

## **Part 21**

### **Airport Zone**

#### **§27-2101. Purpose and Specific Intent.**

The purpose of this Ordinance is to create an Airport District Overlay that considers safety issues, around the New Garden Airport (“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 or 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.

#### **§27-2102. Relation to Other 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.

#### **§27-2103. 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.

**Airport Elevation:** The highest point of an airport’s useable landing area measured in feet above sea level. The airport elevation of the Airport is 436 feet.

**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.C.S.§5102.

**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).

**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.

**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 (12) foot vertically for a horizontal distance of 4,000 feet.

**Department:** Pennsylvania Department of Transportation.

**FAA:** Federal Aviation Administration of the United States Department of Transportation.

**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 be mean sea level elevation unless otherwise specified.

**Horizontal Surface (Zone):** An imaginary plan 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 arcs by tangent lines. The radius of each arc is based on the planned approach.

**Larger Than Utility Runway:** A runway that is constructed or intended to be used by propeller driven aircraft of greater than 12,500 pounds maximum gross weight and jet powered aircraft.

**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.

**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.

**Obstruction:** Any structure, growth or other object, including a mobile object, which exceeds a limiting height set by this Ordinance.

**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.

**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.

**Runway:** A defined area of an airport prepared for landing and takeoff of aircraft along its length.

**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.

**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).

**Tree:** Any object of natural growth.

**Utility Runway:** A runway that is constructed or intended to be used by propeller driven aircraft of 12,500 pounds maximum gross weight or less.

**Visual Runway:** A runway intended solely for the operation of aircraft using visual approach procedures.

**§27-2104. Establishment of Airport Zones.**

There are hereby created and established certain zones within the Airport District Overlay Ordinance, defined elsewhere in this Part and depicted on Figure 1, hereby adopted as part of this Ordinance, which include:

1. Approach Surface Zone
2. Conical Surface Zone
3. Horizontal Surface Zone
4. Primary Surface Zone
5. Transitional Surface Zone

**§27-2105. Permit Applications.**

As regulated by Act 164 and defined by 14 Code of Federal Regulations Part 77.13 (a) (as amended or replaced), any person who plans to erect a new structure, to add to an existing structure, or to erect and maintain any object (natural or manmade), in the vicinity of the airport, shall first notify the Department's Bureau of Aviation (BOA) by submitting PennDOT Form AV-57 to obtain an obstruction review of the proposal at least 30 days prior to the commencement thereof. The Department of BOA response must be included with this permit application for it to be considered complete. If the Department's BOA returns a determination of no penetration of airspace, the permit request should be considered in compliance with the intent of this Overlay Ordinance. If the Department's BOA returns a determination of a penetration of airspace, the permit shall be denied, and the project sponsor may seek a variance from such regulations as outlined elsewhere herein.

No permit from the Department's BOA is required to make maintenance repairs to or to replace parts of existing structures which do not enlarge or increase the height of an existing structure.

**§27-2106. Variance.**

Any request for a variance shall be submitted to the Zoning Hearing Board and shall include documentation in compliance with 14 Code of Federal Regulations Part 77 Subject B (FAA Form 7460-1 as amended or replaced). Determination of whether to grant a variance will depend on the

determinations made by the FAA and the Department's BOA as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable air space. In particular, the request for a variance shall consider which of the following categories the FAA has placed on the proposed construction in:

1. No Objection – the subject construction is determined not to exceed obstruction standards and marking/lighting is not required to mitigate potential hazard. Under this determination a variance shall be granted.

2. Conditional Determination – the proposed construction/alteration is determined to create some level of encroachment into an airport hazard area which can be effectively mitigated. Under this determination, a variance shall be granted contingent upon implementation of mitigating measures as described in provisions relating to Obstruction Marking and Lighting.

3. Objectionable – The proposed construction/alteration is determined to be a hazard and is thus objectionable. A variance shall be denied and the reasons for his determination shall be outlined to the applicant.

Such requests for variances shall be granted where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship and that relief granted will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the intent of this Ordinance.

**§27-2107. Use Restrictions.**

Notwithstanding any other provisions of this Ordinance, no use shall be made of land or water within the Airport District Overlay in such a manner as to create electrical interference with navigational signals or radio communications between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, impair visibility in the vicinity of the airport, create bird strike hazards or otherwise endanger or interfere with the landing, takeoff or maneuvering of aircraft utilizing the airport.

**§27-2108. 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 continuation 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 reestablished consistent with the provisions herein.

**§27-2109. 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 “Variance” found elsewhere in this Part to require the owner of the structure or object of natural growth in question to permit the Township, 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.

**§27-2110. Enforcement, Violations and Penalties.**

It is the duty of the Zoning Officer to administer and enforce the regulations of this Section. Applications for permits and variances shall be made to the Zoning Officer. Applications required to be submitted to the Zoning Officer shall be promptly considered and granted or denied. Applications for action by the Zoning Hearing Board shall be forthwith transmitted by the Zoning Officer.

Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of this Section shall, upon being found liable therefore in a civil enforcement proceeding commenced by the Township, pay of judgment of not more than \$500.00 plus all court costs, including reasonable attorney fees incurred by the Township as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of the determination of violation by the Magisterial District Justice. If the defendant neither pays nor timely appeals the judgment, the Township may enforce the judgment pursuant to the applicable rules of Civil Procedure. Each day that a violation continues shall constitute a separate

violation, unless the Magisterial District Justice determining that there has been a violation, further determines that there was a good faith basis for the person, partnership or corporation violating this Section to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of determination of a violation by the Magisterial District Justice and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable attorney fees collected for the violation of this Section shall be paid over to the Township.

The Court of Common Pleas, upon petition, may grant an order of stay, upon cause shown, tolling the per diem fine pending a final adjudication of the violation and judgment.

Nothing contained in this Section shall be construed or interpreted to grant to any person or entity other than the Township the right to commence any action for enforcement pursuant to this Section.