

Upon motion by Brian P. McGrath, seconded by John E. Morgan, the following Ordinance was duly enacted, 3 voting in favor of enactment, 0 voting against enactment.

ORDINANCE 2016-3

An Ordinance to amend Sections 2.04, 3.10.1, 3.10.3, 3.10.4, 3.10.5, 3.18.1, 4.07.2 and 5.06 of the Zoning Ordinance, No. 2011-8, as amended, to add six defined terms, amend regulations pertaining to buffer yards, landscaping and screening and off-street parking, amend uses permitted in the C-2 General Commercial District and amend regulations of the Lakefront Area Overlay District and containing repealer and severability clauses.

WHEREAS, zoning and land use regulations were amended and restated in the Zoning Ordinance enacted on August 16, 2011, Ordinance No. 2011-8 and later further amended by Ordinance 2012-12; and

WHEREAS, the Board of Supervisors has determined that the Zoning Ordinance should be amended so as to permit, within the C-2 General Commercial District eating and drinking establishments and general retail establishments of all sizes, subject to amendment of regulations for buffer yards, landscaping and screening where such establishments abut residential uses; and

WHEREAS, the Board of Supervisors has determined that amendment of the minimum requirements for planting strips and of landscaping standards for parking lots is necessary to ensure landscaping and preservation of pervious areas in parking lots, clarify screening and buffering requirements and to make such items required improvements for purposes of landowners' obligations and the Township's regulatory authority; and

WHEREAS, in order to preserve pervious areas and surfaces, the Board of Supervisors believes that it is necessary to establish limitations on the extent of improved parking areas and to allow and ensure stormwater management for land-banked spaces available for future or additional parking; and

WHEREAS, in view of determinations which reflect misunderstanding of the intent and objectives of the Lakefront Area Overlay District, the Board of Supervisors believes that it is necessary to amend regulations governing such district so as to clarify the intentions and the limited application of Section 5.06.3; and

WHEREAS, the Board of Supervisors has determined that it is necessary and appropriate to establish four new terms which are used in the amended regulations of Ordinance Section 3.10.

IT IS HEREBY ORDAINED AND ENACTED by the Board of Supervisors of the Township of Millcreek, Erie County, Pennsylvania, and it is ordained and enacted, as follows:

1.01 Section 2.04 of the Zoning Ordinance is hereby amended, to add the four following defined terms:

End Cap - When used in this Ordinance, shall mean and refer to a cap installed at the end of something, such as a planting island at the end of a row of off-street parking.

Impervious Surface - A surface that prevents the infiltration of water into the ground. Impervious surface (or areas) includes, but is not limited to: roofs, additional indoor living spaces, patios, garages, storage sheds and similar structures, parking or driveway areas and any streets and sidewalks. Any surface areas proposed initially to be gravel or crushed stone shall be assumed to be impervious surfaces.

Lakefront Area Overlay District - Shall mean and include that section or area of Millcreek Township situated from the waters of Lake Erie southward to the toe of the bluff.

Landscaping Material - Shall mean and include any combination of living plants such as trees, shrubs, vines, flowers, ground cover and grass, and shall not be deemed to include stone and/or other non-vegetative cover.

Parking Bay - When used in this Ordinance, shall mean and include that area consisting of one or two rows of parking spaces and the aisle from which motor vehicles enter and leave the spaces.

Pervious Area - Any area and/or surface not defined in this Ordinance as impervious.

1.02 Table 3.10 in Section 3.10.1(2) of the Zoning Ordinance, pertaining to side and rear yard setbacks where a nonresidential use abuts a residential use, is hereby amended to provide that where the Adjacent Use is C-2 General Commercial District, the side and rear yard setbacks shall be increased from 30 feet to 40 feet each.

1.03 Section 3.10.3 of the Zoning Ordinance is hereby amended to provide as follows:

3.10.3 Where a C-1 district abuts a residential district, all land developments, whether commercial, industrial or residential, shall provide as screening in side yards and/or rear yards as abut the distinguished district a planting screen along the entire boundary of said yard, exclusive of public or private rights-of-way and easements, to be located not less than 4 feet and not more than 20 feet from the boundary line of the adjacent property(ies). Also, where a C-2, C-3, C-4, RC or industrial district abuts a residential district, all land developments, whether commercial, industrial or residential, shall provide as screening in side yards and/or rear yards as abut the distinguished district a planting screen along the entire boundary of said yard, exclusive of public or private rights-of-way and easements, to be located not less than 4 feet and not more than 40 feet from the boundary line of the adjacent property(ies), subject to the following requirements:

- (1) Planting Strips. All developments subject to provisions of this Section shall assure a planting strip to be located parallel to the boundary line of the side and/or rear yard, as applicable, said planting strip to begin at the applicable boundaries and extend the required width of the respective zoning district from the said boundary line(s), the entire planting strip to be covered properly and maintained as required by the provisions of Section 3.10.4.
- (2) Planting Standards. All developments requiring planting strips shall show required plantings on the land development plan.

1.04 Section 3.10.4 of the Zoning Ordinance, establishing minimum requirements for planting planting strips, is hereby amended to provide as follows:

3.10.4 Minimum Requirements - Planting Strips.

- (1) Planting materials or trees used in the buffer yard and planting strip shall be at least 6 feet in height at the time as planting, as measured from the root collar to the top of the crown, and shall conform to species and spacing as described in the Township's landscaping planting standards in order to prevent direct views of the land development. However, if deemed appropriate to assure safety and visibility, the Zoning Officer may require that the visual screen extend only to a point not nearer than 5 feet from a public right-of-way to provide a clear sight triangle. Plantings shall be completed in the current planting season or within the first two (2) months of the following season if construction takes place during the off season. In all cases, plantings shall be installed not later than six (6) months following issuance of a certificate of occupancy
- (2) Trees, shrubs, fences, walls and other landscape features depicted on plans approved by the Township shall be considered to be elements of the project in the same manner as parking, stormwater management facilities and all other required improvements and other details are elements of the plan. The planting strip shall be maintained permanently. The land owner, or agents and/or successors in interest to the landowner, shall be jointly and severally responsible for the following:
 - (i) Regular maintenance of all landscaping materials in good condition and in a way that presents a healthy, neat and orderly appearance. All landscaping materials shall be maintained free from disease, pests, weeds and litter. This maintenance shall include weeding, watering, fertilizing, pruning, mowing, edging, mulching and/or other maintenance, as needed and in accordance with acceptable horticultural practices.
 - (ii) The prompt repair or replacement of required landscape structures (e.g., walls, fences) to a structurally sound condition.
 - (iii) The regular maintenance and prompt repair or replacement, where necessary, of any landscaping materials required by this Ordinance.
 - (iv) Continuous maintenance of the site.

- (3) Up to 50 percent of the required length of a planting strip may be comprised of walls or fences with a height of 72 inches (72") from finished grade, to achieve the required screening. Walls or fences shall be compatible with architectural style and building materials; shall be constructed of appropriate materials, including but not limited to iron grating, wood, stone or brick; and shall provide the required degree of opacity, durability and aesthetic compatibility with the surrounding context. The finished side of a fence or wall shall be placed on the outside of the fenced area. Chain link fencing, barbed wire and razor wire are not permitted. Walls greater than 30 feet (30') in length shall incorporate some form of visual relief, including but not limited to pattern breaks, varying wall construction, vertical features such as columns, differing construction materials or a combination of the above.
- (4) Screens and planting strips shall be broken only at points of vehicular or pedestrian access.
- (5) The width of the planting strip shall not be used as a parking area and shall be occupied only by the required plantings and required ground cover.

1.05 Section 3.10.5 of the Zoning Ordinance, which establishes landscaping requirements for parking lots, is hereby amended to provide as follows:

3.10.5 Parking Lot Landscaping Standards. The following landscaping requirements shall apply to parking lots that accommodate or may accommodate 15 or more parking spaces and are intended to increase pervious surfaces to increase groundwater recharge and mitigate runoff and encourage the planting of appropriate vegetation to enhance the built environment.

- (1) Planting Island. One planting island shall be provided for each 15 parking spaces, at a minimum, and at the end of each parking row, unless an end cap island is required.
 - (i) The pervious surface area of each island shall be 17 feet long and a minimum of 12 feet wide.
 - (ii) Where two or more islands are required in a parking row, they shall be placed so that in no instance are the islands separated by more than 15 spaces.
 - (iii) All planting islands shall contain, at a minimum, one deciduous street tree per planting island. The tree shall have a clear trunk at least six feet (6') above the finished grade to allow vehicular circulation and visibility beneath the canopy.
- (2) End Cap Planting Island. An end cap planting island shall be required at the end of each row of parking to separate the rows of parking and drive aisles.
 - (i) End cap planting islands shall meet all of the minimum requirements for planting islands.

- (3) Planting Median. A planting median, meaning a strip of land landscaped as required by this subsection, shall be placed between every third parking bay of adjacent parking bays, at a minimum, to prevent traffic movement across parking aisles.
- (i) All planting medians shall be a minimum of 15 feet (15') wide and may include a sidewalk, where necessary or appropriate for pedestrian circulation.
 - (ii) All planting medians, at a minimum, shall include the following vegetation:
 - (a) One deciduous tree, planted 35 feet on center, in a continuous or staggered row; and
 - (b) Ten (10) shrubs for every tree required, planted in rows or clustered groups.
 - (iii) All planting medians shall contain defined breaks, as necessary, to provide pedestrian circulation between bays of parking. The bays shall allow for handicap accessibility from one side of the planting median to the other and onto the any sidewalk located within the planting median.
- (4) Ground Cover. In addition to any other required plantings, all parking lot planting areas shall be planted with turf grass, ornamental grasses (not exceeding 24 inches at maturity) or other ground cover plant material. Mulch, stone or similar materials may be used sparingly.
- (5) Pervious Surface. In parking lots with an area of one-half acre or more, a minimum of 7 percent (7%) of parking lot area must be and remain pervious within the interior of the parking lot.
- (i) Pervious surface calculations shall include all pervious area within planting islands, end cap islands and planting medians. Sidewalks within a planting median may be included in the pervious surface area calculation for the median.
 - (ii) To calculate the amount of required pervious surface area, the impervious surface area shall include all parking spaces and drive aisles that access parking spaces.
 - (iii) If the required minimum number and size of parking lot landscaping areas required above do not result in 7% of pervious surface, the 7% requirement shall be met by increasing the size and number of the required planting islands, end cap islands or planting medians.

1.06 Section 3.18.1(7) of the Zoning Ordinance, pertaining to Land Banking of Spaces within general regulations for Off-Street Parking, is hereby amended to add the following as subsection (iii), with former subsection iii (relating to authority of the Board of Supervisors) to be renumbered subsection iv:

- (iii) Stormwater management shall be provided for land banked spaces; and
- (iv) The Board of Supervisors has authority to require that the said spaces be constructed in the future if the Board determines them to be needed.

1.07 Section 3.18.1 of the Zoning Ordinance, establishing general regulations for Off-Street Parking, is hereby amended to add new subsection 3.18.1(11) pertaining to Maximum Parking, former subsection 3.18.11 to be renumbered 3.18.1(12), as follows:

- (11) Maximum Parking. The maximum amount of permitted parking shall be 120 percent (120%) of the minimum required parking. Applicants who anticipate a need for additional parking in excess of the maximum number authorized by this subsection should design their developments with suitable area for additional parking that may, in the future, be needed. The land banked parking spaces may be constructed by the applicant if and when authorized and approved by the Board of Supervisors, on recommendation by the Zoning Officer.
- (12) No off-street parking space or area shall be located or arranged so as to permit or cause any vehicle to be backed out onto any public street or highway, except in the case of single-family or two-family detached dwelling units.

1.08 Subsections (10) and (19) of Section 4.07.2 of the Zoning Ordinance, which defines those uses permitted in the C-2 General Commercial District, are hereby amended to delete former reference to area of the establishment, as follows:

- (10) Eating and drinking establishment, including private clubs and social halls.
- (19) Retail business establishment; and

1.09 Subsections 5.06.2 and 5.06.3 of the Zoning Ordinance, pertaining to the Lakefront Area Overlay District, are hereby amended and restated so as to provide as follows:

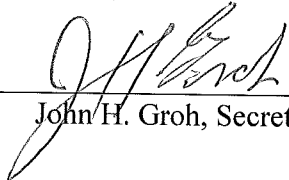
- 5.06.2 In each additional row of lots or dwellings, the maximum height may be increased by five feet (5') to a maximum height of thirty-five feet (35') in developments having four or more rows of lots and/or dwellings.
- 5.06.3 In the case of a single row of lots, the maximum dwelling height shall not exceed thirty-five feet (35'). Where lots abut the north and south lines of the same street or road within this Overlay District, the height limitations set forth in Subsections 5.06.1 and 5.06.2 shall govern. In any case, for there to be a single row of lots, there must be no dwelling lots or dwellings within 200 feet measured from the back of the proposed dwelling in a landward area defined by a 180 degree arc starting and ending at each corner of the dwelling.

1.10 The Zoning Officer and Solicitor are authorized to prepare and disseminate corrected pages of the Township's Zoning Ordinance reflecting the amendments enacted by this Ordinance. As these amendments may not be included in the initial codification of Millcreek Township ordinances, these amendments shall be memorialized as deemed necessary until they can be incorporated into the code of ordinances.

1.11 If any section, subsection, sentence, clause, phrase or portion of this Ordinance or its application to any person, property or circumstances is for any reason held invalid or unconstitutional by any court, such holding shall not be construed to affect the validity of any of the remaining provisions of this Ordinance or its application, for such portion shall be deemed as a separate, distinct and independent provision from the remaining provisions which shall be and remain in full force and effect. It is hereby declared the legislative intent that this Ordinance would have been adopted had such valid or unconstitutional provision of its application not been included herein.

1.12 All Ordinances or parts of any Ordinances inconsistent herewith are hereby repealed.

BE IT ENACTED this 22nd day of March, 2016.



John H. Groh, Secretary