MAXIMUM RESIDENTIAL IMPERVIOUS SURFACE AMENDMENT

ZONING ORDINANCE SERVICE PACK 2C CLEAN-UP

ATTACHMENTS

1. **Community Development Department Memorandum**
2. **Excerpt of the January 19, 2023 Planning Commission Meeting Minutes**
3. **Proposed Ordinance Amendment**

TO: **PLANNING COMMISSION**

FROM: **GREGG R. ADAMS, PLANNER**

SUBJECT: **MAXIMUM RESIDENTIAL IMPERVIOUS SURFACE AMENDMENT ZONING ORDINANCE SERVICE PACK 2C CLEAN-UP**

DATE: **MARCH 10, 2023**

COPIES: **T. PETRUCCI, H. BENDER, D. MANHARDT, L. HARRIER, J. ZATOR, ESQ., J. ALDERFER, ESQ. S. PIDCOCK**

Background:

At their December 15, 2023 meeting, the Planning Commission recommended approval of all but one of the Zoning Ordinance Service Pack 2C amendments. The exception was the Maximum Residential Impervious Surface Amendment (Amendment C15). This amendment had been discussed over three Planning Commission meetings and it appeared that the Planning Commission had come to a consensus by the third meeting. Staff opines that the Planning Commission came to three conclusions with regard to the proposed amendment:

- That the section should be amended to require a maximum of 80% impervious coverage for lots between 0 and 5,000 square feet.
- That the proposed amendment shall not reduce the maximum impervious coverage for large lot owners.
- That staff should contact surrounding municipalities to learn how they are addressing the greater issue of MS4 where it relates to SALDO and Zoning impervious coverage requirements.

Staff amended the proposed amendment to incorporate the first two conclusions and contacted surrounding municipalities to address the third conclusion. In doing so it learned that three out of four responding municipalities are not coordinating Ordinances to address MS4 concerns. Lower Macungie Township is not currently addressing the issues holistically. Salisbury Township is not either, although they are fairly-well built out and have fewer opportunities for large land developments. Upper Macungie noted that they attempt to work with developers to reasonably size stormwater management facilities. North Whitehall has recently adopted a combined Stormwater/MS4 Ordinance which addresses MS4 concerns in a more holistic manner.

At the January 19, 2023 Planning Commission meeting, staff presented the revised amendment C15. Planning Commission comments were mainly supportive, but included several that sought definition of what would constitute evidence that adjoining properties are adequately protected from stormwater runoff. Staff has provided additional language to define the specific requirements.

Staff wishes to point out that, larger stormwater issues aside, this amendment proposes to repair an identified flaw in the Ordinance. The proposed amendment is designed to be compatible with possible future amendments to SALDO and Stormwater Management Ordinances, if that path is chosen. If that path is not chosen, the proposed amendment stands well on its own and is

consistent with what staff understood to be the Planning Commissions' conclusions from all reviews to date.

Respectfully submitted,

Gregg R. Adams, Planner
Community Development Department

TOWNSHIP OF SOUTH WHITEHALL

LEHIGH COUNTY, PENNSYLVANIA

PLANNING COMMISSION

REGULAR SESSION MINUTES JANUARY 19, 2023

The Regular Session of the South Whitehall Township Planning Commission was held on the above date in the Township Municipal Building located at 4444 Walbert Avenue, Allentown, Lehigh County, Pennsylvania.

Members in attendance:

David Wilson, Chairman
Brian Hite, Vice-Chairman
Trevor Dombach
Timothy Dugan
Andrew Flagg
Diane E. Kelly

Staff members in attendance:

Gregg Adams, Planner
Chris Strohler, Long-Range Planner
Laura Harrier, Zoning Officer
David Manhardt, Director of Community Development
Anthony Tallarida, Assistant Township Engineer
Jennifer Alderfer, Assistant Township Solicitor
Leo DeVito, Alternate Township Solicitor

B. Residential Impervious Surface Zoning Ordinance Amendment
Staff Directed Request for Zoning Ordinance Text Amendment

Mr. Adams reviewed the history of the amendment, noting that it was separated from Zoning Ordinance Service Pack 2C to allow the rest of that amendment to proceed. He stated that he understood the direction of the Planning Commission was that residents should not lose any of the impervious surface currently permitted them. He stated that he revised the chart to reflect that direction. He reviewed the table showing the proposed new chart and the columns to the right that showed the practical impact in both square footage of impervious cover and percentage of lot impervious cover.

Mr. Flagg inquired as to what surrounding municipalities are doing.

Mr. Adams stated that he contacted the surrounding municipalities and received four responses. He stated that three out of four use a similar approach and one has combined stormwater management with other Ordinances.

Mr. Hite stated that he had discussed the matter with the LVPC, and they indicated that most municipalities are using a similar approach, and some recognize that current MS4 regulations may require a change.

Mr. Adams suggested that the Township appears to be slightly ahead of the pack on the matter. He noted that this amendment is only intended to fix a flaw in the current Ordinance and not make the holistic change that was discussed. He stated that the reduction of the smallest lots to a maximum of 80% impervious coverage and the addition of the Special Exception for property owners who wish to exceed the maximum impervious coverage are both good reasons to approve the amendment.

Chairman Wilson stated that the amendment proposes good concepts. He noted that it could be tied into changes in other Ordinances to better address the MS4 issues that the Township is currently seeing.

Mr. Adams stated that the changes to other Ordinance are not being proposed now, but with the adoption of the new Comprehensive Plan staff will be looking at the MS4 implications within SALDO and Stormwater Management and those changes may return to the Planning Commission in the future.

Mr. Dombach inquired as to whether a disclaimer should be added to this Section to indicate that other regulations may apply.

Mr. Adams stated that he would check but believes that the Zoning Ordinance may already make a similar statement.

Ms. Harrier inquired as to whether the Planning Commission could review impervious surface Special Exceptions.

Mr. Adams stated that the Planning Commission may be overkill, particularly since the Township Engineer will review an Individual Lot Grading Plan for a disturbance under 5,000 square feet, an Erosion and Sedimentation Control Plan for a disturbance between 5,000 and 10,000 square feet, a Stormwater Management Plan for a disturbance between 10,000 and 43,50 square feet, and LCCD will review an NPDES permit for disturbances over an acre.

Mr. Manhardt suggested codifying the afore-mentioned as the evidence required by Special Exception.

Mr. Adams stated that we could add that.

Mrs. Kelly inquired as to whether the addition of the Special Exception provision allows a property owner to get around the Zoning Ordinance.

Mr. Adams stated that it could be viewed that way, or it could be viewed as a reasonable avenue for a property owner to be permitted to exceed the Township maximum impervious surface only after a deeper Township review. He noted that the necessary review and approval by either the Township Engineer or the LCCD prior to the Zoning Hearing Board review should prevent egregious use of that option.

Ms. Harrier inquired whether the Planning Commission could review it prior to the Zoning Hearing Board, as they are more familiar with stormwater issues.

Mr. Adams noted that the Planning Commission typically requires applicants to get their approvals from the afore-mentioned agencies as proof they are complying with the stormwater regulations. He stated that he saw no additional value from a Planning Commission review that would be based on the same evidence that the Zoning Hearing Board would require.

Mr. Dugan inquired whether the Township could require signed and sealed drawings for an LCCD review for a 5,000 square foot lot.

Mr. Tallarida stated that the point of an Individual Lot Grading Plan is to get that information on a sealed plan, which could be used by the Zoning Hearing Board.

Mr. Dombach agreed that the Planning Commission would look to the engineers to ensure compliance with the stormwater management regulations.

Mr. Flagg stated that he would be uncomfortable with the possible conflict between the intent of planning and the intent of zoning with regard to a Planning Commission review of this issue.

Mrs. Kelly inquired as to how many conflicts that residents have had with this Section over the past year to fully understand the issues our residents are facing.

Mr. Adams opined that there have been none in the past year. He stated that there was a resident caught in this issue in the last three or four years. He stated that, as a planner, he prefers to look ahead and act to fix potential problems before they become problems. He stated that if the Township waits until a resident is caught up in the issue, it would be at least six or twelve months before the resident would have satisfaction, if ever.

Mr. Dugan suggested that the evidence to be presented to the Zoning Hearing Board should be defined.

Mr. Adams stated that such evidence could easily be added, as we know the current requirements.

Mr. Dugan opined that amendment is pretty close with the amended language.

Mr. Hite suggested that the amendment be cleaned up and brought back for a full Board.

Chairman Wilson made a motion to table the amendment to a future meeting.

The motion was seconded and passed unanimously, 6-0.

ADOPTED THIS DATE: February 16, 2023

ATTEST:

Secretary	**Chairman**

15. Amend Section 350-44(c) to Correct the Impervious Lot Coverage for a Residential Use:

Staff noticed that the chart designating the Maximum Percentage of Lot Coverage permitted for Residential Uses creates conflicting situations around the points where the categories change. Staff's original concept was that residential life demands a certain amount of impervious surface, regardless of the size of the house and accessory uses, but to maintain community standards of proportionality and discourage excessive impervious surface, once that "standard amount of impervious surface" is reached larger lots should be required to maintain more non-impervious surfaces. Therefore, smaller lots should be permitted more impervious surface (as a percentage of the lot area), while larger lots should be permitted less (as a percentage of the lot). Unfortunately, this rigid chart has led to some situations that are contradictory to the intent of the Section. For example, a residential lot of 5,000 square feet in area is currently permitted 5,000 square feet of impervious coverage, but a lot of 5,001 square feet in area is permitted 3,750.75 square feet of impervious surface. This discrepancy escalates at larger lot sizes – for example, a 5-acre lot is permitted 54,450 square feet of impervious surface but a 5.001-acre lot is permitted only 32,676.5 square feet of impervious surface.

Staff proposes to revise the table to "smooth" the amount of permitted impervious surface through the entire table, so that the permitted impervious surface continues to increase as the lot size increases. Staff also proposes to reduce the maximum impervious surface for the smallest lots to 80% from the current 100%, reasoning that almost all existing lots maintain some green space and that a minimum amount of green space be maintained on every residential lot to allow some infiltration of stormwater onsite. Staff also proposes that a Special Exception approval be required for property owners who wish to exceed the maximum impervious surface permitted. Special Exception review would allow a public forum for the approval of such uses and would allow the Zoning Hearing Board to attach reasonable conditions to projects that exceed the Maximum Impervious Surface requirements.

The existing Section 350-44(c):

(c) Impervious Lot Coverage for a Residential Use is as follows:

Lot Area	Maximum Percentage of Lot Coverage
Up to 5,000 sq. ft.	100%
>5,000 sq. ft. to 10,000 sq. ft.	75%
>10,000 sq. ft. to 25,000 sq. ft.	65%
> 25,000 sq. ft. to 43,560 sq. ft.	50%
> 43,560 sq. ft. to 5 acres	25%
> 5 acres	15%

At their December 15, 2022 meeting, the Planning Commission, while appreciating staff's efforts to address the multiple issues outlined above, expressed concern that larger

landowners would be unduly burdened by the limitations to the impervious surface proposed. Staff acknowledges that concern and proposes revising the table to more closely mirror the effects of the existing standards. The following table shows the proposed amendment to the table above with proposed maximum impervious surface (and percentage) for each category for comparison purposes.

Lot Area	*Maximum Lot Coverage*	Impervious Coverage in Square Feet	Impervious Coverage as a Percentage of Lot
0 sq. ft. to <5,000 sq. ft.	*80%*	0 sq ft to <4,000 sq ft	80% to 80%
5,000 sq. ft. to <10,000 sq. ft.	*70% of the lot area between 5,000 sq ft and <10,000 sq ft. To determine the Maximum Impervious Lot Coverage: Subtract 5,000 sq ft from the area of the lot, multiply the remainder by 0.7, and then add 4,000 sq ft.*	4,000 sq ft to <7,500 sq ft	80% to 75%
10,000 sq. ft. to <25,000 sq. ft.	*60% of the lot area between 10,000 sq ft and <25,000 sq ft. To determine the Maximum Impervious Lot Coverage: Subtract 10,000 sq ft from the area of the lot, multiply the remainder by 0.6, and then add 7,500 sq ft.*	7,500 sq ft to <16,500 sq ft	75% to 66%
25,000 sq. ft. to <43,560 sq ft.	*30% of the lot area between 25,000 sq ft and <43,560 sq ft. To determine the Maximum Impervious Lot Coverage: Subtract 25,000 sq ft from the area of the lot, multiply the remainder by 0.3, and then add 16,500 sq ft.*	16,500 sq ft to <22,068 sq ft	66% to 51%
43,560 sq. ft. to <5 Acres	*20% of the lot area between 43,560 sq ft and <5 acres (217,800 sq ft). To determine the Maximum Impervious Lot Coverage: Subtract 43,560 sq ft from the area of the lot, multiply the remainder by 0.2, and then add 22,068 sq ft.*	22,068 sq ft to <56,916 sq ft	51% to 26%
5 Acres or More	*15% of the lot area 5 acres or more (217,800 sq ft). To determine the Maximum Impervious Lot Coverage: Subtract 217,800 sq ft from the area of the lot, multiply the remainder by 0.15, and then add 56,916 sq ft.*	56,916 sq ft and up	26% and down

→ Staff also recommends that Section 350-44(c) be amended by adding subsection (1) as follows:

(2) Lots containing a Residential Use that exceed the Maximum Lot Coverage requirements above shall be permitted by Special Exception subject to the following minimum standards and criteria, in addition to those set forth in Section 350-16(i):

(A) That the applicant provides evidence that adjoining properties are adequately protected from the impacts of the additional impervious surface and associated development including, but not limited to, light, noise, and stormwater runoff. To address stormwater runoff impacts, such evidence shall include, but not be limited to:

(i) An approved Individual Lot Grading Plan for earth disturbances of less than 5,000 square feet in size.

(ii) An approved Erosion and Sedimentation Control Plan for earth disturbances from 5,000 square feet to less than 10,000 square feet.

(iii) An approved Stormwater Management Plan for earth disturbances from 10,000 square feet to less than 43,560 square feet.

(iv) An approved NPDES Permit for earth disturbances of 43,560 square feet or more.

CLEAN SECTION 350-44(c)

(c) Impervious Lot Coverage for a Residential Use is as follows:

(1)

Lot Area	Maximum Lot Coverage
0 sq. ft. to <5,000 sq. ft.	80%
5,000 sq. ft. to <10,000 sq. ft.	70% of the lot area between 5,000 sq ft and 10,000 sq ft. To determine the Maximum Impervious Lot Coverage: Subtract 5,000 sq ft from the area of the lot, multiply the remainder by 0.7, and then add 4,000 sq ft.
10,000 sq. ft. to <25,000 sq. ft.	60% of the lot area between 10,000 sq ft and 25,000 sq ft. To determine the Maximum Impervious Lot Coverage: Subtract 10,000 sq ft from the area of the lot, multiply the remainder by 0.6, and then add 7,500 sq ft.
25,000 sq. ft. to <43,560 sq ft.	30% of the lot area between 25,000 sq ft and 43,560 sq ft. To determine the Maximum Impervious Lot Coverage: Subtract 25,000 sq ft from the area of the lot, multiply the remainder by 0.3, and then add 16,500 sq ft.
43,560 sq. ft. to <5 Acres	20% of the lot area between 43,560 sq ft and 5 acres (217,800 sq ft). To determine the Maximum Impervious Lot Coverage: Subtract 43,560 sq ft from the area of the lot, multiply the remainder by 0.2, and then add 22,068 sq ft.
5 Acres or More	15% of the lot area over 5 acres (217,800 sq ft). To determine the Maximum Impervious Lot Coverage: Subtract 217,800 sq ft from the area of the lot, multiply the remainder by 0.15, and then add 56,916 sq ft.

(2) Lots containing a Residential Use that exceed the Maximum Lot Coverage requirements above shall be permitted by Special Exception subject to the following minimum standards and criteria, in addition to those set forth in Section 350-16(i):

(A) That the applicant provides evidence that adjoining properties are adequately protected from the impacts of the additional impervious surface and associated development including, but not limited to, light, noise, and stormwater runoff. To address stormwater runoff impacts, such evidence shall include, but not be limited to:

(i) An approved Individual Lot Grading Plan for earth disturbances of less than 5,000 square feet in size.

(ii) An approved Erosion and Sedimentation Control Plan for earth disturbances from 5,000 square feet to less than 10,000 square feet.

(iii) An approved Stormwater Management Plan for earth disturbances from 10,000 square feet to less than 43,560 square feet.

(iv) An approved NPDES Permit for earth disturbances of 43,560 square feet or more.