public safety and general welfare that the creation or establishment of airport hazards, as defined, be prevented; and

WHEREAS, the prevention of these airport hazards, as defined, should be accomplished, to the extent legally possible, by the exercise of police power without compensation; and

WHEREAS, both the prevention of the creation or establishment of airport hazards, as defined, and the elimination, removal, alteration, mitigation or marking and lighting of existing airport hazards, as defined, are public purposes for which political subdivisions may raise and expend public funds and acquire land or interests in land; and

WHEREAS, THEREFORE BE IT ORDAINED by the Caernarvon Township Board of Supervisors, pursuant to the authority conferred by 1984 Pa. Laws 164 codified at 74 Pa. Cons. Stat. §§5912 et. Seq., the following be and is hereby adopted as an Ordinance of Caernarvon Township.

1. Purpose.

The purpose of this Ordinance is to create an airport district overlay that considers safety issues around the Morgantown Airport, regulates and restricts the heights of constructed structures and objects of natural growth, creates appropriate zones, establishing the boundaries thereof and providing for changes in the restrictions and boundaries of such zones, creates the permitting process for use within said zones and provides for enforcement, assessment of violation penalties, an appeals process, and judicial review.

2. Relation to Other Zone Districts.

The Airport District Overlay shall not modify the boundaries of any underlying zoning district. Where identified, the Airport District Overlay shall impose certain requirements on land use and construction in addition to those contained in the underlying zoning district.

3. Definitions.

The following words and phrases when used in this Ordinance shall have the meaning given to them in this section unless the context clearly indicates otherwise.

- a. Airport Elevation:** The highest point of an airport's useable landing area measured in feet above sea level. The airport elevation of the Morgantown Airport is 610 ft.
- b. Airport Hazard:** Any structure or object, natural or manmade, or use of land which obstructs the airspace required for flight or aircraft in landing or taking off at an airport or is otherwise hazardous as defined in 14 CFR Part 77 and 74 Pa. Cons. Stat. §5102.
- c. Airport Hazard Area:** Any area of land or water upon which an airport hazard might be established if not prevented as provided for in this Ordinance and the Act 164 of 1984 (Pennsylvania Laws Relating to Aviation).
- d. Approach Surface (Zone):** An imaginary surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface. An approach surface is applied to each end of the runway based on the planned approach. The inner edge of the approach surface is the same width as the primary surface and expands uniformly depending on the planned approach. The approach surface zone, as shown on Figure 1, is derived from the approach surface.
- e. Conical Surface (Zone):** An imaginary surface extending outward and upward from the periphery of the horizontal surface at a slope of twenty (20) feet horizontally to one (1) foot vertically for a horizontal distance of 4,000 feet. The conical surface zone, as shown on Figure 1, is based on the conical surface.
- f. Department:** Pennsylvania Department of Transportation.
- g. FAA:** Federal Aviation Administration of the United States Department of Transportation.
- h. Height:** For the purpose of determining the height limits in all zones set forth in this Ordinance and shown on the zoning map, the datum shall mean sea level elevation unless otherwise specified.
- i. Horizontal Surface (Zone):** An imaginary plane 150 feet above the established

airport elevation that is constructed by swinging arcs of various radii from the center of the end of the primary surface and then connecting the adjacent arc by tangent lines. The radius of each arc is based on the planned approach. The horizontal surface zone, as shown on Figure 1, is derived from the horizontal surface.

- j. Larger Than Utility Runway:** A runway that is constructed for and intended to be used by propeller driven aircraft of greater than 12,500 pounds maximum gross weight and jet powered aircraft.
- k. Nonconforming Use:** Any pre-existing structure, object of natural growth, or use of land which is inconsistent with the provisions of this Ordinance or an amendment thereto.
- l. Non-Precision Instrument Runway:** A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in non-precision instrument approach procedure has been approved or planned.
- m. Obstruction:** Any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth by this Ordinance.
- n. Precision Instrument Runway:** A runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS) or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated on an approved airport layout plan or any other planning document.
- o. Primary Surface (Zone):** An imaginary surface longitudinally centered on the runway, extending 200 feet beyond the end of paved runways or ending at each end of turf runways. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The primary surface zone, as shown on Figure 1, is derived from the primary surface.
- p. Runway:** A defined area of an airport prepared for landing and takeoff of aircraft along its length.
- q. Structure:** An object, including a mobile object, constructed or installed by man, including but without limitation, buildings, towers, cranes, smokestacks, earth formation and overhead transmission lines.
- r. Transitional Surface (Zone):** An imaginary surface that extends outward and upward from the edge of the primary surface to the horizontal surface at a slope of seven (7) feet horizontally to one (1) foot vertically (7:1). The transitional surface zone, as shown on Figure 1, is derived from the transitional surface.
- s. Tree:** Any object of natural growth.

- t. **Utility Runway:** A runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 pounds maximum gross weight or less.
- u. **Visual Runway:** A runway intended solely for the operation of aircraft using visual approach procedures.

4. Establishment of Airport Zones.

In order to carry out the provisions of this article, there is hereby created and established an airport overlay district made up of the following zones which include all of the land lying beneath the approach surfaces, transitional surfaces, horizontal surfaces and conical surfaces as they apply to the Morgantown Airport. Such zones are shown on the Morgantown Airport Surface Area Map consisting of one sheet, which is hereby made a part of this chapter.

- a. **Utility Runway Non-precision Instrument Approach Zone.** The inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 2,000 feet at a horizontal distance 5,000 feet from the primary surface. Its center line is the continuation of the center line of the runway.
- b. **Runway Larger Than Utility with A Visibility Minimum Greater Than 3/4 Mile Non-precision Instrument Approach Zone.** The inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 3,500 feet
- c. **Transitional Zones.** The Transitional Zones are the areas beneath the transitional surfaces.
- d. **Horizontal Zone.** The Horizontal Zone is established by swinging arcs of 5,000 feet radii for all runway designated utility or visual and 10,000 feet for all others from the center of each end of the primary surface of each runway and connecting the adjacent arcs by drawing lines tangent to those arcs. The Horizontal Zone does not include the approach and Transitional Zones.
- e. **Conical Zone.** The Conical Zone is established as the area that commences at the periphery of the horizontal zone and extends outward there from a horizontal distance of 4,000 feet.

5. Permit Applications.

Except as otherwise provided in this article, no structure shall be erected, altered or maintained and no tree shall be allowed to grow in any zone created by this article to a height in excess of the applicable height herein established for such zone.

- A. Such applicable height limitations are hereby established for each of the zones in question as follows:
1. Utility Runway Non-precision Instrument Approach Zone: slopes 20 feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway center line.
 2. Runway Larger Than Utility with A Visibility Minimum Greater Than 3/4 Mile Non-precision Instrument Approach Zone: slopes 34 feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway center line.
 3. Transitional Zone: Slopes seven feet outward for each foot upward beginning at the sides of and at the elevation of the primary surface and the approach surface, and extending to a height of 150 feet above the airport elevation, which is 610 feet above mean sea level. In addition to the foregoing, there are established height limits sloping seven feet outward for each foot upward beginning at the sides of and the same elevation as the approach surface, and extending to where they intersect the conical surface. Where the precision instrument runway approach zone projects beyond the conical zone, there are established height limits sloping seven feet outward for each foot upward beginning at the sides of and the same elevation as the approach surface and extending a horizontal distance of 5,000 feet measured at ninety-degree angles to the extended runway center line.
 4. Horizontal Zone: established at 150 feet above the airport elevation or at a height of 760 feet above mean sea level.
 5. Conical Zone: slopes 20 feet outward for each foot upward beginning at the periphery of the horizontal zone and at 150 feet above the airport elevation and extending to a height of 350 feet above the airport elevation.
- B. Exceptions to height limitations. Nothing in this article shall be construed as prohibiting the construction or maintenance of any structure or growth of any tree up to the height limits established by other applicable Township zoning district limits or this article,

6. Variance

The following use restrictions shall apply:

- A. Notwithstanding any other provisions of this article, no use may be made of land or water within any zone established by this article in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport

lights and other lights, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards or otherwise in any way endanger or interfere with the landing, takeoff or maneuvering of aircraft intending to use the airport.

- B. Variances. Any person desiring to erect or increase the height of any structure or permit the growth of any tree or use property not in accordance with the regulations prescribed in this article may apply to the Zoning Hearing Board for a variance from such regulations. Prior to submitting an application to the Zoning Hearing Board, the applicant shall be required to submit FAA Form 7460-1 to the Federal Aviation Administration (FAA) and Pennsylvania Department of Transportation Form AV-57 to the Pennsylvania Department of Transportation. The application for variance shall be accompanied by a determination from the Federal Aviation Administration (FAA) and the Pennsylvania Department of Transportation as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship and that the relief granted will not be contrary to the public interest or create a hazard to air navigation.

7. Use Restrictions

Applications for permits shall be governed by the following:

- a. Future uses. Except as specifically provided in Subsection [a. \(2\)](#) and [\(3\)](#) hereunder, no material change shall be made in the use of land, no structure shall be erected or otherwise established and no tree shall be planted in any zone hereby created unless a permit thereof shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient detail to determine whether the resulting use, structure or tree would conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be granted subject to the other requirements and conditions of this section. No permit for a use inconsistent with the provisions of this article shall be granted unless a variance has been granted in accordance with Subsection [d.](#)
1. In the area lying within the limits of the horizontal zone and conical zone, no permit shall be required for any tree or structure less than 75 feet of vertical height above the ground, except when, because of terrain, land contour or topographic features, such tree or structure would extend above the height limits prescribed for such zones.
 2. In areas lying within the limits of the approach zones, but at a horizontal distance of not less than 4,200 feet from each end of the runway, no permit shall be required for any tree or structure less than 75 feet of vertical height above the ground, except when such tree or structure would extend above the height limit prescribed for such approach zones.

3. In the areas lying within the limits of the transition zones beyond the perimeter of the horizontal zone, no permit shall be required for any tree or structure less than 75 feet of vertical height above the ground, except when such tree or structure, because of terrain, land contour or topographic features, would extend above the height limit prescribed for such transition zones.
- b. Existing uses. No permit shall be granted that would allow the establishment or creation of an obstruction or permit a nonconforming use, structure or tree to become a greater hazard to air navigation than it was on the effective date of this article or any amendments thereto or when the application for a permit is made.
- c. Nonconforming uses abandoned or destroyed. Whenever the Zoning Officer determines that a nonconforming tree or structure has been abandoned or more than 80% torn down, physically deteriorated or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations.

Variances. Any person desiring to erect or increase the height of any structure or permit the growth of any tree or use property not in accordance with the regulations prescribed in this article may apply to the Zoning Hearing Board for a variance from such regulations. Prior to submitting an application to the Zoning Hearing Board, the applicant shall be required to submit FAA Form 7460-1 to the Federal Aviation Administration (FAA) and Pennsylvania Department of Transportation Form AV-57 to the Pennsylvania Department of Transportation. The application for variance shall be accompanied by a determination from the Federal Aviation Administration (FAA) and the Pennsylvania Department of Transportation as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship and that the relief granted will not be contrary to the public interest or create a hazard to air navigation.

- d. Obstruction marking and lighting. Any permit or variance granted may, if such action is deemed advisable to effectuate the purpose of this article and be reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to install, operate and maintain, at the owner's expense, such markings and lights as may be necessary. If deemed proper by the Zoning Hearing Board, this condition may be modified to require the owner to permit the airport, at its own expense, to install, operate and maintain the necessary markings and lights.
- e. FAA regulation update. In the event that any existing or future regulation of the Federal Aviation Administration (FAA), its successor agency or the Pennsylvania Department of Transportation is inconsistent with any provision of this article, then such FAA or state regulation shall prevail and such provision of this article shall automatically be modified thereby.

8. Pre-Existing Non-Conforming Uses.

The regulations prescribed by this Ordinance shall not be construed to require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations as of the effective date of this Ordinance, or otherwise interfere with the continuance of a non-conforming use. No non-conforming use shall be structurally altered or permitted to grow higher, so as to increase the non-conformity, and a non-conforming use, once substantially abated (subject to the underlying zoning ordinance), may only be re-established consistent with the provisions herein.

9. Obstruction Marking and Lighting.

Any permit or variance granted pursuant to the provisions of this Ordinance may be conditioned according to the process described in Section 6 to require the owner of the structure or object of natural growth in question to permit the municipality, at its own expense, or require the person requesting the permit or variance, to install, operate, and maintain such marking or lighting as deemed necessary to assure both ground and air safety.

10. Violations and Penalties.

Enforcement of the provisions of this Ordinance shall be in accordance with the provisions of Article 9 of the Caernarvon Township Zoning Ordinance, as amended, the terms and conditions of which are incorporated herein by this reference.

11. Appeals.

Appeals from the provisions of this Ordinance shall be governed by Article 8 of the Caernarvon Township Zoning Ordinance, as amended, particularly Sections 806 and 807 thereof, the provisions of which are incorporated herein by this reference.

12. Conflicting Regulations.

Where a conflict exists between any of the regulations or limitations prescribed in this Ordinance and any other regulation applicable to the same area, the more stringent limitation or requirement shall govern and prevail.

13. Severability.

If any of the provisions of this Ordinance or the application thereof to any person or circumstance are held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given the effect without the invalid provision or application, and to this end, the provisions of this Ordinance are declared to be severable.

14. Incorporation.

This Ordinance is incorporated in and made a part of the Zoning Ordinance of Caernarvon Township and shall be administered and enforced in accordance therewith. In addition, the Airport Zoning Overlay Map which is attached to this Ordinance is incorporated as a overlay of the Zoning Map of Caernarvon Township.

15. Repeal.

The terms and provisions of any prior ordinance of Caernarvon Township to the extent of its inconsistency herewith are hereby repealed. Particularly Ordinance No. 137 adopted March 8, 1994 is hereby repealed.

ENACTED AND ORDAINED this 10th day of January, 2012.

**CAERNAVON TOWNSHIP
BOARD OF SUPERVISORS**









