

**ORDINANCE NO. 285**

**AN ORDINANCE OF THE TOWNSHIP OF CAERNARVON, BERKS COUNTY, PENNSYLVANIA: TO AMEND THE CAERNARVON TOWNSHIP ZONING ORDINANCE OF 2007, AS AMENDED; AND TO REVISE AND INCORPORATE NEW SECTIONS GOVERNING CONDITIONAL USES.**

PURSUANT TO THE AUTHORITY CONTAINED IN THE PENNSYLVANIA MUNICIPALITIES PLANNING CODE, AS AMENDED, 53 P.S. § 10101, ET SEQ., THE BOARD OF SUPERVISORS OF CAERNARVON TOWNSHIP DOES HEREBY ENACT AND ORDAIN AS FOLLOWS:

**SECTION 1.           ARTICLE VI OF THE CAERNARVON TOWNSHIP ZONING ORDINANCE OF 2007 IS AMENDED TO INCORPORATE A NEW SECTION AS FOLLOWS:**

**Section 574.A Building Height Exceptions as a Conditional Use**

The maximum building height limitation for a building used as a principal use of a property within the C-3 Highway Commercial Zoning District may be increased by Conditional Use pursuant to Section 705, subject to the following standards:

- 1) The minimum lot size shall be thirty (30) acres (gross) or larger in area;
- 2) The property must be connected to public water and Applicant shall establish to the satisfaction of the Township that a fire hydrant or other means of access to a water source is available to allow for emergency response;
- 3) The property must have Highway Frontage to the Pennsylvania Turnpike;
- 4) The property must be within two hundred feet (200') to any state highway right-of-way;
- 5) No artificial lighting of the building shall be permitted at a height greater than fifty (50) feet (including light cast from any windows or other sources greater than fifty (50) feet in height);
- 6) The portion(s) of the building exceeding forty (40) feet in height shall be setback an additional distance beyond the base Zoning District's building setback equivalent to a distance 1/2 foot for each one (1) foot of height greater than forty (40) feet in height; except that this provision shall not serve to increase any setback along Highway Frontage to the Pennsylvania Turnpike. For example, if a building is proposed to be 100 feet in height in the C-3 Zoning District, it shall be setback an aggregate of 80 feet. However, the additional setback shall not be required along any Highway Frontage to the Pennsylvania Turnpike.
- 7) Applicant shall establish to the Township's satisfaction that the Township's emergency response personnel have sufficient equipment and capabilities to address an emergency response to the site and that the building complies with all applicable building and fire codes;
- 8) The maximum building height permissible under this Section shall be 150 feet as measured from the highest point of the roof to the average grade elevation along any building wall.

**SECTION 2.           ARTICLE VII OF THE CAERNARVON TOWNSHIP ZONING ORDINANCE OF 2007 IS AMENDED TO INCORPORATE A NEW SECTION AS FOLLOWS:**

**Section 705.   Conditional Use Procedures**

1.     An application for a conditional use shall be filed with the Board of Supervisors c/o Township Secretary, and shall state and provide:
  - a.     The name and address of the Applicant.
  - b.     The name and address of the owner of the real estate to be affected by the proposed conditional use application.
  - c.     A description and location of the tract or parcel on which the conditional use is proposed.
  - d.     A statement of the present zoning classification of the tract or parcel in question, the improvements thereon, and the present use thereof.
  - e.     A statement of the Section of this Ordinance which authorizes the conditional use.
  - f.     An accurate description of the present improvements and the additions intended to be made under the application for conditional use, including the size of proposed improvements, material and general construction features. The application shall be accompanied by a proposed plan showing the size and location of the proposed use, the location of all proposed buildings, all proposed facilities, including access drives and parking areas, and dimensional features demonstrating compliance with the applicable area, width, coverage, yard and design standards.
2.     The application for a conditional use shall be filed with the Secretary of the Township on such forms as may be prescribed for that purpose, and shall be accompanied by the application fee, prescribed from time to time, by the Board of Supervisors. No application shall be received for filing unless accompanied by the required filing fee.
3.     The Board of Supervisors shall hold a public hearing on the conditional use application in accordance with the procedures set forth in the Pennsylvania Municipalities Planning Code, Article IX:
  - a.     Public notice as defined by this Ordinance shall be given of the hearing. Notice of the hearing shall be conspicuously posted on the affected tract of land at least one (1) week prior to the hearing. The Board of Supervisors shall conduct its first hearing on the application within sixty (60) days from

the date the application is filed with the Township Secretary unless the time therefore is extended in writing or on the record by the Applicant.

- b. The parties to the hearing shall be the municipality, any person affected by the application who has made timely appearance of the record before the Board of Supervisors, and any other person, including civic or community organizations permitted to appear by the Board. The Board shall have the power to require that all persons who wish to be considered parties enter written appearances on forms provided by the Board for that purpose.
  - c. The Chairman or Acting Chairman of the Board shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses and documents requested by the parties.
  - d. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.
  - e. The Board of Supervisors shall keep a stenographic record of the proceedings. The appearance fee for a stenographer shall be shared equally by the Applicant and the Board. The cost of the original transcript shall be paid by the Board if the transcript is ordered by the Board or shall be paid by the person appealing from the decision of the Board if such appeal is made, and in either event, the cost of additional copies shall be paid by the person requesting such copy or copies. In all other cases the party requesting the original transcript shall bear the cost thereof.
  - f. The Board shall render a written decision within forty-five (45) days after the last hearing before the Board. Where the application is contested or denied, the decision shall be accompanied by findings of fact and conclusions based thereon, together with the reasons therefore.
  - g. A copy of the final decision shall be delivered to the Applicant and the parties before the Board personally or mailed to them not later than the day following the date of the decision.
4. In granting or denying a conditional use or establishing conditions with reference to such grants, the Board of Supervisors shall use as a guide in evaluating a proposed conditional use, and may determine to be mandatory, the standards listed in subsection 8 below. The burden of establishing compliance with those enumerated standards shall be upon the Applicant by a fair preponderance of the credible evidence. The standards required by this subsection shall be deemed a part of the definitional aspect under which a conditional use may be granted, and the failure of the Applicant to establish his or her compliance with all of the standards shall, in the discretion of the Board, be deemed either a basis for the establishing of conditions or limitations on an approval or the basis for a determination that the Applicant has not met the requirements for which a conditional use may be granted.

5. Nothing in this Section shall be construed to relieve the Applicant for a conditional use approval from obtaining other required approvals mandated by the Township Subdivision and Land Development Ordinance, or other applicable ordinances.
6. Appeals from a determination of the Board pursuant to any application for conditional use shall be only as prescribed within such times permitted by the applicable provisions of the Pennsylvania Municipalities Planning Code.
7. In granting an application for conditional use, the Board may attach such additional reasonable conditions and safeguards as it deems necessary and appropriate to insure compliance with the provisions of this Ordinance and to protect the health, safety and general welfare of the community.
8. The burden of establishing compliance with those enumerated standards below shall be upon the Applicant by a fair preponderance of the credible evidence. The standards required by this sub-section shall be deemed a part of the definitional aspect under which a conditional use may be granted, and the failure of the Applicant to establish his or her compliance with all of the standards shall, in the discretion of the Board, be deemed either a basis for the establishing of conditions or limitations on an approval or the basis for a determination that the Applicant has not met the requirements for which a conditional use may be granted. In addition to those standards set forth in the section of the Ordinance authorizing the conditional use, Applicant shall establish:
  - a. That the proposed change is consistent with the spirit, purpose, and intent of the Caernarvon Township Comprehensive Plan;
  - b. That the proposed change will not substantially injure or detract from the use of the neighborhood property or from the character of the neighborhood, and that the use of the property adjacent to the area included in the proposed change or plan is adequately safeguarded;
  - c. That the proposed change will serve the best interests of the Township, the convenience of the community, and the public welfare;
  - d. That the proposed change will not preclude the logical, efficient, and economical extension of public services, and facilities such as public utilities, police and fire protection, and public schools, and assure adequate arrangements for situation in specific instances;
  - e. That the proposed conditional use relief is suitable for the proposed location to probable effects upon traffic patterns and emergency response, and assure adequate access arrangements will be provided in order to protect roads from undue congestion and hazard;

- f. The adequacy of sanitation and public safety provisions, where applicable, and require a certificate of adequacy of sewage and water facilities from the appropriate governmental health agency in any case required herein; and
- g. Consider and apply all relevant provisions of the Municipalities Planning Code, including but not limited to 53 P.S. § 10913.2 (relating to conditional uses).

### **SECTION 3. SEVERABILITY**

If any article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase or word in this Ordinance, is, for any reason declared to be illegal, unconstitutional or invalid, by any Court of competent jurisdiction, this decision shall not affect or impair the validity of the Ordinance as a whole, or any other article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase, word, or remaining portion of the Ordinance. The Board of Supervisors hereby declares that it would have adopted the Ordinance and each article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase and word thereto irrespective of the limitations, restrictions, sentences, clauses, phrases, or word that may be declared illegal, unconstitutional or invalid.

### **SECTION 4. REPEALER**

All Ordinances inconsistent with the above provisions are repealed to the extent of their consistency.

### **SECTION 5. RENUMBERING**

The location and numerical designation of these above-referenced Sections shall be delegated to the discretion of the General Code Publishers who may renumber or reorder these revised sections as is necessary.


*[remainder of page left blank intentionally]*

**SECTION 6. EFFECTIVE DATE**

This Ordinance shall become effective five (5) days from the date of enactment, and shall be codified into the Caernarvon Township Code of Ordinances.

**ORDAINED** and **ENACTED** by the Supervisors of the Caernarvon Township in lawful session duly assembled this 25<sup>th</sup> day of April, 2017.

**BOARD OF SUPERVISORS  
CAERNARVON TOWNSHIP  
BERKS COUNTY, PENNSYLVANIA**

By:   
Allen Styer, III, Chairman

**ATTEST:**

By:   
Township Secretary