

ARTICLE 6 Regulations to Prevent the Creation Or Establishment of Airport Hazards

6.1 Overview

This article regulates and restricts the height to which structures may be erected or objects of natural growth, and otherwise regulating the use of property in the vicinity of the Jersey Shore Airport by creating the appropriate zones and establishing the boundaries thereof; providing for changes in the restrictions and boundaries of such zones; defining certain terms used herein; referring to the Jersey Shore Height Limitation and Zoning District Map which is incorporated in and made part of this Ordinance; and providing for enforcement.

6.2 Declaration of Policy

This Article is adopted pursuant to the authority conferred by 1984 Pa Laws 164, codified at 74 Pa Cons. Stat. §5101 et seq., and 53 PS 10101 et sq. It is hereby found that an obstruction has the potential for endangering the lives and property of users of the Jersey Shore Airport and property or occupants of landing in its vicinity; that an obstruction may affect existing and future instrument approach minimums of the Jersey Shore Airport and that an obstruction may reduce the size of areas available for the landing, takeoff and maneuvering of aircraft, thus tending to destroy or impair the utility of the Jersey Shore Airport and the public investment therein. Accordingly, it is declared:

6.2.1 – that the creation or establishment of an obstruction has the potential of being a public nuisance and may injure the region served by the Jersey Shore Airport.

6.2.2 – that it is necessary in the interest of the public health, safety, morals and general welfare that the creation or establishment of obstructions that are a hazard to air navigation be prevented, and

6.2.3 – that the prevention of these obstructions should be accomplished, to the extent legally possible, be the exercise of the police power without compensation.

It is further declared that the prevention of the creation or establishment of hazards to air navigation, the elimination, removal, alteration or mitigation of hazards to air navigation, or the marking and lighting of obstructions are public purposes for which a political subdivision may raise and expend public funds and acquire land or interests in land.

¹ Note - This article is a codification of Nippenose Township Zoning Ordinance Amendment 04-60 pertaining to Airport Hazards.

6.3 General Definitions

The following words and phrases when used in this article shall have the meaning given to them in this section unless the context clearly indicates otherwise.

6.3.1 Aircraft – Any contrivance, except an unpowered hang glider or parachute, used for manned ascent into or flight through the air.

6.3.2 Airport - Jersey Shore – Defined as: Any area of land or water which is used, or intended to be used, for the landing and takeoff of aircraft and any appurtenant areas which are used or intended to be used, for airport buildings or air navigation facilities or rights-of-way, together with all airport buildings and facilities thereon. As used herein, the term "airport" includes public airports but excludes private airports and heliports. Public and private airports are defined separately in this section.

6.3.3 Airport Elevation – 500 feet – Defined as: The highest point of an airport's usable landing area measured in feet above sea level.

6.3.4 Airport Hazard – Any structure or object, natural or manmade, or use of land which obstructs the airspace required for flight or aircraft in landing or taking off at an airport or is otherwise hazardous as defined by "Airport Hazard" in 74 Pa Cons. Stat. §5102.

6.3.5 Airport Hazard Area – Any area of land or water upon which an airport hazard might be established if not prevented as provided for in this Article and Act 164 of 1984 (Pennsylvania Laws Relating to Aviation).

6.3.6 Approach Surface – A surface longitudinally centered on the extended runway centerline, extending outward and upward from the end of the primary surface and at the same slope as the approach surface zone height limitation slope set forth in Section 4 of this Ordinance. In the plan perimeter of the approach surface zone.

6.3.7 Approach, Transitional, Horizontal and Conical Surface Zones – These zones are set forth in Section 6.4 of this Article.

6.3.8 Zoning Hearing Board – A Board appointed by the authority adopting these regulations. The number of members, powers, the governing rules, etc. of the Board are set forth in Section 6.9 of this Article. Joint Airport Zoning Board is defined in Section 6.10.

6.3.9 Conical Surface – A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.

6.3.10 Department – Pennsylvania Department of Transportation.

6.3.11 FAA – Federal Aviation Administration of the United States Department of Transportation.

6.3.12 Height – For the purpose of determining the height limits in all zones set forth in the Article and shown on the zoning map, the datum shall be mean sea level elevation unless otherwise specified.

6.3.13 Horizontal Surface – A horizontal plane 150 feet above the established airport elevation, the perimeter of which in plan coincides with the perimeter of the horizontal surface zone.

6.3.14 Larger Than Utility Runway – A runway that is constructed for and intended to be used by propeller drive aircraft of greater than 12,500 pounds maximum gross weight and jet powered aircraft.

6.3.15 Nonconforming Use – Any pre-existing structure, object of natural growth, or use of land which is inconsistent with the provisions of this article or an amendment thereto.

6.3.16 Non-Precision Instrument Runway – A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in non-precision approach procedure has been approved or planned.

6.3.17 Obstruction – Any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in Section 6.4 of this Article.

6.3.18 Person – An individual, firm partnership, corporation, company, association, joint stock association, or governmental entity; includes a trustee, a receiver, an assignee, or a similar representative of any of them.

6.3.19 Precision Instrument Runway – A runway having an existing instrument approach procedure utilizing an Instrument Landing System (ILS) or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated on an approved airport layout plan or any other planning documents.

6.3.20 Primary Surface – A surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway. For military runways or when the runway has no specially prepared hard surface or planned hard surface, the primary surface ends at each end of that runway. The width of the primary surface is the same as the elevation of the nearest point on the runway centerline.

6.3.21 Private Airport – An airport which is privately owned, and which is not open or intended to be open to the public as defined in 74 Pa. Cons. Stat. §5102.

6.3.22 Public Airport – An airport which is either publicly or privately owned and which is open to the public as defined in 74 Pa. Cons. Stat. §5102.

6.3.23 Runway – A defined area on an airport prepared for landing and takeoff of aircraft along its length.

6.3.24 Structure – An object, including a mobile object, constructed or installed by man including but without limitation, buildings, towers, cranes, smokestacks, earth formation and overhead transmission lines.

6.3.25 Transitional Surfaces – These surfaces extend outward at 90-degree angles to the runway centerline and the runway centerline extended at a slope of seven (7) feet horizontally for each foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces. Transitional surfaces for those portions of the precision approach surfaces, which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at 90-degree angles to the extended runway centerline.

6.3.26 Tree – Any object of natural growth.

6.3.27 Utility Runway – A runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 pounds maximum gross weight or less.

6.3.28 Visual Runway – A runway intended solely for the operation of aircraft using visual approach procedures.

6.4 Airport Surface Zones

In order to carry out the provisions of this Article, there are hereby created and established certain zones which include all of the land lying beneath the approach surfaces, transitional surfaces, horizontal surfaces and conical surfaces as they apply to the Jersey Shore Airport. Such zones are shown on the Jersey Shore Airport Height Limitation and Zoning District Map prepared by the Pennsylvania Department of Transportation, Bureau of Aviation, and dated Spring, 1989, which is attached to this Ordinance and made a part hereof. An area located in more than one (1) if the following zones are considered to be only in the zone with the more restrictive height limitation. The various zones are hereby established and defined as follows:

6.4.1 Utility Runway Visual Approach Surface Zone – Established beneath the visual approach surface. The inner edge of this zone coincides with the width of the primary surface and is 250 feet

wide. The zone expands outward uniformly to a width of 1,250 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

6.4.2 Utility Runway Non-Precision Instrument Approach Surface Zone – Established beneath the non-precision instrument approach surface. The inner edge of this zone coincides with the width of the primary surface and is 500 feet wide. The zone expands outward uniformly to a width of 2,000 feet at a horizontal distance 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

6.4.3 Runway Larger Than Utility Visual Approach Surface Zone – Established beneath the visual approach surface. The inner edge of this zone coincides with the primary surface and is 500 feet wide. The zone expands outward uniformly to a width of 1,500 feet at a horizontal distance of 5,000 feet from the primary surface.

6.4.4 Runway Larger Than Utility with a Visibility Minimum Greater Than $\frac{3}{4}$ Mile Non-Precision Instrument Approach Surface Zone – Established beneath the non-precision instrument approach surface. The inner edge of this zone coincides with the width of the primary surface and is 500 feet wide. The zone expands uniformly to a width of 3,500 feet at a horizontal distance of 10,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

6.4.5 Runway Larger Than Utility with a Visibility Minimum as Low As $\frac{3}{4}$ Mile Non-Precision Instrument Approach Surface Zone – Established beneath the non-precision instrument approach surface. The inner edge of this zone coincided with the width of the primary surface and 1,000 feet wide. The zone expands outward uniformly to a width of 4,000 feet at a horizontal distance of 10,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

6.4.6 Precision Instrument Runway Approach Surface Zone – Established beneath the precision instrument approach surface. The inner edge of this zone coincides with the width of 16,000 feet at a horizontal distance of 50,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

6.4.7 Transitional Surface Zones – Established beneath the transitional surfaces adjacent to each runway and approach surface as indicated on the Height Limitation and Zoning District Map.

6.4.8 Horizontal Surface Zone – Established beneath the horizontal surface, 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of 5,000 feet radii from the center of each end of the primary surface of each runway and connecting the adjacent arcs by drawing lines tangent to those arcs. The horizontal surface zone does not include the approach surface and transitional surface zones.

6.4.9 Conical Surface Zone – Established beneath the conical surface. This zone commences at the periphery of the horizontal surface and extends outward from a horizontal distance of 4,000 feet.

6.5 Airport Surface Zone Height Limitations

Except as otherwise provided in this Ordinance, no structure shall be erected, altered, or maintained and no tree shall be allowed to grow in any zone created by this article to a height in excess of the applicable height limit herein established for such zone. Such applicable height limitations are hereby established for each of the zones in question as follows:

6.5.1 Utility Runway Visual Approach Surface Zone – Slopes twenty (20) feet outward for each foot upward beginning at the end of an at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.

6.5.2 Utility Runway Non-Precision Instrument Approach Surface Zone – Slopes twenty (20) feet outward for each foot upward beginning at the end of an at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.

6.5.3 Runway Larger Than Utility Visual Approach Surface Zone – Slopes twenty (20) feet outward for each foot upward beginning at the end of an at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.

6.5.4 Runway Larger Than Utility with a Visibility Minimum Greater Than 3/4 Mile Non-Precision Instrument Approach Surface Zone – Slopes thirty-four (34) feet outward for each foot upward beginning at the end of an at the same elevation as the primary surface and extended to a horizontal distance of 10,000 feet along the extended runway centerline.

6.5.5 Runway Larger Than Utility with A Visibility Minimum As Low As 3/4 Mile Non-Precision Instrument Approach Surface Zone – Slopes thirty-four (34) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline.

6.5.6 Precision Instrument Runway Approach Surface Zone – Slopes fifty (50) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline, thence slopes upward forty (40) feet horizontally for each foot vertically to an additional horizontal distance of 40,000 feet along the extended runway centerline.

6.5.7 Transitional Surface Zones – Slopes seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the primary surface and the approach surface and extending to a height of 150 feet above the airport elevation which is 500 feet above mean sea level. In addition to the foregoing when an airport has a precision instrument runway approach zone, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the approach surface and extending to where they intersect the conical surface. Where precision instrument runway approach zone projects beyond the conical zone, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of an at the same elevation as the approach surface, and extending a horizontal distance of 5,000 feet measured at 90-degree angle to the extended runway centerline.

6.5.8 Horizontal Surface Zone – Established at 150 feet above the established airport elevation or at a height of 650 feet above sea level.

6.5.9 Conical Surface Zone – Slopes twenty (20) feet outward for each foot upward beginning at the periphery of the horizontal surface and at 150 feet above the established airport elevation and extending to a height of 350 feet above the established airport elevation or at a height of 850 feet above mean sea level.

6.6 Airport Zoning Requirements

6.6.1 Reasonableness – All airport zoning regulations adopted under this article shall be reasonable; none shall impose any requirement or restriction unless it is reasonably necessary to effectuate the purpose of the article. In determining what regulation, it may adopt, each municipality and joint airport zoning board shall consider, among other factors, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood and the uses to which the property to be zoned is put and adaptable.

6.6.2 Use Restrictions – Notwithstanding any other provisions of this Article, no use may be made of land or water within any zone established by this Article in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.

6.6.3 Nonconforming Uses –

6.6.3.1 Regulations Not Retroactive – The regulations prescribed by this Article shall not be construed to require the removal, lowering or other change or alteration of any structure or tree not conforming to the regulations as of the effective date of this article or otherwise interfere with the continuance of any nonconforming use, except as provided in Section 6.7 (relating to permits and variances). Nothing contained herein shall require any change in the construction, alteration or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this Article and is diligently executed.

6.6.3.2 Marking and Lighting – Notwithstanding the preceding provision of this Section, the owner of any existing nonconforming structure or tree is hereby required to permit the installation, operation and maintenance thereon or nearby of such markers and lights as shall be deemed necessary by the Jersey Shore Airport to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport obstruction. Such markers and lights should be installed, operated and maintained at the expense of the owners of Jersey Shore Airport.

6.7 Permits and Variances

6.7.1 Future Uses – Except as specifically provided in Sections 6.7.1.1, 6.7.1.2 or 6.7.1.3 hereunder, no material changes shall be made in the use of land, no structure shall be erected or otherwise established, and no tree shall be planted in any zone hereby created unless a permit therefore shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to be determined whether the resulting use, structure, or tree would conform to the regulations herein prescribed. If such determination is in the affirmation, the permit shall be granted. No permit for use is inconsistent with the provisions of this article shall be granted unless a variance has been approved in accordance with this Section 6.7.4.

6.7.1.1 – In the area lying within the limits of the horizontal zone and conical zone, no permit shall be required for any tree or structure less than seventy-five (75) feet of vertical height above the ground, except when, because of terrain, land contour, or topographic features, such tree or structure would extend above the height limits prescribed for such zones.

6.7.1.2 – In areas lying within the limits of the approach zones, but at a horizontal distance of not less than 4,200 feet from each end of the runway, no permit shall be required for any tree or structure less than seventy-five (75) feet of vertical height above the ground, except when, because of terrain, land contour or topographic features, such tree or structure would extend above the height limit prescribed for such approach zones.

6.7.1.3 – In the areas lying within the limits of the transition zones beyond the perimeter of the horizontal zones, no permit shall be required for any tree or structure less than seventy-

five (75) feet of vertical height above ground, except when such tree or structure, because of terrain, land contour, or topographic feature, would extend above the height limit prescribed for such transition zones.

Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction, or alteration of any structure or growth of any tree in excess of any height limits established by this article, except that a permit may be required to make maintenance repairs to or to replace parts of existing structures which do not enlarge or increase the height of an existing structure.

6.7.2 Existing Uses – Before any nonconforming structure may be replaced, substantially altered or rebuilt or tree allowed to grow higher or replanted, a permit must be secured from the municipality authorizing the replacement or change. No permit shall be granted that would allow the establishment or creation of an obstruction or permit a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of this article or any amendments thereto or than it is when the application for a permit is made.

6.7.3 Nonconforming Uses Abandoned or Destroyed – Whenever the Township Zoning Officer determines that a nonconforming tree or structure has been abandoned or more than 80 percent torn down, physically deteriorated or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviated from this article.

6.7.4 Variance – Any person who plans to erect a new structure, to add to an existing structure or to erect or maintain any object (natural or manmade) in the vicinity of the Jersey Shore Airport, as defined in 14 Code of Federal Regulations Paragraph 77.13(a) (as amended or replaced) shall first notify the Federal Aviation Administration and the Pennsylvania Bureau of Aviation to complete and obtain an obstruction review of the plan. Subsequently, if necessary because the plan is in violation of other township zoning regulations, the individual may apply to the Zoning Hearing board for a variance from the zoning regulations in question. A variance shall only be granted after the requirements of Section 6.8 are satisfied. A variance may be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but would do substantial justice and would be in accordance with the spirit of the regulations and this Article. Any variance may be granted subject to any reasonable conditions that the Zoning Hearing Board may deem necessary to effectuate the purposes of this Article.

The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Additionally, no application for variance to the requirements of this article may be considered by the Zoning Hearing Board unless a copy of the application has been furnished to the Airport Manager (or person of equivalent description) for advice as to the aeronautical effects of the variance. If the Airport Manager (or person of equivalent description) does not respond to the application within fifteen (15) days after receipt, the Zoning Hearing Board may act without input to grant or deny said application.

6.7.5 Hazard Marking and Lighting – In granting any permit or variance under this section, the Board shall, if it deems the action advisable to effectuate the purpose of this Article and reasonable under the circumstances, so condition the permit or variance as to require the owner of the structure or object of natural growth in question to permit the municipality, at its own expense, or require the person or persons requesting the permit or variance, to install, operate and maintain thereon such markers and lights as may be required by guidelines or regulations adopted by the FAA.

6.8 Enforcement/Notice

6.8.1 Local Enforcement – It shall be the duty of the Zoning Officer to administer and enforce the regulation prescribed in this article.

Applications for permits and variances shall be made upon a form published for that purpose. Applications required by this article are to be submitted to the Zoning Officer and processed in accordance with the provisions of Article 16 of this Ordinance.

6.8.2 Notice to Department – Notwithstanding any other provision of law, a municipality or board which decides to grant a permit or variance under this Article shall notify the Department of Transportation of its decision. This notice shall be in writing and shall be sent to the department at least (10) days before the date upon which the decision is to be issued.

6.8.3 Enforcement – Enforcement shall be by Zoning Enforcement notice as provided in Nippenose Township Zoning Ordinance.

6.9 Joint Airport Zoning Board

Joint Airport Zoning Board – Where any airport hazard appertaining to an airport is located outside the territorial limits of the municipality encompassing the airport, all of the municipalities involved may, by ordinance or resolution, create a Joint Airport Zoning Board which shall have the same power to adopt, administer and enforce airport zoning regulations applicable to the airport hazard area in question as that vested (by the police power) in the municipality within which the area is located. Each joint airport zoning board shall have as members two representatives appointed by each municipality participating in its creation, and in addition, a chairman elected by a majority of the members so appointed.

6.10 Appeals

6.10.1 Right of Appeal – Any person aggrieved, or taxpayer affected by any decision of the municipality or zoning officer may appeal to the Zoning Hearing Board as provided by law.

6.11 Acquisition of Air Rights

In any case in which it is desired to remove, lower or otherwise terminate a nonconforming structure or use, or the approach protection necessary cannot because of constitutional limitation, be provided by airport zoning regulations, or it appears advisable that the necessary approach protection be provided by acquisition of property rights, rather than by airport zoning regulations, the municipality or municipal authority owning the airport or served by it, if any, may acquire by purchase, grant or condemnation, in the manner provide by the law under which municipalities are authorized to acquire real property for public purposes, such air right, aviation easement or other estate or interest in property or nonconforming structure or use in question as may be necessary to effectuate the purpose of this article. In the case of the purchase of any property or any easement or estate, or interest therein, or the acquisition thereof by the power of eminent domain, the municipality making the purchase or exercising the power shall, in addition to the damages for the taking, injury or destruction of property, also pay the cost of the removal and relocation of any structure or any public utility which is required to be moved to a new location.

6.12 Relation to Other Zoning Regulations of the Municipality

6.12.1 Incorporation – In the event that a municipality has adopted or hereafter adopts a comprehensive zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations applicable to the same area or portion thereof may be incorporated in and made a part of the comprehensive zoning regulations and be administered and enforced in connection therewith. This Article (Nippenose Township Ordinance 2004-60) is intended to be a part of the Nippenose Township Zoning Ordinance, by incorporation therein as an addendum chapter.

6.12.2 Conflicts – In the event of conflict between any airport zoning regulations adopted under this Article and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, and the use of land, or any other matter, and whether the other regulations were adopted by the municipality which adopted the airport zoning regulations or by some other municipality or otherwise the more stringent limitation or requirement shall govern and prevail