

**BOROUGH OF ALBURTIS
LEHIGH COUNTY, PENNSYLVANIA**

Ordinance No. 400

(Duly Adopted October 9, 2002)

AN ORDINANCE AMENDING THE BOROUGH OF ALBURTIS ZONING ORDINANCE TO TREAT NEWER HEALTH CARE PROFESSIONS UTILIZING MASSAGE (SUCH AS MASSAGE THERAPY, MOVEMENT EDUCATION, REFLEXOLOGY, AND SOMATIC PRACTICES) IN THE SAME MANNER AS LONG-RECOGNIZED HEALTH CARE PROFESSIONS, SUCH AS PHYSICAL THERAPY AND CHIROPRACTIC; TO PERMIT HOME OFFICES AND BUSINESSES IN THE L-1 LIGHT INDUSTRIAL/OFFICE RESEARCH DISTRICT; TO PERMIT NON-RESIDENT EMPLOYEES OF HOME OFFICES AND BUSINESSES IN NON-RESIDENTIAL DISTRICTS; TO PERMIT CULTURAL FACILITIES, COMMUNITY CENTERS, ADULT EDUCATION CENTERS AND SIMILAR FACILITIES, PRIVATE COMMERCIAL EDUCATIONAL INSTITUTIONS, REPAIR SERVICES, AND ADMINISTRATIVE, MANAGEMENT, AND PROFESSIONAL OFFICES IN THE L-1 LIGHT INDUSTRIAL/OFFICE RESEARCH DISTRICT; TO PERMIT MULTIPLE USES ON RESIDENTIAL LOTS WHICH ARE NOT LOCATED IN RESIDENTIAL DISTRICTS; AND TO CONFORM TO THE HEARING PROCEDURES REQUIRED BY PENNSYLVANIA ACT 2002-43.

WHEREAS, the Borough of Alburdis is empowered to enact, amend, and repeal zoning ordinances under Article VI of the Pennsylvania Municipalities Planning Code, 53 PA. STAT. ANN. § 10601 *et seq.*; and

WHEREAS, Borough Council has enacted a zoning ordinance, which has been codified as Chapter 137 of the Code of the Borough of Alburdis (1981), as amended; and

WHEREAS, current zoning requirements concerning massage fail to treat newer health care professionals, such as massage therapists, in the same manner as physicians, chiropractors, physical therapists and other long-recognized health care professionals; and

WHEREAS, the current ordinance permits home offices and businesses in all zoning districts except the L-1 district, and there is no reason to treat such uses differently in the L-1 district than in the C-1 district; and

WHEREAS, Borough Council believes that it is not necessary to restrict employees of home offices or business to members of the resident family when the use is located in either the C-1 district or the L-1 district, since even more extensive commercial activities are permitted in those districts; and

WHEREAS, Borough Council believes that it is not necessary to limit the number of uses on a residential lot when the lot is located in either the C-1 district or the L-1 district, since the such a restriction is designed to protect the residential character of residential districts; and

WHEREAS, Borough Council believes that certain commercial uses permitted by right in the C-1 district are also compatible with the L-1 district and should be permitted by right in that district as well; and

WHEREAS, Pennsylvania Act 2002-43 has amended various procedures relating to zoning hearings; and

WHEREAS, Pennsylvania Act 2002-43 also includes requirements relating to “no-impact home-based businesses,” but those requirements are not effective until December 1, 2002, and Borough Council will defer incorporating those requirements into the zoning ordinance until further review and comparison with the existing provisions relating to home offices and businesses; and

WHEREAS, Borough Council desires to amend the provisions of the Zoning Ordinance as provided below; and

WHEREAS, more than thirty (30) days prior to the date of the enactment of this Ordinance, the Borough submitted a copy of this Ordinance to the Alburtis Planning Commission and the Lehigh Valley Planning Commission, to provide them with an op-

portunity to submit recommendations, in accordance with the provisions of 53 PA. STAT. ANN. §§ 10505(a), 10609(c), and 10609(e); and

WHEREAS, the Alburtis Planning Commission recommended that this Ordinance be approved by a unanimous vote at its meeting on August 20, 2002; and

WHEREAS, the Lehigh Valley Planning Commission reviewed this Ordinance at its meeting on September 26, 2002 and considers it to be a matter of local concern; and

WHEREAS, on September 25, 2002 and October 2, 2002, the Borough published a public notice in the *East Penn Press*, a newspaper of general circulation in the Borough of Alburtis, of its intention to conduct a hearing on this Ordinance on October 9, 2002 at 7:00 P.M. in the Borough Hall, 260 Franklin Street, Alburtis, Pennsylvania, and to consider the adoption of this Ordinance thereafter. The notice stated the particular nature of the matter to be considered at the hearing, as provided in the title of this Ordinance; and

WHEREAS, immediately prior to the vote of Borough Council enacting this Ordinance, Borough Council conducted a hearing on this Ordinance, pursuant to 53 PA. STAT. ANN. §§ 10505(a) and 10609(b), and did not substantially change or revise this Ordinance as a result of the hearing or the comments of the Alburtis Planning Commission or the Lehigh Valley Planning Commission;

NOW, THEREFORE, be it **ORDAINED** and **ENACTED** by the Borough Council of the Borough of Alburtis, Lehigh County, Pennsylvania, as follows :

SECTION 1. Section 137-5 of Chapter 137 of the Code of the Borough of Alburtis (relating to Zoning Ordinance—Definitions and Usage—Definitions) shall be amended by revising the definition of “Home Office or Business”, paragraph (1) of the initial definition, as follows (with deletions indicated in ~~strike-outs~~ and insertions indicated by double underlining)¹:

¹ To be re-codified as Section 21-247(a)(1) in the forthcoming re-codification of the Borough’s ordinances.

Home Office or Business.

A business or office conducted in the home or principal buildings of a lot used for residential purposes by members of the resident family, provided that:

(1) no person may be employed in a “home office or business” who is not a member of the resident family if the “home office or business” is located in a residential District (R-1, R-2, or R-3);

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SECTION 2. Section 137-5 of Chapter 137 of the Code of the Borough of Al-
burtis (relating to Zoning Ordinance—Definitions and Usage—Definitions) shall be
amended by revising the definition of “Massage” as follows (with deletions indicated in
~~strike-outs~~ and insertions indicated by double underlining)²:

Massage; Certain Health Care Professions Utilizing Massage.

A. Massage. The term “Massage” shall mean any Any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external parts of the human body with the hands or the aid of any mechanical or electrical apparatus or appliances, with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointment, or other such similar preparations commonly used in the practice of massage, under such circumstances that it is reasonably expected that the person to whom the treatment is provided, or some third party on his or her behalf, will pay money or give any other consideration or any gratuity therefor.

² To be re-codified as Section 21-256 in the forthcoming re-codification of the Borough’s ordinances.

B. Massage Therapy. The term “Massage Therapy” shall mean a profession dealing with those practices using the application of a system of structured touch to the human body, which may include, but is not limited to, holding, pressure, positioning, and causing movement of the body by manual means. The term includes complementary methods, including the external application of water, heat, cold, lubricants, or other topical preparations; and electro-mechanical devices that mimic or enhance the actions possible by the hands. The term does not include the diagnosis of illness or disease, medical procedures, chiropractic adjustment, electrical stimulation, ultrasound, prescription of medicines or the use of modalities for which a license to practice medicine, chiropractic, physical therapy, occupational therapy, podiatry, or other practice of the healing arts is required.

C. Movement Education. The term “Movement Education” shall mean the art and science of teaching self-awareness and habitual movement patterns by verbally and physically guiding the student in the self-discovery of alternative and improved postures, coordination, and choices of behavior.

D. Reflexology. The term “Reflexology” shall mean a science based on the premise that there are zones and reflex areas in the feet and hands which correspond to all glands, organs, parts, and systems of the body. The term incorporates the physical act of applying specific pressure using thumb, finger, and hand techniques to these reflex areas. The term does not include the diagnosis of illness or disease, medical procedures, chiropractic adjustment, electrical stimulation, ultrasound, prescription of medicines or the use of modalities for which a license to practice medicine, chiropractic, physical therapy, occupational therapy, podiatry, or other practice of the healing arts is required.

E. Somatic Practices. The term “Somatic Practices” shall mean complementary health care practice systems of activities including, but not limited to, touch, verbal interaction, and movement in order to assess and assist an individual in making changes in breathing, movement, and lifestyle patterns. The term does not include the diagnosis of illness or disease, medical procedures, chiropractic adjustment, electrical stimu-

lation, ultrasound, prescription of medicines or the use of modalities for which a license to practice medicine, chiropractic, physical therapy, occupational therapy, podiatry, or other practice of the healing arts is required.

F. Medical Related Professions. For purposes of this Chapter, practitioners of message therapy, movement education, reflexology, or somatic practices who are licensed or certified by the Commonwealth of Pennsylvania to so practice shall be considered professionals in a medically-related profession.

SECTION 3. Section 137-5 of Chapter 137 of the Code of the Borough of Alburtis (relating to Zoning Ordinance—Definitions and Usage—Definitions) shall be amended by revising the definition of “Massage Parlor” as follows (with deletions indicated in ~~strike-outs~~ and insertions indicated by double underlining)³:

Massage Parlor.

Any establishment having a source of income or compensation derived from the practice of massage, and which has a fixed place of business, where any person, firm, association, or corporation engages in or carries on the practice of massage; provided, however, that this definition shall not be construed to include a hospital, nursing home, or medical clinic, or the office of a physician, surgeon, chiropractor, osteopath, or physical therapist, or practitioner of message therapy, movement education, reflexology, or somatic practices, duly licensed or certified by the Commonwealth of Pennsylvania, nor barber shops or beauty salons in which massages are administered only to the scalp, face, neck, or the shoulders. In addition, this definition shall not be construed to include a volunteer fire department, a volunteer rescue squad, or a nonprofit organization operating a community center, swimming pool, tennis court, or

³ To be re-codified as Section 21-257 in the forthcoming re-codification of the Borough’s ordinances.

other educational, cultural, recreational, or athletic facilities, and facilities for the welfare of the residents of the area.

SECTION 4. Article VIII of Chapter 137 of the Code of the Borough of Alburdis (relating to Zoning Ordinance—Regulations for the L-1 Light Industrial-Office Research Zoning District) shall be amended as follows (with deletions indicated in ~~strike-outs~~ and insertions indicated by double underlining):

**Article VIII — Regulations for L-1
Light Industrial-Office Research District**

* * *

§ 137-44 Uses permitted by right.⁴

D. Cultural facilities, including art galleries, auditoriums, libraries, or museums open to the public or connected with a permitted educational use.

E. Community center, adult education center, or similar facility operated by an educational, philanthropic, or religious institution.

F. Private commercial educational institution, including schools for dance, music, art, drama, and other similar activities.

G. Repair services such as shops for appliances, watches, guns, bicycles, locks, etc., but not automobile repair services.

H. Administrative, management, or professional offices, including but not limited to, offices of realtors, physicians, lawyers, clergymen, teachers, dentists, architects, engineers, insurance agents, opticians, and medical and related professionals (including incidental laboratories

⁴To be re-codified as Section 21-803 in the forthcoming re-codification of the Borough's ordinances.

and out-patient clinics), and the incidental retail sale of products directly related to any professional services provided.

I. Non-Intrusive Home Office or Business associated with a residential use which is permitted by variance or as a lawful nonconforming use, provided that the person(s) conducting the office or business use registers the use with the Zoning Officer so that the Borough is aware that a non-residential activity is being conducted on the property.

J. Intrusive Home Office or Business associated with a residential use which is permitted by variance or as a lawful nonconforming use, provided that the office or business use is the type of use permitted by right under this Section 137-44, and that the person(s) conducting the office or business use registers the use with the Zoning Officer so that the Borough is aware that a non-residential activity is being conducted on the property.

§ 137-45 Conditional uses.⁵

~~B. Professional offices, including management, real estate, insurance, legal, engineering, and other professional endeavors, not including retail sales activities. [RESERVED]~~

HH. Intrusive Home Office or Business associated with a residential use which is permitted by variance or as a lawful nonconforming use, provided that the office or business use is the type of use permitted as a conditional use under this Section 137-45.

§ 137-46 Special exception uses.⁶

⁵To be re-codified as Section 21-804 in the forthcoming re-codification of the Borough's ordinances.

⁶To be re-codified as Section 21-805 in the forthcoming re-codification of the Borough's ordinances.

B. Intrusive Home Office or Business associated with a residential use which is permitted by variance or as a lawful nonconforming use, provided that the office or business use is the type of use permitted as a special exception use under this Section 137-46.

* * *

SECTION 5. Section 137-52(E) of Chapter 137 of the Code of the Borough of Alburdis (relating to Zoning Ordinance—General Regulations—Overall Requirements) shall be amended as follows (with deletions indicated in ~~strike-outs~~ and insertions indicated by double underlining)⁷:

§ 137-52 Overall requirements.

* * *

E. Notwithstanding any provision of this Chapter to the contrary, if a residential use is established on a lot in a residential District (R-1, R-2, or R-3), no other use may also be established on such lot, *unless* such other use is:

* * *

SECTION 6. Section 137-70(A) of Chapter 137 of the Code of the Borough of Alburdis (relating to Zoning Ordinance—Conditional Uses and Special Exception Uses—Application Procedures—Conditional Use) shall be amended as follows (with deletions indicated in ~~strike-outs~~ and insertions indicated by double underlining)⁸:

⁷ To be re-codified as Section 21-902(e) in the forthcoming re-codification of the Borough's ordinances.

⁸ To be re-codified as Section 21-1303(a) in the forthcoming re-codification of the Borough's ordinances.

§ 137-70 Application procedures.

A. Conditional use. All applicants shall submit three (3) sets of site plans to the Zoning Officer when making application for a ~~zoning permit~~ conditional use.

(1) The Zoning Officer shall submit two (2) copies of a site plan that complies with all requirements of this Article to the Borough Planning Commission with his written report within fifteen (15) days of ~~site plan submission~~ after the Borough's receipt of the applicant's application or at the next regularly scheduled meeting.

(2) The Planning Commission shall, within forty-five (45) days after ~~receipt of said site plans and report from the Zoning Officer~~ the Borough's receipt of the applicant's application, review and submit a recommendation to the Borough Council. The absence of action on the part of the Planning Commission within the said forty-five (45) days shall constitute approval of the conditional use application, and the Borough Council shall proceed in its review on the basis of such approval.

(3) The Council shall then ~~review the proposed land use development and approve or disapprove the development.~~ hold hearings on and decide the request for a conditional use approval in accordance with the standards and criteria set forth in this Chapter and the procedures set forth in Section 137-98 for hearings before the Zoning Hearing Board (substituting Borough Council for the Zoning Hearing Board), except as otherwise provided in this subsection (A).

(4) The hearing shall be conducted by Council or Council may appoint any member or an independent attorney as a Hearing Officer. The decision or, where no decision is called for, the findings shall be made by Council. However, the applicant and the Borough may, prior to the decision of the Hearing Officer, waive decision or findings by Council and accept the decision or findings of the Hearing Officer as final.

(5) The Borough Council or the Hearing Officer, as the case may be, shall render a written decision or, when no decision is called for, make written findings on the application within forty-five (45) days after the last hearing before the Borough Council or Hearing Officer.

Where the application is contested or denied, the decision shall be accompanied by findings of fact and conclusions based thereon, together with the reasons therefor. Conclusions based on any provisions of the Pennsylvania Municipalities Planning Code, this Chapter, or of any other ordinance, rule, or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found. A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to him no later than the day following its date. If disapproved, the reasons for disapproval shall be clearly stated on one (1) copy of the submission and returned to the applicant. The Zoning Officer shall deny a zoning permit for the proposed development until written approval of the Borough Council is obtained. Approval may be made conditional upon the applicant's adoption of specified changes in the submission. The absence of action on the part of the Planning commission within the said forty five (45) days shall constitute approval of the site plan, and the Borough Council shall proceed in its review on the basis of such approval.

(6) Where the Borough Council fails to render the decision within the period required by this subsection or fails to commence, conduct, or complete the required hearing as provided in Section 137-98(B), the decision shall be deemed to have been rendered in favor of the applicant, unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of a failure of the Borough Council to meet or render a decision as hereinabove provided, the Borough Council shall give public notice of the decision within ten (10) days from the last day it could have met to render a decision in the same manner as provided in Section 137-98(A). If the Council shall fail to provide such notice, the applicant may do so.

(7) (4) Court appeals. Any person or persons jointly or severally aggrieved by any decision of the Borough Council may present to the Court of Common Pleas of Lehigh County a petition, duly verified, setting forth that such decision is illegal in whole or in part, specifying the ground of the illegality. Such petition must be presented to the court within thirty (30) days after the decision be the Borough Council. Nothing

in this subsection (A) shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

SECTION 7. Section 137-71(B) of Chapter 137 of the Code of the Borough of Alburtis (relating to Zoning Ordinance—Conditional Uses and Special Exception Uses—General Requirements—Conditions) shall be amended as follows (with deletions indicated in ~~strike-outs~~ and insertions indicated by double underlining)⁹:

§ 137-71 General requirements.

* * *

B. ~~The Borough Council may impose whatever conditions regarding layout, circulation, and performance it deems necessary to ensure that any proposed development will substantially secure the objectives of this chapter.~~ In granting a conditional use, Council may attach such reasonable conditions and safeguards, in addition to those expressed in this Chapter, as it may deem necessary to implement the purposes of the Pennsylvania Municipalities Planning Code and this Chapter.

SECTION 8. Section 137-98 of Chapter 137 of the Code of the Borough of Alburtis (relating to Zoning Ordinance—Zoning Hearing Board—Hearings) shall be amended as follows (with deletions indicated in ~~strike-outs~~ and insertions indicated by double underlining)¹⁰:

⁹To be re-codified as Section 21-1304(b) in the forthcoming re-codification of the Borough's ordinances.

¹⁰To be re-codified as Section 21-1806 in the forthcoming re-codification of the Borough's ordinances.

§ 137-98 Hearings.

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B. ~~The hearings shall be held~~ first hearing shall be commenced within sixty (60) days from the date of the receipt of the applicant's ~~request~~ application, unless the applicant has agreed in writing to an extension of time. Each subsequent hearing shall be held within forty-five (45) days of the prior hearing, unless otherwise agreed by the applicant in writing or on the record. An applicant shall complete the presentation of his case-in-chief within one hundred (100) days of the first hearing. Upon the request of the applicant, the Zoning Hearing Board or the Hearing Officer shall assure that the applicant receives at least seven (7) hours of hearings within the one hundred (100) days, including the first hearing. Persons opposed to the application shall complete the presentation of their opposition to the application within one hundred (100) days of the first hearing held after the completion of the applicant's case-in-chief. An applicant may, upon request, be granted additional hearings to complete his case-in-chief, *provided* the persons opposed to the application are granted an equal number of additional hearings. Persons opposed to the application may, upon written consent or consent on the record by the applicant and the Borough, be granted additional hearings to complete their opposition to the application, *provided* the applicant is granted an equal number of additional hearings for rebuttal.

* * *

J. The Zoning Hearing Board or the Hearing Officer, as the case may be, shall render a written decision or, when no decision is called for, make written findings on the application within forty-five (45) days after the last hearing before the Zoning Hearing Board or Hearing Officer. Where the application is contested or denied, each decision shall be accompanied by findings of fact and conclusions based thereon, together with the reasons therefor. Conclusions based on any provisions of the Pennsylvania Municipalities Planning Code, this chapter, or of any other ordinance, rule, or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found. If the hearing is conducted by a Hearing Officer,

and there has been no stipulation that his decision or findings are final, the Zoning Hearing Board shall make his report and recommendations available to the parties within forty-five (45) days, and the parties shall be entitled to make written representations thereon to the Zoning Hearing Board prior to final decision or entry of findings, and the Zoning Hearing Board's decision shall be entered no later than thirty (30) days after the report of the Hearing Officer. Except for challenges filed under section 916.1 of the Pennsylvania Municipalities Planning Code (relating to landlord curative amendments), where ~~Where~~ the Zoning Hearing Board fails to render the decision within the period required by this subsection or fails to ~~hold~~ commence, conduct, or complete the required hearing ~~within sixty (60) days from the date of the applicant's request for a hearing as provided in subsection B,~~ the decision shall be deemed to have been rendered in favor of the applicant, unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of a failure of the Zoning Hearing Board to meet or render a decision as hereinabove provided, the Zoning Hearing Board shall give public notice of said decision within ten (10) days from the last day it could have met to render a decision in the same manner as provided in Subsection A of this section. If the Zoning Hearing Board shall fail to provide such notice, the applicant may do so. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction.

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SECTION 9. The Secretary of the Borough shall send a certified copy of this Ordinance to the Lehigh Valley Planning Commission within thirty (30) days after the date of enactment, as required by 53 PA. STAT. ANN. §§ 10505(b) and 10609(g).

DULY ORDAINED and **ENACTED** by the Borough Council of the Borough of Al-
burtis, this 9th day of October, 2002, in lawful session duly assembled.

**BOROUGH COUNCIL
BOROUGH OF ALBURTIS**

Steven R. Hill, President

Attest:

Melanie Hansen, Secretary

AND NOW, this 9th day of October, 2002, the above Ordinance is hereby
APPROVED.

Russell J. Afflerbach, Mayor