
UPPER AUGUSTA TOWNSHIP

ACCESS TO AND OCCUPANCY OF HIGHWAYS BY DRIVEWAYS AND LOCAL ROADS

ADOPTED

March 13, 2008

ARTICLE III. HIGHWAYS

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CHAPTER 441. ACCESS TO AND OCCUPANCY OF HIGHWAYS BY DRIVEWAYS AND LOCAL ROADS

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Authority

The provisions of this Chapter 441 issued under the State Highway Law (36 P.S. § 670-420), unless otherwise noted.

Source

The provisions of this Chapter 441 adopted March 28, 1980, effective April 1, 1980, 10 Pa. B. 1392, unless otherwise noted.

Cross References

This section cited in 67 Pa. Code § 203.34 (relating to highway occupancy permit work on State-designed highways).

§ 441.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

Acceleration lane – The portion of roadway adjoining the traveled way constructed for the purpose of enabling a vehicle entering a roadway to increase its speed to a rate at which it can safely merge with traffic.

Access – A driveway, street or other means of passage of vehicles between the highway and abutting property, including acceleration and deceleration lanes and such drainage structures as may be necessary for the proper construction and maintenance thereof.

Combination – Two or more vehicles physically interconnected in tandem.

County office – Any of the various maintenance district office of the Department.

Curblin – A line formed by the face of the existing curb or in its absence the outer edge of the shoulder, along which curbing is or may be located.

Deceleration lane – The portion of the roadway adjoining the traveled way constructed for the purpose of enabling a vehicle that is exiting a roadway to slow to a safe speed after it has left the mainstream of traffic.

Divided highway - A highway divided into two or more roadways and so constructed as to impede vehicular traffic between the roadways by providing an intervening space, physical barrier, or clearly indicated dividing section.

Driveway – Every entrance or exit used by vehicular traffic to or from properties abutting a highway. The term includes proposed streets, lanes, alleys, courts, and ways.

Driveway width – The narrowest width of a driveway measured perpendicular to the centerline of the driveway.

Egress – The exit of vehicular traffic from abutting properties to a highway.

Equipment – All machinery and equipment, together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper construction and completion of the work.

Frontage width – The distance along the right-of-way line in front of an abutting property.

High volume driveway – A driveway used or expected to be used by more than 1500 vehicles per day.

Highway – A highway or bridge on the system of State highways and Township roads, including the entire width between right-of-way lines, over which the Department has assumed or has been legislatively given jurisdiction.

Improved area – The are within the right-of-way which has been constructed for highway purposes, including roadbed, pavement, shoulders, slope, sidewalks, drainage facilities, and any other appurtenances.

Ingress – The entrance of vehicular traffic to abutting properties from a highway.

Inspector – The Townships authorized representative assigned to inspect permit operations.

Intermediate island – The section of right-of-way between driveways from the pavement edge or curb to the property line.

Limited access highway – A highway to which owners or occupants of abutting lands and other persons have no legal right of access except at points and in the manner determined by the Township.

Local road – Every public highway other than a State highway. The term includes existing or proposed streets, lanes, alleys, courts, and ways.

Low volume driveways – A driveway used or expected to be used by more than 25 but less than 750 vehicles per day.

Median – Any structure or area which separates the paved traveled ways for opposing directions of traffic.

Medium volume driveway – A driveway used or expected to be used by more than 750 but less than 1500 vehicles per day.

Minimum use driveways – A residential or other driveway is used or expected to be used by not more than 25 vehicles per day.

Own – To hold title to land or a building or be a tenant in a lease that will not terminate within 15 years of the permit issuance date.

Pavement edge – The edge of the main traveled portion of any highway, exclusive of shoulder.

Permanent curbing – Plain or reinforced cement concrete curb which meets Township standards.

Permit – A highway occupancy permit issued by Authorized agents of PennDOT and Upper Augusta Township.

Person – Any natural person, firm, copartnership, association, corporation, or political subdivision.

Plans – Drawings which show the location, character, and dimensions of the proposed occupancy and related highway features, including layouts, profiles, cross sections, drainage, and other details.

Property line clearance – The distance measured along the pavement edge or curb between the property frontage boundary line and the near edge of the driveway.

Publication 43 – A Department publication, sometimes called “Bulletin 43”, containing requirements for the maintenance and protection of traffic on construction projects.

Publication 68 – A Department publication containing regulations governing the design, location, and operation of all official traffic signs, signals, and marking on and along highways.

Publication 90 – A Department publication containing requirements for work area traffic control during highway maintenance operations and utility work.

Right-of-way – *The area which has been acquired by the Township highways purposes.*

Roadway – That portion of highway improved, designed, or ordinarily used for vehicular travel, exclusive of the sidewalk or shoulder.

Roadway construction standards – Department Publication No. 72 containing the Department’s design standards for roadway construction.

Secretary – The Secretary of the Township.

Setback – The lateral distance between the right-of-way line and the roadside building, liquid fuel pump island, display stand, or other object, which will result in space for vehicles to stop or park between such objects and the right-of-way line.

Shoulder – The portion of the roadway, contiguous to the traffic lanes, for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses and pavements.

Shoulder line – The intersection of the shoulder slope with the side slope or ditch slope.

Sidewalk – A paved walkway, continuous for a reasonable distance and an integral part of the highway, constructed solely for use by pedestrians.

Stabilized material – Any aggregate such as aggregate cement, aggregate bituminous or lime pozzolan, placed in such manner as to provide a smooth, stable, all-weather surface not subject to undue raveling.

Stopping sight distance – The distance required by a driver traveling at a given speed to stop the vehicle after an object on the roadway becomes visible to the driver.

Traveled way – The portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

Traffic control device – Any sign, signal, marking or device placed or erected for the purpose of regulating, warning, or guiding vehicular traffic or pedestrians, or both.

Turning radius – The radius of an arc which approximates the turning path of the exterior corner of a vehicle.

Vehicle – Every device in or by which any person or property is or may be transported or drawn upon a highway. The term includes special mobile equipment as defined in the Vehicle Code.

Notes of Decisions

Responsible Person

The pavement cartway used for vehicular traffic was beyond the curb line which separated the highway from pedestrian traffic and was, therefore, the responsibility of the Commonwealth, not the city. *Ruch v. City of Philadelphia*, 587 A.2d 830 (Pa. Cmwlth.1991).

Absent an agreement on maintenance at an intersection of a city street and a state highway, the State is responsible for maintaining only that portion of the vehicular intersection between actual or extended curb lines of its highway, without any reference to sidewalks; the city is responsible for maintaining crosswalks and other area up to the actual or extended curb lines of the state highway at the vehicular intersection. *Crigler v. City of Philadelphia*, 667 A.2d 470 (Pa. Cmwlth. 1995).

Roadway

The State is responsible for maintaining only those vehicular areas on its streets between curb lines. The crosswalks on the lane was not between existing curb line available to vehicular traffic on the

street; it is beyond the outer edge of the shoulder, along which curbing may be located on the street. Thus, the State would have no liability for plaintiff's injuries caused by a fall in a pothole on the crosswalk of the lane. *Crigler v. City of Philadelphia*, 667 A.2d 470 (Pa. Cmwlth. 1995).

Cross References

This section cited in 67 Pa. Code § 441.8 (relating to driveway design requirements).

§ 441.2 Purpose and application.

- (a) *General rule.* It is in the public interest to regulate the location, design, construction, maintenance and drainage of access driveways, local roads, and other property within State highway right-of-way for the purpose of security, economy of maintenance, preservation of proper drainage and safe and reasonable access.
- (b) *Other requirements.* Issuance of a permit under these regulations does not relieve the permittee from any additional responsibility to secure other Federal, State, or local approvals or permits as may be required by law.
- (c) *Authority.* These regulations are made pursuant to the State Highway Law (36 P.S. § 670-420).
- (d) *Safety requirements.* Nothing contained in this chapter is intended to relax existing safety requirements.

Notes of Decisions

Police Powers

Although driveway opening on to State highway was established prior to promulgation of these regulations, this regulations, this regulation could be applied retroactively to reasonably limit ingress and egress since property is held subject to valid police power regulations "made, and to be made, for the health and comfort of the people." *Department of Transportation v. Longo*, 510 A.2d 832 (Pa. Cmwlth. 1986).

§ 441.3. Permit application procedure.

- (a) *General rule.* No driveway, local road or drainage facility or structure shall be constructed or altered within Township highway right-of-way and no drainage facility of the Township may be altered or connected on to without first obtaining a permit from the Township. A permit may not be required for maintenance.
- (b) *Who may execute applications.* Permit applications shall be submitted in the name of and executed by the owner of the property.
- (c) *Where to submit application.* Permit applications shall be submitted to either the Township officer or directly to the authorized agent of the Township.
- (d) *When to submit applications.* Permit applications shall be submitted prior to the construction of any building which the proposed driveway will serve to assure that the driveway can be constructed in accordance with this chapter.
- (e) *Application procedure and required information.* Permit applications:
 - (1) Shall be submitted in person or by mail on a properly completed Township Form.

- (2) Shall be signed by the applicant.
 - (3) Shall include 3 sets of plans, detailing the location and pertinent dimensions of both the proposed installation and related highway features.
 - (4) Shall be accompanied by a check or money order, payable to the Township, in the appropriate amount.
 - (5) Shall be submitted to the Township at least 30 days prior to the anticipated start of work.
 - (6) Shall contain proof of ownership.
- (f) *Traffic control plan.* Submission of the traffic control plan shall be as follows:
- (1) When the applicant anticipates that it will be necessary to close a portion of a lane to vehicular traffic in order to perform the permitted work, the applicant shall submit a traffic control plan with the application.
 - (2) The Township office may require the applicant to submit a traffic control plan if it is anticipated that a potential hazard or interference to vehicular or pedestrian traffic will result from performance of the work.
 - (3) The traffic control plan shall be either:
 - (i) A detailed drawing, showing all traffic control devices.
 - (ii) a reference to a standard drawing found in Publication 43 or Publication 90, provided the referenced standard drawing properly depicts the work area and completely addresses the needed traffic control.
- (g) *Drainage control plan for other than minimum use driveways.* Drainage control plan for other than minimum use driveways shall be as follows:
- (1) If it can reasonably be anticipated that there will be an increase in the flow of water onto the highway or into highway drainage facilities as a result of action by the applicant, or that there will be an increase in the flow of water into the property of some other person as a result of any action authorized by the permit, a drainage control plan shall be submitted with the application. The drainage control plan shall contain the following:
 - (i) Source of water
 - (ii) Existing flow in cubic feet per second.
 - (iii) Predicted flow in cubic feet per second.
 - (iv) Where drainage currently flows.
 - (v) Where drainage ultimately outlets.
 - (vi) Hydraulic computations showing effect of additional flow on existing highway drainage system.
 - (2) Issuance of a permit shall be conditioned upon the Townships approval of the drainage control plan.

(h) *Drainage release for other than minimum use driveways.* If it can reasonably be anticipated that there will be an increase in the flow of water onto the property of some other person as a result of action, authorized by the permit, a drainage release shall be submitted with the application. Where possible, drainage releases – Form L-15 or CC-15 – will be obtained, by and at the expense of the applicant, in the County Office of the Recorder of Deeds. If a drainage may nonetheless issue a permit if it determines that there is no reasonable and prudent alternative available to the applicant and the applicant executes an indemnification agreement acceptable to the Township.

(i) *Plans for other than minimum use driveways.* The permit application for all driveways other than those classified as minimum use shall include a plan which illustrates, as minimum, the following, including dimensions where applicable:

- (1) Existing highway pavement, ditches, right-of-way and relevant property lines, highway appurtenances, utilities, and medians.
- (2) Existing and proposed building, including a description of present and proposed use of building.
- (3) Details of internal traffic circulation, parking, and traffic signs.
- (4) Design features of existing and proposed driveways, curbs, tapers, acceleration, and deceleration lanes including the following:
 - (i) Driveway width.
 - (ii) Driveway radii and other points of curvature.
 - (iii) Driveway grades or profile view of drive.
 - (iv) Driveway angle relative to the highway
 - (v) Dimensions of traffic islands adjacent to the highway and within the development that separate traffic flow from or into a highway.
 - (vi) Driveway surface material and traffic control devices.
 - (vii) Location of all required traffic control devices.
- (5) Distance from each existing and proposed driveway to the following:
 - (i) Nearest intersecting street, road, and highway.
 - (ii) Nearest driveway on adjacent properties.
 - (iii) Street, road, highway, or driveways opposite the site.
 - (iv) Relevant property lines and property lines extended to the roadway.
 - (v) Building and business appurtenances on the site.

(6) Sight distance in each direction from each proposed driveway.

(7) The number of vehicles per day which are expected to utilize each proposed driveway.

(j) *Review the municipalities, planning commissions, and zoning boards.* Review by municipalities, planning commissions, and zoning boards shall comply with the following:

- (1) Certain local governing bodies wish to review driveways applications within their jurisdictions.
 - (2) Each application for an access driveway within this jurisdiction must be accompanied by evidence which indicates that the location and type of access being requested has been reviewed by that agency.
 - (3) The Township will consider any comments or recommendations resulting from this review prior to approving the access permit.
- (k) *Authority to reject application.* The Township or Authorized Agent will examine and determine the genuineness, regularity, and legality of every application, and may reject any application if not satisfied of its genuineness, regularity or legality, or the truth of any statement contained in the application. The Township or Authorized Agent make sure such investigations and require such additional information as it deems necessary.
- (l) *Penalty for falsifying application.* Information provided in applications must be accurate. Section 4904 of the Crimes Code, (18 Pa. C.S. § 4904), makes it a misdemeanor for a person to mislead a public servant in performing an official function by making any written false statement which the person does not believe to be true.
- (m) *Newspaper or mail receptacles.* Permits are not required for the placing of newspaper receptacles or mailboxes, although their location is subject to the maintenance requirements of the Township.

§ 441.4 Permit fees.

Per Township fee schedule.

Cross Reference

This section cited in 67 Pa. Code § 441.3 (relating to permit application procedure); and 67 Pa. Code § 441.10 (relating to penalties and enforcement).

§ 441.5. Issuance of permits.

- (a) *General rule.* Upon application duly made in accordance with this chapter, a permit will be issued by the Township or Authorized Agent subject to this chapter and the conditions contained on the permit and its attachments and supplements. This permit will be the authority of the applicant to proceed with the work and will also serve as a receipt for the applicant to proceed with the work and will also serve as a receipt for the fees accompanying the application.
- (b) *Permit issued only to property owner.* Permits will be issued only to the owners of the property. Permits will not be issued to contractors of the property owner nor to any person other than the owner of the property.
- (c) *Permits not issued for certain structures.* Permits will not be issued for bus stop shelters or phone booths, or for advertising signs, liquid fuel pumps, loading platforms, weight scales, or any structure which the Township deems not proper for occupancy of the right-of-way. However, the Township may authorize bus stop shelters or phone booths by written agreement.

(d) *Permit requiring agreement.* Where the applicant will be required to perform a substantial amount of work, the Township may require the application to execute an agreement as a prerequisite to issuance of the permit.

(e) *Requesting permit time extension.* A permit shall be valid for A one year period as specified on the permit. If the permittee has not completed all authorized work by the completion date specified on the permit, an application shall be submitted requesting a time extension. If approved, a supplement may be issued by the Township or Authorized Agent, authorizing work to continue for an additional six-month period.

§ 441.6. General conditions.

The following conditions shall apply to permits issued under the provisions of this chapter:

- (1) *Scope of permit.* The permit shall be binding upon the permittee, its agents, contractors, successors, and assigns.
 - (i) The permittee shall be responsible for causing compliance with all terms and conditions of the permit by its employees, agents, and contractors.
 - (ii) The permit shall be located at the work site and shall be available for inspection by the representative of the Township.
 - (iii) The permit shall be maintained by the permittee as a permanent record and remain in effect, subject to the permit conditions and this chapter, as long as the driveway or the facility authorized by the permit exists.
 - (iv) Responsibility for compliance with the terms of the permit cannot be assigned or transferred by the permittee without first obtaining approval from the Township.
 - (v) The permittee shall be principally liable to the Township for any failure to comply with the permit and this chapter. The principal liability of the permittee to the Township shall not preclude the permittee or the Township from bringing any action against the permittee's contractor, subcontractor, engineer, architect, or any other person.
 - (vi) The permittee shall be the only party in interest in any action against the involving disputes arising from the permit.
 - (vii) A permit shall be valid only as long as the traffic volume of the driveway does not exceed the approved driveway classification as set forth in § 441.8(a) of this title (relating to driveway design requirements).
 - (viii) The Township, in granting a permit, will waive none of its powers or rights to require the future change in operation, removal, relocation, or proper maintenance of any access within State highway right-of-way.
- (2) *Additional restrictions.* All work authorized by the permit shall be subject to the following:
 - (i) All applicable laws, rules, and regulations, including but not limited to the following:
 - (A) Act of October 26, 1972 (P.L. 1017, No. 247) (53 P.S. § 1611), concerning environmental control measures related to pollution and the preservation of public natural resources.

(B) Act of December 10, 1974 (P.L. 1017, No. 247) (53 P.S. §§ 176-182), concerning protection of the public health and safety by preventing excavation or demolition work from damaging underground utility facilities.

(C) O.S.H.A. construction safety and health regulations, 39 Fed. Reg. 22801 (June 24, 1974) and 29 CFR § 1926.1 *et seq.*

(D) 42 U.S.C. § 2000d, as implemented by 49 CFR § 21 and 23 CFR § 230.101 *et seq.*

(E) Ordinances enacted by the Township which contain more stringent minimum safety requirements than this chapter.

(ii) Any rights of any person

(iii) The conditions, restrictions, and provisions of the permit.

(3) *Work to conform to Township standards.* The work shall be done at such time and in such time and in such a manner as shall be consistent with the safety of the public and shall conform to all requirements and standards of the Township including, but not limited to, form 408. If at any time it shall be found by the Township that the work is not being done or has not been properly performed, the permittee upon being notified in writing by the Township shall immediately take the necessary steps, at its own expense, to place the work in condition to conform to such requirements or standards. In case any dispute arises between the permittee and the Township's inspector, the Township's inspector shall have the authority to suspend work until the question at issue can be referred to and be decided by the Township.

(4) *Permittee responsibilities* shall be as follows:

(i) The permittee shall pay all fees, costs, and expenses incident to or arising from the project, including the cost of related highway improvements which increased traffic or surface drainage may necessitate.

(ii) In the event of failure or neglect by the permittee to perform and comply with the permit or the provisions of this chapter, the Township or Authorized Agent immediately revoke and annul the permit and order and direct the permittee to remove any or all structures, equipment, or property belonging to the permittee or its contractors from the legal limits of the right-of-way and to restore the right-of-way to its former condition. In the event the Township or Authorized Agent determines that such structures, equipment, or property pose a threat to the public safety and the permittee fails to remove the same after notice from the Township or Authorized Agent to do so, the Secretary or his or her attorneys, or any attorney of any court of record shall be authorized to appear for the permittee, and to enter an amicable action of ejectment and confess judgment against the permittee; and the attorney shall be authorized to issue forthwith a writ of possession without leave of court, all at the cost of the permittee.

(iii) If work is stopped on a project for any reason, other than at the end of any normal work day and any ditch or trench; in the opinion of the Township or its Authorized Agent remains open for an unreasonable period, the permittee, if so directed, shall refill the ditch or trench and work shall not resume until the permittee is prepared to proceed immediately with the work to its completion. In the event the permittee fails to refill the ditch or trench or proceed to completion of the work upon notice from the Township or Authorized Agent to do so, the Township or a Authorized Agent may perform the necessary and required work and shall be reimbursed for the costs by the permittee within 30 days after receipt of the Township's invoice.

- (iv) If the permittee, after making an opening in the surface to place or repair a drainage facility or for any other purpose, fails to restore any portion of the right-of-way to conform with Township specifications upon notice from the Township to do so, the Township may perform the work and the permittee shall reimburse the Township for the costs within 30 days after receipt of the Township's invoice.
- (5) *Restoration of slopes.* All disturbed slopes or earthen areas shall be restored to their original condition, or in a manner approved by the Township.
- (6) *Altering drainage prohibited.* Unless specifically authorized by the permit, the permittee shall not:
- (i) alter the existing drainage pattern of the existing flow of drainage water; or
 - (ii) direct additional drainage of surface water onto or into the highway right-of-way or highway facilities in a way which would have a detrimental effect on the highway or highway facilities.
- (7) *Disposition of materials.* Disposition of materials shall comply with the following:
- (i) The permittee shall keep the improved area free of all material which may be deposited by vehicles traveling upon or entering onto the highway during the performance of work authorized by the permit.
 - (ii) The permittee shall be responsible for controlling dust conditions created by its operations.
 - (iii) All excess material and material that is not suitable for backfill shall be removed and disposed of outside the right-of-way as the work progresses.
 - (iv) All retained suitable material shall be placed or stored outside the improved area, and in such a manner that there will be no interference with the flow of water in any gutter, drain, pipe, culvert, ditch, or waterway.
- (8) *Equipment damaging highway.* Equipment damaging the highway shall conform with the following conditions:
- (i) To protect the pavement and shoulders, all equipment shall have rubber wheels or runners and shall have rubber, wood, or similar protective pads between the outriggers and the surface, unless otherwise authorized by the permit.
 - (ii) In the event that other than rubber equipped machinery authorized for use, the pavement and shoulders shall be protected by the use of matting, wood, or other suitable protective material having a minimum thickness of four inches.
 - (iii) If the equipment damages the pavement or shoulders, the permittee shall restore the pavement or shoulders to their former condition, at the expense of the permittee.
- (9) *Traffic protection and maintenance.* Maintenance and protection of traffic shall be carried out in accordance with the requirements of the Township as set forth in PennDOT Publication 43 and Publication 90.
- (i) The permittee shall provide and maintain all necessary precautions to prevent injury or damage to persons and property in accordance with instructions furnished by the district office. A traffic control plan shall be submitted to and approved by the Township before closing any portion of lane to vehicular traffic.

- (ii) Traffic control devices shall be provided in accordance with Publication 43 and Publication 90. Any open trench or hole shall be adequately barricaded to prevent possible injury to pedestrians and the motoring public. All traffic control devices shall be of an approved type. Signs shall conform to all requirements of Publication 68.
- (iii) Designated employees shall be assigned by the permittee to direct one lane traffic. Flag man shall be provided as specified in the permit and in accordance with Publication 43 and Publication 90.
- (10) *Restoration.* All disturbed portions of the highway, including slopes and all appurtenances and structures such as guard rail or drain pipes, shall be restored by the permittee to a condition at least equal to that which existed before the start of any work authorized by the permit. This includes providing appropriate end treatments on guard rail systems where existing guard rail is being broken by the driveway.
- (11) *Approval by inspector.* Approval by the Township's inspector of all or part of any permitted work shall not constitute acknowledgement that the work was performed in accordance with the permit, nor shall such approval of the inspector act as a release of the permittee or waiver by the Township of its right to seek performance or restitution by the permittee.
- (12) *Maintenance.* All driveways and adjacent areas within the highway right-of-way shall be continuously maintained by the property owner so as to conform to the permit and so as not to interfere or be inconsistent with the design, maintenance, and drainage of the highway, or the safe and convenient passage of traffic upon the highway.
- (13) *Indemnification.* The permittee shall fully indemnify and save harmless and defend the Township, its agents and employees, of and from all liability for damages or injury occurring to any person or persons or property through or in consequence of any act or omission of any contractor, agent, servant, employee, or person engaged or employed in, about, or upon the work, by, at the instance, or with the approval or consent of the permittee; from any failure of the permittee or any such person to comply with the permit or this chapter; and, for a period of two years after completion of the permitted work, from the failure of the highway in the immediate area of the work performed under the permit where there is no similar failure of the highway beyond the area adjacent to the area of the permitted work.
- (14) *Insurance.* The permittee shall, when requested by the Township submit to the Township office a certificate or certificates of insurance for public liability and property damage, in 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 permitted construction.
- (15) *Damage to highway.* Restoration
- (i) If there is failure of the highway, including slope or any other appurtenance thereto, in the immediate area of the permitted work within two years after the completion of the permitted work and there is no similar failure of the highway beyond the area adjacent to the area of the permitted work, the permittee shall have absolute responsibility to make all temporary and permanent restoration including restoration of the adjacent area if it has also failed.
- (ii) If there is a failure of the highway, including slope or any other appurtenance thereto, in the area adjacent to the immediate area of the permitted work within two years after the completion of the permitted work and there is no similar failure of the highway in the area of the permitted work or beyond the area adjacent to the area of the permitted work, it shall be presumed that the work done by the permittee was the proximate cause of the failure proximate cause of the failure and the permittee shall be responsible to

make all temporary and permanent restoration unless the presumption is rebutted by clear and convincing evidence.

(iii) If there is a failure of the highway, including slope or any other appurtenance thereto, in the immediate area of the permitted work, which occurs more than 2 years after the completion of the permitted work, and there is no similar failure of highway beyond the area adjacent to the area of the permitted work, it shall be presumed that the work done by the permittee was the proximate cause of the failure and the permittee shall be responsible to make all temporary and permanent restoration, including any failure of the adjacent area if it has also failed, unless the presumption is rebutted by clear and convincing evidence.

(iv) If there is a failure of the highway, including slope or any other appurtenance thereto, in the area adjacent to the immediate area of the permitted work, which occurs more than 2 years after the completion of the permitted work, the permittee shall be responsible to make all temporary and permanent restoration if the permitted work was the proximate cause of the failure.

(v) If the permitted work is the proximate cause of damage to the highway, including slope or any other appurtenance thereto, beyond the adjacent area, the permittee shall be responsible for all remedial work and shall make all temporary and permanent restoration.

(vi) Where the permittee has the responsibility to restore the highway, including slope or any other appurtenance thereto, under subparagraphs (i) – (v), including instances where a presumption of responsibility has not been rebutted, the permittee shall have the duty to restore the improved area in properly, the Township will have the authority to do the work at the expense of the permittee. This permittee shall reimburse the Township for the cost within 30 days after receipt of the Township's invoice.

(16) *Future additional driveways.* Future additional driveways shall consist of the following:

(i) If the Township anticipates that a property may be subdivided and that such subdivision will result in an unacceptable number or arrangement of driveways or both, the Township may require the property owner to enter into an access covenant (Form CC-14) prior to issuance of a permit.

(ii) The access covenant will restrict access to the approved locations regardless of whether the land is later subdivided or conveyed to other persons, or both.

(iii) The access covenant shall become a part of the permit, which shall be recorded in the County Office of the Recorder of Deeds.

(17) *Use of highway prohibited.* Prohibited use of the highway shall be as follows:

(i) No part of the right-of-way shall be used for servicing vehicles, displays or conducting business. The area between the edge of the pavement and the right-of-way line shall be kept clear of all buildings, sales exhibits, business signs, vehicles, service equipment and similar items.

(ii) Improvements on private property adjacent to the right-of-way shall be so located that parking, stopping, and maneuvering of vehicles on the right-of-way will not be necessary in order for vehicles or patrons to be served. New liquid fuel pump islands installed in service stations adjacent to the highway shall be located at least 12 feet outside the right-of-way, in order for a driveway permit to be issued. See Figure 11 and Figure 12.

Notes of Decisions

Discretion

Hearing officer committed no abuse of discretion by order approving application for highway occupancy permit upon conditions that permittee pay for traffic signal and driveway access as this was within exercise of power to make reasonable rules and regulations governing the use of highways and flow of traffic thereon. *People v. Department of Transportation, 575 A.2d 973 (Pa. Cmwlth. 1990)*.

Preemption

The fact that the Department of Transportation issued a highway occupancy permit for direct access does not preempt the township's ability to abide by its duly enacted ordinance, which contains safety standards stricter than the Department's. The township's requirement that the landowner establish access other than that approved by the Department was affirmed. *Shelbourne Square Assocs. L.P. v Exeter Township, 794 A.2d 946 (Pa. Cmwlth. 2002)*.

Cross Reference

This section cited in 67 Pa. Code § 441.4 (relating to permit fees).

§ 441.7. General driveway requirements.

- (a) *General rule.* Driveways shall be located, designed, constructed and maintained in such a manner as not to interfere or be inconsistent with the design, maintenance and drainage of the highway.
- (b) *General location restrictions.* Access driveways shall be permitted at locations in which:
 - (1) Sight distance is adequate to safely allow each permitted movement to be made into or out of the access driveway.
 - (2) The free movement of normal highway traffic is not impaired.
 - (3) The driveway will not create a hazard.
 - (4) The driveway will not create an area of undue traffic congestion on the highway.
- (c) *Specific location restrictions.* Specific location restrictions shall include the following:
 - (1) Access driveways may not be located at interchanges, ramp areas, or locations that would interfere with the placement and proper functioning of highway signs, signals, detectors, lighting or other devices that affect traffic control.
 - (2) The location of a driveway near a signalized intersection may include a requirement that the permittee provide, in cooperation with the municipality, new or relocated detectors, signal heads, controller and the like, for the control of traffic movements from the driveway.
 - (3) Access to a property which abuts two or more intersecting streets or highways may be restricted to only that roadway which can more safely accommodate its traffic.
 - (4) The Township may require the permittee to locate an access driveway directly across from a highway, local road, or access driveway on the opposite side of the roadway if it is judged that offset driveways will not permit left turns to be made safely or that access across that roadway from one access to the other create a safety hazard.

(d) *Local roads.* As access intended to serve more than one property or act as a connecting link between two or more roadways shall be, for the purpose of this chapter, considered a local road and not a driveway regardless of its ownership. As such, its design must be in accordance with PennDOT's current standards governing the design of local roads. All other requirements of this chapter shall be complied with before the local road will be allowed access onto any highway.

(e) *Number of driveways.* The number and location of entrances which may be granted will be based on usage, interior and exterior traffic patterns, and current design policy of the Township.

(1) Normally, only one driveway will be permitted for a residential property and not more than two driveways will be permitted for a nonresidential property.

(2) If the property frontage exceeds 600 feet, the permit may authorize an additional driveway.

(3) Regardless of frontage, a development may be restricted to a single entrance/exit driveway, served by an internal collector road separated from the traveled way.

(f) *Approaches to driveways.* Driveway approaches shall conform to the following standards:

(1) The location and angle of an access driveway approach in relation to the highway intersection shall be such that a vehicle entering or leaving the driveway may do so in an orderly and safe manner and with a minimum of interface to highway traffic.

(2) When the access driveway approach and highway pavement meet, flaring of the approach may be necessary to allow safe, easy turning of vehicular traffic.

(3) Where the highway is curbed, driveway approaches shall be installed 1 ½ inches above the adjacent highway or gutter grade to maintain proper drainage. See Figure 5.

§ 441.8 Driveway design requirements.

(a) *General.* General requirements shall be as follows:

(1) The ability of a driveway to safely and efficiently function as an integral component of a highway system requires that its design and construction be based on the amount and type of traffic that it is expected to serve and the type and character of roadway which it accesses. This chapter separates driveway into four classifications, based on the amount of traffic they are expected to serve. A description of each classification and typical examples of land uses normally associated with each follows:

(i) Minimum use driveway, see Figure 7. A driveway normally used by not more than 25 vehicles per day, such as:

(A) single family dwellings, duplex houses; or

(B) apartments with five units or less.

(ii) Low volume driveway, see Figure 8. A driveway normally used by more than 25 vehicles per day but less than 750 vehicles per day, such as:

(A) office buildings;

(B) elementary and junior high schools; or

(C) car washes.

(iii) Medium volume driveway, see Figure 9,11, and 12. A driveway normally used by more than 750 vehicles but less than 1500 vehicles per day, which does not normally require traffic signalization, such as:

(A) motels;

(B) fast food restaurants; or

(C) service stations and small shopping centers or plazas.

(iv) High volume driveway, see Figure 10. A driveway normally used by more than 1500 vehicles per day, which often requires traffic signalization, such as:

(A) large shopping centers; or

(B) multi-building apartment or office complexes.

(2) The design features described in this section and illustrated in the attendant figures are to be used by the application. Dimensions shall be selected from the range of values shown on the appropriate figure, unless site conditions warrant a deviation. The Township may require design details which are more stringent than those specified in this chapter to insure the safe and efficient operation of any proposed driveway.

(3) Figure 7, 8, and 9 show two sets of design values. The applicant shall design his driveway using the values appropriate for the posted speed of the roadway being accessed.

(b) *Angle of access driveway approach*. Angle of access driveway approach shall include the following:

(1) Access driveway approaches used for two-way operation shall be positioned at right angles, that is, 90 degrees, to the highway or as near thereto as site conditions permit, except as authorized in Figure 11.

(2) When two access driveways are constructed on the same property frontage and used for one-way operation, each of these driveways may be placed at an angle less than a right angle, but not less than 45 degrees to the highway, except that along divided highways where no openings are allowed in median the minimum angle of an exit driveway may be 30 degrees, as shown in Figure 12.

(c) *Driveways adjacent to intersection*. Driveways serving properties located adjacent to a highway intersection shall be subject to the following:

(1) There shall be a minimum ten foot tangent distance between the intersecting highway radius and the radius of the first permitted driveway.

(2) The distance from the edge of pavement of the intersecting highway to the radius of the first permitted driveway shall be a minimum of 20 feet on curbed highways and 30 feet on uncurbed highways.

(3) Paragraphs (1) and (2) of this subsection may be waived only if the intersecting highway radius extends along the property frontage to the extent that compliance is physically impossible.

- (d) *Property line clearance.* No portions of any access shall be located outside of the property frontage boundary line.
- (e) *Multiple driveways.* Multiple driveways serving the same property must be separated by a minimum distance of 15 feet measured along the right-of-way line and 20 feet measured along the shoulder, ditch line, or curb. When the distance between multiple driveways is 50 feet or less measured along the shoulder or ditch line, the area between shall be clearly defined by permanent curbing. This curb shall be placed in line with existing curb or two feet back of the shoulder or ditch line on uncurbed highways. It shall be extended around the driveway radii to the right-of-way line.
- (f) *Site requirements.* Site requirements shall be as follows:
- (1) All nonresidential buildings shall be located a sufficient distance from the right-of-way line to provide ample driving area and parking off the right-of-way to prevent storage of vehicles on the access driveways and to prevent the back-up and turning of vehicles on the highway pavement.
 - (2) The radii of internal curves shall be as large as possible to allow a direct movement from the highway into a proper position to obtain service or parking without any interference to other vehicles attempting the same maneuver.
 - (3) Applications for driveways providing access to drive-in-service developments shall, when requested, include information relative to the amount of storage provided between the service facility and the right-of-way, the number of service operations anticipated during peak periods, and the hours and days of operation.
 - (4) The area between the right-of-way line adjacent to and on both sides of a driveway shall be used as a clear zone to provide a physical barrier between the traveled way and activity on private property. This area shall remain free of any obstructions which may interfere with a clear line of vision for entering or exiting vehicles.
- (g) *Curbing.* Requirements for curbing shall conform with the following:
- (1) The permit may require the installation of curbing wherever it is required to control access or drainage, or both. All curbing must be permanent curbing, as defined in § 441.1 of this title (relating to definitions).
 - (2) Where property abutting the right-of-way could be used as parking area, the permit may require curbing, permanent guardrail, or fencing to be constructed along the right-of-way line in order to prohibit vehicle encroachment upon the sidewalk or shoulder area.
 - (3) If, in the opinion of the Township there is a high probability that vehicles would otherwise utilize a portion of the property frontage other than the approved driveway to gain access to the property, the permit may require curbing or other physical barriers to be constructed.
 - (4) When curb exists adjacent to the proposed driveway, the line and grade of the existing curb shall be matched, unless otherwise authorized by the permit.
- (h) *Sight Distance.* Conditions for sight distance shall be as follows:
- (1) Access driveways shall be located at a point within the property frontage limits which provides at least the minimum sight distance listed in the appropriate following table:

Table 1 – Sight Distance for passenger cars and single unit trucks exiting from driveways onto two-lane roads.

<i>Posted Speed (mph)</i>	<i>Safe Sight Distance – Left¹ (feet)</i>	<i>Safe Sight Distance – Right¹ (feet)</i>
25	250	195
35	440	350
45	635	570
55	845	875

¹ Measured from a vehicle ten feet back of the pavement edge.

Table 2 – Safe Sight Distance for buses and combinations exiting from driveways onto two-lane roads.

<i>Posted Speed (mph)</i>	<i>Safe Sight Distance – Left¹ (feet)</i>	<i>Safe Sight Distance – Right¹ (feet)</i>
25	400	300
35	675	625
45	1225	1225
55	2050	2050

¹ Measured from a vehicle ten feet back of the pavement edge.

Table 3 – Safe Sight Distance for passenger cars and single unit trucks exiting from driveways onto four and six-lane roads.

<i>Posted Speed (mph)</i>	<i>Safe Sight Distance – Left¹ (feet)</i>	<i>Safe Sight Distance – Right² (feet)</i>
25	175	195
35	300	350
45	500	570
55	785	875

¹ Measured from a vehicle ten feet back of the pavement edge to a vehicle approaching in the outside lane.

² Measured from a vehicle ten feet back of the pavement edge to a vehicle approaching in the median lane.

Table 4 – Safe Sight Distance for buses and combinations exiting from driveways onto four and six-lane roads.

<i>Posted Speed (mph)</i>	<i>Safe Sight Distance – Left ¹ (feet)</i>	<i>Safe Sight Distance – Right ² (feet)</i>
25	300	300
35	625	625
45	1225	1225
55	2050	2050

¹ Measured from a vehicle ten feet back of the pavement edge to a vehicle approaching in the outside lane.

² Measured from a vehicle ten feet back of the pavement edge to a vehicle approaching in the median lane.

Table 5 – Safe Sight Distance for passenger cars and single unit trucks entering driveways by left turns.

<i>Posted Speed (mph)</i>	<i>Safe Sight Distance in Feet ¹</i>		
	<i>2-Lane</i>	<i>4-Lane</i>	<i>6-Lane</i>
25	190	205	220
35	300	320	345
45	445	470	500
55	610	645	680

¹ Measured from the point where a left-turning vehicle stops to a vehicle in the outside lane.

Table 6 – Safe Sight Distance for buses and combinations entering driveways by left turns.

<i>Posted Speed (mph)</i>	<i>Safe Sight Distance in Feet ¹</i>		
	<i>2-Lane</i>	<i>4-Lane</i>	<i>6-Lane</i>
25	330	360	390
35	485	530	575
45	690	750	810
55	905	990	1075

¹ Measured from the point where a left-turning vehicle stops for a vehicle in the outside lane.

(2) In using Tables 1 through 6 the following additional requirements shall apply:

(i) Tables 2, 4, and 6 shall be used in lieu of Tables 1, 3, and 5 only when combination traffic exceeds 5.0% of the total traffic using the proposed driveway.

(ii) Posted speeds shall be used unless operating speeds vary from the posted speed by more than ten miles per hours, in which case the Township may require that operating speeds be used.

(iii) The sight distances in Tables 1 through 4 apply only when highway grades are zero to 3.0%, either up or down.

(A) When the highway grade in the section to be used for acceleration, after leaving the driveway, ascends at 3.0 – 5.0%, the sight distance in the direction of approaching ascending traffic may be increased by a factor of 1.4.

(B) When the highway grade ascends at greater than 5.0%, sight distance may be increased by a factor of 1.7.

(C) When the highway grade in the section to be used for acceleration after leaving the driveway descends at 3.0 – 5.0%, sight distance in the direction of approaching descending highway traffic may be reduced by a factor of 0.6.

(D) When the road descends at greater than 5.0%, sight distance may be reduced by a factor of 0.5.

(iv) The sight distance values in Tables 1 through 6 are desirable for safe operation of the driveway. If it is impossible to achieve the desirable value by locating the driveway at any point within the property frontage boundaries, the minimum acceptable sight distance values shall be computed from the following formula:

$$SSSD = 1.47 Vt + \frac{V^2}{30(f+g)}$$

SSSD = Minimum safe stopping sight distance (feet).

V = Velocity of vehicle (miles per hour).

t = Perception time of motorist (average = 2.5 seconds).

f = Wet friction of pavement (average = 0.30)

g = Percent grade of roadway divided by 100.

(3) If sight distance requirements as specified in this chapter cannot be met, the Township may:

- (i) prohibit left turns by existing vehicles;
- (ii) restrict turning movements to right turns in and out of a driveway;
- (iii) require installation of right turn acceleration lane or deceleration lane;
- (iv) require installation of a separate left turn standby lane;
- (v) alter the horizontal or vertical geometry of the roadway; or
- (vi) deny access to the highway.

(i) *Grade of access driveway.* Grade of access driveway shall be constructed in the following manner:

(1) All driveways shall be constructed so as not to impair drainage within the right-of-way, alter the stability of the improved area, or change the drainage of adjacent areas.

(2) Where a drainage ditch or swale exists, the permittee shall install adequate pipe under the driveway. Drainage pipe installed under driveways shall be at least 15 inches in diameter and span both width of cartway and radius width.

(3) The side slopes for driveway embankments within the right-of-way shall not be steeper than ten to one. See Figure 6.

(4) Grade requirements in uncurbed shoulders within the right-of-way shall conform to Figure 1.

(5) Grade requirements where curbs and sidewalks are present.

(i) The driveway approaches shall be installed 1 ½ inches above the adjacent roadway or the gutter grade to maintain proper drainage. See Figure 5.

(ii) The difference between the cross slope of the roadway and the upward grade of the driveway approach shall not exceed 8.0%.

(iii) When a planted area exists in front of the sidewalk, one of the following three cases shall apply.

(A) When the grass strip between the curb and the sidewalk is wide enough to maintain an 8.0% maximum driveway approach grade, construct the driveway as shown in Figure 2.

(B) If the driveway grade would exceed 8.0%, depress the outer edge of the sidewalk and maintain a maximum sidewalk cross slope of 6.0%. This will enable the driveway slope to stay within the 8.0% slope limit. See Figure 3.

(C) If the sidewalk cross slope would exceed 6.0%, as indicated in clause (B) of this subparagraph, depress the entire sidewalk. The amount of depression shall not exceed 1 ½ inches at the inner edge of the sidewalk. The longitudinal slope of the sidewalk shall not exceed two inches per foot. See Figure 3.

(iv) When the sidewalk is directly against the back of the curb and the sidewalk is at least five feet wide, the curb shall be sloped as shown in Figure 5 of this subsection. This will eliminate the need for depressing the back edge of the sidewalk. For sidewalks narrower than five feet, the curb will be sloped and the back edge of the sidewalk will be depressed (maximum 1 ½ inches) to maintain an 8.0% maximum grade on the driveway. The longitudinal grade of the sidewalk shall not exceed two inches per foot.

- (j) *Auxiliary lanes.* Auxiliary lanes shall consist of the following:
- (1) *Acceleration and deceleration lanes.* The combination of highway speed, volumes, location, and arrangement of driveways and intersections may require the installation of an acceleration or deceleration lane, or both, to serve a proposed low, medium, or high volume driveway. When required by the permit, a speed change lane of sufficient length and width shall be constructed to allow vehicles to safely decelerate or accelerate when entering or leaving the property.
 - (2) *Left turn stand-by lanes.* The permit may require the installation of a left turn stand-by lane to separate and protect left turning vehicles from through traffic if failure to do so would result in an undue hazard to the traveling public.
 - (3) *Additional right-of-way for lanes.* Where the width of the highway right-of-way is insufficient to permit the construction of a needed auxiliary lane, the permittee shall provide any necessary additional right-of-way.

- (4) *Cost.* When required, auxiliary lanes shall be constructed, at no cost to the Township in accordance with the Roadway Construction Standards and PennDOT Form 408.
- (5) *Lane in front of another property.* If an auxiliary lane must be located in front of property of another person, the applicant shall be required to secure the approval of the other person or indemnify the Township against any action which the other person may bring against the Township.
- (k) *Access driveway pavement.* Access driveways shall be appropriately surfaced with a stabilized material between the traveled way and the right-of-way line unless a higher type material is specified by the permit. Low, medium, and high volume driveways which provide access to paved highways shall be paved within the right-of-way. Materials used in the construction of driveways shall meet the requirements of Form 408. The driveway pavement shall be at least four inches thick within the right-of-way.
- (l) *Driveways relative to ramps.* Ramps are intended to provide access from one roadway or roadway system to another with a minimum amount of conflict or interference from other traffic. To insure the integrity of this intended function, no access driveway will be permitted on a ramp or within 50 feet of the intersection of the edge of pavement of the ramp or its speed change lane with the edge of pavement of the intersecting roadway. Exceptions will be considered only if the enforcement of this subsection would result in the prohibition of reasonable access from the adjacent property to the highway system.
- (m) *Median openings.* Median openings shall consist of the following:
- (1) The removal of a portion of the median divisor along a divided highway to provide access to and from traffic in both directions will not be permitted unless it is determined that the operating characteristics of the highway system will be improved by such action.
 - (2) A left turn standby lane shall be installed to separate and protect left turning vehicles whenever a median opening is permitted.
 - (3) Requests for removal of a median divisor will not be granted without the approval of the director.
- (n) *Shoulder upgrading.* Where the existing shoulder on either side of a proposed low, medium, or high volume driveway is not adequate to allow its use by turning vehicles, the permittee shall upgrade the shoulder area for a minimum of 100 feet on either side of the driveway. The type of shoulder to be installed will be specified by the permit, in accordance with the volume and type of traffic expected to use the driveway.
- (o) *Traffic control devices.* Requirements for traffic control devices shall be as follows:
- (1) *Nonelectrically powered devices.* The permittee shall, at his own expense, install and maintain all nonelectrically powered traffic control devices, as specified in the permit, which are required to provide for the safe and orderly movement of vehicular or pedestrian traffic, or both. These devices shall include, but not be limited to, any required regulatory, warning or guide signs, delineators, and pavement markings.
 - (2) *Electrically powered devices.* Electrically powered devices shall consist of the following:
 - (i) When power operated devices, including traffic signals, are required for proper traffic control, PennDOT traffic signal permit (Form TE 964) may be required in addition to the driveway permit. The permit to own and operate a traffic control device shall be requested by and issued to only the appropriate municipality.

(ii) Applications for driveways which include traffic signal control shall be accompanied by the following additional information:

- (A) An engineering study in sufficient detail to allow determination of the need for signal control and the adequacy of its design and operation.
- (B) Location of traffic signal heads, poles, controller, and detectors.
- (C) Phasing and timing diagrams.

Source

The provisions of this § 441.8 amended November 27, 1981, effective October 17, 1981, Ps. B. 4159. Immediately preceding text appears at serial pages (62045) and (62046).

Cross References

This section cited in 67 Pa. Code § 441.6 (relating to general conditions).

Notes of Decisions

Although driveway opening on to State highway was established prior to promulgation of the regulations, the regulation could be applied retroactively to reasonably limit ingress and egress since property is held subject to valid police power regulations "made, and to be made, for the health and comfort of the people." *Department of Transportation v. Longo*, 510 A.2d 832 (Pa. Cmwlth. 1986).

§ 441.9 Driveway layout illustrations.

Figures 7 through 12 illustrate and supplement the minimum design requirements described in this chapter. Although site conditions may not allow strict adherence to the dimensions shown in these illustrations, every effort shall be made to design and construct the safest and most efficient access onto the State highway.

§ 441.10 Penalties and enforcement.

(a) *General rule.* A violation of this chapter or the permit requirements shall constitute grounds for imposition of any or all of the following penalties:

- (1) Upon receipt of oral or written notice of a violation from the authorized representative of the Township whose jurisdiction includes the permitted work area, the permittee shall cease to perform further work in the permitted area except to restore the area to a safe condition. Further work may not commence in the permitted area until the violation has been remedied. If the permittee has received oral notice of the violation, written notice shall be sent to the permittee within 10 days of receipt of the oral notice.
- (2) Confiscation of the applicant's permit by an authorized representative of the Township.
- (3) Revocation of the applicant's permit by the Township.
- (4) The Township may block driveways or server, remove or block drainage facilities constructed without a permit or in violation of this chapter.
- (5) The fines, imprisonment or other penalties as are provided by law.
- (6) The other action as may be deemed necessary or proper after consultation with the Township Solicitor.

(b) *Additional grounds for revocation.* Additional ground for revocation shall be as follows:

(1) The Solicitor may revoke a permit whenever he determines that the driveway or approaches or their use constitute a hazard to traffic or interferes with the proper use of the highway by the Township or the public.

(2) The Township may revoke a permit for nonpayment of a fee specified in § 441.4 (relating to permit fees) including default of a check submitted for the payment.

(c) *Revocation procedure.* Prior to revocation of a permit except for nonpayment as specified in paragraph (2), the applicant shall be given an opportunity for a hearing in accordance with 2 Pa.C.S. §§ 501-508 (relating to practice and procedure of Commonwealth agencies).