

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

ORDINANCE 2016-10

An Ordinance to amend Section 8.04 of the Zoning Ordinance, No. 2011-8, as amended, to add as a use on special exception adaptive reuse of certain nonresidential structures and establishing criteria and performance standards therefor, and containing repealor 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, as since further amended; and

WHEREAS, over 50 nonresidential structures having a gross floor area of 7,000 square feet or more are currently located in residential zoning districts; and

WHEREAS, structures lawfully established in residential areas as schools, skilled nursing facilities, churches and other nonresidential purposes have ceased to be used for such purposes; and

WHEREAS the Board of Supervisors has determined that the Zoning Ordinance should be amended so as to authorize as a use on special exception within the RR, R-1 and R-2 Residential zoning districts, the adaptive reuse of certain nonresidential structures which were lawfully established under applicable zoning regulations but are no longer being used as such, subject to compliance with general and specific criteria and performance standards; and

WHEREAS, the Board of Supervisors has determined that amendment of the Zoning Ordinance to allow for such use as one on special exception is in the best interest of the Township as it will make provision for lawful uses subject to compliance with criteria intended to protect neighboring residential uses and in a process that allows the Zoning Hearing Board to establish additional conditions and requirements to address given factual circumstances; and

WHEREAS, the Millcreek Township Planning Commission, after public notice, received comment on and considered the proposed amendment and recommended its approval.

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 Article 8, Section 8.04 of the Zoning Ordinance is hereby amended, to add a new subsection (11), providing as follows:

8.04.11 Adaptive Reuse of Non-Residential Structures

Land situated in a RR, R-1 or R-2 Residential zoning district which is occupied by at least one structure having a gross floor area in excess of seven thousand (7,000) square feet constructed for public, religious establishment, institutional, school and/or other non-residential uses which were permitted uses or otherwise lawful uses when first established, and has been actively utilized for a non-residential use for not less than five (5) consecutive years, and whose use as such has ended may be used as a nonresidential facility for those uses and purposes authorized in subsection (2), subject to the specific criteria established in this Section and those general criteria for uses on special exception set forth in this ordinance (code).

- (1) To be entitled to consideration, the discontinued use must have been a permitted, nonconforming or otherwise lawfully established use when use of said building(s) first commenced. This shall include structures and uses which, under State, Federal or local laws then existing could at such time be lawfully constructed and established.
- (2) Such land and structure(s), upon the Zoning Hearing Board's determination that all prerequisites, specific criteria and applicable general criteria therefore have been met, may be used for the following purposes:
 - (i) Business services
 - (ii) Professional services
 - (iii) Community center
 - (iv) Continuing care facility
 - (v) Daycare facility
- (3) Word Usage and Definitions. For purposes of this Section, general definitions in Section 2.04 of the Ordinance (Section 145-11 of the Code) shall apply. In addition:
 - (i) *Community center* shall mean premises offering social, educational, recreational and other services for the benefit of youth, seniors and other persons which is under the control of a public body, an institutional body or a nonprofit corporation.
 - (ii) The uses specifically authorized do not include any other use which is not expressly permitted or authorized in such residential district, and are expressly intended not to include any other use authorized in commercial zoning districts and/or other non-residential zoning district. As an example, *professional services* shall not include hospitals, clinics, diagnostic facilities, personal services or outpatient emergency medical facilities. This Section does not authorize any use involving drive-through or like facilities for any allowed use.
- (4) Specific Criteria for Use. An applicant for this use on special exception must establish that the application satisfies all of the following specific criteria for the use:
 - (i) The discontinued use meets the definition set forth above in subsection (1);
 - (ii) The use proposed meets one or more of those set forth above in subsection (2);


- (iii) The applicant shall submit a Trip Generation Report to the Township Engineer for review and approval that compares the anticipated trip generation of the proposed use and that of the existing (or most recently discontinued use). Prior to approval, the Township Engineer shall determine whether the report accurately demonstrates that the proposed use will not generate overall daily trips or peak hour trips that exceed those of the existing (or most recently discontinued) use by more than 5%;
 - (iv) The application will meet, at a minimum, all existing regulations governing such use when located in a C-1 Commercial District that abuts a Residential District, including but not limited to lot, yard and height regulations, buffer yards and landscaping, exterior lighting, fences and hedges, loading, traffic and circulation, non-residential use general standards, off-street parking, outside storage, sidewalks, sight distances, clear sight triangles, storm water management and signs in Chapter 145 of the Code (and in the current ordinance) as is practicable given the existing location of structures and lot boundaries;
 - (v) The said use(s) shall not be open to the public prior to 8 a.m. or later than 6 p.m. on any day of the week;
 - (vi) No addition to the footprint or height of existing structures shall be permitted;
 - (vii) The use shall at all times provide landscaping, screening and buffer areas sufficient in the facts of the given application to buffer such uses and their parking and interior traffic circulation from the adjacent residential uses;
 - (viii) As is necessary or appropriate in the facts, the existing structure's exterior shall be preserved and/or maintained so as to be compatible with the adjacent residential uses;
 - (ix) Drive-through facilities shall not be permitted;
 - (x) Traffic exiting from said parcel shall be directed solely toward the nearest collector or arterial street;
 - (xi) Mixed occupancy of uses identified in subsection 2 may be permitted subject to the provisions of subsection 4 being met;
 - (xii) The Zoning Hearing Board shall require such measures, in addition to those specified in subsection 4, as it deems necessary and appropriate to reduce impact of the use on neighboring residential purposes, including but not limited to screening and buffer areas, exterior lighting, signage and traffic volume limitations as warranted in the facts of the appeal.
- (5) Discretion of the Zoning Hearing Board. The Zoning Hearing Board shall attach such requirements and conditions as it believes are appropriate in the circumstances to ensure compliance with requirements of this Section and with applicable provisions of the Zoning Ordinance.

1.02 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.

1.03 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.

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

BE IT ENACTED this 23rd day of August, 2016.



John H. Groh, Secretary