

**BOROUGH OF ALBURTIS
LEHIGH COUNTY, PENNSYLVANIA**

Ordinance No. 437

(Duly Adopted September 14, 2005)

AN ORDINANCE AMENDING CHAPTER 21 OF THE ALBURTIS CODIFIED ORDINANCES (RELATING TO ZONING) TO PERMIT ANY RESIDENTIAL DWELLING UNITS (NOT JUST MULTIFAMILY DWELLINGS) IN THE COMMERCIAL ZONING DISTRICT AS A CONDITIONAL USE, SO LONG AS THE COMMERCIAL USE OCCUPIES AT LEAST 25% OF THE TOTAL FLOOR AREA; AND AMENDING CHAPTER 22 OF THE ALBURTIS CODIFIED ORDINANCES (RELATING TO SUBDIVISION AND LAND DEVELOPMENT) BY REVISING THE PROCEDURES FOR PROCESSING AND ACTING ON SUBDIVISION AND LAND DEVELOPMENT PLANS, INCLUDING CHANGES TO THE TIMES WHEN PLANS ARE CONSIDERED, ACTION ON PLANS MUST BE TAKEN, AND NOTICES OF ACTION ARE SENT; THE RECIPIENTS OF NOTICES OF OFFICIAL ACTION; THE REQUIREMENTS FOR CONSIDERING REPORTS OF OTHER AGENCIES; THE RELATIVE ROLES OF THE PLANNING COMMISSION AND BOROUGH COUNCIL (SUCH THAT THE PLANNING COMMISSION MAKE RECOMMENDATIONS WITH RESPECT TO PRELIMINARY AND FINAL PLANS AND BOROUGH COUNCIL MAKES THE FINAL DECISION FOR BOTH PRELIMINARY AND FINAL PLANS); THE PROCEDURES FOR APPROVALS THAT ARE SUBJECT TO CONDITIONS; AND THE REQUIREMENTS FOR SUBMISSIONS TO THE LEHIGH VALLEY PLANNING COMMISSION.

WHEREAS, the Borough of Albutris is empowered to enact, amend, and repeal subdivision and land development ordinances under Article V of the Pennsylvania Municipalities Planning Code, 53 PA. STAT. ANN. § 10501 *et seq.*, and 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 subdivision and land development ordinance, which has been amended from time to time and codified as Chapter 22 of the Albutris Codified Ordinances, and a zoning ordinance, which has been amended from time to time and codified as Chapter 21 of the Albutris Codified Ordinances; and

WHEREAS, Borough Council desires to amend § 21-704(k) of the zoning ordinance as set forth in this ordinance, and this amendment is generally consistent with the Borough Comprehensive Plan; and

WHEREAS, Borough Council desires to amend the procedures for subdivision and land development applications, reviews, and approvals as set forth in this ordinance; and

WHEREAS, at least thirty (30) days prior to the Council's adoption of this Ordinance, the Borough submitted a copy of this Ordinance to the Alburdis Planning Commission and the Lehigh Valley Planning Commission, to provide them with an opportunity to submit recommendations, in accordance with the provisions of 53 PA. STAT. ANN. §§ 10505(a), 10609(c), and 10609(e); and

WHEREAS, the Alburdis Planning Commission reviewed this Ordinance at its meeting on August 16, 2005 and recommended its adoption; and

WHEREAS, the Lehigh Valley Planning Commission reviewed this Ordinance at its meeting on August 25, 2005 and determined it to be a matter of local concern and voted to offer no comment; and

WHEREAS, on August 31, 2005 and September 7, 2005, the Borough published a public notice in the *East Penn Press*, a newspaper of general circulation in the Borough of Alburdis, of its intention to conduct a hearing on this Ordinance on September 14, 2005 at 7:00 P.M. in the Borough Hall, 260 Franklin Street, Alburdis, 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 Alburdis 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. Codified Ordinances § 21-704 (relating to Zoning—Regulations for C-1 Commercial District—Conditional Uses) is amended by amending subsection (k) as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 21-704 Conditional Uses.

The following conditional uses and their accessory uses may be permitted following a site plan review and recommendation by the Planning Commission and in accordance with the provisions of Article XIII (relating to Conditional Uses and Special Exceptions), any other applicable provisions of this Chapter, and approval by Council:

* * *

(k) Residential dwelling units ~~Multifamily dwellings~~ may be in combination with a commercial use, so long as the commercial use occupies at least twenty-five percent (25%) of the total floor area of all commercial and residential uses.

* * *

SECTION 2. Codified Ordinances § 22-305 (relating to Subdivision and Land Development—Sketch Plan—Review and Recommendations) is amended by amending subsection (a), (c), and (e) as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 22-305 Review and Recommendations.

(a) The sketch plan maps and materials will be reviewed by the Planning Commission at its next regular meeting, *provided* that submission has occurred no less than twenty-one (21) calendar ~~ten (10)~~ days prior to such ~~scheduled~~ meeting.

* * *

(c) ~~[RESERVED] Recommendations shall be made by the Planning Commission only after it has received and considered the written reports of the Lehigh Valley Planning Commission and, where applicable, the Pennsylvania Department of Environmental Protection and the Lehigh County Conservation District. However, if such reports are not received within thirty (30) days after receipt of sketch plan materials, the Planning Commission may make recommendations to the developer without having received and considered such reports.~~

* * *

(e) Within fourteen (14) calendar ~~ten (10)~~ days after the meeting at which the sketch plan was acted upon, the Secretary of the Planning Commission shall send written notice of the Planning Commission's recommendations to the following:

- (1) Council.
- ~~(2) The Lehigh Valley Planning Commission.~~
- (2) ~~(3)~~ The developer or his agent.

SECTION 3. Codified Ordinances § 22-404 (relating to Subdivision and Land Development—Preliminary Plan—Submission) is amended by amending subsections (a) and (b) as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 22-404 Submission.

(a) **To the Planning Commission.** Official submission of a preliminary plan to the Planning Commission shall be made by submitting the following to the Zoning Officer no less than twenty-one (21) calendar ~~ten (10)~~ days prior to a regularly scheduled meeting:

* * *

(b) **To the Lehigh Valley Planning Commission.** Official submission of a preliminary plan to the Lehigh Valley Planning Commission shall be the responsibility of the developer, shall be accomplished within one (1) business day after the plan is submitted to the Zoning Officer, and shall include all fees, forms, plans, calculations, studies, and other information required under the applicable procedures established from time to time by the Lehigh Valley Planning Commission. ~~the following:~~

~~(1) A completed preliminary subdivision or land development application.~~

~~(2) One (1) paper print of the preliminary plan, which shall fully comply with provisions of this Chapter.~~

~~(3) One (1) copy of all required supplemental information as set forth in § 22-403 (relating to Supplementary Data).~~

SECTION 4. Codified Ordinances § 22-407 (relating to Subdivision and Land Development—Preliminary Plan—Review and Decision) is amended by amending the title and subsections (a), (c), and (e) as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 22-407 ~~Review and Decision~~ Recommendations by the Planning Commission.

Review of the preliminary plan by the Planning Commission shall proceed as follows:

(a) When a preliminary plan has been officially submitted, such plan shall be placed on the agenda of the Planning Commission for review at its next regular monthly meeting, *provided* that such official submission has occurred no less than twenty-one (21) ~~ten (10)~~ calendar days prior to such regular meeting. ~~The Planning Commission may hold a public hearing on the preliminary plan at this time.~~

* * *

(c) No recommendations ~~decision~~ shall be made by the Planning Commission with respect to a preliminary plan until the Planning Commission has received and considered the written report of the Lehigh Valley Planning Commission; *provided*, however, that if the Lehigh Valley Planning Commission shall fail to report thereon within forty-five (45) days after receipt of a preliminary plan, then the Planning Commission may make its recommendations ~~officially act~~ without having received and considered such report. ~~In all cases, however, the Planning Commission must act within ninety (90) days after receipt of a preliminary plan from the developer.~~

* * *

(e) The Planning Commission shall recommend to Council that the preliminary plan be approved (with or without conditions) or disapproved. Whenever possible, the recommendations of the Planning Commission should be made at least fourteen (14) calendar days before the last regular meeting of Council which occurs on or before the date by which Council is required to render its decision on the preliminary plan. Within fourteen (14) calendar ~~five (5)~~ days after the meeting at which the preliminary plan was acted upon by the Planning Commission, the Secretary of the Planning Commission shall send written notice of the Planning Commission's recommendations ~~action and the findings and reasons upon which the action is based~~ to the following:

- (1) Council.
- ~~(2) The Lehigh Valley Planning Commission.~~
- (2) ~~(3)~~ The Borough Engineer.
- (3) ~~(4)~~ The developer or his agent.

SECTION 5. Codified Ordinances Chapter 22, Article IV (relating to Subdivision and Land Development—Preliminary Plan) is amended by adding the following new § 22-407.1 after existing § 22-407:

§ 22-407.1 Review and Decision by Council.

(a) **In General.** Council shall approve or disapprove the preliminary plan, and shall communicate its decision to the developer or his agent in writing, within the time limitations (including extensions) and in the manner required by law (*see* Municipalities Planning Code § 508, 53 PA. STAT. ANN. § 10508). Council shall not act until after receipt of recommendations from the Planning Commission, *provided* that Council may act without such recommendations if the next regular meeting of Council will not occur until after the date by which Council is required to render an oral decision on the preliminary plan.

(b) **Conditions.** Approval may be granted subject to conditions. However, if the developer or his agent does not affirmatively accept all of the conditions in writing by the Required Acceptance Date, the approval shall be rescinded automatically and the plan shall be deemed denied/disapproved as of the Required Acceptance Date. For purposes of the preceding sentence, the “Required Acceptance Date” shall be the *earlier* of—

(1) the date by which Council is required to render an oral decision on the preliminary plan (including extensions); *or*

(2) ten (10) calendar days after the date of mailing of the decision to grant approval subject to conditions.

SECTION 6. Codified Ordinances § 22-408 (relating to Subdivision and Land Development—Preliminary Plan—Endorsement and Distribution of Plans) is amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 22-408 Endorsement and Distribution of Plans.

The action of Council ~~the Planning Commission~~ shall be noted, together with the date of the action and signature of its President and Secretary ~~the Chairman~~, on three (3) sets of plans. These plans shall then be distributed as follows:

- (a) Two (2) sets to the developer or his agent.
- (b) One (1) to the Borough Office for filing.

SECTION 7. Codified Ordinances § 22-501 (relating to Subdivision and Land Development—Final Plan—Requirement; Time Limitations) is amended by amending subsection (a) as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 22-501 Requirement; Time Limitations.

(a) **In General.** Within twelve (12) months after approval of the preliminary plan, a final subdivision or land development plan and all required supplemental data shall be submitted to the Zoning Officer. An extension of time may be granted by Council ~~the Planning Commission~~ upon written request. Otherwise, the plan submitted may be considered as a new preliminary plan. Council, in its discretion, may permit a developer to submit a single preliminary/final plan which meets the requirements of both Article IV (relating to Preliminary Plan) and this Article V (relating to Final Plan) and process the plan for both preliminary plan approval and final plan approval concurrently.

* * *

SECTION 8. Codified Ordinances § 22-502 (relating to Subdivision and Land Development—Final Plan—Contents of Plan) is amended by amending subsections (a)(1) and (b)(9) as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 22-502 Contents of Plan.

(a) In General.

(1) The final plan shall conform in all significant respects to the preliminary plan as previously approved by Council ~~reviewed by the Planning Commission and the Lehigh Valley Planning Commission~~, but shall incorporate all modifications required by Council ~~the Planning Commission~~ in its approval ~~review~~ of the preliminary plan.

* * *

(b) Additional Data. The following additional data shall be illustrated on the final plan:

* * *

(9) The location of all existing and proposed street monuments, as required by § 22-705 (relating to Monuments and Markers), a certification of ownership, acknowledgment of plan, and offer of dedication shall be lettered on the plan, duly acknowledged and signed by the owner of the property and notarized; a certificate for review ~~approval~~ of the plan by the Planning Commission and approval of the plan by Council shall be presented; space shall be left, preferably adjacent to the borough certification, in which the review stamp of the Lehigh Valley Planning Commission may be applied; space shall be left along the lower edge of the sheet in order that the Lehigh County Recorder of Deeds may acknowledge receipt and recording of the plan when it is presented; if the final plan requires more than one (1) sheet, a key diagram showing the

relative location of the several sections shall be drawn on each sheet. Information required in § 22-402(d) (relating to Basic Information for Preliminary Plan) shall also be required.

SECTION 9. Codified Ordinances § 22-504 (relating to Subdivision and Land Development—Final Plan—Submission) is amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 22-504 Submission.

(a) **To the Planning Commission.** Official submission of a final plan to the Planning Commission shall be made by submitting the following information to the Zoning Officer no less than twenty-one (21) calendar ~~ten (10)~~ days prior to a regularly scheduled meeting:

* * *

(b) **To the Lehigh Valley Planning Commission.** Copies of the final subdivision or land development plan shall be submitted to the Lehigh Valley Planning Commission or other appropriate county and state agencies by the developer, shall be accomplished within one (1) business day after the plan is submitted to the Zoning Officer, and shall include all fees, forms, plans, calculations, studies, and other information required under the applicable procedures established from time to time by the Lehigh Valley Planning Commission.

(c) **To Other Agencies.** Official submission of a final plan to the Lehigh Valley Planning Commission, the Pennsylvania Department of Environmental Protection, and other appropriate agencies shall be the responsibility of the developer.

SECTION 10. Codified Ordinances § 22-507 (relating to Subdivision and Land Development—Final Plan—Review and Recommendations by the Planning Commis-

sion) is amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 22-507 Review and Recommendations by the Planning Commission.

Review of the final plan by the Planning Commission shall proceed as follows:

(a) When a final plan has been officially submitted, such plan shall be placed on the agenda of the Planning Commission for review at its next regular monthly meeting, *provided* that such official submission has occurred no less than twenty-one (21) ~~ten (10)~~ calendar days prior to such regular meeting.

(b) The Planning Commission shall review the final plan to determine its conformance with the standards contained in this Chapter, with other applicable ordinances and with such changes and modifications as were the Planning Commission required in connection with approval of the preliminary plan. During review of the final plan, the Planning Commission shall also consider the opinions of the Borough Engineer, Borough Solicitor and, ~~if required,~~ of the Lehigh Valley Planning Commission.

~~(c) When a final plan has been reviewed by the Lehigh Valley Planning Commission, no~~ No recommendations shall be made by the Planning Commission to Council with respect to the final plan until the Planning Commission has received and considered the written report of the ~~staff of the Lehigh Valley Planning Commission;~~ *provided*, however, that if the Lehigh Valley Planning Commission shall fail to report thereon within forty-five (45) days after official submission of a final plan, then the Planning Commission may make its recommendations ~~act~~ without having received and considered such report.

(d) The Planning Commission shall recommend to Council, ~~in writing,~~ that the final plan be approved (with or without conditions) or disapproved. ~~The findings and reasons upon which action is based shall be included in the written recommendation.~~ Whenever possible, the recommendations of the Planning Commission should be made at least four-

teen (14) days before the last regular meeting of Council which occurs on or before the date by which Council is required to render its decision on the final plan. Within fourteen (14) days after the meeting at which the final plan was acted upon by the Planning Commission, the Secretary of the Planning Commission shall send written notice of the Planning Commission's recommendations to the following:

- (1) Council.
- (2) The Borough Engineer.
- (3) The developer or his agent.

SECTION 11. Codified Ordinances § 22-508 (relating to Subdivision and Land Development—Final Plan—Review and Decision by Council) is amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 22-508 Review and Decision by Council.

(a) In General. ~~Council, within ninety (90) days after official submission of the final plan,~~ shall approve or disapprove the final plan, and shall communicate its decision to the developer or his agent in writing, within the time limitations (including extensions) and in the manner required by law (see Municipalities Planning Code § 508, 53 PA. STAT. ANN. § 10508). ~~Council shall not act until after receipt of recommendations from the Planning Commission, provided that Council may act without such recommendations if the next regular meeting of Council will not occur until after the date by which Council is required to render on oral decision on the final plan. , and within five (5) days after the meeting at which the final plan is acted upon by Council, the action taken by the Council in approving or disapproving the final plan, together with the findings and reasons upon which such action is based, shall be given, in writing, to the following:~~

- ~~(a) The Planning Commission.~~
- ~~(b) The Lehigh Valley Planning Commission.~~

~~(e) The developer or his agent.~~

(b) **Conditions.** Approval may be granted subject to conditions. However, if the developer or his agent does not affirmatively accept all of the conditions in writing by the Required Acceptance Date, the approval shall be rescinded automatically and the plan shall be deemed denied/disapproved as of the Required Acceptance Date. For purposes of the preceding sentence, the “Required Acceptance Date” shall be the *earlier* of—

(1) the date by which Council is required to render an oral decision on the final plan (including extensions); *or*

(2) ten (10) calendar days after the date of mailing of the decision to grant approval subject to conditions.

SECTION 12. The Executive 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 Alburtis, this 14th day of September, 2005, in lawful session duly assembled.

BOROUGH COUNCIL
BOROUGH OF ALBURTIS

Steven R. Hill, President

Attest:

Melanie Hansen, Executive Secretary

AND NOW, this 14th day of September, 2005, the above Ordinance is hereby
APPROVED.

Russell J. Afflerbach, Mayor