

**BOROUGH OF ALBURTIS
LEHIGH COUNTY, PENNSYLVANIA**

Ordinance No. 464

(Duly Adopted December 12, 2007)

AN ORDINANCE AUTHORIZING THE BOROUGH OF ALBURTIS TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE BOROUGH OF MACUNGIE, THE TOWNSHIP OF LOWER MILFORD, AND THE TOWNSHIP OF UPPER MILFORD TO CREATE A JOINT BOARD OF APPEALS TO HEAR APPEALS FROM DECISIONS OF THE LOCAL CODE ADMINISTRATORS UNDER THE UNIFORM CONSTRUCTION CODE AS ADOPTED IN EACH MUNICIPALITY AS ITS BUILDING CODE, AND ESTABLISHING THIS JOINT BOARD AS THE BOARD OF APPEALS FOR PURPOSES OF THE BOROUGH'S BUILDING CODE.

WHEREAS, the Borough of Alburtis has adopted the Uniform Construction Code (as supplemented by certain provisions in effect in the Borough before July 1, 1999) as the building code of the Borough, and has elected to administer and enforce the code by contract with one or more construction code officials and/or third-party agencies; and

WHEREAS, the Uniform Construction Code and the state regulations thereunder provide that municipalities which have elected to administer and enforce the Code shall establish and appoint members to serve on a board of appeals, which has the powers and duties set forth in the Code and the regulations; and

WHEREAS, two or more municipalities may establish a joint board of appeals through an intermunicipal agreement; and

WHEREAS, considering the number of qualified persons in the Borough who are eligible to serve on a board of appeals and the number of matters anticipated to be heard by the board of appeals, Council has determined that it is preferable to establish a joint board of appeals with neighboring municipalities rather than a separate board of appeals for the Borough alone; and

WHEREAS, the Borough of Macungie and the Townships of Lower Milford and Upper Milford have indicated a desire to establish a joint board of appeals with the Borough of Alburdis on mutually acceptable terms and conditions;

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

SECTION 1. Chapter 6 of the Alburdis Codified Ordinances (relating to Intergovernmental Cooperation) is amended by adding the following new Article VI after existing Section 6-501:

Article VI — Administration of Uniform Construction Code

§ 6-601 Intergovernmental Agreement to Create Joint Board of Appeals with the Borough of Macungie and the Townships of Lower Milford and Upper Milford to Hear and Rule Upon Appeals, Requests for Variances, and Requests for Extensions of Time in the Administration and Enforcement of the Uniform Construction Code as Adopted in Each Municipality as its Building Code.

The Borough of Alburdis shall enter into an Intergovernmental Agreement with the Borough of Macungie, the Township of Lower Milford, and the Township of Upper Milford, in the form attached to Ordinance 464 as **Exhibit A**, which is incorporated into this Article by reference, *provided that* the governing bodies of each of the other parties shall also adopt an ordinance to approve the execution of the Agreement. The President (or Vice President) of Borough Council is hereby authorized and directed to execute the Agreement on behalf on the Borough upon the approval of the Agreement by the governing bodies of the other parties.

SECTION 2. Effective upon the complete execution of the Intergovernmental Agreement described in Section 1 of this Ordinance, Codified Ordinances § 30-301 (re-

lating to Uniform Construction Code— Board of Appeals— Establishment) is amended as follows (with deletions indicated by ~~strike-outs~~ and insertions indicated by double underlining):

§ 30-301 Establishment.

A Board of Appeals, in conformance with the requirements of the Uniform Construction Code (as set forth in regulations of the Department of Labor and Industry) and for the purposes set forth therein, ~~shall be~~ has been established by joint action of the Borough and ~~one or more nearby municipalities~~ the Borough of Macungie, the Township of Lower Milford, and the Township of Upper Milford (see § 6-601), and is the Borough's Board of Appeals for all appeals, requests for variances, and requests for extension of time concerning the administration and enforcement of this Chapter (other than for matters relating to accessibility). ~~If such a~~ the joint Board ~~is not created or terminates~~ or the Borough withdraws from the joint Board, the Borough shall establish its own Board of Appeals.

SECTION 3. The attached **Exhibit A** is incorporated into this Ordinance by reference.

{Remainder of page intentionally left blank.}

DULY ORDAINED and **ENACTED** by the Borough Council of the Borough of Al-
burtis, this 12th day of December, 2007, in lawful session duly assembled.

**BOROUGH COUNCIL
BOROUGH OF ALBURTIS**

Steven R. Hill, President

Attest:

Sharon Trexler, Executive Secretary

AND NOW, this 12th day of December, 2007, the above Ordinance is hereby
APPROVED.

Robert Mader, Mayor

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT REGARDING THE PENNSYLVANIA UNIFORM CONSTRUCTION CODE ACT AND THE UNIFORM CONSTRUCTION CODE

THIS INTERGOVERNMENTAL AGREEMENT is hereby made this _____ day of _____, 2007, by and between the BOROUGHES OF ALBURTIS AND MACUNGIE AND THE TOWNSHIPS OF LOWER MILFORD AND UPPER MILFORD (each a "Participant" and collectively, the "Participants") to address the administration and enforcement of the Pennsylvania Construction Code Act (the "Act"), 35 P.S. §7210.101 *et seq.* and the Uniform Construction Code, 34 Pa.Code, Chapter 401 *et seq.* ("the Code"). As authorized by the Pennsylvania Intergovernmental Cooperation Act, this Agreement is adopted as an Ordinance by each of the Participants.

WHEREAS, each of the Participants has heretofore enacted an Ordinance to administer and enforce the Act and to adopt the Code as its Municipal Building Code; and

WHEREAS, each of the Participants has also heretofore arranged for the administration and enforcement of the Act and Code in a manner as prescribed by §501(b) of the Code, 35 P.S. §7210.501; and

WHEREAS, each of the Participants are desirous of establishing and appointing members to serve on a joint Board of Appeals ("Board of Appeals"), as authorized by §501(c) of the Act and Code, 35 P.S. §7210.501(c) to hear appeals from decisions of the Code Administrator of each of the respective Participants and to utilize authority of the Pennsylvania Intergovernmental Cooperation Act.

NOW, THEREFORE, it is agreed among the parties hereto that:

1. The above purpose clauses are hereby made a part of this agreement by this reference.

2. The Participants hereby establish a joint Board of Appeals (the "Board") to hear appeals from the decisions of the Code Administrator of each of the respective Participants. An application for appeal to the Board shall be based on a claim that the true intent of the Act or Code, or regulations legally adopted pursuant thereto have been incorrectly interpreted, that the provisions of the Act or Code do not fully apply or an equivalent form of construction is to be used. In addition, the Board shall hear and rule on appeal requests for variances and requests for extension of time.

3. Upon the initial formation of the Board, each Participant shall appoint one members and all four Participants shall collectively appoint an "at large" member subject to the approval of at least three (3) of the Participants. In the event a vacancy occurs in regard to the at large member, the replacement member shall be similarly appointed by the joint action of the Participants upon the approval of at least three of the Participants. If a vacancy occurs in regard to the remaining members of the Board, such vacancy shall be filled by the appointment of a new member by the Participant who appointed the member who is leaving the Board. No elected official of any of the Participants and no employees within the Code Administration of such Participant may serve on the Board. A member of the Board serves at the pleasure of the elected officials of each of the Participants, and may be removed at any time with or without cause only by the appointing Participant which originally appointed that member provided, however, no member shall be removed during the pendency of any appeal in which such member participated. Such member shall be qualified by training and experience to pass on

matters pertaining to building construction, which may consist of licensure (i.e., an architect or engineer), experience in the construction industry, and/or training or experience as an inspector or reviewer of plans.

4. The Board, itself, shall consist of a total of five (5) members,. No member of the Board of appeals may cast a vote or participate in any hearing on an appeal, request for a variance or request for an extension of time in which he or she has a personal, professional and/or financial interest. The Board shall schedule meetings and provide public notice of such meetings in accordance with the provisions of the Sunshine Act, 65 Pa.C.S.A. §701 *et seq.* Three members of the Board shall constitute a quorum.

5. An owner or his or her agent may request a variance, seek an extension of time or appeal a decision of the Code Administrator of the Participant by filing a petition, in writing, with such Code Administrator. The post-marked date, or the date of personal service, will establish the filing date for purposes of the appeal, variance and/or request for extension of time. The Board shall hold a hearing within sixty (60) days from the date of the applicant's request unless the applicant agrees in writing to an extension of time. The Board shall decide all appeals, variances and/or requests for extension of time on the basis of the written documents received, including any written briefs, and any argument from the owner and/or his or her agent, and will hear testimony, if and only if, requested by the owner and/or his agent.

6. When ruling upon an appeal from the decision of a Code Administrator, the Board shall only consider the following factors:

a. whether the true intent of the Act or Code was incorrectly

interpreted;

- b. whether the provisions of the Act or Code apply or do not apply;
and
- c. whether an equivalent form of construction is to be used.

7. When considering a request for a variance or an extension of time, the Board shall consider only the following factors:

- a. the reasonableness of the Act or Code's application in a particular case;
- b. the extent to which the granting of a variance or extension of time will pose a violation of the Act or Code or an unsafe condition;
- c. the availability of professional or technical personnel needed to come into compliance;
- d. the availability of materials and equipment needed to come into compliance;
- e. the efforts being made to come into compliance as quickly as possible; and
- f. the compensatory features that will provide for an equivalent degree of protection to the Act or Code.

8. The Board may not act upon appeals, requests for variance or extension of time relating to accessibility issues under the Act or Code. Such appeals, requests for variance and/or extensions of time relating to accessibility shall be brought before the Accessibility Advisory Board as provided by law.

9. The Board may deny any request in whole or in part, grant any requests in whole or in part, or grant a request upon certain conditions being met. The Board shall provide written notice of its decision to the owner, the Code Administrator of the Participant and to each Participant.

10. An appeal from the decision of the Code Administrator or request for variance and/or extension of time to the Board will automatically suspend an action to enforce an Order to correct until the decision of the Board. Notwithstanding the foregoing, an action under §403.84 (relating to unsafe building, structure or equipment) will not be stayed.

11. The Board shall recommend a fee schedule to the Participant for appeal hearings, requests for variances and/or requests for extension of time. The fee schedule shall be set and adopted by the individual Participants, and may be reviewed and revised thereafter. The general expenses and costs of the Board shall be shared equally between the Participants. However, when a hearing is requested, the Participant which is the subject of the hearing, shall be responsible for fees related thereto, including but not limited to, costs for advertising, stenographer, etc. The Board may appoint a Solicitor to serve as its legal counsel. In the event a Solicitor is appointed by the Board, the fees of such Solicitor shall be shared equally between the Participants.

12. If a Participant wishes to withdraw from the Board, such Participant shall provide one year's written notice thereof to the other Participants.

13. This Agreement may only be amended by written ordinance adopted by all of the Participants, other than those Participants who have withdrawn from the

Agreement. Such amendment shall not become effective until the last Participant under this Agreement has adopted such ordinance and amendment.

14. This Agreement shall become effective after each of the Participants has adopted it by ordinance.

IN WITNESS WHEREOF and intending to be legally bound hereby, the parties hereto have set their hands and seals as indicated below and hereby adopt this Intergovernmental Agreement.

DATE: _____ BOROUGH OF ALBURTIS

Name:
Title:

DATE: _____ BOROUGH OF MACUNGIE

Name:
Title:

DATE: _____ TOWNSHIP 0.1 LOWER MILFORD

Name:
Title:

DATE: _____ TOWNSHIP OF UPPER MILFORD

Name:
Title: