

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWNSHIP OF LOWER POTTS GROVE TOWNSHIP, MONTGOMERY COUNTY, PENNSYLVANIA, PROHIBITING THE CONSTRUCTION OF DRIVEWAYS AND/OR REPAIRS TO DRIVEWAYS ONTO A TOWNSHIP ROAD WITHOUT A PERMIT; PROVIDING FOR THE APPLICATION AND ISSUANCE OF PERMITS, REGULATIONS AND FILING FEES; AND IMPOSING FINES AND PENALTIES FOR VIOLATIONS.

WHEREAS, in recognition of the necessity to provide safe egress from and ingress to driveways located within Lower Pottsgrove Township and in order to protect the public health, safety and welfare, it is hereby ENACTED AND ORDAINED by Lower Pottsgrove Township of the County of Montgomery and Commonwealth of Pennsylvania, as follows:

SECTION 1. Short Title. This ordinance may be known and may be cited as the “Lower Pottsgrove Township Driveway Ordinance”.

SECTION 2. Scope.

- A. General. The provisions of this ordinance shall apply to the layout, location, design, construction, erection, installation, opening and/or alteration of driveways (as the term, “driveway” is defined in § 3 of this ordinance, except as provided by subsection C below.
- B. Specific. Without limiting the generality of subsection A above:
 - 1) The provisions of this ordinance shall apply to the alteration of driveways, not excepted under subsection C below, which exist on the effective date of this ordinance.
 - 2) The provisions of §13 of this ordinance (providing for post-installation deficiencies) shall apply to driveways, not excepted under subsection C below, which exists on the effective date of this ordinance.
- C. Exceptions.

- 1) The provisions of this ordinance shall not apply to driveways which require a permit under PennDOT driveway rules and regulations for the layout, location, design, construction, erection, installation, opening and/or alteration of such driveways.
- 2) The provisions of this ordinance, concerning the layout, location, design, construction, erection, installation, opening, alteration and/or number of driveways, shall not apply to driveways which are subject to the Subdivision and Land Development Ordinance (Chapter 215) and permitted under and by an approved and recorded final subdivision and/or land development plan. However, the provisions of this ordinance, concerning permits, permit application fees, review and inspection fees and costs, insurance, post-installation deficiencies and penalties shall apply to such driveways.

SECTION 3. Definitions. The following words and phrases, including the plural, singular and all other forms thereof, when used in this ordinance shall have the meanings given them in this section, unless the context clearly indicates otherwise:

APPLICANT – The applicant for a permit under this ordinance concerning a driveway who shall be the lot owner of the lot served, or to be served, by the driveway.

BOARD OF COMMISSIONERS – The Board of Commissioners of the Township.

CLEAR SITE TRIANGLE – An area of unobstructed vision at the intersection of a street and driveway.

DRIVEWAY – A private way providing for vehicular and pedestrian access between a parking or other area on a lot and an abutting road (as the term “road”, is defined in this section), including:

- A. The entrance and exit of the way, which may be on the lot and/or within the ultimate right-of-way lines of the road; and
- B. All required and/or proposed drainage and other structures, facilities and improvements appurtenant to the way.

DRIVEWAY WIDTH – The narrowest width of a driveway measured perpendicular to the center line of the driveway.

EDGE OF PAVEMENT – The edge of the main traveled portion of a road, exclusive of shoulder.

LAST PERMIT DECISION DATE – The last date on or by which the Township, under or pursuant to 35 P.S. § 7210.502, or other applicable law, is required to render a decision approving or denying a permit under this ordinance.

LOT – A designated parcel, tract or area of land, which is established by a plat or otherwise as permitted by law, that is, or is to be used, developed or built upon as a unit.

LOT FRONTAGE – The extent to which a lot abuts a road, such extent being the length of that portion of the ultimate right-of-way line of the road abutting the lot.

LOT OWNER – The person who holds, of record, legal title to a lot. If more than one person holds such title, “lot owner” shall mean all such persons. For purposes of § 9 (providing for a permit) and § 13 (providing for post-installation deficiencies) of this ordinance, “lot owner” shall mean the person or persons who hold, of record, legal title to a lot served, or to be served, by a driveway subject to those sections.

PennDOT DRIVEWAY RULES AND REGULATIONS – The rules and regulations of the Department of Transportation of the Commonwealth of Pennsylvania set forth in Chapter 441, entitled “Access to and Occupancy of Highways by Driveways and Local Roads,” of Title 67 of the Pennsylvania Code, with all amendments and supplements thereto and any new rules and regulations substituted therefor, as in force at the time of application under this ordinance.

PERSON – Any individual or any corporation, partnership, limited liability company, business trust, syndicate, other association, government entity, estate, trust, foundation or other entity recognized by law as the subject of rights and duties.

ROAD –

- A. Any road, highway, street, lane, alley, court, easement or way, serving primarily as a means of vehicular and pedestrian travel:
 - (1) The dedication of which as a public street has been accepted, conditionally or unconditionally, by the Township;
 - (2) The dedication of which as a public street has been offered to but not yet accepted, conditionally or unconditionally, by the Township;
 - (3) The dedication of which as a public street has not yet been, but is intended to be, offered to the Township as part of an approved and recorded final subdivision and/or land development plan or otherwise; and/or
 - (4) The maintenance of which as a public street has been undertaken by the Township; and

- B. Any state or county road or highway over which the Township has acquired jurisdiction. "Road" shall include the entire width between the ultimate right-of-way lines of such road, highway, street, lane, alley, court, easement or way.

ROAD CLASSIFICATION – The classification of a road as one of the following classes: semi-controlled access highway; feeder road; residential/rural road; rural road; and cul-de-sac road. Such classes are defined in the Subdivision and Land Development Ordinance (Chapter 215). A semi-controlled highway shall be the highest classification, and a cul-de-sac road shall be the lowest classification.

SUBDIVISION AND LAND DEVELOPMENT ORDINANCE – Chapter 215 of the Code of the Township of Lower Pottsgrove, known as the "Lower Pottsgrove Subdivision and Land Development Ordinance" with all amendments and supplements thereto and any new ordinance substituted therefor, as in force at the time of application under this ordinance.

TOWNSHIP – The Township of Lower Pottsgrove, Montgomery County, Pennsylvania.

TOWNSHIP ENGINEER – A professional engineer, licensed as such in the Commonwealth of Pennsylvania, duly appointed as the engineer for the Township or engaged specially as a consultant to the Township.

ULTIMATE RIGHT-OF-WAY LINE – The dividing line between the outside boundary or right-of-way line of a road and an abutting lot.

ZONING HEARING BOARD – The Zoning Hearing Board of the Township.

ZONING ORDINANCE – Chapter 250 of the Code of the Township of Lower Pottsgrove, known as the "Lower Pottsgrove Zoning Ordinance of 1976, as amended" with all amendments and supplements thereto and any new ordinance substituted therefor, as in force at the time of application under this ordinance.

SECTION 4. General Requirements. No driveway, or any part thereof, shall be laid out, located, designed, constructed, erected, installed, opened and/or altered except in strict conformance with the provisions of this ordinance including, without limitation, applying for and obtaining a permit and paying and making deposits for fees and costs as set forth in this ordinance.

SECTION 5. Driveway Location.

- A. The driveway shall be located in such manner so that sight distance is adequate to allow safe movement into and out of the driveway, free movement of normal road traffic is not impaired, and a hazard or an area of undue traffic congestion on the road is not created.
- B. The driveway shall be located at least 40 feet from the nearest road intersection, unless:

- 1) The lot frontage of the lot, on and for which the driveway is proposed, is insufficient to allow such location, in which case the driveway shall be located as far as possible from the nearest road intersection.
 - 2) The Zoning Ordinance [Chapter 250] requires a different location, in which case the driveway shall be located in accordance with applicable provisions of the Zoning Ordinance [Chapter 250]. The provisions of this subsection shall supersede and have control over inconsistent provisions of Subsection B(1) of this subsection.
- C. When different road classifications are involved, the driveway shall provide access to the road of lesser or least, as the case may be, classification.
- D. Safe sight distance and posted speed limits shall be two of the criteria used for driveway location, as well as for driveway design and construction. Minimum safe sight distance shall be determined and provided in accordance with the safe sight distance requirements of PennDOT driveway rules and regulations. Where speed limits are not posted, verified roadway speeds may be used.

SECTION 6. Driveway Design and Construction. The driveway shall be designed and constructed in accordance with the following:

- A. Width. The driveway shall have a minimum width of 10 feet, except that a minimum width of 15 feet shall be provided at the driveway entrance and over any swale or drainage pipe.
- B. Radius. A minimum radius return of six feet (6') shall be provided at the driveway entrance.
- C. Curb. Where curb is involved, the curb shall be depressed to a height of 1½ inches above the gutter line, and the curb depression shall be two feet wider than the driveway.
- D. Paving. That portion of a driveway, within 25 feet of the center line of the abutting road, shall be paved to the full width thereof. Such length of paving may be increased by the Township in cases of long driveways, areas of drainage problems, and/o other conditions deemed by the

Township as warranting additional paving length. The paving of the driveway shall consist of two inches minimum depth of 19 mm or 9.5 mm on four inches minimum depth of crushed stone.

- E. Slopes. Within 20 feet of the edge of pavement, the slope of the driveway profile shall not exceed four percent (4%) and shall not be less than one percent (1%). Beyond such 20-foot point, the slope of the driveway profile shall not exceed thirteen percent (13%). The cross slope of the driveway paving shall be ¼ inch per foot.
- F. Pipe. The Township, upon field investigation, shall determine whether a drainage pipe shall be installed under the driveway. The design and size of the pipe, when required, shall be determined by drainage computations using a five-year storm frequency. The minimum diameter of the pipe shall be 15 inches or should match the existing pipe in the area if greater than 15 inches. The pipe shall be either plastic pipe or concrete pipe. The pipe shall be located at least six feet from the edge of pavement unless field conditions, upon Township inspection, indicate a different location. The minimum length of the pipe shall be either 20 feet or such other length as shall extend at least two feet on each and beyond the edge of the driveway paving, whichever length is greater.
- G. Swale. The Township, upon field investigation, shall also determine whether a swale shall be used. When a swale is used, the gutter shall be at least six inches lower than and at least six feet from the edge of pavement. The requirements of this subsection may be modified by the Township as field conditions warrant.
- H. No driveway shall be closer than five (5) feet from a property boundary line.
- I. Non single-family residential driveway. A driveway for other than a single-family residential use shall be designed and constructed in accordance with all the requirements applicable to residential streets, with the exception of right-of-way requirements, as set forth in the

Subdivision and Land Development Ordinance [Chapter 215]. The provisions of this subsection shall supersede and have control over inconsistent provisions of § 304-18 (providing for driveway location) of this ordinance and inconsistent provisions of subsections A through H (providing for certain design and construction requirements) of this section.

SECTION 7. Waiver of Location, Design and Construction Requirements. If any location, design or construction requirement of a driveway under § 5 and/or § 6 of this ordinance cannot be met, the Board of Commissioners may, upon request of the applicant and upon recommendation of the Township Engineer, waive the requirement if the following conditions are satisfied.

- A. No other reasonable access to the lot is available which will either meet the requirement or deviate from the requirement to a lesser extent.
- B. The applicant has done all that can reasonably be done to satisfy the requirement.
- C. If additional land is required to meet the requirement, the applicant provides satisfactory evidence that the additional land cannot be acquired at a reasonable price.
- D. No traffic problem will be created.
- E. To the extent that the requirement is also provided under and by the Zoning Ordinance [Chapter 250], the applicant applies for and obtains a final unappealable decision of the Zoning Hearing Board granting a variance or other appropriate relief permitting the deviation from the requirement as set forth in the Zoning Ordinance [Chapter 250].
- F. The applicant executes an indemnity agreement satisfactory to the Township, binding upon the applicant and the heirs, personal representatives, successors and assigns of the applicant, and inuring to the benefit of the Township, its officials, employees and agents.

SECTION 8. Multiple Driveways. No more than one driveway for the same lot shall be permitted, unless the lot frontage of the lot exceeds 500 feet, in which case one additional driveway

may be permitted upon a demonstration by the applicant of the need for the additional driveway. In no case shall more than two driveways for the same lot be permitted. Each driveway shall comply with the provisions of this ordinance.

SECTION 9. Permit Required.

- A. A permit issued by the Township, upon application of the lot owner, shall be required prior to laying out, constructing, erecting, installing, opening and/or altering a driveway, and prior to commencing remedial work, required under § 13 of this ordinance.
- B. The application for the permit shall be made in writing upon such forms as the Board of Commissioners shall prescribe from time to time. The prescribed application form shall require such information, plans, studies, reports and other items to be set forth thereon or to be submitted therewith as the Board of Commissioners may deem necessary to determine compliance with the provisions of this ordinance and/or other applicable law including, but not limited to:
 - 1) Safe sight distance calculations in accordance with the minimum safe sight distance requirements of the PennDOT driveway rules and regulations; and
 - 2) A sketch and profile plan of the driveway, including any required or proposed drainage pipe, swale and paving.
- C. The application for the permit shall be submitted in the name of and signed by the lot owner.
- D. The application for the permit shall be accompanied by the application fee as provided under § 10 of this ordinance, and the initial deposit for review fees and costs as provided under § 11 of this ordinance. An application submitted without such application fee and/or initial deposit shall be incomplete.
- E. The Township, upon examination of the application for the permit, may make such investigations and may require the applicant to submit such further information as the

Township deems necessary to determine compliance with the provisions of this ordinance. Such information may be in addition to the information, plans, studies, reports and other items required to be set forth on or submitted with the prescribed application form. If the applicant fails to submit the further information within fifteen (15) days after the date of the Township's written request therefore or by the fifth day prior to the last permit decision date, whichever occurs first occurs, the Township may, in addition to such other or further rights as it may have, deny the application. In such case, the applicant shall not be entitled to the refund of any fees or for any deposit for fees and costs made under this ordinance except as provided under § 11 of this ordinance.

- F. The permit shall be issued only to the lot owner. The permit shall not be issued to any contractor of the lot owner nor to any person other than the lot owner.
- G. Approval of the application for the permit, and any permit issued thereon, shall be subject to and conditioned upon an agreement of and signed by the low owner, binding upon the lot owner and the heirs, personal representatives, successors and assigns of the lot owner, to:
 - 1) Maintain the driveway, including any drainage pipe or swale appurtenant thereto, at all times in a safe and operable manner and to remedy any deficiencies under and in accordance with § 13 of this ordinance.
 - 2) Fully indemnify, save harmless and defend the Township, its officials, employees and agents, of and from all liability, or alleged liability, for damages or injury occurring to ay person or persons or property through, arising out of, resulting from or otherwise in consequence of any act or omission of the lot owner or of any contractor, agent, servant, employee or other person engaged or employed in, about, or upon the work under or pursuant to the permit, by, at the instance of, or with the approval of consent of the lot owner; any failure of the lot owner or of any of the foregoing persons to comply with this

ordinance, other applicable law, and/or the terms and conditions of the permit; and/or for a period of two years after completion of the work under or pursuant to the permit, any failure of the grade, to or from which the driveway provides access, which is caused, directly or indirectly, or in whole or in part, by such work. Such agreement shall be set forth in or attached to the application, and a copy thereof attached the permit.

H. In the event that permit is revoked as provided under this ordinance or otherwise, the Township may, in addition to such other or further rights and remedies as it may have, order and direct the lot owner to remove any and all structures, equipment and/or other property belonging to the lot owner, or to any contractor or other person employed or engaged by the lot owner to perform work or take other actions under or in furtherance of the permit, from the road, between the ultimate right-of-way lines thereof, and to restore the commencement of work under or pursuant to the permit. Should the lot owner fail to comply with such order and direction, the Township shall have the right, without limitation, to cause such removal of property and such restoration of the road right-of-way, and to collect the cost thereof in the same manner and fashion as the Township may collect costs under § 13(C) of this ordinance (providing for the Township's remediation of post-installation deficiencies where the lot owner fails to do so).

SECTION 10. Permit Application Fee. Upon and together with the filing of an application for a permit under § 9 of this ordinance and the making of the initial deposit for review fees and costs under § 11 of this ordinance, the applicant shall pay to the Township an application fee to defray the administrative costs and expenses of the Township in processing the application. The amount of the application fee shall be established from time to time by resolution of the Board of Commissioners.

SECTION 11. Review and Inspection Fees and Costs.

A. Review fees and costs. The applicant for a permit under § 9 of this ordinance shall:

- 1) Be responsible for all fees and costs incurred by the Township in the review of the permit application by the Township Engineer and/or such other professional consultant as may be engaged by the Township for such review. The need for such review and the selection of the consultant to perform the review shall be determined by the Board of Commissioners in its sole discretion.
 - 2) Deposit funds with the Township, to be held in escrow by the Township, for the exclusive use of the Township to draw upon, at its sole order, for purposes of reimbursing itself for or paying the review fees and costs. The initial deposit of funds for review fees and costs shall be made upon and together with the filing of the permit application and the payment of the permit application fee under § 10 of this ordinance. The amount of the initial deposit shall be established from time to time by resolution of the Board of Commissioners.
- B. Inspection fees and costs. The applicant whose permit application under § 9 of this ordinance is approved shall:
- 1) Be responsible for all fees and costs incurred by the Township in the inspection of the work under the permit by the Township Engineer and/or such other professional consultant as may be engaged by the Township for such inspection. The need for such inspection, including the number of inspections, and the selection of the consultant to perform the inspection shall be determined by the Board of Commissioners in its sole discretion.
 - 2) Deposit funds with the Township, to be held in escrow by the Township, for the exclusive use of the Township to draw upon, at its sole order, for purposes of reimbursing itself for or paying the inspection fees and costs. The initial deposit for inspection fees and costs shall be made following approval of the permit application by the Township but prior to

the issuance of the permit. The amount of the initial deposit shall be established from time to time by resolution of the Board of Commissioners. The approval of the permit application and the issuance of the permit shall be subject to the Township's receipt of the initial deposit, and no work under the permit shall commence until the initial deposit is made and the permit is issued. If the initial deposit is not received by the Township within 60 days after the date of the Township's written notice to the applicant advising of the approval of the application and the amount of the initial deposit to be made, the Township may revoke the approval of the application. In the latter case, the applicant shall not be entitled to the refund of any fees or of any deposits for fees and costs paid or made under this ordinance except as provided by subsection F of this section.

- C. Additional deposits. Should the balance of the escrow deposit for either the review fees and costs or the inspection fees and costs, after reimbursement or payment thereof by the Township, fall below that amount estimated by the Township Engineer for additional review or inspection fees and costs which the Township likely may incur, the Township, from time to time and at any time, may notify, in writing, the applicant to deposit additional funds in escrow with the Township to cover the estimated amount of additional fees and costs. The applicant shall deposit the additional funds with the Township within ten (10) days of the date of the Township's notice.
- D. Payment of excess fees and costs. Should the review or inspection fees and costs incurred by the Township at any time exceed the escrow deposit therefore held by the Township, the Township shall invoice the applicant within ten (10) days of the invoice date. Payment under this subsection shall be in addition to the deposit of additional funds in escrow required under subsection C of this section.

- E. Failure to make additional deposits or pay excess fees and costs. If the applicant fails to deposit the additional funds in escrow under subsection C of this section or to pay excess fees and costs under subsection D of this section, the Township may, in addition to such other or further rights and remedies as it may have, do the following as the case may be:
- 1) Discontinue further processing and review of the permit application, and, if the failure continues for more than 30 days after the date of the Township's notice for invoice for the deposit or payment or continues to the fifth day prior to the last permit decision date, whichever first occurs, deny the application.
 - 2) Order the cessation of all further work under the permit until the deposit or payment is made in full, and, if the failure continues for more than 60 days after the date of the Township's notice or invoice for the deposit or payment, revoke the permit. In the case the application is denied or the permit is revoked, as provided in this subsection, the applicant shall not be entitled to the refund of any fees or of any deposit for fees and costs paid or made under this ordinance except as provided under subsection F of this section.
- F. Refunds. To the extent that no other sums, including any fines and/or costs under § 14 of this ordinance, are due and owing the Township by the applicant in connection with the permit application and/or the work under the permit any portion of the escrow deposits, remaining after all review and inspection fees and costs have been fully reimbursed to or paid by the Township, shall be refunded to the applicant.

SECTION 12. Insurance Requirements.

- A. The applicant for a permit under § 9 of this ordinance shall, when requested by the Township, submit to and in favor of the Township a certificate or certificates of insurance for public liability and property damage, in such form and amount satisfactory to the Township, to cover any loss that may be incurred for or on account of any matter, cause or thing arising out of

the work under or pursuant to the permit. Any request by the Township for such insurance certificate or certificates may be made at any time prior to approval of the permit application. If such request is made by the Township, the application shall not be approved until the insurance certificate or certificates are received by the Township.

- B. If the applicant fails to submit to the Township such satisfactory insurance certificate or certificates when requested, the Township may, in addition to such other or further rights and remedies as it may have, discontinue further review and processing the permit application, and, if the failure continues for more than 15 days after the date of the Township's request for the certificate or certificates or continues to the fifth day prior to the last permit decision date, whichever first occurs, deny the application. In the latter case, the applicant shall not be entitled to the refund of any fees or of any deposit for fees and costs paid or made under this ordinance except as provided under § 11(F) of this ordinance.

SECTION 13. Post-Installation Deficiencies.

- A. In the event of any faulty, defective or inadequate design or installation of a driveway which does or is likely to impede the free flow of surface water across or under the driveway entrance or render the entrance or abutting road unsafe to travel thereover, and upon certification by the Township Engineer of such condition and after written notice thereof by the Township to the lot owner or tenant in possession, such deficiency shall be repaired, removed or otherwise remedied by the lot owner with such time as specified in the Township's notice but in no event later than 45 days after the date of the notice.
- B. The specific repair, removal or other remedial work to be undertaken by the lot owner shall be as specified in the Township's notice, and shall be at the sole cost and expense of the lot owner. Such work may include the installation of drainage pipe of adequate design, strength and size. Unless otherwise specified by the Township, no such work shall be commenced

until the lot owner first obtains a permit therefore and pays and makes deposits for applicable fees and costs in accordance with this ordinance.

- C. In the event that the lot owner fails to comply with the Township's notice, the Township, in addition to and not in limitation of any other rights and/or remedies as it may have at law or in equity, may cause the repair, removal or other remedial work to be done and collect the cost thereof, together with a penalty of ten percent (10%) of such cost, in the manner provided by law for the collection of municipal claims or by a civil action at law without the filing of a claim.

SECTION 14. Violations and Penalties. Any person who shall violate any provision of this ordinance shall, upon conviction thereof, be sentenced to pay a fine not exceeding One Thousand Dollars (\$1,000.00), plus costs, and, in default of payment thereof, shall be subject to imprisonment for a term not exceeding thirty (30) days. A violation of the terms and conditions of any permit issued under this ordinance shall be considered a violation of this ordinance. Each day that a violation of this ordinance continues shall constitute a separate offense and violation of this ordinance.

SECTION 15. Severability. The provisions of this ordinance are severable and if any sentence, clause or section of this ordinance is for any reason found to be unconstitutional, illegal or invalid by a court of competent jurisdiction, such finding shall not affect or impair any of the remaining provisions, sections, sentence or clauses of this ordinance. It is hereby declared to be intent of the Board of Commissioners that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause or section not have been included herein.

SECTION 16. Repealer. All ordinances and resolutions and parts of ordinances and resolutions inconsistent with the provisions of this ordinance are hereby repealed.

SECTION 17. Effective Date. This ordinance shall become effective immediately upon enactment.

ENACTED and **ORDAINED** this _____ day of _____, 2019.

**LOWER POTTS GROVE TOWNSHIP
BOARD OF COMMISSIONERS**

By: _____
Bruce Foltz, President

Attest: _____
Secretary