

2018 MUNICIPAL LAW UPDATE

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City of Williamsport Bureau of Codes v. DeRaffele, 170 A.3d 1270 (Pa. Cmwlth. 2017) - Commonwealth Court reversed trial court determination that DeRaffele had violated § 108.5 of the 2015 International Property Maintenance Code ("IMPC") because the court found that Williamsport could not enforce the 2012 IMPC because the city had no authority to pass an ordinance prospectively adopting future changes to the code. Municipalities may adopt ordinances incorporating a standard code such as the IMPC without including the entire text of that code but must adopt new versions of the standard codes via ordinance prior to enforcing the new version. For relevant statutory language, look to: 53 P.S. § 66601(e); 53 P.S. § 58105-A; 8 Pa. C.S. § 32A04; and 11 Pa. C.S. § 11018.13.

DiMattia v. Zoning Hearing Board, 168 A.3d 393 (Pa. Cmwlth. 2017) - The Commonwealth Court affirmed the determination that the property owners' use of their garages and driveway on residential property for the preparation, repair and transport of race cars was not an accessory use because those activities are not clearly incidental to and customarily found in connection with residential properties. The fact that the race car activity was a hobby and not commercial is not determinative. Rather, to determine whether a use is a lawful accessory use requires an examination on the type and intensity of the use and whether this use was subordinate and incidental to and customarily associated with the primary permitted use of the a residential property in that area.

Board of Commissioners of Cheltenham Township v. Hansen-Lloyd, 166 A.3d 496 (Pa. Cmwlth. 2017) - Under Section 508(4) of the MPC, where the zoning ordinance requires the submission of a sketch plan, the plan enjoys a five year protection from changes in land use ordinances. The filing of the mandatory sketch plan creates a vested right for consideration of the plan for approval, as well as a vested right for consideration of future zoning applications related to the plan under the ordinance(s) in effect when the sketch plan was filed.

Reihner v. City of Scranton Zoning Hearing Board, 176 A.3d 396 (Pa. Cmwlth. 2017) - The Commonwealth Court reversed the lower court's decision affirming the zoning hearing board's denial of an appeal of a notice of violation for illegal operation of a bed and breakfast in their home when property owner had been offering rooms for rent on Airbnb because of the ambiguity in the City's Zoning Ordinance. The lower court interpreted the ordinance of defining bed and breakfast as only requiring the rental of rooms for lodging. The Commonwealth Court found the Ordinance to be ambiguous and, therefore, must be interpreted in favor of the landowner's widest use of the land requiring a finding of a bed and breakfast when both a bed and breakfast are provided to lodgers.

Vanvoorhis v. Shrewsbury Township, 176 A.3d 429 (Pa. Cmwlth. 2017) - Trial court properly reversed the township's rejection of a landowner's subdivision plan because the township failed to conduct a hearing to take additional evidence pursuant to § 11005-A of the MPC to determine

whether the landowner should have attached one of its developmental rights to its summer house. The landowner had renovated a summer house on their agricultural property to provide for a kitchen and bedroom, which had been tenant occupied at times prior to a filing of the subdivision plan by the landowner. The zoning ordinance in effect at the time had allocated a specific number of developmental rights to landowners in agricultural districts and landowner did not attach one of its allocated developmental rights to the summer house in its subdivision plan because it was not currently tenant occupied.

Appeal of Chester City Outdoor, LLC, 167 A.3d 280 (Pa. Cmwlth. 2017) - Commonwealth Court vacated denial of permit application seeking site-specific relief after successful validity challenge to an ordinance. The denial was vacated because the lower court had failed to conduct a full review of evidence presented before the Zoning Hearing Board and had improperly concluded that the proposed outdoor advertising sign was required to comply with the zoning ordinance which was in effect at the time of the permit application. The Commonwealth Court determined that this requirement improperly shifted the burden to the applicant to show that the proposed sign was in compliance with the exclusionary ordinance, and concluded that the lower court should have afforded site specific relief.

1050 Ashbourne Associates v. Cheltenham Township Board of Commissioners, 167 A.3d 828 (Pa. Cmwlth. 2017) - Commonwealth Court reversed in part the denial of a plan due to the noncompliance of buildings with height restrictions contained in a zoning ordinance amendment enacted after the developer had filed for special exception. Under the Township Zoning Ordinance, an applicant was exempt from amendments for a period of two (2) years, and in this case, the developer had filed his sketch plan within that time, and disapproval prior to the passage of the two years was found to have been in error.

Marr Development Mifflinville v. Mifflin Township Zoning Hearing Board, 166 A.3d 479 (Pa. Cmwlth. 2017) - The Commonwealth Court reversed the lower court's decision upholding the denial of a special exception to construct single family attached homes, where the objectors had failed to prove that the residences would create negative impacts greater than those generally expected from that same use. Further, the lower court was found to have improperly interpreted the ordinance to apply to single-family detached homes and did not consider that attached dwellings are also specifically provided for in the zoning ordinance.

Dambman v. Board of Supervisors of Whitemarsh Township, 171 A.3d 969 (Pa. Cmwlth. 2017). - A municipality may not require a zoning permit for a temporary construction access for approval of land development plans when the municipality's subdivision and land development ordinance does not require a zoning permit prior to the filing of a land development plan.

Samsel v. Unif. Constr. Code Bd. of Appeals of Jefferson Twp., 10 A.3d 412, 2010 Pa. Commw. LEXIS 668 (Pa. Cmwlth. 2010) - When the member began to build a stable, the township issued a stop work order due to his failure to obtain a building permit. The trial court held that the stable, which would be used to house race horses and store their feed, met the definition of an "agricultural building" set forth in § 103 (35 Pa. Stat. Ann. § 7210.103) of the Pennsylvania

Construction Code and thus did not need a permit. The township argued that race horses were not "farm animals" or "livestock" within the meaning of the Code and, thus, a building to house race horses was not an agricultural building. The appellate court held that as the horses to be housed in the stable were livestock, regardless of their breeding and training as race horses, the stable met § 103's definition of "agricultural building." The township's allegation to the contrary notwithstanding, the stable would not be open to the general public, only a select few such as veterinarians and purchasers would enter the property, there would be no public events, and thus would not be "a place of occupancy by the general public" that was excluded from § 103's definition of an agricultural building.

In re Appeal of Miller, 81 A.3d 1087, 2013 Pa. Commw. LEXIS 518; 2013 WL 6403089 (Pa. Cmwlth. 2013) - The Commonwealth Court concluded that the proposed barn would be used to house horses and store hay and farm implements necessary for the operation of a farm. The purpose of the ring would be to exercise horses not host spectator shows. The owners would not be hosting public events in the barn. The only individuals with access to the barn would be employees of the farm, those who contracted with the farm and their guests. The mere presence of a member of the public in the proposed barn did not automatically rendered it a "commercial building," subject to the Uniform Construction Code's building permit requirement. A building can be both agricultural and commercial; the terms are not mutually exclusive.

Berner v. Montour Twp. Zoning Hearing Bd., 176 A.3d 1058, 2018 Pa. Commw. LEXIS 28, 2018 WL 280464 (Pa. Cmwlth 2018) - Municipality is free to adopt and enforce ordinances that are consistent with and no more stringent than the NMA, its regulations, and its guidelines. Zoning hearing board (ZHB) erred in holding applicant did not have to prove compliance with a special exception requirement, as the requirement was not subjective or vague but was specific and objective, and the applicant did not make the required submissions. Specifically, the Board erred in granting special exception on grounds the Nutrition Management Act (NMA) preempted this special exception requirement so as to excuse the applicant's compliance because the NMA regulation the ZHB cited as conflicting with the local zoning ordinance did not apply so as to excuse Applicant's non-compliance with that provision. Further, because the cited regulation does not apply here, the ZHB erred in determining that the regulation excused Applicant's non-compliance with Section 402(1)(E) of the zoning ordinance's requirement that Applicant submit facility designs and legally binding assurances with performance guarantees that demonstrate that all facilities necessary for manure management will be conducted without adverse impact on adjacent properties.

Marshall v. Charlestown Twp. Bd. of Supervisors, 169 A.3d 162, 2017 Pa. Commw. LEXIS 648, 2017 WL 3707506 (Pa. Cmwlth. 2017) - Township board of supervisors had standing to appeal a common pleas court order in a conditional use matter, under 53 Pa. Stat. Ann. § 10913.2, because the township participated in the proceedings before the board and the board was named as a party and participated in argument before the trial court and filed various pleadings, including a brief in opposition to the property owners' land use appeal and an application for reconsideration of the trial court's order.

*Pennsylvania Construction Code
Definitions*

“AGRICULTURAL BUILDING.” A structure utilized to store farm implements, hay, feed, grain or other agricultural or horticultural products or to house poultry, livestock or other farm animals, a milk house and a structure used to grow mushrooms, agricultural or horticultural products. The term includes a carriage house owned and used by members of a recognized religious sect for the purposes of housing horses and storing buggies. The term shall not include habitable space or spaces in which agricultural products are processed, treated or packaged and shall not be construed to mean a place of occupancy by the general public.

35 P.S. § 7210.104

*Pennsylvania Construction Code
Application*

(a) **GENERAL RULE.**— This act shall apply to the construction, alteration, repair and occupancy of all buildings in this Commonwealth.

(b) **EXCLUSIONS.**— This act shall not apply to any of the following:

(4) Any agricultural building.

34 Pa. Code § 401.1

*Uniform Construction Code
Definitions*

Agricultural building --

(i) A structure utilized to store farm implements, hay, feed, grain or other agricultural or horticultural products or to house poultry, livestock or other farm animals, a milk house and a structure used to grow mushrooms.

(ii) The term includes a carriage house owned and used by members of a recognized religious sect for the purposes of housing horses and storing buggies.

(iii) The term does not include habitable space or spaces in which agricultural products are processed, treated or packaged and will not be construed to mean a place of occupancy by the general public.

34 Pa. Code § 403.1

*Uniform Construction Code
Scope*

(b) *Exclusions and exemptions.* The Uniform Construction Code does not apply to:

- (4) An agricultural building.