

ORDINANCE NO. 300

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AN ORDINANCE AMENDING ORDINANCE NO. 279 ENTITLED "AN ORDINANCE ESTABLISHING A SET-BACK LINE FOR BUILDINGS AND STRUCTURES, PROVIDING FOR EXCEPTIONS FOR NON-CONFORMING BUILDINGS AND STRUCTURES, SPECIAL EXCEPTIONS AND VARIANCES, THE PROCEDURE AND FEES THEREFORE, AND PENALTIES FOR VIOLATION, INCLUDING EQUITABLE ACTION."

WHEREAS, it has come to the attention of the Berlin Borough Council that buildings are being constructed, erected and located in close proximity to the lot or boundary lines of land situate in the Borough; and,

WHEREAS, the Borough Council has determined that the construction, erection and location of buildings in close proximity to the lot or boundary lines may interfere with the use and enjoyment of adjacent properties and in particular, the easements of light and air to which occupants of adjacent property are entitled; and,

WHEREAS, the Borough Council has determined that the construction, erection and location of buildings in close proximity to the lot or boundary lines abutting on public streets poses a hazard in the form of a visual obstruction to vehicular traffic; and,

WHEREAS, the Borough Council is desirous of enacting an Ordinance to preserve the easements of light and air to which the occupants of land situate in the Borough are entitled, as well as to prevent hazards to traffic created by the location of buildings and structures in close proximity to street lines.

NOW THEREFORE, be it ordained and enacted by the Borough of Berlin and it is hereby ordained and enacted by authority of the same as follows:

SECTION ONE: BUILDING SET-BACK LINE, ADJOINING LOT(S).

From and after the date hereof, no building or other structure interfering with or obstructing light and/or ventilation shall be constructed, erected, located or relocated closer to any lot or boundary line than five (5) feet as measured from the lot or boundary line to the nearest line of the building or structure nor shall any building or structure be reconstructed, converted, enlarged or structurally altered in any fashion which will result

in the nearest line of the building or structure being closer to any lot or boundary line than five (5) feet as measured aforesaid.

SECTION TWO: PORCHES, BALCONIES, FIRE ESCAPES, CHIMNEYS, ETC. AS EXCEPTIONS TO SECTION ONE.

Open, unenclosed porches, platforms, terraces, patios, outside stairways, fire escapes, balconies and ordinary projections of chimneys and flues and cornices and gutters, flagpoles, clothesline poles, playground equipment or games, ponds, swimming pools, tree wells, temporary garden structures, arbors and trellises, barbecues and outdoor fireplaces, animal feeding areas and fences and ornamental shrubbery shall constitute the only exceptions to the set-back requirements hereinbefore set forth; provided, however, that the same are so placed as not to obstruct light and ventilation.

SECTION THREE: BUILDING SET-BACK LINE, LOT ABUTTING ON STREET.

Where any lot or parcel of land abuts upon a street, and/or alley, public or private, opened or unopened, no building or other structure interfering with or obstructing vision shall be constructed, erected, located or relocated closer to any street line than ten (10) feet as measured from the street line to the nearest line of the building or structure nor shall any building or structure be reconstructed, converted, enlarged or structurally altered in any fashion which will result in the nearest line of the building or structure being closer to any street line than ten (10) feet as measured aforesaid.

SECTION FOUR: PORCHES, BALCONIES, FIRE ESCAPES; CHIMNEYS, ETC. AS EXCEPTIONS TO SECTION THREE.

Open, unenclosed porches, platforms, terraces, patios, outside stairways, fire escapes, balconies and ordinary projections of chimneys and flues and cornices and gutters, flagpoles, clothesline poles, playground equipment or games, ponds, swimming pools, tree wells, temporary garden structures, arbors and trellises, barbecues and outdoor fireplaces, animal feeding areas and fences and ornamental shrubbery located no closer than two (2) feet from the street right-of-way shall constitute the only exceptions to the set-back requirements as hereinbefore set forth in Section Three; provided, however, that in each case of a lot abutted by a sidewalk or sidewalks, the same shall not be placed or located within the sidewalk; and provided further, that in all cases, no such structure shall be so placed or located as to obstruct vision within the Clear Sight Triangle at intersections as now or hereafter established by the Borough.

SECTION FIVE: NON-CONFORMING BUILDING AND STRUCTURES.

The lawful construction, erection, location, reconstruction, conversion, enlargement or structural alteration of a building or structure existing on the effective date of this Ordinance may be continued and shall not be deemed a violation of this Ordinance. All replacement buildings or structures shall conform to the provisions hereof.

SECTION SIX: SPECIAL EXCEPTIONS.

Special exceptions to the set-back requirements hereinbefore set forth may be granted by the Borough Council where:

- A. On the immediately joining lot or lots there are non-conforming buildings or structures, in a way similar to the exception applied for; or
- B. There are a minimum of fifty (50%) per cent of non-conforming irregularities in the distances existing buildings are located from the street line, on a street frontage on the side of a street between two (2) intersecting streets; and,
- C. The Borough Council finds the allowance of such an exception will not substantially and adversely affect the use and enjoyment of adjacent and neighboring property.

SECTION SEVEN: VARIANCES.

A variance from the set-back requirements hereinbefore set forth may be granted by the Borough Council to relieve practical difficulties or particular hardship in cases, when and where:

- A. By reason of exceptional narrowness, shallowness, or other unusual characteristic of size or shape of a specific piece of property existing on the effective date of this Ordinance; or,
- B. By reason of exceptional topographic conditions or extraordinary physical situation or physical condition of such property; and
- C. Where the strict application of the provisions of this Ordinance would result in peculiar and exceptional hardship upon the owner of such property.

A grant of variance shall comply as nearly as possible in every respect with the spirit, intent and purpose of this Ordinance, it being the purpose of this section to authorize the grant of a variance only for reasons of demonstrable and exceptional hardship, as distinguished from a variance sought for reasons of convenience, profit or caprice.

SECTION EIGHT: PROCEDURE FOR SPECIAL EXCEPTION OR VARIANCE.

- A. Application for a special exception or variance shall be in writing and filed in the Borough office. Each application shall set forth succinctly and briefly the name and address

of the applicant, the precise location of the property for which special exception or variance is sought, the particular provision of this Ordinance which prohibits the conduct for which special exception or variance is sought and the nature of the special exception or variance sought.

- B. The Borough shall forthwith schedule the application for hearing within thirty (30) days of the receipt of application for special exception or variance and shall give ten (10) days regular mail notice thereof to:
1. The applicant, at the address shown on the application.
 2. The owners of real property situate within two hundred (200) feet of the property for which special exception or variance is sought, at the addresses shown on the tax rolls of the Borough.

In addition to the foregoing, the Borough shall post conspicuous notice of the hearing at the Borough offices at least ten (10) days prior to the hearing.

- C. The hearing on appeal shall be informal and unrestricted by the rules of evidence. The applicant may be represented by Counsel.
- D. Within ten (10) days of the hearing on appeal, the Borough Council may either grant the special exception or variance upon such conditions as the case may require or necessitate and direct the Mayor in writing to issue the building permit, if one has been refused because of the provisions of this Ordinance, or dismiss the application, and in either case, notify the applicant in writing of the reasons therefore by regular mail at the address shown on the application.
- E. The applicant may appeal the decision of the Borough Council according to the law in such cases made and provided.

SECTION NINE: LAPSE OF SPECIAL EXCEPTION OR VARIANCE.

After the Borough Council has granted a special exception or variance, the special exception or variance so granted shall lapse after the expiration of two (2) years if the construction, erection, location, relocation, reconstruction, conversion, enlargement or structural alteration contemplated thereby and for which the special exception or variance was granted has not been completed. For good cause shown, the Borough Council may extend the grant of special exception or variance for up to one (1) additional year.

SECTION TEN: FEES TO ACCOMPANY APPLICATION FOR SPECIAL EXCEPTION OR VARIANCE.

Each application for a special exception or variance shall be accompanied by a fee which shall from time to time hereafter be set by resolution of the Borough Council. The fee shall be non-refundable in any case.

SECTION ELEVEN: PENALTIES FOR VIOLATION.

Any person, violating any of the provisions of this Ordinance shall be guilty of a summary offense and upon conviction thereof, for a first offense,

shall be sentenced to pay a fine of not less than Twenty-Five (\$25.00) Dollars nor more than Three Hundred (\$300.00) Dollars. Each day a violation continues beyond the date of conviction for a first offense shall constitute a separate offense and upon conviction thereof for a second or subsequent offense, any person violating any of the provisions of this Ordinance shall be sentenced to pay a fine of not less than One Hundred (\$100.00) Dollars nor more than Three Hundred (\$300.00) Dollars, or undergo imprisonment for a period of time not in excess of ninety (90) days, or both.

SECTION TWELVE: EQUITABLE ACTION.

Nothing herein shall be construed to prevent the Borough to commence and prosecute an action in equity having as its objective the cessation or termination of the construction, erection, location, relocation, reconstruction, conversion, enlargement or structural alteration of buildings or structures in violation of this Ordinance or the removal of buildings and structures constructed, erected, located, relocated, reconstructed, converted, enlarged or structurally altered in violation of this Ordinance and such remedies shall be in addition to and not in lieu of any other remedy provided herein or by law.

SECTION THIRTEEN: COMPLIANCE NOT A DEFENSE EXCEPT AS TO BOROUGH.

It being the spirit, intent and purpose of this Ordinance to provide minimum safeguards for the easements of light and air and to obviate traffic hazards created by visual obstructions in proximity to roads and alleys, compliance with the provisions of this Ordinance shall not be a defense to any legal or equitable action, civil or criminal, claiming interference with the easements of light and air or creating and maintaining a traffic hazard commenced or prosecuted by any person or governmental authority excepting those actions commenced by the Borough of Berlin and its police officers for violation of this Ordinance.

SECTION FOURTEEN: REPEALER AND PRESERVATION OF EXISTING ORDINANCE.

All Ordinances and parts of Ordinances inconsistent herewith be and the same are hereby repealed, excepting Ordinance No. 266 entitled "An Ordinance Providing For A Clear-Sight Triangle At Intersections, Prohibiting The Erection, Planting Or Maintenance Of Visual Obstructions Within The Clear-Sight Triangle And Providing Penalties For The Violation Thereof, Including An Action In Equity For Multiple Violations," the provisions of

which are hereby expressly preserved and in addition to the provisions of this Ordinance.

Adopted by the Berlin Borough Council, enacted and ordained this 4th day of January, 2001.