



# MIDDLETOWN

## MIDDLETOWN DEVELOPMENT CODE

PLANNING & ZONING DIVISION

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# **Chapter 1202: General Provisions**

## **1202.01 PURPOSE**

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It is the purpose of this development code to promote and protect the public health, safety, comfort, convenience, and general welfare of the people of the City of Middletown through the establishment of minimum regulations governing the development, subdivision, and use of land. Furthermore, the intent of these regulations is:

- (a) To implement the City of Middletown Master Plan, City of Middletown Street Master Plan, and other plans and policies adopted by City Council;
- (b) To encourage and facilitate orderly, efficient, and appropriate growth and development within the City;
- (c) To preserve and enhance the character and quality of neighborhoods;
- (d) To establish appropriate development density and intensity to prevent or reduce congestion and to secure the economy in the cost of providing water supply systems, electricity, sewage systems, streets, and highways, fire and police protection, schools, parks and recreation facilities, and other governmental services;
- (e) To conserve the value of buildings and land;
- (f) To protect residential, commercial, office, and industrial areas alike from harmful encroachment by incompatible uses and to ensure that land allocated to a class of uses shall not be usurped by other inappropriate uses;
- (g) To avoid the inappropriate development of lands and provide for adequate drainage, curbing of erosion, and reduction of flood damage; and
- (h) To foster a more rational pattern of relationship between agricultural, conservation, residential, commercial, office, industrial and institutional uses for the mutual benefit of all.

## **1202.02 TITLE**

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These regulations shall be known, and may be cited as, the “City of Middletown Development Code”, or referred to as the “development code” or the “code.”

## **1202.03 AUTHORITY**

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The authority for the preparation, adoption, and implementation of this code is derived from the City of Middletown Charter and the legislative enactments of City Council.

## **1202.04 EFFECTIVE DATE**

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This code was originally adopted by City Council on December 27, 1968 (Ordinance 4886). Any amendment to this code shall become effective 30 days after the adoption by City Council.

## **1202.05 APPLICABILITY AND COMPLIANCE**

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### **(a) General Applicability**

- (1)** The provisions of this code shall apply to all land, buildings, structures, and uses of land, buildings, and structures, or portions thereof, located within the municipal boundaries of the City of Middletown. The provisions of this code are the minimum requirements adopted to meet the purposes of this code as established in Section [1202.01: Purpose](#).
- (2)** The regulations established for each district in this code shall apply uniformly to each class or type of use, land, building, or structure.
- (3)** No building, structure, or land shall be used or occupied and no building, structure, or part thereof shall be structurally altered except in conformity with all of the regulations herein specified for the district in which it is located.

### **(b) Essential Services Exempted**

- (1)** The erection, construction, alteration, maintenance, or use of City-owned or leased lands, buildings, or structures shall be exempt from the provisions of this code.
- (2)** The erection, construction, alteration, or maintenance by City utilities or City departments, boards, or commissions, of overhead, surface or underground gas, electrical steam, or water, distribution or transmission systems, collection, communication, supply or disposal systems, including mains, drains, sewers, pipes, conduits, tunnels, wires, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, poles, electrical substation, gas regulator stations and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of adequate service by such City utility or City department, board, or commission or for the public health, safety, or general welfare, shall be exempt from the regulations of this code. Provided, however, that the installation shall conform to Federal Communications Commission and Federal Aviation Agency rules and regulations, and those of other authorities having jurisdiction.
- (3)** Except for [Chapter 1222: Subdivision Design](#), this code does not regulate dedicated public rights-of-way.
- (4) Utility Structures**
  - A.** Large ground-mounted utility structures or cabinets that exceed six square feet of surface area on any one side shall not be exempt from the provisions of this code.
  - B.** Such structures or cabinets, that may include, but are not limited to, Video-Ready Access Device (VRAD) cabinets, shall be classified and reviewed as "utility structures" in Section [1204.08](#), regardless if the structure is a principal use or accessory use on the subject site.

## **1202.06 PLAN COMPLIANCE**

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- (a) The administration, enforcement, and amendment of this code should be consistent with the City of Middletown Master Plan, the City of Middletown Street Master Plan, and other plans and development policies adopted by City Council, as amended. Such plans and policies shall be collectively referred to as the “master plan” or by the individual plan’s official name.
- (b) Amendments to this code should maintain and enhance the consistency between this code and the master plan.

## **1202.07 INTERPRETATION AND CONFLICT**

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### **(a) Interpretation of Provisions**

The provisions of this code shall be held to be the minimum requirements, adopted for the promotion of the public health, safety, comfort, convenience, and general welfare.

### **(b) Conflict with Other Public Laws, Ordinances, Regulations, or Permits**

This code is intended to complement other City, State, and federal regulations that affect land use and division of land. This code is not intended to revoke or repeal any other public law, ordinance, regulation, or permit. However, where conditions, standards, or requirements imposed by any provision of this code are more restrictive than comparable standards imposed by any other public law, ordinance, or regulation, the provisions of this code shall govern.

### **(c) Repeal of Conflicting Ordinance**

All ordinances or parts of ordinances in conflict with this code or inconsistent with the provisions of this code are hereby repealed to the extent necessary to give this code full force and effect.

## **1202.08 RELATIONSHIP WITH THIRD-PARTY AGREEMENTS**

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- (a) This code is not intended to interfere with or abrogate any third party private agreements including, but not limited to, easements, covenants, or other legal agreements between third parties. However, where this code proposes a greater restriction or imposes higher standards or requirements than such easement, covenant, or other private third-party agreement, then the provisions of this code shall govern.
- (b) Nothing in this code shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not excuse any failure to comply with this code.
- (c) In no case shall the City be obligated to enforce the provisions of any easements, covenants, or agreements between private parties unless the City is a named party or beneficiary in the agreement or instrument.

## **1202.09 SEVERABILITY**

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- (a) If any court of competent jurisdiction invalidates any provision of this code, then such judgment shall not affect the validity and continued enforcement of any other provision of this code.



- (b) If any court of competent jurisdiction invalidates the application of any provision of this code to a particular property, structure, or situation, then such judgment shall not affect the application of that provision to any other property, structure, or situation not specifically included in that judgment.
- (c) If any court of competent jurisdiction judges invalid any condition attached to the approval of a development review application, then such judgment shall not affect any other conditions or requirements attached to the same approval that are not specifically included in that judgment.
- (d) Whenever a condition or limitation is included in an administrative action authorizing regulated activity, then it shall be conclusively presumed that the authorizing staff member, commission, or board considered such condition or limitation necessary to carry out the spirit and intent of this code, and that the staff member, commission, or board would not have granted the authorization to which the condition or limitation pertained except in belief that the condition or limitation was lawful.

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## **1202.10 TRANSITIONAL RULES**

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### **(a) Purpose**

The purpose of these transitional rules is to resolve the status of properties with pending applications or recent approvals, and properties with outstanding violations, on the effective date of this code.

### **(b) Violations Continue**

- (1) Any violation that existed at the time this amendment became effective shall continue to be a violation under this code and is subject to penalties and enforcement under [Chapter 1228: Enforcement and Penalties](#), unless the use, development, construction, or other activity complies with the provisions of this code.
- (2) Payment shall be required for any civil penalty assessed under the previous regulations, even if the original violation is no longer considered to be a violation under this code.

### **(c) Processing of Applications Commenced or Approved Under Previous Regulations**

#### **(1) Pending Projects**

- A. Any complete application that has been submitted or accepted for approval, but upon which no final action has been taken by the appropriate decision-making body prior to the effective date of this code or applicable amendment, shall be reviewed in accordance with the provisions of the regulations in effect on the date the application was deemed complete by the City.
- B. If a complete application is not filed within the required application filing deadlines in effect prior to the effective date of this code, or applicable amendment, the application shall expire and subsequent applications shall be subject to the requirements of this code.
- C. Any re-application for an expired project approval shall meet the standards in effect at the time of re-application.

- D. An applicant with a pending application may waive review available under prior regulations through a written letter to the City and request review under the provisions of this code.

**(2) Approved Projects**

- A. Approved planned use modifications, developments, site plans, development plans, variances, certificates of appropriateness, conditional uses, certificate of zoning compliance, certificates of occupancy, or other approved plans or permits that are valid on the effective date of this code shall remain valid until their expiration date, where applicable.
- B. Any building or development for which a building permit or certificate was granted prior to the effective date of this code shall be permitted to proceed to construction, even if such building or development does not conform to the provisions of this code, as long as the permit or certificate remains valid.
- C. If the development for which the permit or certificate is issued prior to the effective date of this code fails to comply with the time frames for development established for the permit or certificate, the permit or certificate shall expire, and future development shall be subject to the requirements of this code.

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**1202.11 RESTORATION OF UNSAFE BUILDINGS**

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Except as provided in [Chapter 1224: Nonconformities](#), nothing contained in this code shall prevent the strengthening or restoring to a safe condition any part of any building or structure declared unsafe by proper authority.

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**1202.12 USE OF GRAPHICS, ILLUSTRATIONS, FIGURE, AND CROSS-REFERENCES**

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- (a) Graphics, illustrations, section titles, and figures are provided for organizational and illustrative purposes only, and shall not be construed as regulations. Where a conflict may occur between the text and any graphic, illustration, section title, or figure, the text shall control.
- (b) In some instances, cross-references between chapters, sections, and subsections are provided that include the chapter, section, or subsection number along with the name of the reference. Where a conflict may occur between the given cross-reference number and name, the name shall control.
- (c) A table shall be considered text for the purposes of this code unless specifically identified as a figure.

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**1202.13 BURDEN OF PROOF**

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The burden of demonstrating that an application or any development subject to this code complies with applicable review and approval standards is on the applicant. The burden is not on the City or other parties to show that the standards have been met by the applicant or person responsible for the development.

# Chapter 1204: Zoning Districts and Use Regulations

## 1204.01 ESTABLISHMENT OF ZONING DISTRICTS

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The City hereby establishes the following zoning districts to carry out the purpose of this code.

TABLE 1204-1: ZONING DISTRICTS	
DISTRICT ABBREVIATION	DISTRICT NAME
RESIDENTIAL DISTRICTS	
R-1	Suburban Residential District
R-2	Low-Density Residential District
R-3	Medium-Density Residential District
R-4	Attached Residential District
NONRESIDENTIAL DISTRICTS	
O-1	Office District
O-2	Office Park District
B-1	Neighborhood Business District
B-2	Community Business District
B-3	General Business District
BC	Business Center District
BC-I	Business Center Interchange Subdistrict
BC-H	Business Center Hub Subdistrict
BC-O	Business Center Office Subdistrict
BC-R	Business Center Residential Subdistrict
BC-F	Business Center Flex Subdistrict
UC	Urban Core District
UC-C	Urban Core Central Subdistrict
UC-S	Urban Core Support Subdistrict
I-1	Industrial Park District
I-2	General Industrial District
PI	Public and Institutional District
SPECIAL DISTRICTS	
PD	Planned Development District
OVERLAY DISTRICTS	
H-O	Hillside Overlay District
HD	Historic District
CD	Conservation District

## **1204.02 OFFICIAL ZONING MAP**

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- (a) The districts established in [Table 1204-1](#) of this code, and shown on the Official Zoning Map (hereafter referred to as the “zoning map”), together with all explanatory matter thereon, are hereby adopted as part of this code.
- (b) The zoning map shall be identified by the signature of the President and Secretary of the Planning Commission and signature of the Mayor, attested by the Clerk of City Council, and bearing the Seal of the City under the following words: “This is to certify that this is the Official Zoning Map referred to in [Section 1204.02: Official Zoning Map](#), of the City of Middletown Development Code,” together with the date of the adoption of such code.
- (c) Regardless of the existence of purported copies of the zoning map, which may be made or published, the Official Zoning Map, on file in the office of the Development Code Administrator, shall be the final authority as to the current zoning status of land and water areas, buildings and other structures in the City.
- (d) If, in accordance with the provisions of this code, changes are made in district boundaries or other matter portrayed on the zoning map, such changes shall be entered on the zoning map promptly after the effective date of the amendment approved by City Council.
- (e) In the event that the Official Zoning Map becomes damaged, destroyed, lost, or difficult to interpret because of the nature or number of changes and additions, City Council may adopt a new Official Zoning Map, which shall supersede the prior Official Zoning Map. The new zoning map may correct drafting errors or other omissions but shall not have the effect of amending the original code or any subsequent amendments thereto.

## **1204.03 ZONING UPON ANNEXATION OR UNZONED LAND**

---

- (a) In any case where property has not been included within a zoning district, such property shall be considered to be in the R-2 Low-Density Residential District until otherwise classified.
- (b) All property hereafter annexed to the City shall retain the zoning classification which it bore under applicable county or township zoning regulations until City Council either officially adopts such existing zoning classification or a new zoning classification for such property, in accordance with [Section 1226.03](#).

## **1204.04 INTERPRETATION OF DISTRICT BOUNDARIES**

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- (a) Where an amendment to the zoning map is accompanied by a legal description of the zoning boundary, that legal description shall be interpreted as the official zoning boundary line, regardless of the accuracy of the zoning boundary line drawn on the zoning map.
- (b) Where uncertainty exists as to the boundaries of districts as shown on the zoning map, the following rules shall apply:
  - (1) Boundaries indicated as approximately following the centerline of streets, highways, or alleys shall be construed to follow such centerline.
  - (2) Boundaries indicated as approximately following platted or deeded lot lines shall be construed as following such lot lines.
  - (3) Boundaries indicated as approximately following the municipal boundaries for the City of Middletown shall be construed as following such City limits.

- (4) Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks.
- (5) Boundaries indicated as following low-water mark of rivers or streams shall be construed to follow such low-water marks, and in the event of change in the low-water mark shall be construed as moving with the actual low-water mark; boundaries indicated as approximately following the centerline of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such centerline.
- (6) Boundaries indicated as parallel to or extensions of features indicated in subdivisions (1) through (5) above shall be so construed.
- (7) Distances not specifically indicated on the zoning map shall be determined by the scale of the map.
- (8) Where physical or cultural features existing on the ground are at variance with those shown on the zoning map, or in other circumstances not covered by subdivisions (1) through (6) above, the Development Code Administrator shall interpret the district boundaries, appealable to the BZA.

#### **1204.05 HISTORIC DISTRICTS AND HISTORIC LANDMARKS**

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There are properties within the City designated as historic landmarks or located in historic overall districts. Historic Districts in the City are identified on the City Zoning Map as an Overlay District. Any alterations to the buildings, structures, or site for properties designated as a Historic Landmark or located in one of the City's Historic Districts or Historic Conservation District Overlays may be subject to a certificate of appropriateness review as identified in Section 1226.08. For additional information, see [Chapter 1212: Historic Preservation](#).

#### **1204.06 REFERENCES TO PREVIOUS ZONING DISTRICTS**

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Some of the zoning district names and abbreviations established within this code differ from previous versions of this code. In instances where there may be references to the previous zoning district nomenclature, Table 1204-2 identifies how each of the previous zoning districts were renamed or changed for this code. This section shall only be used for comparison purposes only and is not an official representation of the previously applicable zoning district.

**TABLE 1204-2: ZONING DISTRICT TRANSITION TABLE**

ZONING DISTRICTS ESTABLISHED PRIOR TO MARCH 1, 2018		ZONING DISTRICTS ESTABLISHED IN THIS CODE AS OF MARCH 1, 2018	
ABBREVIATION	DISTRICT NAME	ABBREVIATION	DISTRICT NAME
<b>RESIDENTIAL DISTRICTS</b>			
DS	Suburban Dwelling District	R-1	Suburban Residential District
D-1	Low Density Dwelling District	R-2	Low-Density Residential District
D-2	Low Density Dwelling District	R-3	Medium-Density Residential District
D-3	Medium Density Dwelling District	R-4	Attached Residential District
<b>NONRESIDENTIAL DISTRICTS</b>			
P-1	Professional-Institutional District	O-1	Office District
P-2	Professional-Service District		
CP	Commercial-Professional Office Park District	O-2	Office Park District
C-1	Convenience Commercial District	B-1	Neighborhood Business District
C-2	Roadside Commercial District	B-2	Community Business District
C-3	Community Commercial District		
C-4	General Commercial District	B-3	General Business District
BC	Business Center District	BC	Business Center District
BCI	Business Center Interchange Subdistrict	BC-I	Business Center Interchange Subdistrict
BCH	Business Center Hub Subdistrict	BC-H	Business Center Hub Subdistrict
BCO	Business Center Office Subdistrict	BC-O	Business Center Office Subdistrict
BCR	Business Center Residential Subdistrict	BC-R	Business Center Residential Subdistrict
BCF	Business Center Flex Subdistrict	BC-F	Business Center Flex Subdistrict
UC	Urban Core District	UC	Urban Core District
UCC	Urban Core Central Subdistrict	UC-C	Urban Core Central Subdistrict
UCS	Urban Core Support Subdistrict	UC-S	Urban Core Support Subdistrict
I-1	Industrial Park District	I-1	Industrial Park District
IPO	Industrial Park Office District		
I-2	General Industrial District	I-2	General Industrial District
P-3	Hospital District	PI	Public and Institutional District
<b>SPECIAL DISTRICTS</b>			
P	Use Modified Supplemental District	PD	Planned Development District
<b>OVERLAY DISTRICTS</b>			
H	Hillside Supplemental District	H-O	Hillside Overlay District

## **1204.07 ZONING DISTRICT REGULATIONS**

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### **(a) General Requirements**

- (1)** The following subsection establishes the purpose statement for each of the zoning districts and some district-specific regulations.
- (2)** In addition to all standards established within this chapter, development within the zoning districts shall also be subject to Section [1204.10](#), and any other applicable standards of this code.
- (3)** Zoning Verification. Upon request, a zoning verification letter can be issued by the Development Code Administrator for a zoning inquiry for a property or properties.

### **(b) District Purpose Statements**

#### **(1) R-1: Suburban Residential District**

The purpose of the R-1 Suburban Residential District is to provide for low-density suburban or rural residential development to provide for larger lot housing options within the municipal boundaries that may or may not be served by a complete range of public infrastructure.

#### **(2) R-2: Low-Density Residential District**

The purpose of the R-2 Low-Density Residential District is to provide for low density, single-family residential uses in a more urban setting than the R-1 District and which are served completely by public infrastructure adequate for the applicable density of development.

#### **(3) R-3: Medium-Density Residential District**

The purpose of the R-3 Medium-Density Residential District is to provide for moderate density, single-family residential uses in an urban setting which are served completely by public infrastructure adequate for the applicable density of development.

#### **(4) R-4: Attached Residential District**

The purpose of the R-4 Attached Residential District is to provide for moderate to high-density residential development, generally located in the core area of the City and that reflects the historic urban development pattern in and around Downtown Middletown.

#### **(5) O-1: Office District**

The purpose of the O-1 Office District is to provide for areas of general office and non-retail commercial uses that support community needs within small-scale developments. This district may also serve as a land use transition between residential uses and higher intensity uses such as commercial uses and high volume streets.

**(6) O-2: Office Park District**

The purpose of the O-2 Office Park District is to accommodate professional, institutional, management, research, commercial, and related uses in a professional, commercial park setting adjacent to arterial streets and the interstate system.

**(7) B-1: Neighborhood Business District**

The purpose of the B-1 Neighborhood Business District is to provide for areas of the City that may contain small-scale commercial, service, and office uses that provide access to the day-to-day goods and services local residents and businesses require but that is at a much smaller scale than the more intense business districts. This district is intended to be located in close proximity to residential neighborhoods to allow for ease of access to the goods and services.

**(8) B-2: Community Business District**

The purpose of the B-2 Community Business District is to provide for areas of the City that will contain a wide variety of commercial and office uses to meet the needs of the City and region that require access to major arterial streets and are in close proximity to major residential neighborhoods.

**(9) B-3: General Business District**

The purpose of the B-3 General Business District is to provide for intense commercial and office development in close proximity to the interstate and high volume streets that can provide needed goods and services to residents of the City, region, and beyond. Such district is most appropriately located adjacent to freeway interchanges and along major streets.

**(10) BC: Business Center District**

**Overall Purpose**

The overall purpose of the BC District, including all subdistricts, is to:

- i. Create an attractive environment that appeals to a range of businesses that will increase and diversify the City's job and tax base;
- ii. Create a dynamic, mixed-use business center located at the City's main Interstate 75 interchange;
- iii. Encourage offices and related uses as the dominant use throughout the BC District;
- iv. Allow limited retail, service, entertainment, residential, and civic uses that support office development and create a dynamic district;
- v. Provide areas for light industrial development that complement the full range of business opportunities in the BC District;
- vi. Encourage high-quality building and site appearance as viewed along public and private streets and throughout the site;
- vii. Promote preservation and provision of landscaped and natural areas in order to:



- a. Provide transitions between land uses;
  - b. Create an attractive environment that encourages economic development; and
  - c. Provide environmental benefits such as pollution abatement, erosion and runoff control, energy conservation, minimization of flood hazards and continued maintenance of ecological systems.
- viii. Create a high-density, mixed-use core surrounded by lower-density subdistricts;
- ix. Provide for safe and efficient movement of vehicles and pedestrians; and
- x. Encourage pedestrian activity without sacrificing automobile convenience.

**BC-I: Business Center Interchange Subdistrict**

The purpose of the BC-I Subdistrict is to:

- xi. Accommodate mixed commercial, hospitality and entertainment uses that serve the overall BC District, the City as a whole, and the region;
- xii. Create attractive views from 1-75 into the BC District; and
- xiii. Create a pedestrian-scale environment through building and parking lot placement and design.

**BC-H: Business Center Hub Subdistrict**

The purpose of the BC-H Subdistrict is to:

- xiv. Create an urban, mixed-use core that serves as the vibrant hub of the BC District;
- xv. Encourage signature architecture and landscaping treatment; and
- xvi. Create an urban, pedestrian-scale environment through building height and building and parking lot placement and design.

**BC-O: Business Center Office Subdistrict**

The purpose of the BC-O Subdistrict is to:

- xvii. Encourage development comprised primarily of office and medical uses; and
- xviii. Create a more open, campus-like environment with greater automobile convenience than the BC-H Subdistrict.
- xix. Allows for the integration of multi-family residential buildings and dwellings above non-residential uses.

**BC-R: Business Center Residential Subdistrict**

The purpose of the BC-R Subdistrict is to:

- xx. Create an open, campus-like environment with lower building heights than the BC-O Subdistrict.
- xxi. Provide for professional housing located close to an employment center;

- xxii. Permit small-scale office uses that mix well with residential uses; and
- xxiii. Provide for limited, supportive neighborhood retail.

**BC-F: Business Center Flex Subdistrict**

The purpose of the BC-F Subdistrict is to:

- xxiv. Provide for light, clean industrial uses that complement the remaining business uses throughout the BC District; and
- xxv. Allow limited residential development and protect existing and future residential areas from the impacts of industrial development.

**(11) UC: Urban Core District**

**Overall Purpose**

The overall purpose of the UC District, including all subdistricts, is to:

- i. Encourage, support and enhance Downtown Middletown as the civic and cultural center of Middletown and as a vibrant and attractive urban neighborhood;
- ii. Encourage quality and variety in building design as well as compatibility in use and form;
- iii. Protect and enhance historic, cultural and architectural resources; and
- iv. Create and enhance pedestrian-oriented streets to preserve retail vitality and improve the quality of life for downtown workers, visitors, and residents.

**UC-C: Urban Core Central Subdistrict**

The purpose of the UC-C Subdistrict is to encourage, support and enhance Downtown Middletown as a mixed-use, high-intensity urban district and a center of retail, service, entertainment, office, government and urban residence. The UC-C Subdistrict encourages pedestrian-oriented retail or eating, drinking and entertainment establishments on the ground floor and residential on upper floors of buildings, but also allows service, office, institutional and recreational uses.

**UC-S: Urban Core Support Subdistrict**

The purpose of the UC-S Subdistrict is to maintain and enhance Downtown Middletown by providing areas for office, institutional and residential uses that support Central District uses and provide a transition between the high-intensity UC-C Subdistrict and surrounding residential neighborhoods. The UC-S District allows residential (including single family), some service, office, institutional, and recreational uses.

**(12) I-1: Industrial Park District**

The purpose of the I-1 Industrial Park District is to provide areas for the development of industrial uses that have a minimum impact upon the surrounding environment. This district is primarily designed to accommodate the retention and expansion of existing industrial type uses which can be operated in a clean and quiet manner, subject only to those regulations and performance standards necessary to prohibit congestion and for the protection of adjacent residential and business activity areas.

**(13) I-2: General Industrial District**

The purpose of the I-2 General Industrial District is to accommodate a broad range of industrial activities, diverse in products, operational techniques, and size which have a greater potential impact upon their environment and surrounding neighborhoods than those permitted in the I-1 District.

**(14) PI: Public and Institutional District**

The purpose of the PI District is to establish and protect sites for various governmental, institutional, educational, or other public or quasi-public uses that are integral parts of the community while also ensuring compatibility with the surrounding neighborhoods and minimizing traffic congestion.

**(15) PD: Planned Development District**

**Purpose**

- i. The purpose of the PD Planned Development District is to provide an opportunity for creative and flexible land development where a base zoning district will not accommodate the proposed development but where such development will further the purpose of this code and the goals and policies of the master plan.
- ii. The PD District is designed to allow for deviations from certain zoning standards that would otherwise apply if not contrary to the general spirit and intent of this code.

**Location, Applicability, and Review Procedure**

- iii. A PD District may be established in any area of the City following review and approval of the plans in accordance with Section [1226.04](#) with the all other applicable sections of the code.
- iv. The minimum site area for a PD application shall be five acres unless the applicant can demonstrate that the proposed project is of such a unique situation as to warrant review as a PD rather than through the zoning map amendment process or as a variance.
- v. The PD process should not be used to address a nonconforming situation for a lot that will be used for a single building and/or use where the use is permitted but where such use does not comply with other applicable standards. Such situations should first be considered for a variance application.

### **Permitted Uses**

- vi. The uses allowed in a PD District shall be limited to those use types allowed in the City of Middletown as established in [Table 1204-3](#).
- vii. The planned development approval shall include a list of uses that may be allowed in the subject planned development including any uses that may be substituted for the initially proposed development.
- viii. Unless otherwise allowed for in the approved plans, accessory uses associated with development in a PD shall be allowed in accordance with the following:
  - a. Accessory uses permitted in the R-1, R-2, and R-3 districts shall be allowed for any single-family dwelling.
  - b. Accessory uses permitted in the R-4 district shall be allowed for any multi-family dwelling.
  - c. Accessory uses allowed in all nonresidential zoning districts shall be allowed for nonresidential uses.
  - d. Any allowed accessory uses shall still comply with the applicable accessory use standards established in [Section 1206.01](#).

### **Development Standards**

- ix. **Building and Use Arrangement**
  - a. The design and development standards set forth in this section are intended to encourage variety in the arrangement of uses and of the location, bulk, and shape of buildings, open space and landscape features.
  - b. Buildings and uses shall be arranged, designed, or located in order to screen and preserve uses within and near the PD from adverse effects of uses within or near the PD. The buildings and uses may be arranged in various groups, courts, sequences or clusters with open spaces organized and related to the buildings in order to provide privacy where applicable, to form a unified composition of buildings and space, and to maximize the sense of place created by the design.
  - c. Residential uses shall be located and arranged in such a manner as to be in close proximity to required open space or parks, whether within or adjacent to the development.
  - d. If topographical or other barriers within the perimeter of the development do not provide reasonable privacy for existing uses adjacent to the development, the Planning Commission may require additional screening to provide such privacy.
- x. **Traffic Access and Circulation**
  - a. The streets, sidewalks, and trails within the PD development shall be designed to fully accommodate both pedestrian and vehicular traffic in a safe and efficient manner without allowing the same to dominate and destroy the form of the area.

- b. Driveways for group developments and local streets shall be connected to major arterial and collector streets at locations where the traffic can be controlled and operated effectively with minimum interference with the capacity of the major arterial and collector streets. The amount of traffic generated by commercial uses passing through residential areas shall be minimized.

**xi. Topography and General Site Design**

- a. Planned developments shall be designed to take advantage of the topography of the land in order to utilize the natural contours, to economize on the construction of utilities to reduce the amount of grading and to maximize the conservation of trees and topsoil.
- b. The natural features and other distinctive characteristics of the site shall be integrated into the plan to create functional variations in the arrangement of buildings, open spaces and site features.

**xii. Density and Bulk Development Standards**

There shall be no minimum or maximum lot, setback, or density standards established within this district but the Planning Commission and City Council shall have the authority to approve or deny the proposed density and bulk regulations for a development based on the following:

- a. The proposed density is comparable to similar development density in the neighborhood and/or on surrounding properties or developments. For the purposes of this definition, comparable density shall be defined as where the proposed density of the subject application does not exceed the density of an adjacent development with similar uses (e.g., single-family residential, multi-family residential, etc.) by more than 10 percent, as determined by the Planning Commission.
- b. A higher density than adjacent development may be allowed for residential development if the proposed development will serve as a transition between an adjacent, lower-density development and a higher-density development or nonresidential development.
- c. The PD process shall not be used to circumvent the architectural and design requirements for attached residential development identified in [Section Chapter 1210: Architectural Standards](#).
- d. Building separation shall be maintained in accordance with the requirements of the Fire Prevention Code and other safety codes of the City and in accordance with good design principles.
- e. Every dwelling unit shall have access either to a public street, walkway, or other area dedicated to common use.

**xiii. Improvement Standards**

Unless alternative standards are approved as part of the PD approval process, all PDs shall comply with the applicable subdivision improvement and design standards including, but not limited to, sidewalks, street design, drainage, and utilities.

**xiv. Public Parks and Common Open Spaces**

Public parks and common open space shall be provided in accordance with [Chapter 1214: Parkland Dedication](#) and Open Space.

**(16) H-O: Hillside Overlay District**

**Purpose**

The purpose of the H-O District is to protect development in areas of the City with a slope of 10 percent or more from the potential hazards of soil erosion, slippage, landslides, and other hazards related to steep slopes. Furthermore, it is also the purpose of this district to protect viewsheds into and of the City.

**District-Specific Regulations**

In addition to any of the standards that apply to the base zoning district, the following standards shall apply to all development within the H-O District.

**i. Applicability**

- a. The H-O District shall apply to all areas having a total slope of 10 percent or more as designated on the zoning map.
- b. No development shall occur within an area designated as an H-O District without approval of a certificate of zoning compliance in accordance with [Section 1226.12](#).

**ii. Permitted Uses**

All permitted principal, accessory, and temporary uses shall be controlled by the base zoning district unless otherwise modified by this section.

**iii. Development Standards**

- a. No building or structure shall obstruct any natural drainage channel or course without first receiving approval from the Planning Commission.
- b. The certificate of zoning compliance application shall demonstrate that the proposed development shall create the least possible disturbance to natural grade and vegetation.
- c. Any disturbance of the slope and/or soil shall be restored with the planting of native vegetation or other technique to prevent erosion and damage to properties lying at a lower elevation.
- d. To the maximum extent feasible, the development of any area in an H-O District shall be so located on such lot that it will not interfere with the view from adjoining lots. To qualify under the terms of this section, a view or vista shall have such elevation or scope so as, in the opinion of the Planning Commission, to enhance or materially increase the value of a particular lot.

**(17) HD & CD Overlays: Historic District & Conservation District**

The purpose of the Historic District and Conservation District Overlay is to provide protection and awareness of the City's preservation efforts to:

- a. To maintain the historic fabric of the city;
- b. To stabilize and increase property values;

- c. To preserve and protect the character or valued features of established districts;
- d. To maintain and enhance the distinctive character of historic buildings and areas;
- e. To safeguard the heritage of the city by preserving districts and landmarks which reflect elements of its history, architecture, archaeology, engineering or culture;
- f. To protect and enhance the city's attractions to current and prospective residents, businesses and tourists;
- g. To facilitate reinvestment in and revitalization of certain districts and neighborhoods;
- h. To facilitate and encourage economic development, public and private investment, and tourism in the city;
- i. To reduce conflicts between new construction and existing development in established districts; and
- j. To allow districts to work together with the City to formulate a plan that defines their neighborhood that is consistent with City zoning and the Master Plan.

## **1204.08 PERMITTED PRINCIPAL USES**

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### **(a) General Provisions**

- (1) [Table 1204-3](#) lists the principal uses allowed within all base zoning districts.
- (2) Uses permitted in a PD are considered as part of the review and approval of the PD District.
- (3) The principal uses allowed within an overlay zoning district shall be as permitted within the base zoning district with the exception that the overlay zoning district-specific regulations may prohibit certain uses otherwise allowed in the base zoning district or may establish additional standards for the establishment of certain uses.

### **(b) Explanation of Table of Permitted Uses**

#### **(1) Organization of Table**

[Table 1204-3](#) organizes the uses by use categories and use types.

##### **Use Categories**

The use categories provide a systematic basis for assigning present and future land uses into broad general classifications (e.g., household living, mixed use, eating and drinking establishment, etc.). The use categories then organize land uses and activities into specific "use types" based on common functional, product, or physical characteristics, such as the type and amount of activity, the type of customers or residents, how goods or services are sold or delivered, and site conditions.

##### **Use Types**

The use categories are divided into specific use types. The use types identify the specific uses that are considered to fall within characteristics identified in the broader use category. For example, single-family dwellings, two-family dwellings, and townhome clusters are some of the specific use types that fall under the "household living" use category.

### **Use Categories and Use Types Defined**

All use categories and use types are defined in [Chapter 1230: Definitions](#).

#### **(2) Symbols In Table**

The symbols used in [Table 1204-3](#) are defined as follows:

##### **Permitted Uses**

- i. A "P" in a cell indicates that a use type is allowed by-right in the respective zoning district. Permitted uses are subject to all other applicable standards of this code.
- ii. Permitted uses are approved administratively by the Development Code Administrator through the certificate of zoning compliance procedure unless subject to additional review (e.g., certificate of appropriateness, alternative equivalent compliance, variance, etc.).

##### **Permitted Uses with Standards**

- iii. A "PS" in a cell indicates that a use type is allowed by-right in the respective zoning district if it meets the additional standards as identified in the last column of [Table 1204-3](#). Permitted uses with standards are subject to all other standards of this code.
- iv. Uses permitted with standards are approved administratively by the Development Code Administrator through the certificate of zoning compliance procedure unless subject to additional review (e.g., certificate of appropriateness, alternative equivalent compliance, variance, etc.).

##### **Conditional Uses**

- v. A "C" in a cell indicates that a use may be permitted if approved by the Planning Commission through the conditional use review procedure (See [Section 1226.05](#)). Conditional uses may be subject to use-specific standards as identified in the last column of [Table 1204-3](#). Conditional uses are subject to all other applicable standards of this code.
- vi. The existence or lack of additional use-specific standards in this code shall not be implied to be the only standards the use is required to meet. Any conditional use listed in the table shall be subject to the general review standards for all conditional uses established in [Section 1226.05\(d\)](#).

##### **Prohibited Uses**

- vii. A "XX" in a cell indicates that a use is prohibited in the respective zoning district.
- viii. Any use that is not listed as a permitted use, permitted use with standards, or conditional use in a zoning district shall be prohibited in such district.



### **Use-Specific Standards**

The numbers contained in the "Use-Specific Standards" column are references to additional standards and requirements that apply to the use type listed. Standards referenced in the "Use-Specific Standards" column apply in all zoning districts unless otherwise expressly stated.

### **Use Determination and Unlisted Uses**

- ix. The Development Code Administrator shall make the determination if a proposed use is permitted, permitted with standards, a conditional use, or a prohibited use under the provisions of this chapter.
- x. The Development Code Administrator may determine that a proposed use is substantially similar to a use that is permitted, permitted with standards, conditionally permitted, or prohibited in Table 1204-3 based on the proposed use activities, character of the business, similarity to existing uses within the City, or information on the use as may be available from third-party land use resources such as documentation from the American Planning Association, Urban Land Institute, or similar organizations. If the Development Code Administrator finds that the proposed use is substantially similar to a use established in [Table 1204-3](#), the application shall be processed in the same manner as the similar use.
- xi. In finding that a proposed use is similar to a use established in [Table 1204-3](#), the Development Code Administrator shall make a note of the similar use in the approved application form.
- xii. If the Development Code Administrator makes the determination that a use is prohibited, the application shall not be processed and the application fee shall be returned.
- xiii. If the applicant disagrees with the Development Code Administrator's determination regarding the proposed use, the applicant may choose to take one of the following actions:
  - a. The applicant may appeal the determination of the Development Code Administrator to the BZA pursuant to Section [1226.13](#); or
  - b. The applicant may present their case to the Planning Commission and/or City Council to request that the City initiate a text amendment to address the proposed use and applicable standards.

**TABLE 1204-3: PRINCIPALLY PERMITTED USES**

P = PERMITTED PS = PERMITTED WITH STANDARDS C = CONDITIONAL USE XX= PROHIBITED

USE CATEGORY	USE TYPE	R-1	R-2/R-3	R-4	O-1	O-2	B-1	B-2	B-3	I-1	I-2	PI	BC					UC		USE-SPECIFIC STANDARDS
													BC-I	BC-H	BC-O	BC-R	BC-F	UC-C	UC-S	
AGRICULTURAL USES																				
Agriculture and Agricultural Services	Agriculture (Raising of Crops)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	Agriculture (Livestock)	P	P	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	1204.09(b)(1)
	Community Gardens	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	1204.09(b)(2)
	Greenhouses and Nurseries	P	P	XX	XX	XX	XX	XX	P	P	XX	XX	XX	XX	XX	XX	XX	XX	XX	1204.09(b)(3)
RESIDENTIAL USES																				
Group Living	Group Homes	PS/ C	PS /C	PS/ C	XX	XX	XX	XX	XX	XX	XX	PS /C	XX	XX	XX	PS /C	PS/ C	XX	PS/ C	1204.09(c)(1)
	Dormitories	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	P	XX	XX	XX	XX	XX	XX	XX	
	Fraternities and Sororities	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	P	XX	XX	XX	XX	XX	XX	XX	
	Transitional Housing	C	C	C	XX	XX	XX	XX	XX	XX	XX	PS	XX	XX	XX	XX	XX	XX	XX	1204.09(c)(2)
	Rooming Houses	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	C	C	
	Skilled Nursing or Personal Care Facilities	XX	XX	XX	XX	XX	C	PS	PS	XX	XX	PS	XX	XX	PS	PS	PS	XX	XX	1204.09(c)(3)
Household Living	Dwelling, Multi-Family (Apartment Building with 9 to 12 units)	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	P	P	P	P	XX	P	
	Dwelling, Multi-Family (Apartment House with 4 to 8 units)	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	P	P	P	P	XX	P	
	Dwelling, Multi-Family (Attached up to 4 units)	XX	XX	P	XX	XX	XX	XX	XX	XX	XX	XX	XX	P	P	P	P	XX	P	
	Dwelling, Single-Family	P	P	P	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	P	
	Dwelling-Three Family	XX	XX	P	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	P	
	Dwelling, Two-Family	XX	XX	P	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	P	
	Dwelling Units above Nonresidential Uses	XX	XX	XX	P	XX	P	P	P	XX	XX	XX	XX	P	P	P	P	P	P	
COMMERCIAL USES																				
Animal Care	Kennels and Animal Boarding	XX	XX	XX	XX	XX	XX	PS	PS	PS	XX	XX	XX	XX	XX	XX	XX	XX	XX	1204.09(d)(1)
	Veterinarian Offices or Animal Grooming (No Boarding)	XX	XX	XX	PS	XX	PS	PS	PS	XX	XX	XX	XX	XX	PS	XX	XX	XX	PS	1204.09(d)(2)

**TABLE 1204-3: PRINCIPALLY PERMITTED USES**

P = PERMITTED PS = PERMITTED WITH STANDARDS C = CONDITIONAL USE XX= PROHIBITED

USE CATEGORY	USE TYPE	R-1	R-2/R-3	R-4	O-1	O-2	B-1	B-2	B-3	I-1	I-2	I-1	BC					UC		USE-SPECIFIC STANDARDS
													BC-1	BC-H	BC-O	BC-R	BC-F	UC-C	UC-S	
Eating and Drinking Establishments	Bars and Taverns	XX	XX	XX	XX	XX	XX	P	P	XX	XX	XX	P	PS	XX	XX	PS	PS	PS	1204.09(d)(3)
	Restaurants	XX	XX	XX	C	C	P	P	P	XX	XX	C	P	PS	PS	XX	C	P	P	1204.09(d)(4)
	Restaurants, Drive-In	XX	XX	XX	XX	XX	XX	P	XX	XX	XX	XX	P	XX	XX	XX	XX	XX	XX	
	Restaurants, Drive-Through	XX	XX	XX	PS	PS	P	P	P	XX	XX	XX	PS	PS	PS	XX	XX	XX	PS	1204.09(d)(5)
	Microbrewery, Microdistillery, or Microwinery	XX	XX	XX	XX	XX	PS	PS	PS	PS	PS	XX	PS	PS	PS	PS	PS	PS	PS	1204.09(d)(7)
Mixed Use	Live/Work Units	XX	XX	XX	PS	XX	PS	PS	PS	XX	XX	XX	XX	PS	PS	XX	PS	PS	PS	1204.09(d)(7)
	Mixed Use Building (with Residential Uses)	XX	XX	XX	P	XX	PS	PS	PS	XX	XX	XX	XX	PS	XX	XX	XX	PS	PS	1204.09(d)(8)
	Multi-Tenant Development (without Residential Uses)	XX	XX	XX	P	P	P	P	P	P	P	XX	P	P	P	XX	P	P	p	
Offices	Business and Professional Offices	XX	XX	XX	P	P	P	P	P	P	P	PS	P	P	P	XX	P	P	P	1204.09(d)(9)
	Financial Institutions	XX	XX	XX	P	P	P	P	P	XX	XX	XX	P	P	P	XX	P	P	P	
	Medical or Dental Clinics/Offices and 24-Hour Urgent Care	XX	XX	XX	P	P	P	P	P	XX	XX	PS	P	P	P	XX	P	XX	XX	1204.09(d)(10)
Recreation and Entertainment	Recreation Facilities (Indoors)	XX	XX	XX	XX	XX	C	PS	PS	C	C	PS	PS	PS	C	XX	C	C	C	1204.09(d)(11)
	Recreation Facilities (Outdoors)	XX	XX	XX	XX	XX	C	C	C	C	C	C	C	XX	XX	XX	XX	XX	XX	1204.09(d)(12)
	Community Centers	PS	PS	PS	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	PS	XX	XX	PS	1204.09(d)(13)
	Night Clubs	XX	XX	XX	XX	XX	XX	PS	PS	XX	XX	XX	P	PS	XX	XX	XX	XX	C	1204.09(d)(3)
	Theaters	XX	XX	XX	XX	XX	XX	P	P	XX	XX	C	P	PS	XX	XX	XX	P	P	1204.09(d)(14)
	Adult Entertainment Uses	See Chapter 805 City of Middletown Code of Ordinances																		
Retail Sales and Services	Auction Houses and Flea Markets	XX	XX	XX	XX	XX	XX	XX	C	C	XX	XX	XX	XX	XX	XX	XX	XX	XX	
	Business Services	XX	XX	XX	P	P	P	P	P	P	XX	XX	P	P	P	XX	P	P	P	
	Convenience Stores	XX	XX	XX	XX	XX	P	P	P	XX	XX	XX	P	P	P	XX	P	P	P	
	Funeral Homes and Mortuaries	XX	XX	XX	PS	XX	PS	PS	PS	XX	XX	XX	XX	PS	PS	XX	PS	XX	PS	1204.09(d)(15)
	Package Liquor Stores	XX	XX	XX	XX	XX	XX	P	P	XX	XX	XX	P	P	XX	XX	P	P	P	
	Personal Service Establishments	XX	XX	XX	PS	PS	P	P	P	XX	XX	C	P	PS	PS	XX	C	P	P	1204.09(d)(16)

**TABLE 1204-3: PRINCIPALLY PERMITTED USES**

P = PERMITTED PS = PERMITTED WITH STANDARDS C = CONDITIONAL USE XX= PROHIBITED

USE CATEGORY	USE TYPE	R-1	R-2/R-3	R-4	O-1	O-2	B-1	B-2	B-3	I-1	I-2	I-1	BC					UC		USE-SPECIFIC STANDARDS
													BC-1	BC-H	BC-O	BC-R	BC-F	UC-C	UC-S	
	Retail and Service Commercial Uses	XX	XX	XX	PS	PS	P	P	P	PS	PS	C	P	PS	PS	XX	C	P	P	1204.09(d)(17)
Tourism	Assembly Halls and Conference Centers	XX	XX	XX	XX	XX	XX	XX	P	XX	XX	XX	P	P	P	XX	P	C	C	
	Bed and Breakfast Establishments	C	C	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	C	C	1204.09(d)(18)
	Hotels	XX	XX	XX	XX	XX	XX	P	P	XX	XX	XX	P	P	P	XX	XX	P	P	
	Motels	XX	XX	XX	XX	XX	XX	P	P	XX	XX	XX	P	XX	XX	XX	XX	XX	XX	
Vehicle Sales and Services	Automotive Sales and Leasing	XX	XX	XX	XX	XX	XX	PS	C	XX	XX	XX	C	XX	XX	XX	XX	XX	XX	1204.09(d)(19)
	Automotive Repair (Heavy) and Towing Services	XX	XX	XX	XX	XX	XX	XX	XX	P	P	XX	XX	XX	XX	XX	XX	XX	XX	1204.09(d)(20)
	Automotive Service Station and Parts Sales	XX	XX	XX	XX	XX	PS	PS	PS	XX	XX	XX	PS	XX	XX	XX	XX	XX	XX	
	Mobile Home, Commercial Truck, and Recreational Vehicle Sales and Leasing	XX	XX	XX	XX	XX	XX	P	P	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	
	Parking Garages	XX	XX	XX	XX	C	XX	XX	C	C	XX	C	C	C	C	XX	C	C	C	1204.09(d)(22) 1204.09(d)(22)
	Retail Fuel Sales	XX	XX	XX	XX	XX	P	P	P	XX	XX	XX	PS	XX	XX	XX	XX	XX	C	1204.09(d)(21)
	Vehicle Washing Establishment	XX	XX	XX	XX	XX	XX	XX	PS	XX	XX	XX	PS	XX	XX	XX	XX	XX	XX	1204.09(d)(23)
INDUSTRIAL USES																				
Industrial Uses and Services	Bulk Storage of Liquids	XX	XX	XX	XX	XX	XX	XX	XX	P	P	XX	XX	XX	XX	XX	XX	XX	XX	
	Building Material Sales and Contractor Yards	XX	XX	XX	XX	XX	XX	XX	C	PS	PS	XX	XX	XX	XX	XX	XX	XX	XX	1204.09(e)(1)
	Contractor Offices	XX	XX	XX	P	P	P	P	P	P	P	XX	P	P	P	XX	P	XX	P	
	Distribution Centers	XX	XX	XX	XX	XX	XX	XX	C	P	P	XX	XX	XX	XX	XX	XX	XX	XX	
	Manufacturing and Production (Indoors)	XX	XX	XX	XX	XX	XX	XX	XX	P	P	XX	XX	XX	XX	XX	C	C	XX	

**TABLE 1204-3: PRINCIPALLY PERMITTED USES**

P = PERMITTED PS = PERMITTED WITH STANDARDS C = CONDITIONAL USE XX= PROHIBITED

USE CATEGORY	USE TYPE	R-1	R-2/R-3	R-4	O-1	O-2	B-1	B-2	B-3	I-1	I-2	P-1	BC					UC		USE-SPECIFIC STANDARDS
													BC-1	BC-H	BC-O	BC-R	BC-F	UC-C	UC-S	
	Manufacturing and Production (Heavy or Outdoors)	XX	XX	XX	XX	XX	XX	XX	XX	XX	P	XX	XX	XX	XX	XX	XX	XX	XX	
	Manufacturing and Production with Caustic or Hazardous Materials	XX	XX	XX	XX	XX	XX	XX	XX	XX	C	XX	XX	XX	XX	XX	XX	XX	XX	1204.09(e)(2)
	Machinery and Heavy Equipment Sales, Leasing, and Storage	XX	XX	XX	XX	XX	XX	XX	C	P	P	XX	XX	XX	XX	XX	XX	XX	XX	
	Outdoor Storage and Sales	XX	XX	XX	XX	XX	XX	C	C	PS	PS	XX	XX	XX	XX	XX	XX	XX	XX	1204.09(e)(3)
	Research and Development Facilities	XX	XX	XX	XX	P	XX	C	C	P	P	XX	C	C	P	XX	P	XX	XX	
	Train Spurs and Yard Tracks	XX	XX	XX	XX	XX	XX	C	C	P	P	XX	C	XX	XX	XX	XX	XX	XX	
	Wholesale Establishments	XX	XX	XX	XX	XX	XX	C	C	P	P	XX	XX	XX	XX	XX	XX	XX	XX	
Junk and Salvage Uses	Junkyard or Salvage Center	XX	XX	XX	XX	XX	XX	XX	XX	XX	C	XX	XX	XX	XX	XX	XX	XX	XX	1204.09(e)(4)
Mining and Extraction	Soil and Mineral Extraction Activities	XX	XX	XX	XX	XX	XX	XX	XX	XX	C	XX	XX	XX	XX	XX	XX	XX	XX	1204.09(e)(5)
Storage and Distribution	Self-Storage Facilities	XX	XX	XX	XX	XX	XX	XX	XX	PS chr	PS	XX	XX	XX	XX	XX	XX	XX	XX	1204.09(e)(6)
	Warehouses	XX	XX	XX	XX	XX	XX	XX	XX	P	P	XX	XX	XX	XX	XX	XX	XX	XX	
PUBLIC AND INSTITUTIONAL USES																				
Public or Quasi-Public Facilities	Active Recreational Facilities	C	C	C	C	PS	PS	PS	PS	XX	XX	PS	PS	PS	PS	PS	PS	PS	PS	1204.09(f)(1)
	Airport	XX	XX	XX	XX	XX	XX	XX	XX	C	XX	C	XX	XX	XX	XX	XX	XX	XX	
	Essential Services	Exempt Per Section 1202.05(b).																		
	Government Facilities	C	C	C	C	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	Passive Parks, Open Space, and Natural Areas	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	Radio and Television Broadcasting Studios	XX	XX	XX	XX	P	P	P	P	P	P	P	P	P	P	XX	P	P	P	
	Utility Facilities and Buildings	C	C	C	C	C	C	P	P	P	P	P	P	C	P	C	C	C	C	
	Utility Structures	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	1204.09(f)(2)
	Wireless Telecommunication Facilities (Antenna Only)	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	PS	1204.09(f)(3)

**TABLE 1204-3: PRINCIPALLY PERMITTED USES**

P = PERMITTED PS = PERMITTED WITH STANDARDS C = CONDITIONAL USE XX= PROHIBITED

USE CATEGORY	USE TYPE	R-1	R-2/R-3	R-4	O-1	O-2	B-1	B-2	B-3	I-1	I-2	P-1	BC					UC		USE-SPECIFIC STANDARDS
													BC-1	BC-H	BC-O	BC-R	BC-F	UC-C	UC-S	
	Wireless Telecommunication Facilities (New Towers)	C	C	C	C	C	C	C	C	C	C	C	C	C	C	XX	C	XX	XX	<a href="#">1204.09(f)(3)</a>
Institutional Uses	Cemeteries	PS	PS	PS	PS	PS	PS	PS	PS	XX	XX	PS	PS	PS	PS	PS	PS	XX	PS	<a href="#">1204.09(f)(4)</a>
	Colleges and Higher Educational Institutions	XX	XX	XX	XX	P	XX	P	P	P	XX	P	P	P	P	XX	P	P	P	
	Cultural Facilities	C	C	C	PS	PS	PS	PS	PS	C	C	PS	PS	PS	PS	PS	PS	PS	PS	<a href="#">1204.09(f)(5)</a>
	Educational Institutions (K-12)	C	C	C	PS	PS	PS	PS	PS	XX	XX	PS	PS	PS	PS	PS	PS	PS	PS	<a href="#">1204.09(f)(6)</a>
	Fraternal, Charitable, and Service Oriented Clubs	XX	XX	XX	XX	C	C	PS	PS	XX	XX	PS	PS	PS	PS	PS	PS	C	PS	<a href="#">1204.09(f)(7)</a>
	Hospitals	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX	P	XX	XX	P	XX	XX	XX	XX	
	Nursery Schools or Day Care Centers (Children or Adults)	XX	XX	XX	PS	PS	XX	PS	PS	XX	XX	PS	PS	PS	PS	PS	PS	PS	PS	<a href="#">1204.09(f)(8)</a>
	Religious Places of Worship	C	C	C	C	C	C	C	C	XX	XX	PS	PS	PS	PS	PS	PS	PS	PS	<a href="#">1204.09(f)(5)</a>

## **1204.09 USE-SPECIFIC STANDARDS**

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### **(a) Purpose and Applicability**

- (1)** This section provides site planning, development, and/or operating standards for certain land uses that are permitted or conditionally permitted in [Table 1204-3](#).
- (2)** The land uses and activities covered by this section shall comply with the applicable standards for the specific use in all districts unless otherwise specified, in addition to all other applicable provisions of this code.

### **(b) Agricultural Uses**

#### **(1) Agriculture (Livestock), Riding Academies, or Stables**

- A.** The minimum lot area shall be five acres.
- B.** All structures, pens, or corrals housing animals shall be set back a minimum of 200 feet from an adjoining lot line, except where animals are kept in soundproof air conditioned buildings, in which case the building shall be set back a minimum of 100 feet from an adjoining lot line.
- C.** Fencing shall be provided to enclose any activities related to livestock, including grazing.
- D.** Sanitation facilities and/or waste disposal shall be approved by the applicable health department.

#### **(2) Community Gardens**

- A.** Community gardens may be allowed as an accessory use when associated with a public or institutional principal use (e.g., religious place of worship or educational institution).
- B.** The owner of the property shall have an established set of operating rules addressing the governance structure of the garden; hours of operation; maintenance and security requirements and responsibilities; and distribution of garden plots.
- C.** The name and telephone number of the owner and any person designated as the person in-charge of the garden coordination along with a copy of the operating rules shall be kept on file with the Development Code Administrator.
- D.** The site shall be designed and maintained so that water and fertilizer will not drain onto adjacent properties.
- E.** There shall be no sales of produce or other goods on the site of the community garden.
- F.** Benches, bike racks, raised/accessible planting beds, picnic tables, garden art, and rain barrel systems are permitted.
- G.** Fences and walls shall be subject to the provisions of [Section 1208.06](#).
- H.** The garden shall be maintained so that weeds, grass, or other vegetation does not become overgrown.

**(3) Greenhouses and Nurseries**

Greenhouses and nurseries are permitted in the R-1 District only when associated with an agricultural use.

**(c) Residential Uses**

**(1) Group Homes**

- A.** Where a person may operate a group home, as defined in the ORC, that is of a size that is required to be allowed where single-family dwellings are permitted, such use shall be deemed a permitted use in the R-1, R-2, R-3, R-4, PI, BC-R, BC-F, and UC-S districts. Such facilities must comply with the site development standards (See Section [1204.10.](#)) and architectural standards (See Section [1210.03.](#)) that apply to all single-family dwellings within the applicable district. Such uses shall be permitted with standards as described in Section [0.](#)
- B.** Where a person may operate a group home, as defined in the ORC, that is of a size that is required to be allowed where multi-family dwellings are permitted, such use shall be deemed a conditional use (See Section in [0.](#)) in any the PI, BC-R, BC-F, and UC-S districts. Such facilities must comply with the site development standards (See Section [1204.10.](#)) and architectural standards (See Section [1210.03.](#)) that apply to all multi-family dwellings within the applicable district. Furthermore, the facility must comply with all parking, fencing, and sign regulations in the applicable districts.

**(2) Transitional Housing**

- A.** No exterior alteration of the structure shall be made which departs from the residential character of the building. All new structures prepared shall be of compatible residential design with the surrounding neighborhood, to the degree possible.
- B.** In order to prevent the concentration of such facilities, no transitional housing shall be located within 1,500 feet of any other transitional housing or group home. Such distances shall be measured along a straight line from the corner of the building containing one facility to the nearest corner of the building containing the second facility.
- C.** The facility shall have 24-hours supervision consistent with pertinent supporting agency standards subject to review and final approval by the Planning Commission.
- D.** Prior to the issuance of a final certificate of occupancy, the operator or agency shall provide evidence that a valid license has been issued or is obtainable for this proposed use on the subject property. If licensing is not available, a verified affidavit so stating shall be presented.

**E. Findings by the Planning Commission**

In its review of each proposed facility, the Planning Commission shall make specific findings of fact relative to the following criteria. The proposed facility:



- i. Is licensed by the appropriate authority to provide such service within the State (and the City). If such licensing is not available, a certified affidavit so stating has been presented to document this statement;
- ii. Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the surrounding uses so that such use will not change the essential character of the same area;
- iii. Will not be hazardous or disturbing to existing or planned future neighboring uses from the standpoint of noise, lights, congestion or traffic generation which would be incompatible with the neighborhood environment;
- iv. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;
- v. Will not involve uses, activities and conditions of operation that will be detrimental to any persons, property, or the general welfare; and
- vi. Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets.

**(3) Skilled Nursing or Personal Care Facilities**

- A. The principal building shall be set back a minimum of 50 feet from any adjacent residential zoning district or residential lot.
- B. All other site development standards of the applicable zoning district shall apply to the site.
- C. The density shall not exceed 15 patient rooms per acre.
- D. New uses shall be on a lot with primary access on a major arterial, minor arterial, or Collector Street as established in the Middletown Street Master Plan.
- E. Prior to the issuance of a final certificate of occupancy, the operator or agency shall provide evidence that a valid license has been issued or is obtainable for this proposed use on the subject property. If licensing is not available, a verified affidavit so stating shall be presented.

**(d) Commercial Uses**

**(1) Kennels and Animal Boarding**

- A. Care and boarding of animals shall be limited to small animals and may not include cattle, horses, swine, or other similarly sized animals.
- B. All activities other than off-street parking and loading/unloading shall be conducted within a fully enclosed structure.
- C. Outdoor runs shall be set back a minimum of 250 feet from any residential or office zoning district and shall only be permitted in the side or rear yard.
- D. Structures shall be designed and maintained in a manner to prevent the development of unsanitary conditions that could result in unpleasant odor or vermin nuisance.

- E. Rooms intended to accommodate animals shall be insulated, or otherwise soundproofed and vented so that animal noises will not be audible at any point on the perimeter of the property.
- F. A solid wood fence or masonry wall with a minimum height of six feet shall be constructed where a kennel or animal board facility is located adjacent to a residential zoning district.

**(2) Veterinarian Offices or Animal Grooming (No Boarding)**

- A. Care and grooming of animals shall be limited to small animals and may not include cattle, horses, swine, or other similarly sized animals.
- B. All activities other than off-street parking and loading/unloading shall be conducted within a fully enclosed structure.
- C. Outdoor runs shall be prohibited.
- D. Boarding of animals shall be prohibited with the exception that a veterinarian office may have provisions for limited overnight stays necessary for the care of sick or injured animals.
- E. Rooms intended for the care or grooming of animals shall be insulated, or otherwise soundproofed and vented so that animal noises will not be audible at any point on the perimeter of the property.

**(3) Bars, Taverns, and Night Clubs**

- A. The principal building shall be set back a minimum of 35 feet from any adjacent residential lot.
- B. New uses shall be set back a minimum of 100 feet from any public or institutional use. Such setback requirement shall not apply to restaurants that have a bar or tavern that comprises less than 50 percent of the floor area.
- C. The maximum building footprint shall be 15,000 square feet in the BC-H Subdistrict.

**(4) Restaurants**

- A. Restaurants may be conditionally permitted in the PI District if they are associated with an approved public and institutional use.
- B. The maximum building footprint shall be 15,000 square feet in the BC-H, BC-O, BC-R, and BC-F Subdistricts.

**(5) Restaurants, Drive-Through**

- A. The drive through windows and aisles shall be located to the rear of the building, to the maximum extent feasible.
- B. Such uses shall be subject to the drive-through facility standards in Section [1206.01](#).

**(6) Microbrewery, Microdistillery, or Microwinery**

- A.** A microbrewery, microdistillery, and microwinery shall be allowed in the B-1, B-2, B-3, BC, and UC Districts when the majority of the floor area is dedicated to being used for restaurant service or for the serving of drinks made on site so that the use fits into the retail character of the districts.
- B.** A microbrewery, microdistillery, and microwinery in the I Districts may include a taproom area to serve customers drinks made on site provided the floor area of the taproom does not exceed 25 percent of the total footprint of the structure.

**(7) Live/Work Units**

- A.** The majority of the floor area of the unit shall be designated for the nonresidential use.
- B.** Any nonresidential use permitted in the applicable zoning district is permitted in the live/work unit.
- C.** A minimum of 50 percent of a structure's street front façade, at street level, shall be occupied by nonresidential uses.
- D.** The unit must be constructed with a complete dwelling unit but residential occupancy of the unit is not required (i.e., the living space could be used as an extension of the nonresidential use area) but where there will be occupancy, the occupant shall be the owner or employee of the nonresidential use.
- E.** Parking shall be prohibited in front of the building unless located on an approved driveway.

**(8) Mixed-Use Buildings (With Residential Uses)**

- A.** All dwelling units shall be located above the ground floor.
- B.** The gross floor area of dwellings shall not exceed the gross floor area of the entire mixed use building in the B-1, B-2, and B-3 Districts.
- C.** The design shall provide for internal compatibility between the residential and nonresidential uses on the site.
- D.** The design shall ensure that the residential units have privacy from other uses on the same or adjacent site.
- E.** Areas for the collection and storage of refuse and recyclable materials shall be located on the site in a location that is convenient for both the residential and nonresidential uses.
- F.** A mixed-use building shall be designed to provide the residential uses with public or private outdoor space, which may be in the form of open yard areas, roof gardens, individual balconies, or other means acceptable to the Development Code Administrator. The minimum required open space shall be equal to 25 percent of the gross floor area of all dwelling units.

**(9) Business and Professional Offices**

Business and professional offices may be permitted in the PI District if they are associated with an approved public and institutional use.

**(10) Medical or Dental Clinics/Offices and 24-Hour Urgent Care**

- A.** Medical or dental clinics/offices may be permitted in the PI District if they are associated with an approved public and institutional use.
- B.** Such uses may include accessory services such as laboratories and pharmacies for the use of patients visiting medical practitioners in the clinic.

**(11) Recreation Facilities (Indoors)**

- A.** All activities related to the principal use, except parking, shall be located within an enclosed building.
- B.** All structures, except fences, shall be set back a minimum of 50 feet from all lot lines and street rights-of-way.
- C.** Access shall not be provided from a street that primarily serves a residential neighborhood.
- D.** The maximum building footprint shall be 15,000 square feet in the BC-H Subdistrict.

**(12) Recreation Facilities (Outdoors)**

- A.** All structures, except fences, shall be set back a minimum of 100 feet from all lot lines and street rights-of-way. The Planning Commission shall have the authority to require up to a 1,000 foot setback based on the intensity of the use, the potential noise and traffic, and the overall impact on the surrounding neighborhood.
- B.** The Planning Commission may require portions of the site with high activity areas to be enclosed by a fence having a minimum height of six feet.
- C.** New uses shall be on a lot with primary access on a major arterial, minor arterial, or Collector Street as established in the Middletown Street Master Plan.

**(13) Community Centers**

- A.** One community center shall be allowed within an individual subdivision or for a multi-family dwelling development.
- B.** The community center shall only be for the use of residents and their guests.

**(14) Theaters**

- A.** All buildings shall be set back a minimum of 50 feet from all lot lines except in the UC and BC Districts.
- B.** New uses shall be on a lot with primary access on a major arterial, minor arterial, or Collector Street as established in the Middletown Street Master Plan.
- C.** The maximum building footprint shall be 15,000 square feet in the BC-H Subdistrict.

**(15) Funeral Homes and Mortuaries**

- A.** All hearses, limousines, and other related business vehicles shall be stored within an enclosed building when not in use.

- B. The required number of off-street parking spaces shall be designed in parallel aisles so as to facilitate the structuring of funeral processions that leave from the funeral home site to travel to the cemetery.

**(16) Personal Service Establishments**

- A. Up to a maximum of 15 percent of an office building in the O-1 and O-2 Districts, or a public and institutional use in PI District, may be used for a combination of personal service establishments and/or retail and service commercial uses.
- B. Massage therapists must carry a valid license from the State of Ohio and a license issued by the Middletown Police Chief per Chapter 832 of the Codified Ordinances.
- C. Personal service establishments shall only be permitted in the PI District if they are associated with an approved public and institutional use.
- D. The maximum building footprint shall be 15,000 square feet in the BC-H, BC-O, BC-R, and BC-F Subdistricts.

**(17) Retail Sales**

- A. Up to a maximum of 15 percent of an office building in the O-1 and O-2 Districts, or a public and institutional use in PI District, may be used for a combination of personal service establishments and/or retail and service commercial uses.
- B. Retail and service commercial uses shall only be permitted in the PI District if they are associated with an approved public and institutional use.
- C. Up to a maximum of 15 percent of a building in the I-1 and I-2 Districts may be used for retail and service commercial uses when the goods being sold are manufactured or assembled on site.
- D. The maximum building footprint shall be 15,000 square feet in the BC-H, BC-O, BC-R, and BC-F Subdistricts.

**(18) Bed and Breakfast Establishments**

- A. The owner of the bed and breakfast establishment shall reside on the property.
- B. The establishment shall conform to state health and building code requirements and shall show proof of inspection or proof of proper operating licenses by the State and/or county prior to the issuance of the certificate of occupancy.
- C. Only overnight guests shall be served meals unless otherwise authorized as part of the conditional use approval.
- D. The facility shall be limited to no more than four guestrooms with a maximum guest capacity as determined by fire and building regulations.
- E. No external vending machines shall be allowed.

**(19) Automotive Sales and Leasing**

- A. Automotive Sales and Leasing must be located on lots no smaller than four acres in size, with a minimum lot frontage of 200 feet. If the lot is smaller than these requirements, the use shall require approval of a conditional use application.
- B. All outdoor display, storage, and sales facilities must be screened pursuant to Section 1216.06.
- C. The use shall be located on an arterial street as designated on the Official Thoroughfare Plan.
- D. No outdoor loudspeakers shall be permitted between the hours of 8:00 p.m. and 8:00 a.m. when adjacent to a residential district.
- E. The use shall meet all State of Ohio requirements. The dealers license must be on display.
- F. Automotive Sales and Leasing must be located on a lot with a permanent principal structure.

**(20) Automotive Repair (Heavy) and Towing Services**

- A. A heavy automotive repair or towing services establishment shall be subject to the same requirements as an automotive service station as established in Section [1204.09\(d\)\(21\)](#).
- B. There shall be no wrecking or salvaging of parts from vehicles on the site.
- C. The storage of non-operational and/or disassembled vehicles for longer than a 24-hour period shall be permitted if stored in the rear yard and screened by a solid wall or fence with a minimum height of six feet. No such vehicle shall be stored on-site for more than one month.
- D. The principal building shall be set back a minimum of 100 feet from any adjacent residential lot. Parking for the storage of vehicles, whether operational or non-operational, shall be set back a minimum of 50 feet from any adjacent residential lot.

**(21) Automotive Service Stations and Parts Sales and Retail Fuel Sales**

- A. Gasoline pumps shall be set back a minimum of 20 feet from all lot lines and 50 feet from all adjacent residential lot lines.
- B. Canopies shall be set back a minimum of 10 feet from all lot lines and 25 feet from all adjacent residential lot lines.
- C. All hydraulic hoists, oil pits, and all lubricants, greasing, vehicle washing and repair equipment shall be enclosed entirely within a building. No outdoor disassembly or repair of motor vehicles shall be permitted.
- D. The minimum lot width for uses on an arterial street, as established on the Middletown Street Master Plan, shall be 120 feet. In the case of a corner lot, the minimum lot width shall be 185 feet measured along the arterial street.
- E. A solid wood fence or masonry wall at least six feet high shall be provided on any side of the site adjacent to a residential lot.

- F.** Activities shall be limited to:
  - i. The sale of fuel;
  - ii. The servicing of motor vehicles with minor repair work;
  - iii. Automatic or hand washing of vehicles within an enclosed building; and
  - iv. The retail sale of vehicle parts and products relating to minor repair work such as, but not limited to, oil, grease, antifreeze, batteries, windshield wipers, etc.
- G.** Any major repair work, including automobile body repair and painting, automobile glass work, automobile transmission work, automobile engine overhaul and repair, and radiator repair work shall be classified as “automotive repair (heavy)” and shall be subject to Section [1204.09\(d\)\(20\)](#).
- H.** Vehicles being serviced or awaiting same shall be stored for no longer than 14 days on the site if in unenclosed areas.
- I.** Any removal of pumps or tanks shall be undertaken in accordance with safe accepted practices as prescribed by the National Fire Protection Association and filling depressions to the grade level of the lot.
- J.** All areas not paved or covered by the building shall be landscaped.
- K.** There shall be no more than two driveway openings along any frontage and there shall be a minimum separation of 50 feet between each driveway as measured from the edge of pavement.
- L.** The storage and disposal of solid waste and recyclable materials, including used or discarded motor vehicle parts or equipment, and fluids, shall comply with all applicable federal, State, and local requirements.
- M.** Outdoor solid waste and recyclable storage areas shall be screened in accordance with Section [1216.10](#).

**(22) Parking Garages**

- A.** Parking lots and garages shall be subject to the design standards in [Chapter 1218: Parking, Access, and Mobility](#). Parking garages shall also be subject to the standards in this subsection.
- B.** Below-grade parking garages are encouraged over above-grade.
- C.** Above grade are subject to the following architectural standards except if they are not visible from a public right-of-way:
  - i. Parking garages shall meet the architectural standards established for the applicable zoning district.
  - ii. Parking garages shall be constructed of materials of similar quality to the principal buildings on the site.
  - iii. The facades of parking garages that face public streets and are not occupied by commercial, office, institutional, public uses, or civic uses shall be articulated through the use of three or more of the following architectural features to make the parking garage appear similar in character to an occupied building:

- a. Windows or window-shaped openings with decorative mesh or similar features as approved by the City;
  - b. Masonry columns;
  - c. Decorative wall insets or projections;
  - d. Awnings;
  - e. Changes in color or texture of materials;
  - f. Approved public art;
  - g. Integrated landscape planters; or
  - h. Other similar features approved by the City.
- D.** Vehicle entries to off-street parking garages shall be integrated into the placement and design of adjacent buildings or oriented away from the primary street frontage. At a minimum, parking garages shall have user vehicles access from locations that minimize conflicts with pedestrian circulation.

**(23) Vehicle Washing Establishments**

- A.** All structures shall be set back a minimum of 50 feet from any adjacent residential lot line.
- B.** All washing facilities shall be included entirely within an enclosed building except that entrance and exit doors may be left open during the hours of operation.
- C.** Vacuuming and/or steam cleaning equipment may be located outside, but shall not be placed in the yard adjoining a residential zoning district. Such areas shall be set back a minimum of 150 feet from any adjacent residential lot line.
- D.** There shall be an area beyond the exit end of each washing line of at least 500 square feet to allow for the hand finishing and drying of vehicles.
- E.** All parking areas and access drives shall be subject to the surfacing requirements in Section [1218.03\(h\)](#).
- F.** Water or residue from the washing process shall not be allowed to drain from the lot or property on which such establishment is located.
- G.** A solid wood fence or masonry wall at least six feet high shall be provided on any side of the site adjacent to a residential lot.
- H.** The use shall be subject to the stacking space requirements of Section [1218.05](#).

**(e) Industrial Uses**

**(1) Building Materials Sales Yards and Contractor Yards**

- A.** New uses shall be on a lot with primary access on a major or minor arterial as established in the Middletown Street Master Plan.
- B.** All outdoor storage areas shall comply with the outdoor storage requirements of Section [1206.01](#).



**(2) Manufacturing and Production with Caustic or Hazardous Materials**

- A.** As part of any review, the applicant shall provide the City a list of any noxious matter or chemicals used during the manufacturing process and document the safety precautions that will be used to prevent potentially hazardous chemical reactions or contamination.
- B.** If the applicant can demonstrate that due to the specific types of chemicals, material, or processes, that there is no potential for hazardous reactions or contaminate, the Development Code Administrator shall have the authority to review the use as a “manufacturing and production (indoors)” or as a “manufacturing and production (heavy or outdoors).”
- C.** All buildings or structures that contain these activities shall be set back a minimum of 600 feet from all residential lot lines and 300 feet from all other adjacent lot lines.

**(3) Outdoor Storage and Sales**

- A.** Areas devoted to outdoor storage shall be paved with asphalt or concrete and free of dust.
- B.** In all cases, any areas designated for outdoor storage shall be set back a minimum of 50 feet from any adjacent residential lot.
- C.** All aspects of outdoor operations shall be enclosed with a solid wall or fence, including solid gates. The wall or fence shall have a height tall enough to conceal all materials therein from the view of any observer standing at the grade level at an abutting residential district line or a public street. However, in no case shall the height of the fence or wall be less than six feet.
- D.** All materials shall be stored in such a fashion as to be accessible to fire-fighting equipment at all times.
- E.** Outdoor storage of materials shall not include a junkyard or similar storage.

**(4) Junkyard or Salvage Center**

- A.** All aspects of the use shall conform to applicable State and federal regulations.
- B.** Any buildings or structures associated with the use shall be set back a minimum of 300 feet from the property line of any residential lot or zoning district.
- C.** Exterior junk piles shall not exceed 15 feet in height and shall be arranged in a manner (with drives for accessibility) for the purposes of fire protection and access.
- D.** No burning of junk or other materials shall be permitted.
- E.** The area of the site where junk is stored must be enclosed by a fence with a minimum height of eight feet with the exception of entrances or exits into the area. Such fence shall be designed to completely screen the use and shall be located at the required setback line. Additional screening and buffering may be required as appropriate to minimize impact on adjacent properties.
- F.** Fluids from damaged or inoperable vehicles leaking automobile fluids shall be contained and subsequently disposed of in accordance with applicable regulations.

- G. Any expansion of an existing junkyard or salvage center shall be prohibited unless the entire property is brought into compliance with this section.

**(5) Soil and Mineral Extraction Activities**

- A. All aspects of the use shall conform to applicable State and federal regulations.
- B. The applicant must demonstrate that such operations will not be detrimental to the vicinity or surrounding properties.
- C. All equipment used in these operations shall be constructed, maintained, and operated in such a manner as to eliminate so far as practical, noise, vibration, or dust which would injure or annoy persons living in the vicinity.
- D. All structures and activity areas shall be set back a minimum of 100 feet from all lot lines and street rights-of-way.
- E. Such uses shall be enclosed by a fence six feet or more in height for the entire periphery of the development. Fences shall be adequate to prevent trespassing and shall be placed no closer than 50 feet to the top or bottom of any slope. No sand or gravel shall be removed or stored or overburden stored within 100 feet of any lot line not owned or controlled by the operator of said business or his or her agent nor shall such mineral extraction business be conducted closer to any lot line or street so that the area contiguous or adjacent thereto does not have adequate lateral support.
- F. All work conducted in connection with such operations shall be done between the hours of 7:30 AM and 9:00 PM.
- G. No rehabilitated slope shall exceed an angle of 45 degrees.
- H. All equipment and structures shall be removed from the mined area when all mining has been completed.
- I. Truck routes shall be established for movement in and out of the development in such a way that it will minimize the wear on public streets and prevent hazards and damage to other properties in the community.

**(6) Self-Storage Facilities**

- A. No storage structure shall exceed 15 feet in height.
- B. All storage buildings shall be set back a minimum of 100 feet from any adjacent residential lot line and 20 feet from all other lot lines.
- C. The storage area shall be completely enclosed by walls, fences or buildings, or a combination thereof. All walls and fences shall conform to [Section 1208.06](#).
- D. Outdoor storage may be permitted provided it complies with [Section 1206.01](#).
- E. No gasoline or other motor vehicle fuel pumps or tanks shall be permitted on the premises.
- F. There shall be no retail sales on the property with the exception that the owner or their designee may hold an auction on the site up to four times a year for the purpose of selling goods stored in units.

**(f) Public and Institutional Uses**

**(1) Active Recreational Facilities**

- A.** All ball fields, playgrounds, and other areas of the park where there is significant activity and potential noise shall be set back a minimum of 100 feet from all adjacent residential lot lines.
- B.** Only retail uses which are customarily accessory or incidental to the main recreational use shall be permitted and shall include such uses as souvenir stands and concession stands.

**(2) Utility Structures**

- A.** To the maximum extent feasible, utility structures shall be located in the rear or side yards.
- B.** If the applicant demonstrates to the Development Code Administrator that the utility structure can only be located in a front yard, the structure shall be landscaped in a manner that will allow access to the unit but otherwise buffer the view of the structure. The applicant shall be required to provide a landscaping plan as part of the subject application.

**(3) Wireless Telecommunication Facilities**

**A. General Provisions**

- i.** Wireless telecommunication facilities will be allowed in the City in accordance with this code and with the applicable review by the Development Code Administrator or Planning Commission, as applicable.
- ii.** In general, new wireless telecommunication towers will be reviewed as a conditional use in most nonresidential districts as identified in [Table 1204-3](#).
- iii.** The attachment of antennas to existing structures or as a co-location on an existing tower is encouraged and is either reviewed as a permitted use with standards or a conditional use as identified in [Table 1204-3](#).
- iv.** The applicant will hold the City harmless against all claims, demands, suits, causes of action and judgments due to any damage caused by the operation or construction of the facility.
- v.** The applicant shall be required to provide proof that the proposal has been approved by all applicable agencies including, but not limited to, the Ohio Department of Transportation, the Federal Aviation Administration, the Federal Communications Commission or the successors to their respective functions.
- vi.** All towers, antennas, structures, and equipment associated with the wireless telecommunication shall be removed within six months of ceasing operations. If not removed, they shall be subject to abatement by the City as a nuisance.

- vii. Municipal utility towers shall not be subject to this section.
- viii. Amateur radio towers shall not be subject to this section but shall be subject to the accessory use regulations of Section [1206.01](#).
- ix. Wireless telecommunication towers cannot be exempted from the requirements of this code as essential services (See Section [1202.05\(b\)](#)).

**B. Application Timing**

- i. An application for a wireless telecommunication facility shall be reviewed by the Development Code Administrator for completeness and if the application is incomplete, the Administrator shall notify the applicant within 30 days of the filing of the application with the City of the deficiencies which make the application incomplete.
- ii. A final decision on an application for a collocation on an existing tower or structure shall be made by the applicable City decision maker within 90 days of a complete application therefor being submitted to the City.
- iii. A final decision on an application for a new facility shall be made by the applicable City decision maker within 150 days of a complete application therefor being submitted to the City.
- iv. Final decisions by the City decision maker shall be provided to the applicant in writing and any denial of an application or any approval with conditions shall be supported by substantial evidence in writing (if the denial and reasons are not in the same document, both must be provided to the applicant at the same time).
- v. Upon a supplement to the original application in Division [i](#) above, the Development Code Administrator shall have 10 days to notify the applicant of a failure to provide the information identified in the original notice delineating the deficiencies in the original application. Any subsequent deficiencies in the application shall also be subject to this same review and notification process and time deadlines.

**C. Development Standards for New Towers**

- i. To avoid the construction of a new tower, the applicant shall list the location of every tower, building, and structure, within the area where the new tower is to be located, that could support the proposed telecommunication antenna. The applicant must demonstrate that a technically suitable location is not reasonably available on an existing tower, building, or structure irrespective of the City, township and county jurisdictional boundaries. If another telecommunication tower is

technically suitable, the applicant must show that an offer was made to co-locate an antenna on that tower and that the offer was not accepted. The applicant shall provide documentation containing a list of the telecommunication facility site locations and owners of telecommunication towers, buildings and structures which were contacted, the date of such contact, any offers of reciprocal rights to install antennas on the applicant's locations, and the reason why the proposed antennas cannot be located on the existing structures.

**ii. New Towers in Residential Zoning Districts**

New towers shall only be considered for conditional use review in a residential zoning district if such tower is to be placed on publicly owned land in such district, in accordance with the following standards:

- a. The publicly-owned property must be leased from the City, county, State or other public entity at the discretion of the City.
  - b. The publicly-owned property must be a minimum of four acres in area.
  - c. The maximum height of any tower in such area shall not exceed 150 feet.
  - d. No tower shall be located within 150 feet of a public street or property line abutting a residential district. If the property line abuts a commercial or industrial district, the setback for such property line shall be reduced to 50 feet.
  - e. All design standards for new towers in this Section [1204.09\(f\)\(3\)C](#) shall apply.
- iii. Towers shall be of the free-standing lattice or monopole type.**
- iv. All towers must be in conformity with clear zones around any airport.**
- v. Telecommunication towers in nonresidential districts shall be set back to establish a clear zone for falling tower debris, ice and/or the collapse of the tower. Towers over 75 feet tall shall be set back from any adjoining property and from any public or private street a distance equal to their height, measured from the base of the tower to the top of the tower.**
- vi. Towers which cannot satisfy this 100 percent setback requirement may be approved, provided that the applicant presents a certificate from a structural engineer registered in the State of Ohio stating that the tower will withstand a sustained wind velocity based on the requirement of the Ohio Building Code.**
- vii. Telecommunication towers shall be set back a minimum of 500 feet from any residential district if located in the O-1 or O-2 district or 300 feet in all other nonresidential districts where it is allowed as a conditional use.**
- viii. Equipment shelters and other accessory facilities shall comply with any setback requirements in the applicable zoning district.**

- ix. The equipment shelters and other accessory facilities shall be screened with a minimum six-foot high solid fence or barrier and continuous evergreen hedge, and all such screening shall be located behind the appropriate setback lines for the district in which such structures and equipment are located.
- x. Lights, beacons or strobes shall not be permitted on any tower, antenna equipment, or structures, unless required by the Federal Aviation Administration. Any lighting attached to the equipment shelter or other building shall not be mounted above 15 feet, as measured from the grade at the base of the structure. Such lighting shall be subject to Section [1208.04](#).
- xi. The entire facility shall, to the maximum extent feasible, be designed to minimize the visual impact of the facility through the use of stealth design and colors that will blend in with the context (e.g., sky, trees, etc.). The Planning Commission shall give special attention to areas of architectural or historical significance in the approval of a telecommunication facility.
- xii. A wireless telecommunication tower may be approved where there is already an existing principal use, regardless if it is associated with the wireless telecommunication provided, subject to the following additional conditions:
  - a. The existing use on the property is a permitted use in the district. The wireless telecommunication facility shall not infringe upon the required parking access and yard requirements, easements, drainage ways, and basin of the main structure and/or site.
  - b. Service access to the equipment shelter shall, whenever feasible, be provided along existing circulation of the existing use of vehicular areas, which can be roadways, parking areas and driveways.
  - c. The tower shall comply with all setback and height requirements of this subsection.
- xiii. No new telecommunication tower shall be constructed in the City unless such tower is capable of accommodating at least two additional wireless telecommunication antenna owned by another person or business.

**D. Development Standards for the Attachment of Antenna to Existing Towers or Structures**

Wireless telecommunication antennas attached to existing nonresidential buildings are permitted with the issuance of a certificate of zoning compliance when such antenna are in compliance with the following standards.

- i. The wireless telecommunication antenna shall not exceed more than 25 percent of the height of structure where the antenna is to be attached, above the structure or building to which it is attached, as measured from the top of the roofline of the structure or building.

- ii. If the applicant proposes to locate the wireless telecommunication accessory facilities/structures or equipment in a separate equipment shelter, the equipment shelter shall comply with equipment shelter requirements applied to new towers in Section [1204.09\(f\)\(3\)C](#).
- iii. Vehicular access to the accessory facilities/structures or equipment shelter shall not interfere with the parking or vehicular circulation on the site for the principal use, and the access path shall be paved with asphalt or concrete.
- iv. The applicant shall supply written authorization from the property owner where the antenna will be located, agreeing to the location of such antenna.

**(4) Cemeteries**

- A. The minimum lot area shall be 10 acres.
- B. Offices, crematoriums, mausoleums, and other buildings or structures necessary to the operation of a cemetery shall be permitted as accessory uses to a cemetery.
- C. All buildings and structures shall be set back a minimum of 50 feet from all lot lines. Burial plots, markers, and similar structures that have a height of less than 15 feet shall only have to be set back a minimum of five feet from all lot lines.
- D. Mausoleums or crematoriums shall be set back a minimum of 200 feet from all lot lines.

**(5) Cultural Facilities and Religious Places of Worship**

- A. All buildings shall be set back a minimum of 25 feet from all lot lines except in the UC District.
- B. New uses shall be on a lot with primary access on a major arterial, minor arterial, or collector street, as established in the Middletown Street Master Plan.

**(6) Educational Institutions (K-12)**

- A. All buildings shall be set back a minimum of 50 feet from all lot lines.
- B. New uses shall be on a lot with primary access on a major arterial, minor arterial, or collector street as established in the Middletown Street Master Plan.

**(7) Fraternal, Charitable, and Service Oriented Clubs**

Accessory uses necessary to the operation of such use, such as clubhouses, restaurants, bars, swimming pools and similar activities, shall be permitted if they comply with the applicable standards however, such uses where the conduct of business is the principal activity, shall be prohibited.

**(8) Nursery Schools or Day Care Centers (Children or Adults)**

- A. All outdoor play areas shall be enclosed by a fence or wall with a minimum height of five feet. If the lot abuts a lot that is in a residential zoning district, the fence or wall shall be a minimum of six feet tall with a continuous evergreen screen adjacent to the residentially zoned lot.

- B. An on-site drop-off area shall be provided at the main entrance to the facility sufficient to accommodate 4 automobiles for facilities with 20 or fewer children or adults plus one additional vehicle for each additional 10 children or adults served.
- C. Use of outdoor play areas shall be limited to between the hours of 8:00 a.m. and 8:00 p.m.
- D. The Development Code Administrator has the power to require additional fencing, screening and/or other measures deemed necessary to protect the health, safety and welfare of children using day care centers in commercial, industrial, or other high hazard areas, or to deny a request to locate a facility in such areas based on health and safety considerations.

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## **1204.10 SITE DEVELOPMENT STANDARDS**

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### **(a) Measurements, Computations, and Exceptions**

#### **(1) Distance Measurements**

Unless otherwise expressly stated, distances specified in this code are to be measured as the length of an imaginary straight line joining those points.

#### **(2) Lot-Area Measurements**

- A. The area of a lot includes the total horizontal surface area within the lot's boundaries.
- B. No lot, yard, court, parking or other space shall be reduced in area or dimensions so as to make said area or dimensions less than the minimum required by this code; and, if already less than the minimum required by this code, said area or dimensions shall not be further reduced. Exceptions to this standard shall only be granted if a reduction is approved as part of a variance, PD, or administrative waiver approval.

#### **(3) Lot Width Measurements**

Lot width is the distance between the side lot lines measured along the front building line.

#### **(4) Street Frontage Measurements**

Street frontage is the distance between the side lot lines measured along the street right-of-way.

#### **(5) Setbacks, Yards, and Lot Type Requirements**

##### **A. Measurements**

Setbacks refer to the unobstructed, unoccupied open area between the foundation or base of a structure and the property line (lot line) of the lot on which the structure is located. Setbacks shall not contain any structure except when in conformance with this code. See Figure 1204-A.



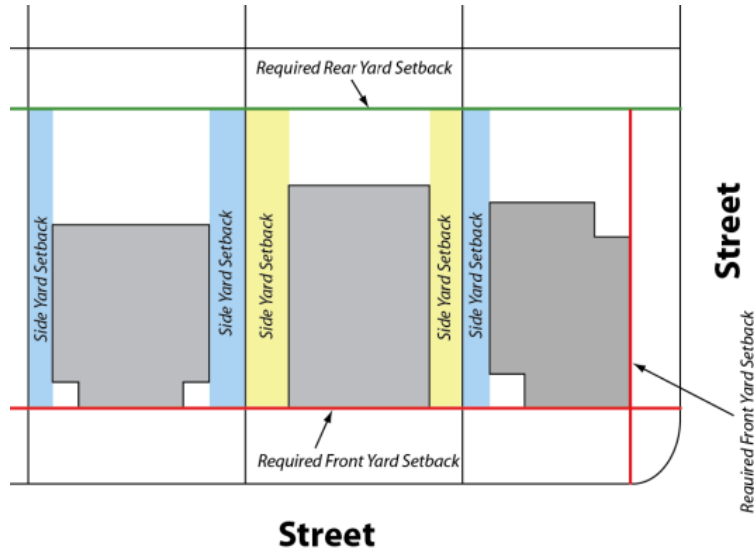


Figure 1204-A: Measurement of typical front, side, and rear yard setbacks.

### B. Yards Required for Buildings

A yard or other open space required for any structure shall be located on the same lot as the structure and shall not include any yard or open space areas from an adjacent lot.

### C. Front Yard Exception

- i. In any residential district, a front yard setback shall not be required to exceed the average front yard setbacks of the existing front yards within the same block and within 100 feet of the principal building. Modification of the front yard in accordance with this section will not create a nonconforming lot unless the lot or structure does not meet other applicable provisions of this code. See [Figure 1204-B](#).
- ii. This provision shall not be interpreted to require a front yard of more than 50 feet for a residential use.

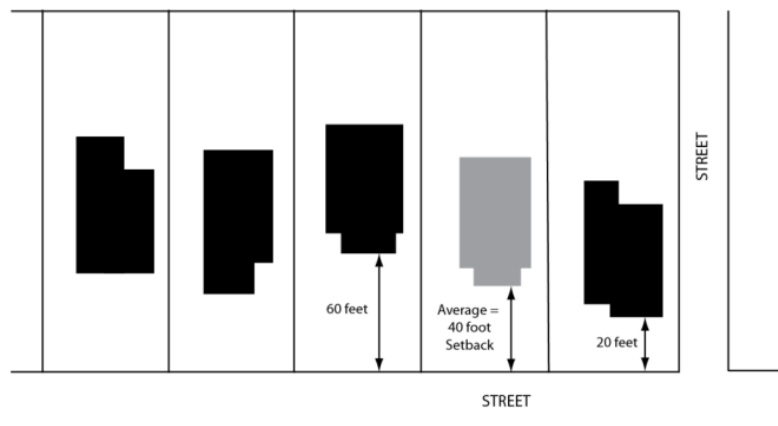


Figure 1204-B: Illustration of the averaging of front yard setbacks. In a district with a minimum front yard setback requirement of 50 feet, smaller setbacks may be allowed if the average front yard setbacks are less than 50 feet.

**D. Projections into Required Yards**

- i. Certain architectural features may project into required front and rear yards as follows:
  - a. Bay windows and chimneys may project a distance not exceeding three feet into the front or rear yard, provided that such features do not occupy, in the aggregate, more than two-thirds of the length of the building wall on which they are located.
  - b. Cornices, canopies, eaves, awnings or other similar architectural features may project into a front or rear yard a distance not exceeding six feet, provided that areas under such projections are not enclosed.
  - c. An uncovered stairway and necessary landings may project a distance not to exceed six feet into a front or rear yard, provided that such stairway and landing shall not extend above the entrance floor of the building except for a railing not exceeding 42 inches in height.
  - d. Porches, patios, and arbors or trellises may project a distance not exceeding ten feet into a front or rear yard as long as they are not enclosed by walls.
  - e. Open or lattice-enclosed fire escapes or fireproof outside stairways may project into a rear yard not more than five feet. Such features shall not be located in the front yard.
- ii. Subject to the limitations in division (i) above, such architectural features may project into any required side yard adjoining, a distance not to exceed one-third of the required least width of such side yard.
- iii. Skylights, sills, belt courses, and other similar ornamental features may project into any yard a distance not to exceed 12 inches.

**E. Interior Lots**

- i. The required minimum front yard setback shall be measured from the street right-of-way or, where a right-of-way is not identified, the front lot line.
- ii. The lot line located directly behind the rear of the structure, as determined by the Development Code Administrator, shall be the rear lot line and the rear yard setback shall be applied.
- iii. All other lot lines shall be considered the side lot line and the side yard setback shall be applied.
- iv. See [Figure 1204-C](#) for an illustration of the applicable yards.

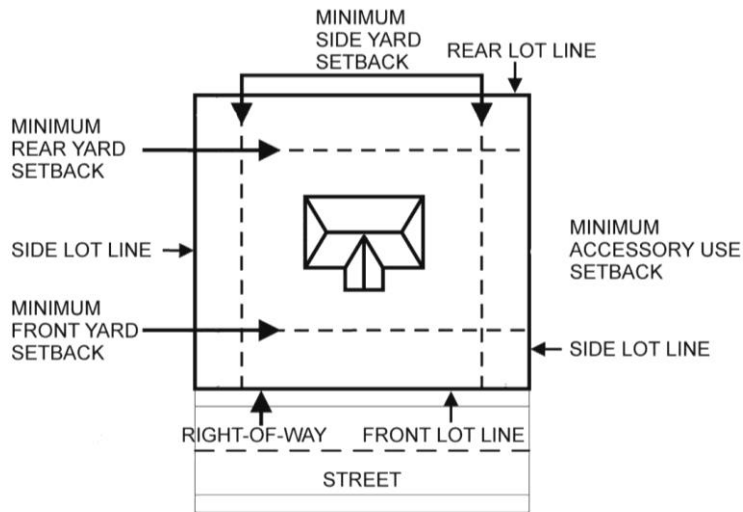


Figure 1204-C: Typical yard locations for an interior lot.

#### F. Corner Lots

Lots that have street frontage on two intersecting streets shall be considered a corner lot, subject to the following:

- i. The required minimum front yard setback shall be provided from each street right-of-way or, where a right-of-way is not identified, the lot line adjacent to the street. An alley shall not be considered a street for the purposes of determining a corner lot.
- ii. The lot line that runs parallel with the lot line along the narrowest street frontage shall be the rear lot line and the minimum rear yard setback shall be applied from such lot line.
- iii. All other lot lines shall be a side lot line and the minimum side yard setback shall be applied from such lot lines.
- iv. See [Figure 1204-D](#) for an illustration of the applicable yards.

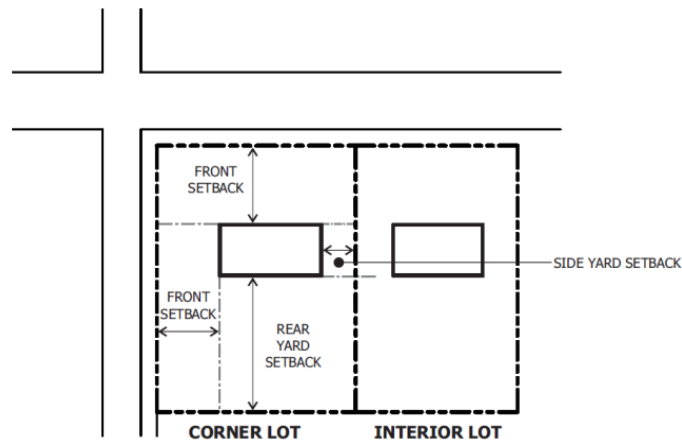
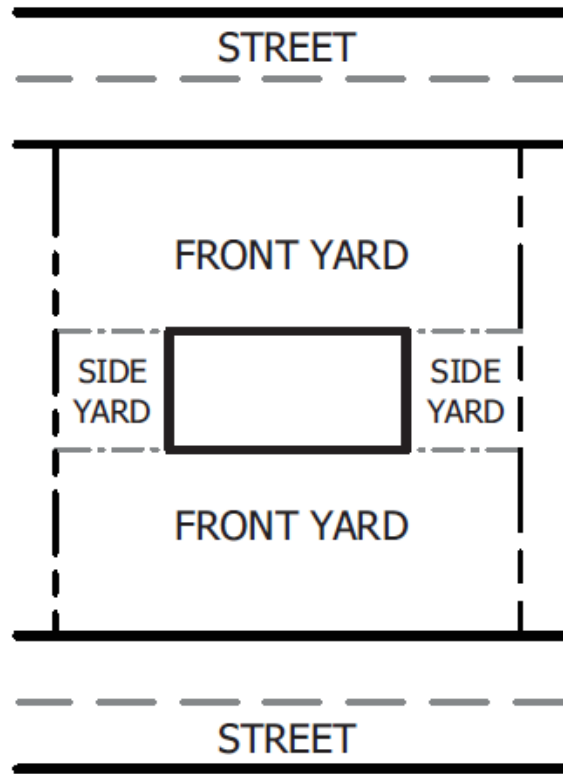


Figure 1204-D: Typical yard locations for a corner lot.

**G. Double Frontage (Through) Lots**

- i. Where a lot is considered a double (through lot) lot, the required minimum front yard setback shall be provided on all lot lines that abut a street.



*Figure 1204-E: Yard locations on double frontage (through) lots.*

- ii. The remaining lot lines not abutting a public road right-of-way shall be considered as side yards and shall have the required minimum side yard setback provided for each side lot line.
- iii. For the purposes of allowing accessory uses and fences, which are allowed in a rear yard, the yard that is located to the rear of the principal building shall be considered the rear yard and the setbacks of [Section 1206.01](#) or [Section 1208.06](#), shall apply, as may be applicable.
- iv. Where alleys exist in the City, any lots that have frontage along the alley shall not be considered a double frontage (through) lot and shall either be regulated as an interior lot or corner lot depending on the location of the subject lot within the block.
- v. See [Figure 1204-E](#) for an illustration of the applicable yards.

#### H. Panhandle (Flag) Lots

Panhandle lots (flag) lots shall be discouraged and shall only be approved if necessitated by unique topographic features or other special physical conditions as deemed necessary by the Planning Commission. Panhandle (flag) lots shall be subject to the following regulations:

- i. Panhandle (flag) lots shall not be used to avoid the construction of a street.
- ii. The stacking of panhandle (flag) lots shall be prohibited. See [Figure 1204-F](#).

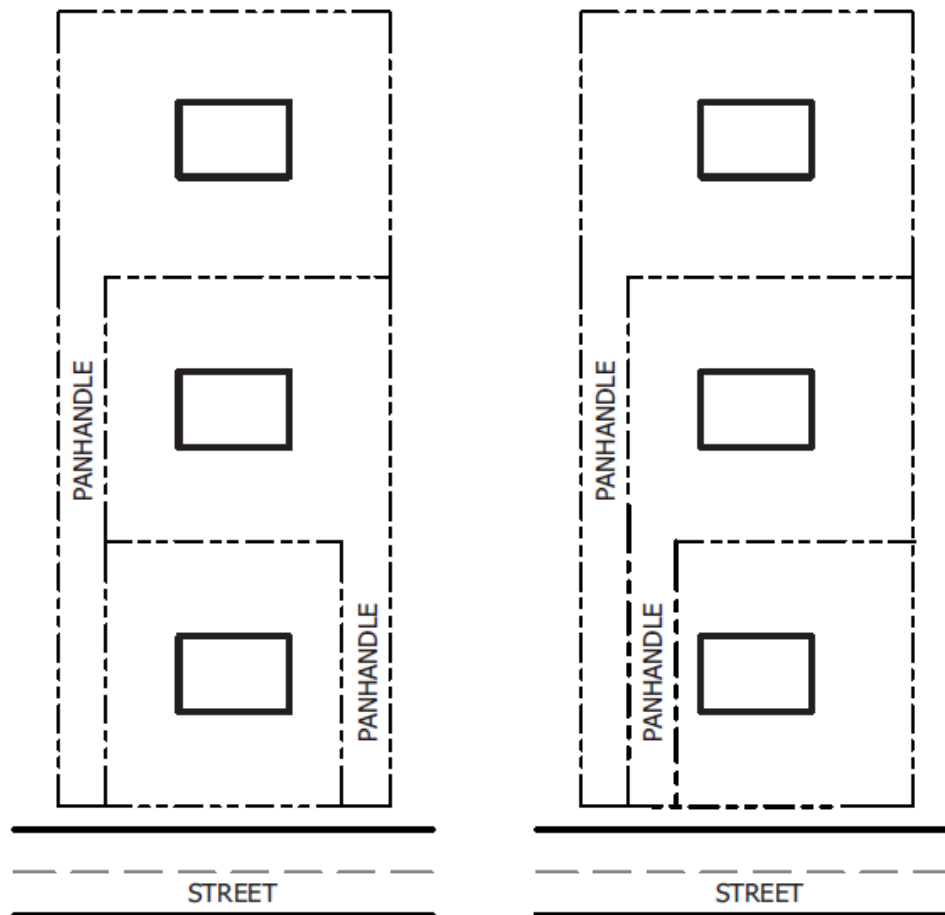


Figure 1204-F: The above illustration shows the stacking of panhandle lots, which is prohibited.

- iii. The panhandle shall have a minimum width of 20 feet along the entire width of the panhandle. The maximum width shall be 40 feet and anything with a width of 40 feet or greater shall be consider an interior, corner, or double frontage lot as may be applicable.
- iv. The minimum front yard setback requirement shall be measured from the lot line that creates the rear lot line of the adjacent lot as illustrated in [Figure 1204-G](#).

- v. No structures, except for fences and walls allowed by this code, shall be permitted in the panhandle portion of the lot.

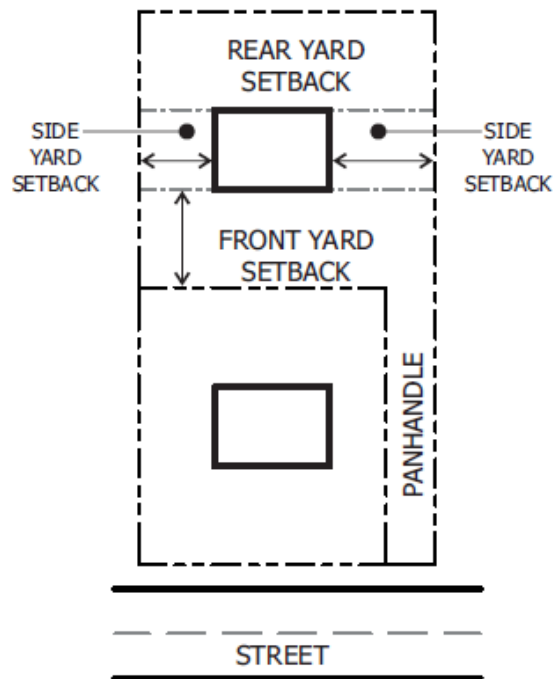


Figure 1204-G: Yard and front yard setback locations on a panhandle lot.

#### I. Cul-de-Sac or Curved-Street Lot

- i. For a cul-de-sac lot or a lot abutting a curved street, the front yard setback shall follow the curve of the front lot line. See [Figure 1204-H](#).

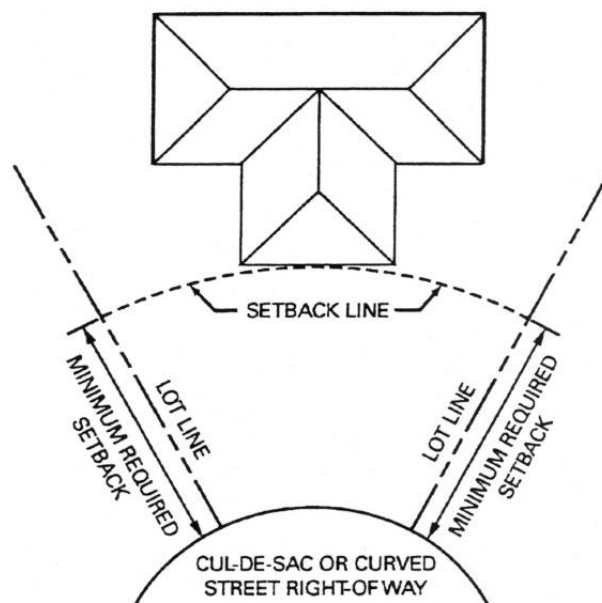


Figure 1204-H: Setback line of a lot with frontage on a curved street or cul-de-sac.

- ii. The lot width at the front lot line may be reduced to no less than 35 feet, however, the lot width at the front building line shall equal the minimum lot width required in the applicable zoning district.

#### J. Other Lot Configurations

Where there is an instance of a lot configuration not addressed in the previous sections (e.g., interior, corner, panhandle, etc.), or where there is an atypical building orientation on any lot, the Development Code Administrator shall have the authority to make a determination regarding where front, rear, and side yard setbacks are required.

### (6) Height Measurement and Exceptions

#### A. Height Measurement

- i. Where specified in stories, building height shall be measured in number of stories above the finished grade for any elevation fronting on a public street including attics, half-stories, mezzanines, and at-grade structured parking. This excludes features that are less than one-half story or completely below grade, such as basements, cellars, crawl spaces, sub-basements, and underground parking structures.
- ii. Where specified in feet, building height shall be measured as the vertical distance from the average grade at the base of the structure to the mid-point between the eaves and the peak line for any sloped roof or to the highest point of a flat roof. See [Figure 1204-I](#).

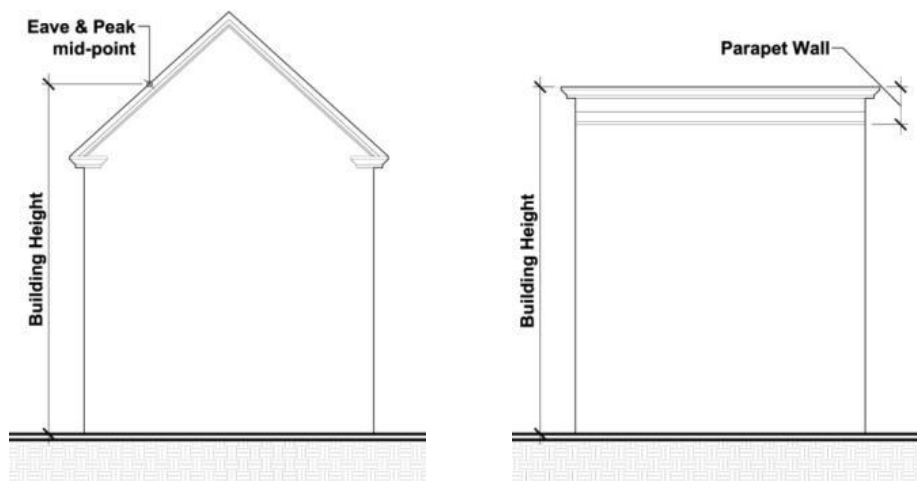


Figure 1204-I: Example of building height measurement for a sloped roof (left) and a flat roof (right).

- iii. Where a building is located on sloping terrain, the height may be measured from the average ground level of the grade at the building wall.

- iv. Where specified fencing and wall height shall be measured in accordance with Section [1208.06](#).

#### **B. Exceptions to Height Limits**

- i. Height limitations stipulated in this code shall not apply to:
  - a. Barns, silos or other farm buildings or structures on farms; spires, belfries, cupolas and domes, monuments, water towers, windmills, chimneys, smokestacks, flagpoles, masts and aerals, parapet walls, and other similar architectural features extending not more than four feet above the maximum height of the building;
  - b. Steeples, turrets, minarets, or other similar, non-habitable architectural features for any religious places of worship, schools and other permitted public and institutional buildings;
  - c. Elevator penthouses, water tanks, provided that no linear dimension of any such structure exceeds 50 percent of the corresponding street frontage, or to towers and monuments, fire towers, hose towers, cooling towers or other such structures where the manufacturing process required a greater height; or
  - d. Free standing and roof-mounted radio and television towers shall not exceed 60 feet in height as measured vertically from the ground surface level to the highest point on the antenna-tower combination. All such structures shall be firmly anchored or guy wired, and shall be capable of withstanding an 80 mile per hour wind. Prior to the issuance of a certificate of zoning compliance, the applicant shall show evidence that the proposed antenna-tower construction can meet the wind-anchoring requirements. Free standing antenna-tower structures or any part thereof may be no closer than three feet to side or rear property lines, and may not be located in or within 10 feet of the required front yard. Antenna operations suspected of causing frequency interference to the televisions-radios of neighboring residents shall be reported to the Federal Communications Commission for inspection and follow-up.
- ii. No such structures above the heights otherwise permitted in the applicable zoning district shall occupy more than 25 percent of the area of the lot.

#### **C. Airport Turning Zone Restrictions**

- i. An aircraft turning zone is established herein, as shown on a drawing entitled "Airport Turning Zone" on file in the office of the Director of Public Service, dated December 18, 1962, and all subsequent revisions.
- ii. No building or other structure shall penetrate this zone unless in conformance with all applicable Federal Aviation Administration policies and other restrictions which the Planning Commission may establish.

#### **(b) Site Development Standards for Residential Zoning Districts**

- (1) [Table 1204-4](#) establishes the minimum site development standards for residential zoning districts.



- (2) There shall not be more than one principal building on an individual lot except as approved as part of a planned development or as part of an approved condominium project. In such cases, the entire group as a unit shall be subject to the minimum setbacks for the applicable zoning district and lot type. Each individual building shall meet all yard requirements for the appropriate district as though it were on an individual lot.

**TABLE 1204-4: SITE DEVELOPMENT STANDARDS FOR RESIDENTIAL ZONING DISTRICTS**

DISTRICT/USE	MINIMUM LOT AREA [1] (SQUARE FEET)	MINIMUM LOT WIDTH (FEET) LOT/CORNER	MINIMUM LOT DEPTH (FEET)	MINIMUM SETBACKS			MAX. BUILDING HEIGHT (FEET)
				FRONT YARD (FEET)	SIDE YARD EACH SIDE (FEET)	REAR YARD (FEET)	
DETACHED RESIDENTIAL DISTRICTS							
R-1	30,000	125/175	225	50	10	50	35
R-2	18,000	110/135	160	40	8	50	35
R-3	13,000	95/115	135	35	7	40	35
Nonresidential Uses in the R-1, R-2, or R-3 Districts	[2]	[2]	[2]	[2]	[2]	[2]	40
R-4 ATTACHED RESIDENTIAL DISTRICT							
Single-Family Dwelling	9,000	70/95	125	30	6	30	35
Two-Family Dwelling	11,000	80/105	125	30	6	30	35
Three-Family Dwelling	13,000	90/115	125	30	6	30	35
Multi-Family Dwellings containing 4 dwelling units	15,000	100/125	125	30	6	30	35
Multi-Family Dwellings containing 5 or more dwelling units	4,000 per dwelling unit	100/125	125	30	6	30	35
Nonresidential Uses	15,000	100/125	125	30	6	30	40
NOTES:							
[1] Larger lot areas may be required by a use-specific standard or by the City or the applicable county's health department/district in cases where there is no access to a public sanitary sewer system.							
[2] The site development standards for nonresidential uses shall be the same as those in the zoning district where the nonresidential use is proposed to be located.							

**(3) Livable Floor Area and Lot Coverage**

- A. All single-family dwellings shall have a minimum of 1,700 square feet livable floor area for all two-story or taller single-family dwellings and 1,500 square feet for any single-family dwelling under two stories tall.
- B. All two-family and three family dwellings shall have a minimum of 1,000 square feet livable floor area per dwelling unit.
- C. All multi-family dwellings shall have a minimum of 500 square feet of livable floor area per dwelling unit.

**(4) Front Yard Impervious Surface**

Impervious surface shall not exceed 30 percent of the front yard. Impervious surface includes driveway, walkways and sidewalks. Any expansion of a driveway requires review and issuance of a certificate of zoning compliance.

**(c) Site Development Standards for Nonresidential Zoning Districts**

- (1) [Table 1204-5](#) establishes the minimum site development standards for all nonresidential zoning districts.
- (2) There can be more than one principal building on an individual lot. When multiple principal buildings are located on an individual lot, the spacing between the buildings shall be reviewed and approved during the certificate of zoning compliance review to ensure an adequate amount of building spacing and preservation of landscaping areas.

**TABLE 1204-5: SITE DEVELOPMENT REQUIREMENTS FOR NONRESIDENTIAL DISTRICTS**

DISTRICTS	MINIMUM LOT AREA (SQUARE FEET)	MINIMUM LOT WIDTH (FEET)	MINIMUM FRONT YARD (FEET)	MINIMUM REAR YARD (FEET)	MINIMUM SIDE YARD (FEET)		MAXIMUM BUILDING HEIGHT (FEET)
					EACH SIDE	COMBINED SIDE YARDS	
O-1 District	10,000	100/120	20 [1]	25	10	25	40
O-2 District	30,000	100/130	35 [1]	25 [2]	10	25	40
B-1 District	5,000	None	25	25 [3]	15 [3]	30 [3]	35
B-2 District	10,000	None	35	30 [3]	20 [3]	40 [3]	45
B-3 District	None	None	10	20 [3]	10 [3]	20 [3]	75
BC District	BC-I Subdistrict	217,800	None	20	None	None	45
	BC-H Subdistrict	217,800	None	10 to 30	None	None	90
	BC-O Subdistrict	217,800	None	20 to 90	None	None	90
	BC-R Subdistrict	217,800	None	20 to 90	None	None	60
	BC-F Subdistrict	217,800	None	20 to 90	None	None	45
UC District	UC-C Subdistrict	None	None	0 to 15 [4]	None	None	60
	US-S Subdistrict	None	None	0 to 15 [4]	None	None	40
I-1 Industrial Park District	10,000	100	25	15 or 25 [5]	10 or 20 [5]	20 or 40 [5]	50 [6]
I-2 General Industrial District	5,000	50	20	15 or 25 [5]	10 or 20 [5]	20 or 40 [5]	50 [6]
PI Public and Institutional District	None	None	20	30 [3]	10 [3]	20 [3]	60

**NOTES:**

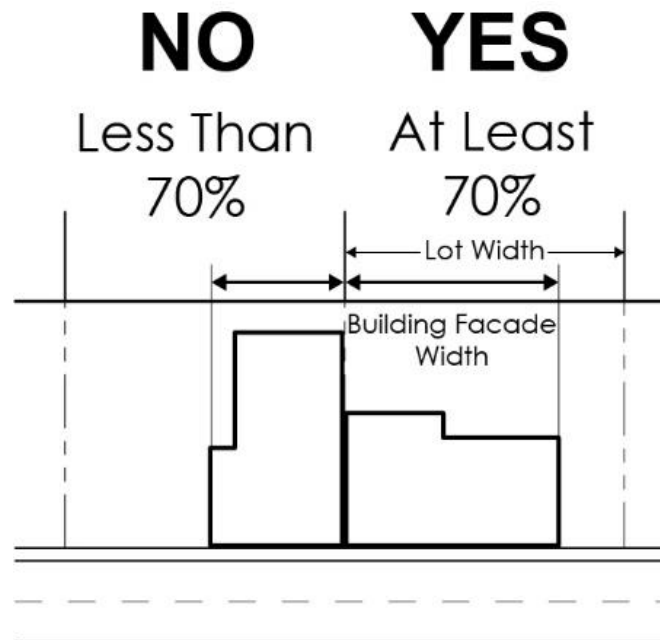
- [1] The front yard setback shall be increased to 50 feet when the front yard abuts an R-1, R-2, R-3, or R-4 District, including when the residential district is across the street from the applicable nonresidential district.
- [2] The rear yard setback shall be increased to 50 feet when the rear yard abuts a lot in and R-1, R-2, R-3, or R-4 District.
- [3] The rear yard setback and side yard setback shall only be required when the lot is adjacent to a residential zoning district otherwise, no setback is required.
- [4] The front yard setback shall be between the ranges established in this table. For the UC-C subdistrict, all buildings shall be set to the back of the sidewalk (0 foot setback) unless the applicant is providing outdoor dining, public art, or other pedestrian amenities, in which case, the building may be set back up to 15 feet from the back of the sidewalk.
- [5] The larger setback number shall apply to any yard that is adjacent to a residential zoning district.

**TABLE 1204-5: SITE DEVELOPMENT REQUIREMENTS FOR NONRESIDENTIAL DISTRICTS**

DISTRICTS	MINIMUM LOT AREA (SQUARE FEET)	MINIMUM LOT WIDTH (FEET)	MINIMUM FRONT YARD (FEET)	MINIMUM REAR YARD (FEET)	MINIMUM SIDE YARD (FEET)		MAXIMUM BUILDING HEIGHT (FEET)
					EACH SIDE	COMBINED SIDE YARDS	
[6] The maximum height shall only apply to buildings within 200 feet of a residential zoning district, otherwise, the maximum height shall be as approved by the Middletown Fire Department.							

**(3) Minimum Building Width**

In the UC-C Subdistrict, a principal building shall be required to have a minimum building façade width of at least 70 percent of the lot width. See [Figure 1204-J](#).



*Figure 1204-J: Illustration of building width requirements in the UC-C District.*

**(4) Maximum Floor Area**

- A. The maximum floor area of any principal building in the B-1 District shall be 5,000 square feet. This shall not include any areas used for storage, bathrooms, utilities, preparation, or other activities that are not seen or accessed by the general public.
- B. The maximum floor area of any principal building in the B-2 District shall be 25,000 square feet. This shall not include any areas used for storage, bathrooms, utilities, preparation, or other activities that are not seen or accessed by the general public.

# Chapter 1206: Accessory and Temporary Use Regulations

## 1206.01 ACCESSORY USES AND STRUCTURES

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### (a) Purpose

This section authorizes the establishment of accessory uses and structures that are incidental and customarily subordinate to principal uses. The intent of this section is to allow a broad range of accessory uses while not creating adverse impacts on surrounding lands.

### (b) General Provisions

- (1) An accessory use or structure shall be incidental to the primary use of the site, and shall not alter the character of the principal use.
- (2) Accessory uses and structures shall be constructed on the lot that contains the principal use that it serves or on adjoining lots with the same property owner.
- (3) Any accessory use or structure that does not require a certificate of zoning compliance as part of this chapter shall still be subject to all standards of this chapter.
- (4) No accessory structure shall be constructed on any lot until the construction of the principal structure has commenced. In cases where the main or principal structure is demolished, an existing accessory structure shall be allowed to remain on the lot or property without the principal structure.
- (5) Small accessory structures such as doghouses, benches, garden decorations, barbeque equipment, etc. shall be exempt from the provisions of this section provided they do not have a footprint that exceeds 40 square feet. Such structures shall be set back a minimum of three feet from all lot lines and shall be subject to the maximum height standards of this section.
- (6) Gardens and the raising of crops for the personal use of the residents, tenants, or property owners, may be grown in any yard without a permit.
- (7) An accessory structure that is attached to the principal building shall be considered an integral part of the principal building and shall comply with the site development standards and all other development standards of the applicable zoning district. Any accessory structure shall be considered as an integral part of the principal building if it is connected to the principal building either by common walls or by a breezeway or roof.
- (8) The accessory use regulations of this chapter shall not apply to any public park lands owned by the City, Butler County, Warren County, or the State of Ohio.

- (9) Accessory buildings over 200 square feet in area must have the same approximate color and material as the front of the existing primary building if visible from a public street. When the above provisions shall not be met, the materials shall be reviewed by the Architectural Review Board.

**(10) Height Limit**

- A. Unless otherwise stated, the maximum height of a detached accessory structure shall be one story or 15 feet.
- B. The height of an accessory building may be increased to 18 feet provided that the primary exterior materials of the accessory building are similar to the primary exterior materials of the principal building.
- C. In no case shall an accessory structure be taller than the principal building.

**(11) Size Requirements**

- A. For residential districts, the aggregate square footage of the following accessory buildings and structures shall not exceed more than 25 percent of the total rear yard:
  - i. Detached garages and carports;
  - ii. Detached storage/utility sheds, gazebos, and other similar structures;
  - iii. Porches and decks;
  - iv. Ground-mounted solar energy systems;
  - v. Swimming pools;
  - vi. Tennis and other recreational courts; and
  - vii. Other accessory buildings similar in nature to the above mentioned structures, as determined by the Development Code Administrator.
- B. There is no maximum square footage of accessory buildings or structures in the nonresidential zoning districts or for accessory uses utilized in the operation of a farm including, but not limited to, barns, silos, shed, etc.
- C. In no case shall any accessory building or structure have a larger footprint than the principal building.

**(12) Setback and Location Requirements**

- A. Unless otherwise provided for in this section, all accessory uses and structures shall be located in the side or rear yard. See Section [1204.10](#) for determination of yards based on the lot type.
- B. Unless otherwise required in this section, all accessory uses and structures shall be set back a minimum of six feet from all other buildings on the lot and a minimum of three feet from all lot lines. Swimming pool decks can have a 0 foot setback from accessory structures and buildings but must meet the required setbacks from all property lines.
- C. Additional setbacks may be required from the principal building, adjacent structures, or streets based on the applicable building or fire code regulations.

**(c) Prohibited Accessory Uses**

- (1)** Except as provided in code, the use of inflatable garages, portable garages, temporary structures as defined in Section [1206.02](#), temporary carports, portable containers, shipping containers, and semi-tractor trailers used for storage (with or without wheels) shall not be used as permanent accessory structures in any zoning districts.
- (2)** Outdoor wood boilers and furnaces are specifically prohibited in the City of Middletown.
- (3)** No accessory building shall be used for residential purposes.

**(d) Explanation of Accessory Use Table**

The following is an explanation of [Table 1206-1](#):

- (1)** The symbols for permitted uses (P), permitted uses with standards (PS), and conditional uses (C) are defined in the same manner as Section [1204.08\(b\)\(2\)](#).

**(2) Prohibited Uses**

A blank and/or shaded cell with an “XX” indicates that a use is prohibited in the respective zoning district.

**(3) Yards Permitted**

This column identifies within which yards the use may be permitted. See the use-specific standards for any restrictions related to placement in individual yards.

**(4) Use-Specific Standards**

The numbers contained in the “Use-Specific Standards” column are references to additional standards and requirements that apply to the use type listed. Standards referenced in the “Use-Specific Standards” column apply in all zoning districts unless otherwise expressly stated.

**(5) Use Determination and Unlisted Uses**

- A.** The Development Code Administrator shall make the determination if a proposed use is permitted, permitted with standards, a conditional use, or a prohibited use under the provisions of this section.
- B.** Section [0](#) identifies the procedure the Development Code Administrator will use in addressing uses that are similar to other uses in [Table 1206-1](#) or uses that are unlisted.

**(6) Accessory Uses in the Planned Developments**

- A.** The types of accessory uses allowed in a PD district shall be considered as part of the PD review.
- B.** The following standards shall establish requirements for accessory uses in a PD District unless otherwise specified in the PD approval:
  - i.** Accessory uses for single-family dwellings in a PD District shall be the same as those allowed in the R-1 District.

- ii. Accessory uses for multi-family dwellings in a PD District shall be the same as those allowed in the R-4 District.
- iii. Accessory uses for commercial uses in a PD District shall be the same as those allowed in the B-3 District.
- iv. Accessory uses for industrial uses in a PD District shall be the same as those allowed in the I-1 District.

**TABLE 1206-1: PERMITTED ACCESSORY USES AND STRUCTURES**

USE TYPE  P = PERMITTED USE PS = PERMITTED USE WITH STANDARDS C = CONDITIONAL USE XX = PROHIBITED	R-1, R-2, R-3, R-4, BC-F, or BC-R	O-1, O-2, B-1, B-2, B-3, UC-C, UC-S, BC-I, BC-H, BC-O	I-1 OR I-2	PI	YARDS PERMITTED F = FRONT S = SIDE R = REAR	CERTIFICATE OF ZONING COMPLIANCE REQUIRED	USE-SPECIFIC STANDARDS IN SECTION:
Accessibility Ramps	PS	PS	PS	PS	F, S, or R	No	<a href="#">1206.01(e)(1)</a>
Amateur Radio Towers and Antennae	PS	PS	PS	PS	S or R	Yes	<a href="#">1206.01(e)(2)</a>
Basketball Hoops	PS	PS	PS	PS	F, S, or R	No	<a href="#">1206.01(e)(3)</a>
Bike and Skateboard Ramps	PS	PS	PS	PS	R	Yes	<a href="#">1206.01(e)(4)</a>
Community Gardens	PS	PS	PS	PS	F, S, or R	Yes	<a href="#">1206.01(e)(5)</a>
Detached Garages and Carports	PS	PS	PS	PS	R	Yes	<a href="#">1206.01(e)(6)</a>
Detached Storage/Utility Sheds, Gazebos, Pool Houses, and other Similar Buildings	P	P	P	P	R	Yes	
Drive-Through Facility	XX	PS/C	PS/ C	XX	See Section <a href="#">1206.01(e)(7)</a>	Yes	<a href="#">1206.01(e)(7)</a>
Home Occupations	PS	PS	XX	PS	Not Applicable	Yes	<a href="#">1206.01(e)(8)</a>
Nursery Schools or Day Care Centers (Children or Adults)	PS	PS	PS	PS	Not Applicable	Yes	<a href="#">1206.01(e)(9)</a>
Outdoor Dining	XX	PS	PS	PS	F, S, or R	Yes	<a href="#">1206.01(e)(10)</a>
Outdoor Displays and Sales	XX	PS	XX	XX	F, S, or R	Yes	<a href="#">1206.01(e)(11)</a>
Outdoor Storage and Bulk Sales	XX	PS	PS	XX	S or R	Yes	<a href="#">1206.01(e)(12)</a>
Outdoor Vending Machines and Drop-Off Boxes	PS	PS	PS	PS	F, S, or R	No	<a href="#">1206.01(e)(13)</a>
Patios (Unenclosed)	PS	PS	PS	PS	F, S, or R	Yes	<a href="#">1206.01(e)(14)</a>
Porches and Decks	PS	PS	PS	PS	F, S, or R	Yes	<a href="#">1206.01(e)(15)</a>
Playsets, Treehouses, and Trampolines	P	P	P	P	R	No	
Private Water Towers, Tanks, or Reservoirs	XX	C	PS	XX	S or R	Yes	<a href="#">1206.01(e)(16)</a>
Raising of Small Livestock	PS	XX	XX	XX	S or R	No	<a href="#">1206.01(e)(17)</a>
Retail Sales	PS	PS	PS	PS	Not Applicable	No	<a href="#">1206.01(e)(18)</a>
Satellite Antennas (Dish-Type)	PS	PS	PS	PS	See Section <a href="#">1206.01(e)(19)</a> <b>Error! Reference s ource not found.</b>		<a href="#">1206.01(e)(19)</a>
Small Wind Energy Conservation Systems - Blade Tip Power System Turbines (BTPS)	XX	C	C	C	S or R	Yes	<a href="#">1206.01(e)(20)</a>
Solar Energy Systems	PS	PS	PS	PS	See Section <a href="#">1206.01(e)(21)</a>		<a href="#">1206.01(e)(21)</a>
Swimming Pools (Outdoors)	PS	PS	XX	PS	S or R	Yes	<a href="#">1206.01(e)(22)</a>
Tennis and Other Recreational Courts (Outdoor)	PS	PS	PS	PS	R	Yes	<a href="#">1206.01(e)(23)</a>
Type-B Day Care Home (1-6 Children)	PS	PS	XX	PS	Not Applicable	No	<a href="#">1206.01(e)(24)</a>

**(e) Standards for Specific Accessory Uses and Structures**

The following requirements apply to the specific types of accessory uses and structures listed, in addition to the requirements of Section [1206.01\(b\)](#).



**(1) Accessibility Ramps**

Ramps that provide access to buildings for the disabled are permitted in all zoning districts and may encroach in all setbacks but shall not encroach on a public sidewalk, right-of-way, or street.

**(2) Amateur Radio Towers and Antenna**

- A. No more than one amateur radio tower and/or antenna shall be permitted on each lot.
- B. Ground-mounted amateur radio towers, antennas, and related guy wire anchors must be located in the rear yard unless such location prevents effective amateur radio service communications and in that event the tower and related equipment shall be located in the least conspicuous location on the lot from the public right-of-way and contiguous lots under separate ownership.
- C. Building-mounted amateur radio towers and antennas must be located to the rear of the centerline of the principal building unless such location prevents effective amateur radio service communications and in that event the tower and related equipment shall be located in the least conspicuous location on the lot from the public right-of-way and contiguous lots under separate ownership.
- D. Such tower shall not exceed 65 feet in height or the maximum height of the applicable zoning district, whichever is greater unless such location prevents effective radio service communications and in that event, the height of the tower shall not exceed the height reasonably necessary to have effective amateur radio service communications. The measurement shall be made from the grade directly beneath the tower to the highest point on the antenna or tower, whichever is the tallest point of the structure.
- E. Proof of a valid and active amateur radio license from the Federal Communications Commission (FCC) must be provided with the certificate of zoning compliance application.
- F. Antennas and guy wire anchors shall not overhang or otherwise be located on adjacent lots.
- G. When an amateur radio tower and antenna is no longer being used by an FCC amateur radio license holder for amateur radio service, the tower and antenna must be removed no more than 180 days after cessation of the FCC license or the transfer of property ownership or lease to an individual without such an FCC license.
- H. If the Development Code Administrator determines that expertise beyond that of City staff is necessary to determine compliance with the foregoing regulations, then the applicant shall reimburse the City for any expenses necessary for hiring a third-party consultant to make this determination.

**(3) Basketball Hoops**

- A. Basketball courts shall be subject to the standards of Section [1206.01\(e\)\(23\)](#).
- B. Movable basketball hoops shall not be located in rights-of-way or be so located as to require play in any right-of-way.

**(4) Bike and Skateboard Ramps**

Bike ramps and skateboard ramps shall be set back at least 15 feet from all lot lines.

**(5) Community Gardens**

- A. Community gardens shall only serve as an accessory use to nonresidential uses.
- B. Community gardens that are accessory to another principal use shall be subject to the same rules as established for community gardens in Section [1204.09\(b\)\(2\)](#).

**(6) Detached Garages and Carports**

- A. Only one detached garage or carport may be permitted on any single lot with a single-family dwelling. Detached garages or carports for all other uses shall be controlled by the size and height limitations of this chapter but shall not be restricted in number of buildings.
- B. Attached and detached garages and carports shall be accessed by a paved driveway.

**(7) Drive-Through Facilities**

The following standards shall apply to businesses that contain a drive-through facility regardless if the drive-through is part of another use (e.g., restaurant or financial institution) or if it is a stand-alone use (e.g., automatic teller machine).

**A. General Standards**

- i. Drive-through facilities shall be prohibited in the R-1, R-2, R-3, R-4, BC-F, and BC-R Zoning Districts.
- ii. Audible electronic devices such as loudspeakers, automobile service order devices, and similar instruments shall not be located within 250 feet of any residential dwelling unit.
- iii. All drive-through areas, including but not limited to drive-through signs, stacking lanes, trash receptacles, audio equipment, drive up windows, and other objects associated with the drive-through area shall be located in the side or rear yard of a property and shall not cross, interfere with, or impede any public right-of-way.
- iv. Drive-through windows, drive-through signage (See Section [1220.08\(g\)](#)), or any audio equipment located in the front yard shall only be permitted with approval as a conditional use. Such facilities shall be screened with an opaque, landscaped screen of with a height that will fully screen the window, signage, or audio equipment. Such screening shall not be required for stacking spaces that are located in a front yard.

**B. Stacking Space and Lane Requirements**

Drive-through facilities shall be required to include vehicle stacking spaces as established in Section 1218.05.

**(8) Home Occupations**

The following standards for home occupations are intended to provide reasonable opportunities for employment within the home, while avoiding changes to the residential character of a dwelling that accommodates a home occupation, or the surrounding neighborhood, where allowed by this section.

- A.** The home occupation shall be clearly secondary to the full-time use of the property as a residence.
- B.** Any home occupation that provides services where members of the public visit or enter the premises may be permitted if designed to accommodate one client or customer (one client could include multiple people from a family or household) at a time and which meets all other applicable requirements for home occupations.

**C. Permitted Home Occupations**

The following uses, and other uses determined by the Development Code Administrator to be similar in nature and impact, may be approved as a home occupation when in compliance with this section:

- i. Art and craft work including, but not limited to ceramics, painting, photography, dressmaking, millinery, sewing, weaving, tailoring, and sculpting;
- ii. Office-only uses, including, but not limited to, an office for an architect, financial advisor, attorney, consultant, counselor, insurance agent, planner, tutor, or writer;
- iii. Personal service establishments including, but not limited to, fitness/health facilities, ironing or washing, beauty parlors, barber shops, animal grooming (no overnight boarding), or licensed massage or physical therapy; and
- iv. Mail order or online businesses or direct sale product distribution (e.g., Amway, Avon, Creative Memories, Pampered Chef, etc.) may be allowed where there is no stock-in-trade on the site.

**D. Prohibited Home Occupations**

The following are business activities that are prohibited as home occupations:

- i. Animal hospitals and boarding facilities;
- ii. Automotive and other vehicle repair and service, except when such repair or service is on a vehicle owned by the property owner or tenant of such property;
- iii. Construction, landscaping, or similar contractor facilities and storage (an office-only use is allowed in compliance with the above section) and other outdoor storage;
- iv. Fitness/health facilities that provide group activities or services;
- v. Medical clinics, laboratories, or doctor's offices;

- vi. Parking on, or dispatching from the site, any vehicle used in conjunction with the home occupation (e.g., landscaping services, taxi services, construction, semi-trucks, etc.) with the exception of a vehicle owned and operated by the home owner or tenant;
- vii. Uses that require explosives or highly combustible or toxic materials or that involve equipment that creates any dust, noise, odors, glare, vibrations or electrical disturbances beyond the property line;
- viii. Welding and machine shop operations;
- ix. Wood cutting businesses; or
- x. Other similar uses as determined by the Development Code Administrator.

**E. Use Standards**

- i. Permitted home occupations shall not create an adverse effect on the residential character of the zoning district or interfere with the reasonable enjoyment of adjoining properties.
- ii. The residential building shall not be altered in any manner that is intended to change the residential appearance of the dwelling to a building with a commercial appearance. There shall be no separate entrance created solely for the home occupation.
- iii. At least one resident of the dwelling shall operate the home occupation and there may be up to one employee on-site who does not reside at the dwelling.
- iv. The operator of a home occupation in a rental unit shall be able to demonstrate that the property owner has authorized the use of the unit for a home occupation.
- v. The home occupation may be located in either the principal dwelling or in an accessory building but in no case shall occupy a space that exceeds 25 percent of the total floor area of the principal dwelling unit.
- vi. No additional off-street parking or loading facilities shall be provided beyond that traditionally used for residential uses. No additional driveways shall be established for the use of the home occupation.
- vii. There shall be no signs other than the signs allowed on a dwelling in Section [1220.07\(a\)](#).
- viii. There shall be no window display or outdoor storage or display of equipment, materials, or supplies associated with the home occupation.
- ix. Activities conducted and equipment or material used shall not change the fire safety or occupancy classifications of the premises.

**(9) Nursery Schools or Day Care Centers (Children or Adults)**

Nursery schools or day care centers may only be permitted as accessory uses to an approved public and institutional use.

**(10) Outdoor Dining**

- A.** Outdoor dining shall only be permitted as an accessory to an indoor restaurant.
- B.** Outdoor dining areas shall be located along a public or private sidewalk adjacent to the principal building or between the principal building and parking area. Outdoor dining areas shall not be located in such a manner as to require customers and employees to cross driveways or parking areas to go between the outdoor dining area and the principal building.
- C.** The seating capacity of the outdoor seating areas shall not exceed the seating capacity of the indoor seating area.
- D.** If the outdoor dining area is located on a sidewalk, the area shall be designed so there is a minimum of five feet of clearance adjacent to the dining area to allow for pedestrian circulation.
- E.** The outdoor dining area shall be limited to seating only and shall not include facilities for bussing or food or beverage preparation.
- F.** Umbrellas and awnings that shelter diners from the elements shall be secured so as not to create a hazard in windy conditions.
- G.** No outdoor dining areas shall obstruct any entrance or exit to a restaurant.
- H.** The property owner shall be responsible to keep the outdoor dining area free and clear from all garbage, trash and other debris and shall provide appropriate trash receptacles within the outdoor dining area for the deposit of refuse and litter. Such trash receptacles shall be emptied on a daily basis and shall be moved indoors at the end of each business day.
- I.** Enclosing outdoor dining areas either by a permanent roof or to expand the existing structure shall meet all the requirements of a building within the applicable zoning district and shall require the issuance of a new certificate of zoning compliance.

**(11) Outdoor Displays and Sales**

Seasonal and permanent facilities for outdoor display and sales (e.g., garden supply sales, news and flower stands, and similar uses) that are accessory to another principal use may be permitted upon compliance with the following:

- A.** Such uses shall not be placed within the street right-of-way, within an interior drive, or in a location which will interfere with the intersection visibility requirements of Section [1208.05](#).
- B.** Outdoor displays and sales shall be related to the principal use of the site and shall clearly be accessory and incidental to the principal use. Outdoor displays and sales shall be prohibited when the principal building is vacant.
- C.** Outdoor display and sales areas may be permitted in the front yard provided that the merchandise is displayed along the sidewalk or walkway adjacent to the building. Outdoor display and sales areas may also be permitted in the side or rear yard without being located adjacent to the building.
- D.** In all cases, any areas designated for outdoor display or sales shall be set back a minimum of 25 feet from any adjacent residential lot.

- E. The placement of the merchandise shall not interfere with pedestrian movement on any sidewalk or walkway. A minimum of five feet of the sidewalk or walkway shall be clear of merchandise to allow for safe pedestrian movement.
- F. The outdoor display and sales areas shall be maintained in good order and appearance.
- G. A specific schedule of operation shall be filed and approved as part of the submitted certificate of zoning compliance application. If the principal operator intends to use the area on a regular basis, the area shall be clearly designated on the plans submitted with the certificate of zoning compliance application and shall include a schedule of use for outdoor display and sales activities.
- H. The outdoor display and sale of goods and products shall only be allowed for a maximum of three consecutive months. A conditional use approval shall be required for any timeframe longer than three consecutive months.
- I. The outdoor display and sale of goods and products shall be limited to those goods and products that a customer can pick up and carry into the building for purchase. Larger items may be displayed for sale if in compliance with the outdoor storage requirements of Section [1206.01\(e\)\(12\)](#).

**(12) Outdoor Storage and Bulk Sales**

- A. Outdoor storage and bulk sales shall comply with the standards of outdoor displays and sales unless otherwise modified by this section.
- B. Outdoor storage and bulk sales in a parking lot shall be prohibited unless allowed as a temporary use pursuant to Section [1206.02](#).
- C. The area of the lot devoted to outdoor storage of goods and merchandise shall not exceed 20 percent of the ground floor area of the principal building.
- D. Areas devoted to outdoor storage shall be paved with asphalt or concrete and free of dust.
- E. In all cases, any areas designated for outdoor storage areas shall be set back a minimum of 50 feet from any adjacent residential lot.

**F. Screening**

- i. All aspects of outdoor storage and bulks sales of goods and materials shall be enclosed with a Type B buffer as identified in Section [1216.06](#).
- ii. If the wall or fence needs to exceed eight feet in height to conceal the storage of materials, such wall or fence shall be constructed of materials similar to the principal building so that it appears to be an extension of the principal structure.



*Figure 1206-A: Use of a wall and fencing for screening that is architecturally compatible with the principal building.*

- iii. All materials shall be stored in such a fashion as to be accessible to fire-fighting equipment at all times.
- iv. Outdoor storage of materials shall not include a junkyard or similar storage as defined in this code.

**(13) Outdoor Vending Machines and Drop-Off-Boxes**

Outdoor vending machines and drop-off boxes for recycled goods, books, donations, etc., may be permitted when they comply with the following regulations:

- A. No such use or facility shall be placed within the street right-of-way, within an interior drive, or in a location which will interfere with required intersection visibility requirements in [Section 1208.05](#).
- B. The facility or equipment shall be maintained in good operating order and appearance.
- C. Outdoor vending machines and drop-off boxes shall only be permitted in residential zoning districts when accessory to a nonresidential use.
- D. Vending machines shall only be placed along the façade of the principal building. See [Figure 1206-B](#).





*Figure 1206-B: The above is an image of a vending machine that is appropriately located along the façade of the building.*

- E. Drop-off boxes shall only be permitted in the side or rear yard.
- F. A maximum of one drop-off box and two vending machines are permitted on any single lot. One additional drop-off box and one vending machine shall be permitted on a lot for each two acres of lot area in excess of an initial two-acre lot. This limitation on the number of boxes or machines shall not apply to dumpsters or to vending machines located within the building.
- G. The container shall be emptied at least once every week. Containers that result in the overflow of donated goods shall be declared a nuisance and shall be removed immediately upon notification by the Development Code Administrator at the expense of the property owner or business owner.
- H. The City shall have the authority to place more than one drop-off box on a single lot when providing recycling services to the general public.

**(14) Patios (Unenclosed)**

Patios in the rear yard may have built-in grills or kitchen areas provided such use complies with any applicable building code requirements.

**(15) Porches and Decks**

Porches or decks that are enclosed (with walls made of screening or other materials) shall meet the setback requirements for principal buildings in the applicable zoning district.

**(16) Private Water Towers, Tanks, or Reservoirs**

- A. The structure shall be set back from all lot lines a minimum of one foot for every foot in height;
- B. The structure shall be a pedisphere, fluted column, or standpipe design only. Multi-leg designs are prohibited;



- C. Any signage on the tower, tank, or reservoir shall be calculated as part of the allowable building signage pursuant to Section [1220.08\(c\)](#).
- D. The structure shall not be artificially lighted or marked, except as required by law;
- E. The structure shall be galvanized and/or painted with rust preventive white paint in its entirety and shall be maintained in accordance with the requirements of this code.

**(17) Raising of Small Livestock**

- A. The raising of small livestock, other than rabbits, shall be in compliance with Section 618.21 of the Middletown Code of Ordinances.
- B. The raising of up to five rabbits on a lot with a single-family dwelling is allowed subject to the following:
  - i. The rabbits shall be provided with a covered enclosure and must be kept in the covered enclosure or a fenced enclosure at all times; and
  - ii. No enclosure shall be located closer than 25 feet to any residential structure on an adjacent lot.

**(18) Retail Sales**

- A. The accessory retail sale of items manufactured on-site is permitted in the I-1 and I-2 Districts provided that the total floor area of retail sales does not exceed 35 percent of the total gross floor area of the principal building.
- B. Accessory retail sales (e.g., coffee kiosk, cafeteria, book store, etc.) are permitted in all other zoning districts when located completely within the principal building of a nonresidential use. The total floor area of retail sales shall not exceed 15 percent of the total gross floor area of the principal building.

**(19) Satellite Antennas (Dish-Type)**

**A. Purpose**

City Council hereby finds and determines that the guidelines and restrictions contained in this section are necessary to ensure the following health, safety and aesthetic objectives:

- i. To minimize obstructions to visibility around streets, sidewalks and driveways;
- ii. To reduce potential attractive nuisance to children, animals, etc.;
- iii. To reduce the exposure of the antenna to high wind forces, particularly from tornadoes, and reduce hazards from falling and wind-propelled objects;
- iv. To reduce impediments to moving people and equipment near buildings and to avoid interference with firefighting and emergency ingress and egress, both at and above grade level;
- v. To reduce potential contact and conflicts between antennas and utility lines, both above and below grade level;

- vi. To limit interference with natural sunlight and the circulation of air and to preserve space for trees and other plants; and
- vii. To reduce the visual impact of antennas in a municipality containing both old and new homes, many with historic and architecturally significant features, and to preserve property values.

**B. Permits**

- i. Except as provided under Subsection [1206.01\(e\)\(19\)B.ii.b](#) below, a permit is not required for the following types of antennas:
  - a. A small antenna; or
  - b. A conforming commercial earth station.
- ii. A permit prior to installation is required for the following types of antennas:
  - a. A small antenna installed, maintained and used in a manner requiring a permit under the OBBC Antenna Regulations;
  - b. An antenna in an Historic District or upon a Historic Landmark; or
  - c. A satellite earth station.

**C. Restrictions**

- i. All antennas must comply with the applicable regulations in this section, regardless of whether a permit is required. The regulations stated in the Table below apply to the indicated types of antennas. The regulations do not apply to an antenna located within a building.
- ii. The Development Code Administrator shall designate all other regulations from codes other than this section that apply to small antennas, by listing them on a document to be made readily available to antenna users. The Development Code Administrator shall only include those regulations which are:
  - a. Necessary to accomplish a clearly defined safety objective; and
  - b. No more burdensome to affected antenna users than is necessary to achieve the stated objective.
- iii. The Development Code Administrator shall state each such safety objective in the document. A copy of this section shall also be made readily available to antenna users. The regulations stated in the document, plus any others made applicable by this section, are the only City regulations applicable to small antennas.
- iv. The City must be notified within 30 days of the installation of any antenna not otherwise requiring a permit prior to installation on a form provided by the Development Code Administrator.
- v. Conforming commercial earth stations must comply with the applicable building code.

- vi. Small antennas and satellite earth stations must comply, where applicable, with Section 3109.0 of the OBBC and Section 1301:7 of the Ohio Fire Code.
- vii. Regulations Specific to Satellite Earth Stations:
  - a. A free-standing antenna shall not be constructed in any front or side yard, but shall be constructed to the rear of the primary structure. Roof-mounted antennas are prohibited unless construction of a freestanding antenna in the rear yard materially limits transmission or reception. If roof-mounted, antennas shall be mounted only upon the portion of the roof of a primary structure that faces the rear yard or on an accessory structure in the rear yard, as defined in this code.
  - b. No antenna, including its concrete base slab or other substructure, shall be constructed less than 15 feet from any property line or easement.
  - c. An antenna shall be placed to reasonably conceal the antenna from views from neighboring properties and public rights-of-way.
  - d. An antenna, if ground-mounted, shall not exceed a grade height of 15 feet. If roof-mounted, its height shall not exceed 16 feet above the roof upon which it is mounted in a non-residentially-zoned district. In residentially-zoned districts, the height of a roof-mounted antenna shall not exceed the maximum height of the roof upon which it is mounted. In any event, a roof-mounted antenna shall not exceed a height equal to the maximum permissible height of a building in the zoning district in which it is located.
  - e. An antenna shall not exceed three meters in diameter.
  - f. The connection between a ground-mounted antenna and its receiving and/or transmitting equipment shall be placed at least four inches beneath the surface of the ground.
  - g. Any driving motor shall be limited to 120 volts maximum power design and shall be encased in protective guards.
  - h. An antenna must be grounded.
  - i. No sign or advertising shall be displayed on the antenna.

**D. Variances**

In addition to its other powers, the BZA may grant a variance for an antenna, if:

- i. The BZA finds that the intended function of the antenna would be adversely affected, in some significant way, if the antenna had to be constructed in accordance with the provisions of this section; or
- ii. The variance is necessary to harmonize the City's ordinances and federal laws, rules or regulations. A variance under this section does not require a showing of unnecessary hardship.

**E. Table**

In the following table, "X" means that the regulation applies to the indicated type of antenna, and the "N/A" means that it does not apply. The numbered notes are integral parts of this table and regulation.

Regulations	Small Antennas	Conforming Commercial Earth Stations	Other Satellite Earth Stations
Street Visibility – Antenna must be placed in a location that is not visible from a street area or that is least conspicuous from a street area, in order of preference listed below, if this placement will not impair reception of an acceptable signal, or result in any unreasonable delay in, or cost, of installation. 1. Rear yard or rear roof, 2. Side roof, 3. Side yard, 4. Front roof, or 5. Front yard	X	X	N/A See 1207.16(c.)(6)
Screening – Antenna installed in a location visible from a street area must be screened so as not to be visible from the street area, if screening will not impair reception of an acceptable signal or result in an unreasonable cost of installation. Screening may be installed within thirty (30) days of the antenna's installation, or if vegetation will be used to screen an antenna that is not installed during a planting season, screening may be installed within thirty (30) days of the beginning of the next planting season.	X	X	N/A See 1207.16(c.)(6)
Height – Antenna must be no greater in height, to the extent feasible, than (2) for Small Antenna, four (4) feet above the maximum height of the roof of the primary structure on the lot on which the antenna is located and (ii) for Conforming Commercial Earth Stations, eight (8) feet above the maximum height on the roof of the primary structure on the which the antenna is located.	X	X	N/A See 1207.16(c.)(6)
Color – Antenna must be colored to blend into the background against which it will be mounted. This may require painting, if paint will not interfere with reception or result in an unreasonable cost of installation. Antenna may be painted within thirty (30) days of the antenna's installation or as soon thereafter as weather permits.	X	N/A	X
Signage – No sign or advertising shall be displayed on the antenna.	X	X	X
OBBC – Antenna must comply with the OBBC Antenna Regulations.	X	N/A	X
Small Antenna – Must Comply with Designated Small Antenna Regulations.	X	N/A	N/A
Conforming Commercial Earth Station – Must comply with Codified Ordinance Chapter 1444.	N/A	X	N/A
Satellite Earth Station – Must comply with Satellite Earth Station Regulations in Section 1207.16(c)(6).	N/A	N/A	X

**(20) Small-Scale Wind Energy Turbines (SWET)**

- A.** Systems that are five megawatts or larger in capacity are regulated by the Ohio Public Utilities Commission.
- B.** SWETS are prohibited in the UC District.
- C.** SWETs may be located on lots with a minimum lot area of 2.5 acres or more. However, if the proposed turbine is attached to a building and the turbine (to the top of the blades) does not exceed the maximum building height requirement of the applicable zoning district, there shall be no minimum lot area requirement.
- D.** The maximum height of a stand-alone SWET shall be 150 feet from natural grade to the top of an extended rotor blade.
- E.** All portions of a SWET support structure must, at a minimum, meet the setback requirements for the applicable zoning district. SWETs must also be set back a minimum distance equal to 110 percent of the height of the SWET, as measured to the top of the rotor blades, from all lot lines.
- F.** Only a single tower and single turbine shall be permitted on a property. Multiple turbines may be permitted if attached to a nonresidential building and if the diameter of the rotor is less than six feet.
- G.** Climbing access to the tower structure shall be limited by
  - i. Placing fixed climbing apparatus no lower than 10 feet from the ground; and
  - ii. Placing a six-foot fence or shielding around the SWET.
- H.** SWETs shall be of a scale intended for on-site power consumption and shall not be designed to produce energy to sell to electric providers. This regulation shall not prohibit a property owner that is installing a SWET from connecting to the local electric system if mandated by the electric provider for the purposes of safety.

**(21) Solar Energy Systems**

**A. Ground-Mounted Solar Energy Systems**

- i. Ground-mounted solar energy systems shall only be permitted in the side or rear yard and shall be set back a minimum of five feet from all lot lines.
- ii. No ground-mounted system shall exceed eight feet in height as measured from ground.
- iii. Ground-mounted solar energy systems shall be screened from any adjacent residential lots by a Type B landscape buffer as identified in Section [1216.06](#).
- iv. A certificate of zoning compliance shall be required for ground-mounted solar energy systems.

## **B. Roof-Mounted Solar Energy Systems**

- i. Roof-mounted solar panels that are integrated with the surface layer of the roof structure or are mounted flush with the roof structure may be permitted on any roof surface of a principal building or accessory building.
- ii. Roof-mounted solar panels that are mounted at an angle to the roof structure shall only be permitted on roof surfaces that face the side or rear lot.
- iii. Solar panels may be mounted on flat roofs provided there is a parapet wall or other architectural feature that screens the view of the panels. Such panels may be mounted on an angle provided they do not extend more than five feet above the roof surface.
- iv. A certificate of zoning compliance shall not be required for roof-mounted solar energy systems.

## **(22) Swimming Pools**

Any swimming pool shall be subject to the standards of this subsection including pools that are designed to be temporary in nature.

- A. Swimming pools that are enclosed within a building shall not be subject to these standards.
- B. The outer wall of a swimming pool shall be set back a minimum of six feet from any side or rear lot line. The pool shall also meet all front yard setbacks, except on a corner lot, where the pool shall be set back a minimum distance equal to one-half of the front yard setback requirement in the applicable district, from the secondary street as determined by the Development Code Administrator.
- C. The outer wall of a swimming pool shall be set back a minimum of six feet from a dwelling on the lot or at least three feet from any structure having no basement, including the principal structure or any accessory structure found on the same lot.
- D. Any walks or paved areas adjacent to the pools shall be considered as patios for the purpose of this chapter and shall conform to the provisions of this chapter.
- E. Any pool for the use of occupants of multi-family dwellings containing over three dwelling units or those that are accessory to a nonresidential use shall meet the structural and sanitary requirements of the Ohio Department of Health, as may be applicable.

## **(23) Tennis and Other Recreational Courts**

Outdoor tennis courts and courts for other sports, including basketball and racquetball, that are accessory to a residential or nonresidential use shall comply with the following requirements:

- A. The court shall be set back a minimum of 10 feet from all lot lines.

- B. Fencing located adjacent to the court can have a maximum height of ten feet, regardless of the maximum fence height allowed in Section 1208.06 (Fencing). The fencing may be a chain link fence. Any fencing that exceeds the maximum height allowed in Section 1208.06, shall be limited to the area that encloses the court.
- C. If the fencing surrounding the court exceeds six feet in height, it shall be planted with a continuous row of large shrubs or hedges with a minimum, mature growth height of three feet that will screen and/or soften the appearance of the tall fencing and court. Such landscaping may only be broken by gates or doors that access the court.
- D. Any lighting for the court shall not exceed 18 feet in height and shall be directed downward and only illuminate the court. All outdoor lighting shall comply with Section 1208.04.

**(24) Type B Family Day Care Home (1-6 Children)**

Type B Family Day Care Homes are permitted when accessory to a single-family dwelling, regardless of the applicable residential zoning district.

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**1206.02 TEMPORARY USES AND STRUCTURES**

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**(a) Purpose**

This section allows for the establishment of certain temporary uses and structures of limited duration, provided that such uses or structures do not negatively affect adjacent properties, and provided that such uses or events are discontinued upon the expiration of a set time period. Temporary uses and structures shall not involve the construction or alteration of any permanent building or structure.

**(b) General Standards for Temporary Uses and Structures**

**(1) Temporary uses or structures shall:**

- A. Not be detrimental to property or improvements in the surrounding area or to the public health, safety, or general welfare;
- B. Be compatible with the principal uses taking place on the site;
- C. Not have substantial adverse effects or noise impacts on nearby residential neighborhoods;
- D. Not include permanent alterations to the site;
- E. Not maintain temporary signs associated with the use or structure after the activity ends;
- F. Not violate the applicable conditions of approval that apply to a site or use on the site;
- G. Not interfere with the normal operations of any permanent use located on the property; and
- H. Contain sufficient land area to allow the temporary use, structure, or special event to occur, as well as adequate land to accommodate the parking and traffic movement.

**(2) These temporary use standards shall not apply to City sponsored events.**

**(c) Table of Allowed Temporary Uses and Structures**

- (1) [Table 1206-2](#) summarizes allowed temporary uses and structures and any general or specific standards that apply. Temporary uses or structures not listed in the table are prohibited unless the Development Code Administrator determines the proposed temporary use or structure is similar in scale, intensity, and use as a temporary use in the table, in which case, the Development Code Administrator may treat it as a similar use.
- (2) Temporary uses allowed in residential districts shall be allowed for residential uses in PDs. Temporary uses allowed for nonresidential districts shall be allowed for nonresidential uses in PDs.

TABLE 1206-2: TEMPORARY USES AND STRUCTURES				
TEMPORARY USE OR STRUCTURE	DISTRICTS	ALLOWABLE DURATION (PER SITE)	PERMIT REQUIRED	ADDITIONAL REQUIREMENTS
Construction Dumpster	All Districts	Until issuance of a certificate of occupancy or where construction activity ceases for more than two weeks	None	<a href="#">1206.02(d)(1)</a>
Construction Trailer or Office	All Districts		Certificate of Zoning Compliance	<a href="#">1206.02(d)(2)</a>
Garage Sales	All Districts	See Section <a href="#">1206.02(d)(3)</a>		
Mobile Food Vending	See Chapter 1037 of the City of Middletown Code of Ordinances			
Real Estate Sales/Model Homes	All Districts	Until issuance of the final certificate of occupancy	Certificate of Zoning Compliance	<a href="#">1206.02(d)(4)</a>
Seasonal Agricultural Sales	All Nonresidential Districts	90 days per calendar year	Certificate of Zoning Compliance	<a href="#">1206.02(d)(5)</a>
Sidewalk Sales	All Nonresidential Districts	Three days per calendar month	None	<a href="#">1206.02(d)(6)</a>
Temporary Classrooms	All Districts	Two years	Certificate of Zoning Compliance	<a href="#">1206.02(d)(7)</a>
Temporary Events	All Districts	See Section <a href="#">1206.02(d)(8)</a>	Certificate of Zoning Compliance	<a href="#">1206.02(d)(8)</a>
Temporary Storage	All Districts	Maximum of 14 days per calendar year for residential storage and 90 days per calendar year for commercial storage	Certificate of Zoning Compliance	<a href="#">1206.02(d)(9)</a>

**(d) Specific Regulations for Certain Temporary Uses and Structures**

**(1) Construction Dumpster**

Temporary trash receptacles or dumpsters related to construction shall:

- A. Only be located on the site where the related construction is taking place;
- B. Be located to the side or the rear of the site, to the maximum extent practicable;
- C. Be located as far as possible from lots containing existing development;
- D. Not be located within a floodplain or otherwise obstruct drainage flow; and
- E. Not be placed within five feet of a fire hydrant or within a required landscaping area.



**(2) Construction Trailer or Office**

Construction trailers or offices may be permitted on a construction site provided that the trailer is:

- A. Located on the same site or in the same development as the related construction;
- B. Not located within a required open space set-aside or landscaping area; and
- C. Associated with a development subject to a valid building permit or subdivision approval.

**(3) Garage Sales**

- A. Garage sales, as that term is defined in Section 874.01 of the Middletown Code of Ordinance, are permitted as a temporary use in any zoning district.
- B. Garage sales shall be held in accordance with standards established in Chapter 874 of the Middletown Code of Ordinances.
- C. For the purposes of this code, estate sales, auctions, and similar temporary sales shall be subject to the same standards as garage sales.

**(4) Real Estate Sales Office/Model Home**

One temporary real estate sales office or model home per builder or developer shall be permitted in a section or phase of a new subdivision, provided that the use:

- A. Is located on a lot where a preliminary plat has been approved by the Planning Commission and no change in title takes place;
- B. Complies with all of the applicable standards of this code for the final residential use;
- C. Is operated by a developer or builder active in the same phase or section where the use is located; and
- D. Is removed or the model home is converted into a permanent residential use upon completion of construction and issuance of the last certificate of occupancy.

**(5) Seasonal Agricultural Sales**

Outdoor seasonal agricultural sales including the sale of such items as Christmas trees, pumpkins, seasonal produce, and similar agricultural products, may be permitted in accordance with the following standards:

- A. The property contains an area not actively used that will support the proposed temporary sale of products without encroaching into or creating a negative impact on existing vegetated areas, open space, landscaping, traffic movements, or parking space availability.
- B. The sale of goods shall be set back a minimum of 100 feet from any residential dwelling unit.
- C. The range of goods or products available for sale shall be limited to non-processed products obtained primarily through farming or agricultural activities, including, but not necessarily limited to: pumpkins; grains and seed crops; fruits of all kinds; vegetables; nursery, floral, ornamental, and greenhouse products; trees and forest products, including Christmas trees, and firewood.

**(6) Sidewalk Sales**

Sidewalk sales are permitted if they are conducted by the business owner and operator. The owner or operator of a business located in a nonresidential district may conduct a sidewalk sale outside that business premises on private property or on an abutting public sidewalk adjacent to that business premises in accordance with the following provisions.

- A. The merchandise for sale shall be limited to that merchandise normally offered for sale by the business owner who has a certificate of zoning compliance for the business operation.
- B. The use of public sidewalks for sidewalk sales shall only be permitted in the UC-C sub-district in accordance with Section [1218.07\(b\)\(6\)](#).
- C. The sidewalk sale shall be conducted in a manner that will leave at least a five-foot wide or half of the width of the sidewalk unobstructed area, whichever is greater, to allow for pedestrian use. The display shall be confined to the portion of the sidewalk in front of the business establishment of which the seller or displayer is the lawful occupant.
- D. The stands and display structures shall be constructed of stable material and able to withstand local normal wind loads. Merchandise shall be securely and adequately placed so that it will not endanger pedestrians or encroach on the public right-of-way.
- E. Sales shall be conducted so as not to cause a nuisance, or create a fire hazard or obstruct ingress and egress to the premises.

**(7) Temporary Classrooms**

- A. Modular units may be authorized for use as a temporary classroom not to exceed two school calendar years to allow schools to accommodate students and new programs until the schools are able to raise capital funds for permanent structures.
- B. Such facilities shall be located in the rear yard.

**(8) Temporary Events**

Temporary events may be permitted on private property within the City if the event complies with the following standards:

- A. Certain events such as circuses and carnivals shall be subject to the requirements of Chapter 808 (Amusements) of the Middletown Code of Ordinances.
- B. Applicants seeking approval for other events that impact public land or rights-of-ways shall be subject to review by the Public Works Department.

**(9) Temporary Storage**

Storage containers that are placed on a property for the purpose of temporarily storing materials are permitted with the following regulations:

**A. Portable Storage Containers in Residential Districts**

Portable storage container shall be allowed in residential zoning districts in accordance with the following:

- i. Portable storage containers shall be kept in the driveway of the property at the furthest accessible point from the street. The location of the portable storage container on a driveway shall not obstruct visibility nor block the sidewalk. If no driveway is present, approval from the Development Code Administrator for the placement of the portable storage container prior to its delivery is required.
- ii. Only one portable storage container shall be placed at any residential property at one time. The container shall not have dimensions larger than eight feet wide, eight feet tall, and 16 feet long.
- iii. The Development Code Administrator, upon good cause shown, may approve a one-time extension of the certificate of zoning compliance for an additional 14 days. Portable storage containers shall not be located on any lot for a period exceeding 28 days per calendar year.
- iv. There shall be no utility hookups to the storage container.

**B. Temporary Commercial Storage**

Commercial tractors, semitrailers, commercial vehicles and portable and temporary storage structures may be used for temporary storage in nonresidential zoning districts in accordance with the following:

- i. They shall not have permanent attachment to any utility, i.e. electricity, water, gas or sanitary sewer lines.
- ii. They shall be parked or located in the rear of the building or as close to the rear as is reasonably possible, preferably in the loading area and on a continuous hard surface equivalent in strength to the existing parking area.
- iii. No part of the vehicle or portable storage structure shall be closer than two feet from the principal building nor encroach on more than ten percent of required off-street parking.
- iv. There shall be no permanent human occupancy in the vehicle or portable storage structure, except for necessary access.

# Chapter 1208: General Development Standards

## 1208.01 ENCLOSED ACTIVITIES

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- (a) Except in the I-2 District or for uses where the use type is, by definition, an outdoor use, all activities related to the principal use, with the exception of parking and loading, shall take place within a completely enclosed building.
- (b) Outdoor displays, sales, and storage may only be permitted as part of an approved accessory or temporary use. See [Chapter 1206: Accessory and Temporary Use Regulations](#).

## 1208.02 ON-SITE UTILITY REQUIREMENTS

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All visible utilities that are internal to a site shall be buried or rerouted to an unobtrusive location.

## 1208.03 PERFORMANCE STANDARDS

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### (a) Purpose

It is the purpose of this section to provide standards for the operation of all uses or activities to prevent dangerous or harmful elements from adversely affecting adjacent properties.

### (b) Applicability

All new uses and activities installed or enacted on or after the effective date of this code shall adhere strictly to these standards. All new uses and activities installed or enacted prior to the effective date of this code may continue as authorized in [Chapter 1224: Nonconformities](#).

### (c) Standards

The following factors of annoyance shall be measured at the lot or property line where produced:

- (1) No vibration which is discernible to the human sense of feeling shall be permitted except for normal but temporary construction activities.
- (2) Music, noise, and sound shall all be subject to rules and standards of Chapter 648 of the City of Middletown Code of Ordinances.
- (3) No odor shall be emitted which is harmful to humans.

## 1208.04 OUTDOOR LIGHTING STANDARDS

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### (a) Purpose

The purpose of this section is to regulate outdoor lighting elements as they contribute to the identity of a development or project. It is also the purposes of these regulations to ensure the safety of pedestrians while minimizing light pollution and the negative impacts of excessive glare.

**(b) Applicability**

- (1)** The standards of this section shall apply to the following development activities:
  - A.** Construction of all new buildings in nonresidential zoning districts;
  - B.** Construction of all new nonresidential buildings in residential zoning districts.
  - C.** Establishment or expansion of any vehicular use areas; or
  - D.** Addition of outdoor lighting fixtures regulated by this section
- (2)** The requirements of this section shall not apply for a lighting related to single-family, two-family, and three-family dwellings, however, all lighting for these uses, with the exception of low-voltage landscaping lighting, shall be completely shielded from adjacent properties.
- (3)** The applicant must provide a plan that identifies the location, height, and type of luminaries, and shows how the applicant intends to comply with this section.

**(c) Lighting Standards**

- (1) General Standards**
  - A.** The placement of light poles within raised curb planting areas or landscaped islands should be the priority location, but conflicts with parking lot trees that can obscure the lighting shall be avoided through alternative lighting locations.
  - B.** Outdoor lighting shall not be designed or located in such a way as to shine directly into an adjacent dwelling unit, regardless of the applicable zoning district.
  - C.** All outdoor lighting for nonresidential uses shall be located, screened, or shielded so that adjacent lots or streets located in residential districts are not directly illuminated.
- (2) Building-Mounted Lighting**
  - A.** Lighting may be mounted to a building façade only at entrances, loading/service locations, or for the purpose of accent lighting.
  - B.** In no case shall a light fixture mounted on a structure be mounted at a height where the fixture will exceed the height of the roofline.
- (3) Ground-Mounted Lighting**

The maximum height of a light fixture, if mounted on a pole or on a structure other than the principal building, is 25 feet.
- (4) Lighting Intensity and Glare**
  - A.** Lighting must be selected, located, aimed and shielded, using cutoff shields or similar measures, so as to focus illumination exclusively on the intended site elements and away from adjoining properties and public streets.

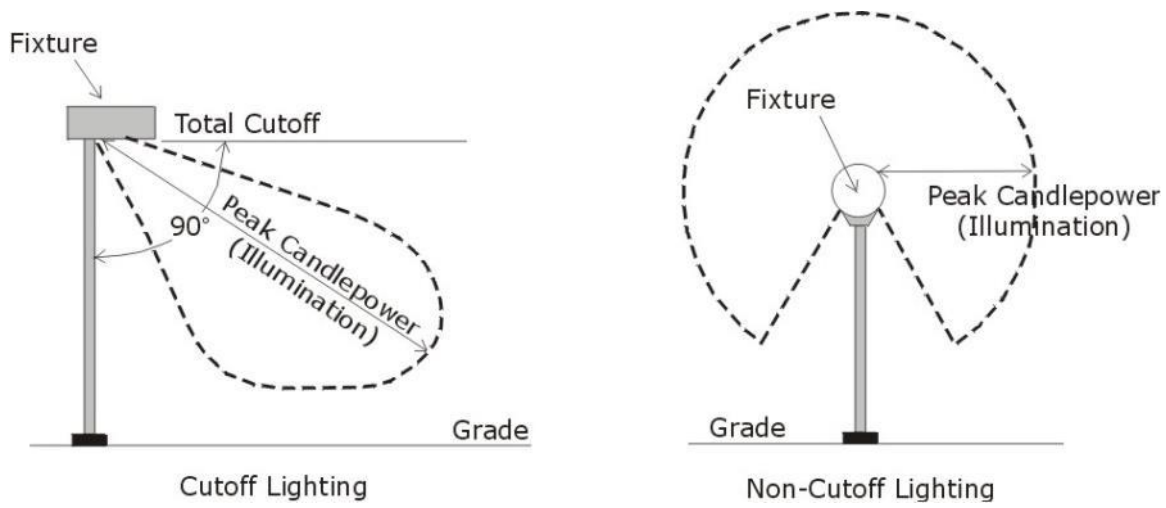


Figure 1208-A: Cutoff lighting fixtures (left) are permitted whereas non-cutoff lighting fixtures (right) are prohibited.

B. [Table 1208-1](#) includes lighting level guidelines for individual site elements.

TABLE 1208-1: OUTDOOR LIGHTING STANDARDS		
LIGHTING LOCATION OR ILLUMINATED SITE ELEMENT	LIGHTING STANDARD	MAXIMUM TO MINIMUM LIGHTING RATIO
Internal Driveways and Roads (Non-Public)	Average of 1.5 foot-candles	Four to One
Drop-Off Areas	Minimum of 2.0 foot-candles	Four to One
Other Vehicular Use Areas	Average of 0.8 foot-candles	Four to One
Pedestrian Traffic Areas	Average of 1.25 foot-candles	Four to One
Building Entrances	Minimum of 2.0 foot-candles	Three to One

## 1208.05 INTERSECTION VISIBILITY

- (a) In order to provide a clear view to the motorist there shall be a triangular area of clear visibility that is free of any obstructions where there is an intersection of two or more streets and/or where a driveway intersects with a street.

- (b) Where a street intersects with another street, the triangular areas shall be defined by measuring 25 feet from the intersection of the extension of the front and side street curb lines (or the edge of pavement where there is no curb) and connecting the lines across the property. See [Figure 1208-B](#).

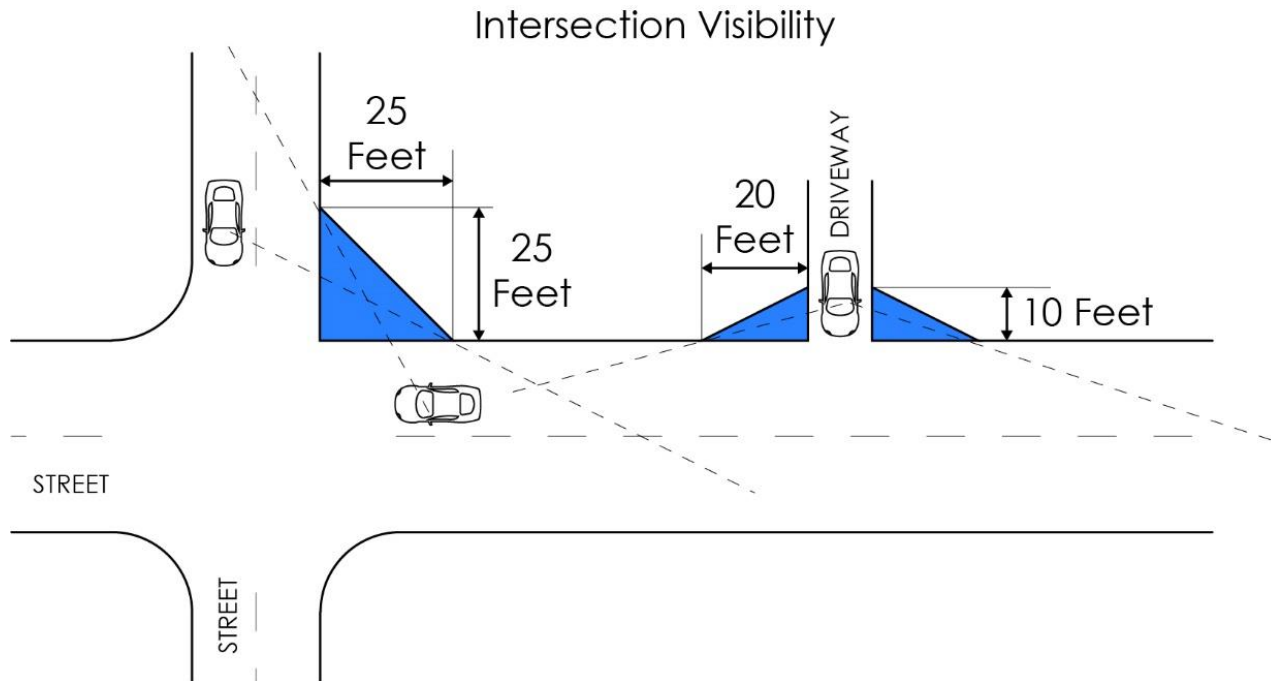


Figure 1208-B: Intersection visibility area for two intersecting streets.

- (c) Where a driveway intersects a street, the triangular areas shall be defined by measuring 20 feet from the edge of the driveway along the street and 10 feet along the driveway, perpendicular from the street. See [Figure 1208-B](#).
- (d) These standards shall not apply to driveways for single-family, two-family, or three-family dwellings.
- (e) The Development Code Administrator, in consultation with the City Engineer, may reduce the distance requirement where it is determined that a narrow lot frontage would excessively reduce buildable area.
- (f) No structure, sign, or landscape element shall exceed 30 inches in height, measured from the top of the curb, within the area established above, unless approved by the City Engineer. Trees may be located within these areas provided they are pruned and/or the canopy is trimmed to provide clear visibility (with the exception of the tree trunk) up to eight feet above the top of the curb.
- (g) Where no curb exists, the height shall be measured from the top of the pavement.
- (h) The Ohio Department of Transportation may impose additional restrictions along State routes, interchanges, and interstate highways.

## **1208.06 FENCES, WALLS, AND HEDGES**

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### **(a) Permit Required**

- (1)** No person shall construct or erect a fence or wall without first obtaining an approved certificate of zoning compliance and/or a building permit, if applicable. Permits are not required for repairs of existing fences, for replacement of a fence for which the original permit can be produced, or for invisible fences.
- (2)** A certificate of zoning compliance shall not be required for vegetative hedges or invisible fences but they shall be subject to any applicable requirements of this section.
- (3)** No person shall construct or erect a fence or wall on a vacant lot unless established as a temporary construction fence.

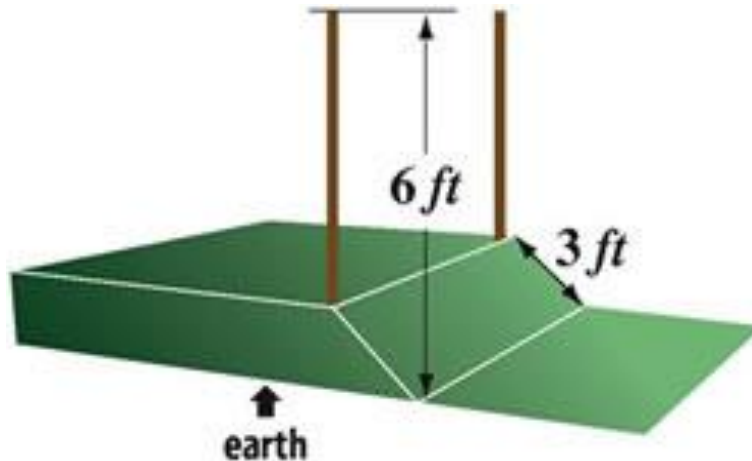
### **(b) General Requirements**

- (1)** All fences, walls, and hedges shall be subject to the intersection visibility requirements of Section [1208.05](#).
- (2)** Fences shall be subject to the standards of Chapter 1438 of the Middletown Code of Ordinances in addition to this section.
- (3)** All fences, walls, hedges and invisible fences, and any related supporting structures or appurtenances, shall be contained within the lot lines of the applicable lot and shall not encroach into adjoining or abutting lots and/or rights-of-way.
- (4)** The smooth finished side of the fence or wall shall be the side of the fence that faces outward from the lot or yard being fenced. If a fence has two similarly finished sides, either side may face the adjacent property.
- (5)** All fences, walls, and hedges shall be maintained in a neat and orderly manner.
- (6)** Walls shall be prohibited within all utility easements. Fences that are placed in utility easements are subject to removal without notice by utility companies or the City when work is being done in the utility easements. Replacement of the fence shall be at the property owner's expense.
- (7)** Fences, walls, and hedges shall not impede, inhibit, or obstruct culverts, drains, natural watercourses, or storm water drainage in any zoning district.
- (8)** It shall be the duty of each lot owner and contractor, or an agent thereof, to determine lot lines and to ascertain that the fence or wall does not deviate from the plans as approved by the Development Code Administrator issuing the certificate of zoning compliance, and that the fence does not encroach on another lot or existing easement. The issuance of the certificate and any inspection by the City shall not be construed to mean that the City has determined the fence is not encroaching on another lot, nor shall it relieve the property owner of the duty imposed on him or her herein.



**(c) Measurement**

- (1) The maximum fence or wall height shall be measured from the lowest point within three feet on either side of the fence to the top most portion of the fence between posts. See [Figure 1208-C](#). The structure posts may exceed the maximum height allowed in this section by up to six inches including any decorative features.



*Figure 1208-C: Illustration of measurement of fence height*

- (2) A fence may be erected on top of a wall but the combined height of the fence and wall shall not exceed the heights specified within this section for a fence or wall. Fences or walls located on top of a retaining wall shall be measured from the top of the finished grade at the top of the retaining wall.

**(d) Materials**

- (1) In the UC District, the fence or wall materials and style must conform to the historic character of the district. Fences shall only consist of wood, ornamental iron or aluminum, or vinyl material which resembles wood, ornamental iron or aluminum. Walls shall only be constructed with brick or stone exposed surfaces or traditional stucco (synthetic stucco such as EIFS is prohibited). Chain link, wire, and barbed wire fences are expressly prohibited all UC sub-districts.
- (2) Chain link fencing shall not be used around the perimeter of the lot.
- (3) All fences shall be constructed of commonly accepted fence material types include wood, aluminum, vinyl, metal, etc., as determined by the Development Code Administrator. The use of salvaged materials, metal that is typically used for building siding, or other materials shall be prohibited.

**(e) Fences, Walls, and Hedges in Front Yards**

The following shall apply to fencing, walls, and hedges in front yards (See [Figure 1208-D](#)):

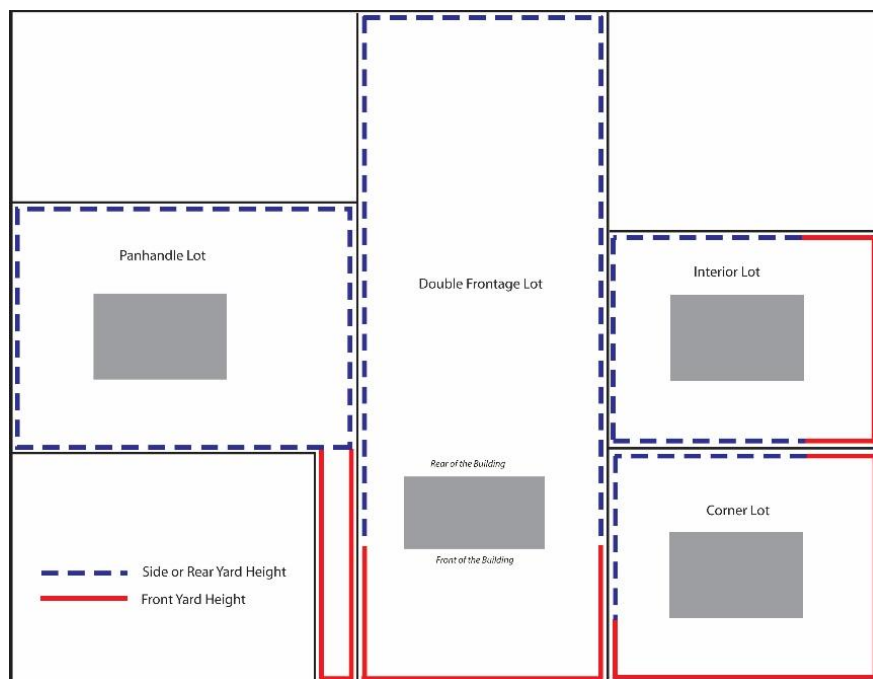
- (1) Fences, walls, and hedges shall not exceed 48 inches in the front yard or along any lot line that is adjacent to a street, including corner lots, in any residential district or in the O-1 or O-2 Districts.

- (2) Fences and walls shall not exceed six feet in any front yard of any other zoning district except where such fence meets the minimum setback requirements for buildings in the applicable district.
- (3) For double frontage lots, fencing in the rear yard (See Section 0.) may exceed 48 inches if the fencing is set back a minimum of 50 feet from the right-of-way but in no case shall it exceed the height allowed in rear yards for the applicable zoning district. This setback shall not apply if the entire block face contains double frontage lots with the rear façade of the buildings facing the same street.

**(f) Fences, Walls, and Hedges in Side and Rear Yards**

The following shall apply to fencing, walls, and hedges in side and rear yards (See [Figure 1208-D](#)):

- (1) There shall not be a height requirement for hedges in side and rear yards.
- (2) Fences and walls shall not exceed six feet in height in any side or rear yard within any residential district or in the O-1 and O-2 Districts.
- (3) Fences and walls shall not exceed ten feet in height in any side or rear yard within any residential district or in the I-1 and I-2 Districts.
- (4) Fences and walls shall not exceed eight feet in any side or rear yard of any other zoning district.



*Figure 1208-D: Illustration of yard locations related to fence height.*

**(g) Temporary Fences**

Fences around construction sites shall be allowed for the duration of the construction work. A certificate of zoning compliance shall not be required for temporary fences.

# Chapter 1210: Architectural Standards

## **1210.01 PURPOSE**

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The purpose of this chapter is to encourage development that contributes to the City of Middletown's physical character in appropriate ways. The architectural design of residential and nonresidential development, particularly large-scale developments, determines much of the character and attractiveness along the thoroughfares of the City, and the gateways to the community.

## **1210.02 APPLICABILITY AND WAIVER**

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- (a) The standards of this chapter shall apply to all new buildings and the expansion of existing buildings unless otherwise specified.
- (b) Buildings in the I-1 and I-2 Districts shall be exempt from this chapter.
- (c) The ARB shall have the authority to waive any or all provisions of this chapter with respect to infill where the proposed dwelling is on a lot located in a block that is more than 50 percent developed.

## **1210.03 ARCHITECTURAL STANDARDS FOR RESIDENTIAL BUILDINGS**

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The standards of this section apply to all residential principal and accessory buildings unless otherwise stated.

### **(a) Architectural Standards and Review for New Single-, Two-, Three-, and Four-Family Dwellings**

#### **(1) Applicability**

- A. The standards of this subsection apply to all single, two-, three- and multi-family dwellings with four dwelling units for which building permit applications are filed after the effective date of this code.
- B. No building permit shall be issued without a determination from the Architectural Review Board (ARB) of compliance with the standards set forth in this section with the following exceptions:
  - i. The ARB may review subdivisions and approve the architectural standards for an entire subdivision. If the ARB reviews and approves architectural standards for a subdivision, the Development Code Administrator may issue a certificate of zoning compliance for any individual dwelling that is in compliance with the ARB approval.
  - ii. The Development Code Administrator may review the architectural standards for single-family, two-family, and three-family dwellings on lots within a single block where over 80 percent of the lots within the block are occupied by existing dwellings constructed prior to the effective date of this code. ARB review and approval shall not be required in these infill development applications.

**(2) Architectural Standards**

**A. Building Orientation**

- i. The main entrance of any residential building shall be oriented toward a public street.
- ii. For corner lots in residential zoning districts, a dwelling unit may be oriented toward the intersection of the two streets.

**B. Building Materials**

- i. The first above-ground story of a residential dwelling shall have facades constructed of stone, brick, wood, stucco, cultured stone, cement siding, or hardy plank when such facades are visible from a public street.
- ii. All other exterior walls areas of the dwelling may be constructed of other code approved building materials.
- iii. Areas excluded from the building material requirements stated above are limited to any exterior wall areas of the dwelling where normal building practices prohibit the use of the material stated above including gas fireplace insert cantilevers, gables, overhangs, downspout and gutters, kitchen and other bays and other types of protrusions for which it is not reasonably practical to use the materials stated above.
- iv. All siding shall be either horizontal or vertical in placement.
- v. All potential below grade living areas shall be constructed with poured concrete walls.

**C. Roofs and Projections**

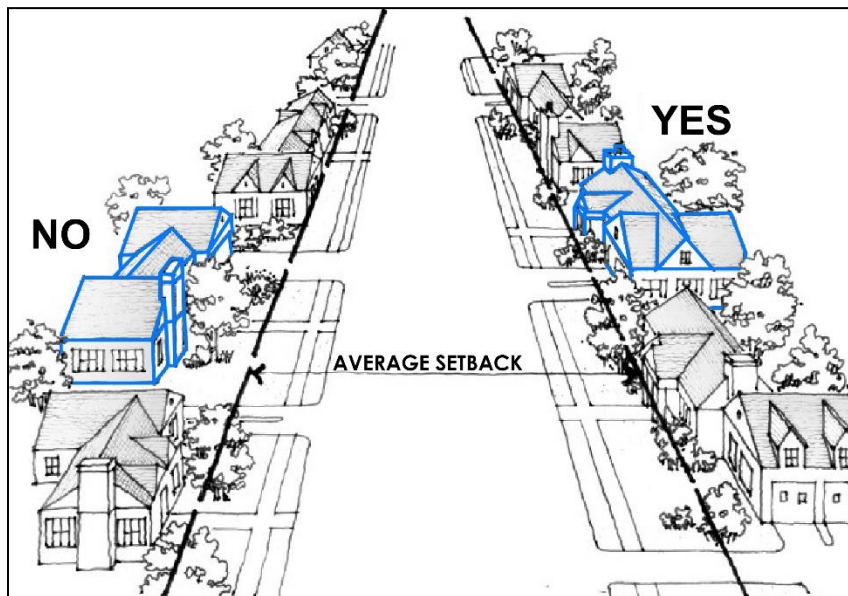
- i. Roof pitch shall have a minimum five-twelves pitched roof design, including the roof area located over the garage.
- ii. The roof area located over the porch and entrance portions of the dwelling may be constructed using a minimum of four-twelve pitched roof design. Roofing materials shall be compatible with the design and style of the dwelling unit and development.
- iii. A minimum overhang of 12 inches shall be provided over all faces of the exterior walls of a dwelling. The material of such projections shall be constructed of durable and maintenance-free materials. The entire exterior areas of chimneys used for masonry, wood-burning open flame fireplaces shall be constructed of the exterior materials provided for in Section [1210.03\(a\)\(2\)B](#).
- iv. No horizontal plane on ground floor street-facing building frontage shall continue over 24 feet in length without being broken into different planes. Any sidewalls exceeding 30 feet in length shall be broken into different planes or be substantially broken with doors, windows, or a variety of siding materials.

**D. Windows and Doors**

No dwelling shall be constructed with aluminum windows or aluminum primary doors. Aluminum clad and vinyl clad windows and garage doors are permitted.

**E. Mass and Scale**

- i. No principal building shall be constructed where the front facade is more than 20 percent wider or 20 percent narrower than the average width of principal buildings along the same block face when more than half of the lots along the block face are occupied by existing structures.
- ii. The front façade of the principal building is set back from the front line an amount equal to or within 20 percent of the average setback of all other buildings along the same block face. See [Figure 1210-A](#).



*Figure 1210-A: The new construction (outlined in red) on the right demonstrates appropriate average setbacks. The dwelling outlined in red on the left has a front setback that is too deep.*

- iii. In the case of the complete redevelopment of entire block or block face, the minimum front yard setback shall be within 20 percent of the average setback of the structures that previously existed on the applicable block face or the average setback of adjacent block faces.
- iv. Street-facing garages shall not comprise more than 50% of the ground floor building frontages. Any garage with more than two car parking capacity should not directly face onto any street. It is recommended that any garage with more than two car parking capacity should have the sidewall facing onto the street.
- v. For all new subdivisions, the applicant shall provide sufficient information to demonstrate a variety of base architectural styles or models dependent on the size of the subdivision in accordance with [Table 1210-1](#).

TABLE 1210-1: VARIETY OF RESIDENTIAL STYLES	
PROPOSED NUMBER OF LOTS	NUMBER OF BASE MODELS/STYLES
Less than 20	2
21 to 50	4
51 to 100	8
More than 100	$8 + (0.08 \times \# \text{ lots over } 100)$ , rounded to the nearest whole number

**F. Utility Boxes**

- i. All utility boxes located in the front yard shall be screened from public view with landscaping material, to the maximum extent feasible, as permitted by the utility company.
- ii. Large utility structures shall be subject to Section [1204.09\(f\)\(2\)](#), regardless if they are located in a subdivision or are on a lot subject to a certificate of zoning compliance.

**(b) Architectural Standards for Multi-Family Dwellings with Over Four Dwelling Units**

**(1) Applicability**

- A. The standards of this section shall apply to all multi-family dwellings that have more than four dwelling units.
- B. No building permit shall be issued without a determination from the Architectural Review Board (ARB) of compliance with the standards set forth herein.

**(2) Architectural Standards**

- A. In addition to the standards set forth herein for multi-family dwellings, all multi-family dwellings with over four units shall be subject to the following:
  - i. [1210.03\(a\)\(2\)A: Building Orientation](#);
  - ii. [1210.03\(a\)\(2\)B: Building Materials](#);
  - iii. [1210.03\(a\)\(2\)D: Windows and Doors](#); and
  - iv. [1210.03\(a\)\(2\)F: Utility Boxes](#).
- B. **Architectural Features**
  - i. At least three of the following design features shall be provided on the front façade of each dwelling unit with frontage on a public street:
    - a. One or more dormer windows or cupolas;
    - b. A recessed entrance;
    - c. A covered porch or balcony;
    - d. Pillars, posts, or pilasters;
    - e. One or more bay windows with a minimum of 12 inch projection from the façade plane;



- f. A parapet wall with an articulated design, which entails design variation rather than a simple rectilinear form; or
- g. Multiple windows with a minimum of four inch wide trim.
- ii. To the maximum extent practicable, all roof vents, pipes, antennas, satellite dishes, and other roof penetrations and equipment (except chimneys) shall be located on the rear elevations or configured to have a minimal visual impact as seen from the street. See Section [1216.10](#).



*Figure 1210-B: Illustrative example of acceptable architectural design for multi-family dwellings*



*Figure 1210-C: Illustrative example of unacceptable architectural design for multi-family dwellings*

### **(c) Residential Architectural Review**

- (1) Whenever an application for a preliminary subdivision plat or a certificate of zoning compliance is submitted related to development subject to this section, it shall be accompanied by architectural elevations or similar documents illustrating the facades of the proposed dwellings in order to demonstrate compliance with this chapter.

- (2) The Development Code Administrator shall forward the submitted information to the ARB for their review and decision on compliance with this chapter. Such review shall be completed within 15 days of submission of the drawings.
- (3) The ARB shall provide a written determination of compliance with the requirements with this chapter.
- (4) The ARB shall have the authority to waive the provisions of this chapter provided that the intent of this chapter is upheld and if the applicant clearly demonstrates that the strict enforcement of these provisions causes undue hardship and that an extraordinary circumstance exists which would not be found elsewhere in the community.
- (5) Any individual aggrieved by a decision of the ARB regarding an interpretation or design involving this chapter shall, within 30 calendar days from the date of the ARB's decision, file an appeal to the Planning Commission. The appeal shall be heard on the next available Planning Commission agenda.

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## **1210.04 DESIGN STANDARDS FOR NONRESIDENTIAL DEVELOPMENT**

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### **(a) Applicability**

- (1) Unless otherwise specified, the standards of this section shall apply to:
  - A. All new construction of nonresidential buildings (principal and accessory) in a residential zoning district;
  - B. All new construction of principal buildings in the O-1, O-2, B-1, B-2, B-3, and PI Districts;
  - C. All new construction of principal buildings in the UC and BC Districts, including all subdistricts;
  - D. All new construction accessory buildings related to a nonresidential use that are visible from a public street; and
  - E. The expansion or exterior alteration of existing buildings otherwise subject to this section.
- (2) For the purposes of this section, nonresidential buildings shall include any mixed-use buildings that may have a residential component.

### **(b) Requirements for New Construction**

- (1) **New Construction in the UC District**
  - A. In addition to any specific requirements identified in this section, new construction and building renovations in the UC District shall follow the guidelines established in the *Downtown Middletown Design Guidelines for New Construction and Building Renovation*.
  - B. In a case of a conflict between the *Downtown Middletown Design Guidelines for New Construction and Building Renovation* and this code, the guidelines shall control.



**(2) Building Orientation and Entrances**

- A.** Buildings shall generally be parallel to the street they front, unless an alternate orientation is consistent with existing adjacent development along the same block face.
- B.** The primary building frontage shall incorporate at least one main entrance door.
- C.** Buildings located at the intersection of two streets may orient a main entrance toward the corner.
- D.** Service entries shall not be permitted along any façade that faces a street.
- E.** For buildings that are part of a large-scale development with internal driveways, buildings may be oriented toward the private driveways in the interior of the development if none of the building's facades has frontage on a public street.
- F.** Main entrances shall be designed to include at least two of the following design features:
  - i. Canopies/porticos above the entrance;
  - ii. Roof overhangs above the entrance;
  - iii. Entry recesses/projections;
  - iv. Arcades that are physically integrated with the entrance;
  - v. Raised corniced parapets above the entrance;
  - vi. Gabled roof forms or arches above the entrance;
  - vii. Outdoor plaza adjacent to the entrance having seating and a minimum depth of 20 feet;
  - viii. Display windows that are directly adjacent to the entrance;
  - ix. Architectural details, such as tile work and moldings, that are integrated into the building structure and design and are above and/or directly adjacent to the entrance; or
  - x. Similar features that distinguish the entrance as the main entrance.

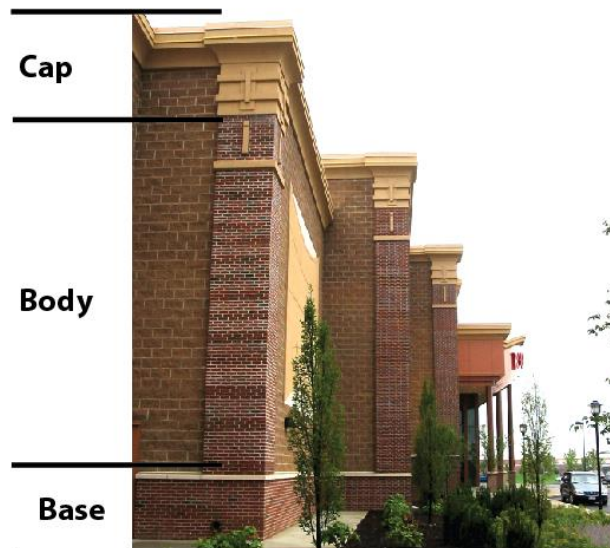
**(3) Building Materials**

- A.** All building façades, except those in the UC District, shall be constructed of the following materials:
  - i. Stone, brick, wood, stucco, cultured stone, cement board, ceramic tile, ceramic block, or exterior insulation finish system (E.I.F.S.).
  - ii. Architectural metal is permitted, provided that it occupies no more than 10 percent of the façade area and that all fasteners are concealed.
  - iii. This subsection shall not be construed to prohibit metal roofs, flashing, or high-quality metal siding such as copper, bronze, or other decorative metal as determined by the Development Code Administrator.
- B.** All building façades that face a public street in the UC District (all subdistricts) shall be constructed of the following materials:

- i. Brick, stone, painted lap cement fiberboard and stucco or exterior insulation finish system (E.I.F.S.) shall be the primary materials on each facade.
- ii. Natural wood clapboard, wood board and batten, wood shingles, aluminum, or steel siding may be permitted as secondary materials as permitted by fire code ratings. For the purposes of this standard, secondary shall mean less than 50 percent.
- iii. Visible roofing materials to be used are dimensional asphalt, slate, tile, or standing seam.

**(4) Facade Design and Mass**

- A.** All architectural elevations of principal buildings shall consist of a base, a body, and a cap as described below (See [Figure 1210-D](#)). The height requirements for the base, body and cap shall apply in all districts except the UC District. The height of the base, body and cap in the UC District shall be compatible with the predominant pattern found on the same block as the building subject to review.



*Figure 1210-D: Image of a building with a clear, base, body, and cap.*

- i. The base shall occupy the lowest portion of the elevation, and shall have a height no less than eight percent of the average wall height.
  - ii. The body shall occupy the middle portion of the elevation, and shall have a height no less than 60 percent of the average wall height.
  - iii. The cap shall occupy the highest portion of the elevation, excluding the roof, and shall have a height no less than eight percent of the average wall height, not to exceed the height of the base.
- B.** The cap shall consist of at least one of the following architectural features:
- i. A cornice;
  - ii. A parapet;

- iii. An awning;
  - iv. A canopy; or
  - v. Eaves.
- C. The base and cap shall be clearly distinguishable from the body through changes in color, material, pattern, profile, or texture.

**(5) Façade Variation**

- A. All facades that have frontage along a public street that is more than 50 feet in length shall incorporate one of the methods of façade variation identified in Subsection B below at a minimum of every 30 feet along the full length of the façade.

**B. Façade Variation Options**

- i. A wall offset of at least two feet in depth (projections or recesses) and 20 feet in width;
- ii. A change in building materials or color;
- iii. A pilaster or pier having a minimum depth of one foot, minimum width of one foot, and a minimum height of 80 percent of the façade's height.



*Figure 1210-E: Illustration of façade treatments such as pilasters, projections, and material changes to provide a visual façade offset.*

**(6) Wall Openings (Doors and Windows)**

- A. Blank walls, those devoid of openings such as windows and transparent doors, shall be prohibited on any façade that faces a public street.
- B. Building facades that face a public street in the BC-I and BC-H Sub-districts shall contain glass windows and doors that occupy a minimum of 30 percent of the first floor façade's wall surface area and 25 percent of each upper floor wall surface area. In the remaining BC sub-districts, any façade that faces a public street shall contain glass windows and doors that occupy a minimum of 25 percent of the total wall surface area.

- C. Building facades that face a public street in the UC District shall contain glass windows and doors that occupy a minimum of 60 percent of the first floor façade's wall surface area between the height of two and ten feet above the nearest sidewalk grade. Such glass shall provide a view into the interior of the building a minimum distance of four feet. This requirement shall only apply to the building façade that faces the largest street. The transparency requirement of this section shall apply a distance of ten feet back from such street on any secondary street frontage.
- D. A maximum of 20 percent of the windows that can be seen from all public rights-of-way, excluding alleys, may be opaque, including spandrel glass except in the UC District where such glass is prohibited.

**(7) Awnings**

- A. Where awnings or canopies are proposed, the awning or canopy shall not conceal architectural features of the building to which it is attached.
- B. Awning and canopy colors and materials must complement the colors and materials of the building to which the awning is attached.

**(8) Roof Design**

- A. The height of any pitched roof shall not exceed one-half of the overall building height.
- B. **Roof Line Changes**
  - i. Roofline changes shall include changes in roof planes or changes in the top of a parapet wall, such as extending the top of pilasters above the top of the parapet wall.
  - ii. When roofline changes are included on a façade that incorporates wall offsets or material or color changes, roof line changes shall be vertically aligned with the corresponding wall offset or material or color changes. See [Figure 1210-F](#).



*Figure 1210-F: Roofline changes shall be aligned with corresponding wall offsets and/or material or color changes.*

**C. Flat Roofs**

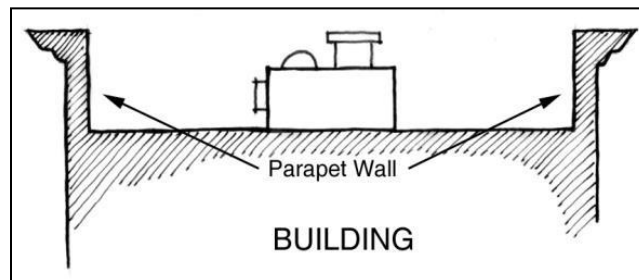
- i. When flat roofs are used, parapet walls with three-dimensional cornice treatments shall conceal them. The cornice shall include a perpendicular projection a minimum of eight inches from the parapet façade plane.
- ii. Thin parapets that extend more than two feet above the roof and have a depth of less than two feet from the façade surface, are prohibited.



*Figure 1210-G: Parapet walls with cornice treatments are used to disguise flat roofs. The image on the right illustrates a tall, thin parapet wall that is prohibited.*

**(9) Mechanical Equipment**

- A. Wall mounted mechanical, electrical, communication equipment, downspouts, gutters, service doors, and other building-mounted utility fixtures, shall be painted and maintained to match the building or be screened from view.
- B. Mechanical equipment such as transformers and HVAC units shall not be located in front yards.
- C. All mechanical equipment, including both ground-mounted and roof-mounted equipment, shall be screened from view from adjacent public and private rights-of-way, as well as from all property zoned or used for residential purposes.



*Figure 1210-H: Example of how parapet walls are utilized to screen roof mounted mechanical equipment.*

- D. Screening elements shall include walls (same material and color as principal structure), landscaping, mounds, parapets or enclosures constructed of the same materials used on the majority of the principal structure or any combination.
- E. Mechanical equipment is also subject to Section [1216.10](#).

# Chapter 1212: Historic Preservation

## 1212.01 PURPOSE

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City Council hereby declares as a matter of public policy that the protection, enhancement, and perpetuation of Landmarks, Historic Districts, and Conservation Districts is necessary to promote the economic, cultural, educational and general welfare of the public. Inasmuch as the identity of a people is founded on its past, and inasmuch as the City of Middletown has many significant historic, architectural, and cultural resources which reflects its heritage, this act is intended to:

- (a) Protect and enhance the Historic Landmarks, Historic Districts, and Conservation Districts which represent distinctive elements of Middletown's historic, architectural, and cultural heritage;
- (b) Foster civic pride in the accomplishments of the community in the past;
- (c) Stabilize and improve property values of designated landmarks, neighborhoods, and districts;
- (d) Protect and enhance Middletown's attractiveness to visitors, tourism, and the support and stimulus to the economy thereby provided;
- (e) Insure the harmonious, orderly, and efficient growth and development of Middletown affording the widest possible scope of continuing vitality through private renewal and architectural creativity, within appropriate controls and standards. It is intended to foster a climate in which the City's historic areas may continue to exist as living, changing commercial and residential areas, not static museums;
- (f) Encouraging development of vacant and incompatibly developed properties in accordance with the character of the area;
- (g) Providing preservation information and advice to property owners and the general public;
- (h) Maintaining and enhancing the distinctive character of historic buildings and areas;
- (i) Safeguarding the heritage of the City by preserving districts which reflect elements of its history, architecture, archaeology, engineering or culture; and
- (j) Provide a review process for the continued preservation and protection of Middletown's historic resources.

## 1212.02 DESIGNATION OF A HISTORIC LANDMARK OR HISTORIC DISTRICT

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A) Proposals to designate or expand historic districts, conservation districts, or designate historic landmarks may be initiated by the Historic Commission, a property owner or by motion of Planning Commission or City Council. Proposals initiated by property owners, Planning Commission or Council shall be referred to the Historic Commission for recommendation and initiation of the formal designation process.

B) Proposals to designate or expand a historic district or conservation district shall be submitted with a rezoning application as well as the information listed below. Proposals to designate a historic landmark shall include, at a minimum, the following additional information:

1. Evidence of property owner interest in landmark designation or location within the proposed historic district.
2. A boundary description.
3. An inventory of historic resources.

4. A description of the architectural and historical significance of properties within the proposed boundaries, including photo documentation of unique elements and also those that are stereotypical of the architectural style.
5. A map or description of existing zoning.
  - a) In considering any area, place, structure, work of art or similar object in the City as a historic site, historic district, or conservation district the Historic Commission shall apply the following criteria:
    - (1) The structure or site or area's character, value, or significance as part of the development of the City, the State, or the United States;
    - (2) Its location as a site or area of a significant historic event;
    - (3) Its identification with a person who significantly contributed to the development of the City;
    - (4) Its embodiment of distinguishing characteristics of an architectural style or type;
    - (5) Its exemplification of the cultural, economic, social or political heritage of the City;
    - (6) Its relationship to other distinctive areas or structures designated for preservation;
    - (7) Its unique location or singular physical characteristic representing an established and familiar feature of the City; and
    - (8) Its inclusion of prehistoric and/or historic archaeological sites or other important representations of previous cultures.

**b) Designation Procedure**

The previously named entities, individuals, or Historic Commission shall have the authority to propose designations of any area, place, structure, work of art, or similar object in the City as a historic site, historic district, or conservation district. The following shall be the procedure for the formal designation of such places or areas.

- (1) Step 1 – Development Code Administrator Recommendation Required
  - A. The Historic Commission shall advise the Development Code Administrator of the proposed designation and secure from the Development Code Administrator a recommendation with respect to the relationship of the proposed designation to the Master Plan of the City and any applicable Historic Preservation Plan.
  - B. The Development Code Administrator shall give an opinion as to the effect of the proposed designation upon the surrounding neighborhood and an opinion and recommendation as to any other planning consideration which may be relevant to the proposed designation, together with a recommendation of approval, rejection, or modification of the proposed designation.
  - C. Such recommendation shall be submitted in written form by the Historic Commission, along with its recommendation concerning the proposed designation.
  - D. The Historic Commission shall make a decision whether to proceed with the designation review based on the recommendation of the Development Code Administrator.



**(2) Step 2 – Notification**

- A.** If the Historic Commission decides to proceed with designation, the Development Code Administrator shall notify the owner of all properties under consideration for designation. For the purpose of designation or expansion of a group or district, notice shall be published on the City's webpage and shall be mailed or otherwise distributed to each owner of real property located within such group or district. Whenever possible, the Historic Commission shall secure the owner's written consent for submittal of the proposed designation, together with its recommendation of findings of fact.
- B.** The Historic Commission shall make a recommendation concerning the designation of the property to the City Council. Once the proposal to establish or expand a preservation district or to designate an individual property or structure as a historic landmark has been reviewed, the Historic Commission shall schedule a public hearing. The public hearing shall not be more than thirty (30) calendar days after such a proposal is submitted. Notice of the public hearing shall be given according to the following:
  - i.** The Historic Commission shall give the owner(s) not less than fourteen (14) calendar days' written notice of the date, time and place of such hearing.
  - ii.** Notice of the public hearing shall be given to at least one (1) or more newspapers of general circulation in the City. The notice shall be published at least ten (10) calendar days before the date of the hearing.
  - iii.** Notices shall include the time and place of the public hearing, a summary of the proposal and a statement that opportunity to be heard will be afforded to any person interested. Failure of delivery of such notice shall not invalidate any such amendment.
  - iv.** The original application, all comments and additional considerations presented at the public hearing, and the recommendation of the Historic Commission shall be forwarded to the City Council for its consideration.

**(3) Step 3 – Historic Commission Public Hearing**

- A.** The Historic Commission shall conduct the public hearing as provided and shall provide an opportunity for all interested parties to express their opinions.
- B.** The Historic Commission shall determine if any or all of the criteria listed in Section 1212.02 have been met.
- C.** The Commission shall then make a recommendation regarding the proposed designation, in writing, within 30 days after the initial hearing date and shall notify the owner or any person having a legal interest in such property, as well as other interested parties who request a copy.
- D.** The Historic Commission shall state in its recommendation findings of fact that constitute the basis for its decision and shall transmit such recommendation concerning the proposed designation to the Middletown City Council.



**(4) Step 4 – Consideration by City Council**

- A.** The City Council shall give due consideration to the findings and recommendations of the Historic Commission, input provided by the persons participating in the public hearing before the Historic Commission, in addition to the recommendation of the Development Code Administrator, in making its determination with respect to the proposed designation of any areas, places, structures, works of art or similar objects as historic sites or historic districts.
- B.** The City Council may, at its discretion, hold public hearings on any such proposed designation, whether such designation is proposed with the consent of the owner or after public hearings before the Historic Commission. The City Council may then designate by ordinance areas, places, structures, works of art, or similar objects as historic sites, historic districts, or conservation district.

**(5) Step 5 – Notification of Designation**

Within 14 days, the Historic Commission shall notify the Chief Building Official of the official designation. The Commission shall also send, by certified mail, a certified copy of the designation ordinance to the owner and any person having a legal interest in any properties involved in the designation.

**(6) Step 6 – Record of Designation**

The Historic Commission shall direct the Law Director to cause a record of such designation to be filed with the applicable county recorder.

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**1212.03 MINIMUM MAINTENANCE STANDARDS**

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**(a) Maintenance Required**

Nothing in this chapter shall be construed to prevent the ordinary repair and maintenance of any exterior architectural feature of a historic landmark, historic district, or conservation district property which does not involve a change in design, material, color, or outward appearance. No owner or person with an interest in real property designated as a historic landmark or property within a historic district shall permit the property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the Historic Commission, produce a detrimental effect upon the character of the historic landmark or historic district as a whole, or the life or character of the property itself. Examples of such deterioration include:

- (1)** Deterioration of exterior walls or other vertical supports;
- (2)** Deterioration of roofs or other horizontal members;
- (3)** Deterioration of exterior chimneys;
- (4)** Deterioration of exterior stucco, siding, trim, brick, stone or mortar, including chipping or peeling paint;
- (5)** Ineffective waterproofing of exterior walls, roofs, roof drainage systems, foundations, including broken or damaged windows and doors;
- (6)** The accumulation of rubbish and debris;

- (7) Any condition as to cause fire or explosion or to provide a ready source of fuel to augment the spread or intensity of fire or explosion arising from any cause; and
- (8) Failure to adequately secure a building or structure to prevent vandalism or destruction of a property.
- (9) All other provisions of the City's codified ordinances regarding maintenance of property.

**(b) Inspection of and Notice to Repair**

- (1) The Historic Commission shall have the authority to direct the Development Code Administrator, in conjunction with the Chief Building Official, to investigate and inspect, any building which, in its opinion, may be a substandard historic building in accordance with this section.
- (2) The Development Code Administrator and the Chief Building Official shall also have the authority to investigate and inspect, any building which, in its opinion, may be a substandard historic building in accordance with this section.
- (3) Any investigation and inspection shall take place within 30 calendar days of an initial notification from the Historic Commission or identification by the Development Code Administrator or Chief Building Official.
- (4) After an inspection, the Development Code Administrator shall relay their findings to the Historic Commission. If after inspection it is found that such building is substandard, the Development Code Administrator shall give written notice shall be posted to the Historic Commission and owner of record or person responsible for the property, or if unable to effect such notice by posting on the premises, stating in what respects the building is substandard, and setting forth the repairs, alterations or improvements to such building required to correct such substandard conditions or preserve the building, and a reasonable period of time in which the required work shall be done.
  - (5) Such notices shall also inform the owner or person responsible that the Development Code Administrator's and Chief Building Official's findings will be subject to appeal as provided in the notice.

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#### **1212.04 EFFECT OF ORDER OF THE HISTORIC COMMISSION**

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An order of the Historic Commission shall bear the same consequence as if issued by the Development Code Administrator. The findings and orders of the Historic Commission shall be transmitted to the owner or person responsible for the affected building not later than 30 calendar days following the date of the hearing and decision. The owner or person responsible will be notified according to Section 1226.02 of the Development Code.

## **1212.05 REMEDIES OF THE HISTORIC COMMISSION'S DECISION**

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- (a) If the owner or person responsible for the affected property fails to comply with a final order to repair, alter, preserve or improve property, such property is hereby declared a public nuisance and the Development Code Administrator and the Chief Building Official, by such means and with such assistance as may be available to them, are hereby authorized and directed to cause such property to be repaired, altered or improved to achieve compliance with this code.
- (b) Regarding any property that is unoccupied or vacant, the Chief Building Inspector, upon review may, where appropriate and necessary, order the following:
  - (1) That service of water, gas or electricity be terminated;
  - (2) That all accumulations of flammable or combustible rubbish or debris be removed from the premises by the owner or person responsible for the building;
  - (3) That all windows, doors and other openings in such buildings be locked, barricaded or otherwise secured by the owner or person responsible for the building.
  - (4) Where the City incurs costs to abate public nuisances and gain compliance with Section 1210, the City shall charge the owner of the property, who failed to comply with the notices and/or orders issued in accordance with this section, an amount equal to two and one-half times the actual costs for compliance. The City may either:
    - i. Seek and recover judgement against the owner for the costs of the actions necessary to gain compliance and abate the nuisance; or
    - ii. Certify the cost of said abatement, including the cost of service or publication of notice, by the Clerk of City Council to the County Auditor to be placed on the tax duplicate as a lien upon the premises, to be collected as other taxes and returned to the City, as provided in Ohio R.C. 715.261.

## **1212.06 DEMOLITION OR MOVING OF HISTORIC BUILDINGS AND STRUCTURES**

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- (a) The demolition of an historic landmark designated by the Historic Commission shall not be permitted unless one of the following conditions exist:
  - (1) Demolition has been ordered by the Development Code Administrator or Chief Building Inspector for public safety because of an unsafe or dangerous condition that constitutes an emergency;

- (2) The owner demonstrates that the historic landmark is either not habitable or otherwise not safe, the repair, rehabilitation or restoration of the property is not economically feasible and the property's condition did not result from damage which has been purposefully caused to the property, or allowed to occur due to the gross neglect of the owner with the intention of making the restoration of the property not economically feasible. For purposes of this section, "economically feasible " means that the costs of the repair, rehabilitation or restoration of an Historic Landmark, when combined with the cost of the land, do not exceed the fair market value of the real property after the repair, rehabilitation or restoration of the Historic Landmark has been completed No permit to demolish will be permitted under this paragraph (a)(2) or (3) hereof unless the owner or owner's representative obtains final approval from the Historic Commission for the structure which will replace the structure to be demolished.
- (3) The owner demonstrates to the satisfaction of the Historic Commission that denial of the demolition is inconsistent with a legitimate interest in the health, safety and welfare of the City; or
- (4) The demolition request is for an inappropriate addition or a portion of a structure that is not historically significant, and, the demolition will not adversely affect those parts of the structure that are significant as determined by the Historic Commission.
- (5) Whoever constructs, reconstructs, or alters any exterior architectural feature within the historic district without a Certificate of Appropriateness shall be required to restore and reconstruct such features in full detail.

(b) No historic landmark may be moved from its current location unless the Historic Commission determines that the moving of the property will not materially and adversely impact the historical character of the building or structure or other historic landmarks in proximity to the subject historic landmark.

**(c) APPEAL FOR DENIED DEMOLITION AND ALTERATION**

A. Application for Demolition: An applicant whose certificate of appropriateness for a proposed demolition has been denied may apply for relief on the grounds of hardship. Substantial hardship does not include an applicant's inability to maximize return on his or her investment. Deterioration of a historic property due to neglect by its owner does not create the basis of finding of hardship.

In order to prove the existence of hardship, the applicant must establish that:

- (1) The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible; and
- (2) The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return; and
- (3) Efforts to find a purchaser interested in acquiring the property and preserving it have failed. Efforts must be proven by different methods of documentation.

B. Application for alteration. An applicant whose certificate of appropriateness for a proposed alteration has been denied may apply for relief on the grounds of hardship. In order to prove the existence of hardship the applicant shall establish that the property is incapable of earning a reasonable return regardless of whether that return represents the most profitable return possible.

To prove economic hardship the applicant shall submit sufficient information to enable the Historic Commission to make an accurate assessment of economic conditions affecting the application. In considering cases of economic hardship the Commission may solicit expert testimony or request that the applicant submit any items it needs, including but not limited to the items below. The level of documentation may vary as appropriate to each case; however, the Commission's assessment shall be based solely on the property's economic fundamentals and not the financial capacity of the owner.

Documentation on alternative uses and potential economic return they could include but not limited to the following:

- a. Estimate of the cost of the proposed redevelopment, alteration, demolition, or removal and an estimate of any additional cost that would be incurred to comply with the recommendations of the Commission for changes necessary for the continued use of the property and the issued Certificate of Appropriateness.
- b. A report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any buildings on the property and their suitability for rehabilitation including any evidence that deterioration has progressed to the extent that rehabilitation is not practical;
- c. Estimated market value of the property in its current condition; after completion of the proposed development, alteration, demolition or removal, and after changes recommended by the Historic Commission for the renovation of the existing property for continued use;
- d. Testimony from a third party architect, developer, appraiser, or other real estate professional experienced in rehabilitation or reuse of existing buildings on the property taking into consideration any existing evidence that deterioration has progressed to the extent that rehabilitation is not practical.

Documentation on the current economic return on the property could include but not be limited to the following:

- a. The amount paid for the property, the date of purchase, and the party from whom purchased, including a description of the relationship, if any, between the owner of record or applicant and the person from whom the historic property was purchased;
- b. If the property is income-producing, the annual gross income from the property for the previous two years; itemized operating and maintenance expenses for the previous two years; and depreciation deduction and annual cash flow after debt service, if any, during the same period;
- c. Real estate taxes from the previous two years and assessed value of the property according to the most recent assessed valuation;
- d. All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing or ownership of the property.

Documentation if property is not able to be sold, considered in relation to any listings of the property for sale or rent, price asked, and offers received, if any, within the two previous years, could include but is not limited to testimony and relevant documents regarding:

- a. Any real estate broker or firm engaged to sell or lease the property;
- b. Reasonableness of the price or rent sought by the applicant;
- c. Any advertisements laced for sale or rent of the property;
- d. Economic incentives and/or funding available to the applicant through federal, state, city, or private programs.

e. All purchase offers that were rejected during period of sale.

#### **HARDSHIP APPLICATION PROCEDURE**

- (1) After receiving written notification from the Historic Commission of the denial of a certificate of appropriateness, an applicant may commence the hardship process. No building permit, demolition permit or zoning permit shall be issued unless the Commission makes a finding that a hardship exists.
- (2) The applicant must file an application in writing to the Development Code Administrator outlining the reasons for the hardship request.
- (3) The Historic Commission may hold a public hearing on the hardship application at which an opportunity will be provided for proponents and opponents of the application to present their views.
- (4) The applicant shall consult in good faith with the Historic Commission, local preservation groups, and interested parties in a diligent effort to seek an alternative that will result in preservation of the property. The Commission may impose a waiting period not to exceed 60 days in order to seek alternatives prior to making a decision regarding an application for alteration and not to exceed six months for an application for demolition. During the waiting period, the Commission and the applicant shall undertake continuing discussions for the purpose of finding a means to preserve the structure, site or area involved or explore other alternatives for requested alteration of structures.
- (5) If the Historic Commission and the applicant cannot agree on a means of preserving the structure through a demolition hardship appeal, within 90 days after the start of the waiting period, the Development Code Administrator shall request that the Planning Director obtain approval and the Director shall have the authority to order necessary appraisals of the market value of the land and structures, if any, comprising the real estate on which the proposed demolition is to be done. The appraisal shall then be referred to the City Manager who shall, within 15 days after the designated six-month waiting period, transmit the application, the appraisals, his recommendation relative to the advisability of immediately purchasing such real estate and the status of the fund from which the purchase money is to be appropriated, to the City Council.
- (6) Within 30 calendar days of the receipt of the application and the report of the City Manager, the City Council shall determine whether or not the immediate acquisition of such property is in the best interest of the public. In the event of an affirmative decision, the City Council shall direct the City Manager to take the necessary steps for immediate acquisition. In the event of a negative decision, the City Council shall either direct the issuance of a certificate of appropriateness, in accordance with applicable law, or, on the basis of the public's best interest, deny the certificate.
- (7) All decisions of the Historic Commission shall be in writing. A copy shall be sent to the applicant and be filed with the Clerk of City Council. The Commission decision shall state the reasons for granting or denying the hardship application. If the application is granted, the Commission shall approve only such work as to alleviate the hardship.

## **Chapter 1214: Parkland Dedication and Open Space**

### **1214.01 PURPOSE AND FINDINGS**

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- (a) The purpose of this chapter is to ensure that adequate parkland and/or open space is provided to serve the recreational needs of the City's residents.

- (b) It is hereby found and determined that the public health, safety and general welfare require at least .0294 acres of property per dwelling unit be devoted to active or passive recreation, and the same is hereby established as the parkland standard for the City. It is further hereby found and determined that the development of new housing creates the need for additional parkland and/or open space and capital improvements to provide the opportunity for active and passive recreation. It is further found and determined that “parkland”, as defined by this section, is and shall be readily available to all residents of the City, regardless of the location of the parkland, and is open and free of charge to the public.
- (c) For purposes of this chapter, “parkland” is defined as publicly-owned lands that can be used for active or passive recreation by the public. For purposes of this chapter, “open space” is defined as privately-owned lands that is used for park purposes and meets the requirements of this chapter for “open space”.
- (d) It is the policy of the City that .0294 acres of parkland should be reserved for each new dwelling unit in the City, and that all new residential developments, mixed use development with residential components, and subdivisions should contribute to the maintenance of the parkland standard.

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## **1214.02    APPLICABILITY**

This chapter shall apply to all new subdivisions and any new development that includes residential dwellings after the effective date of this code.

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## **1214.03    ESTABLISHMENT OF THE PARK IMPACT FEE**

- (a) The applicant shall pay to the City a park impact fee in the sum of 500 dollars for each new dwelling unit.
- (b) The park impact fee will be collected at the time final plat approval is requested for a subdivision or prior to issuance of a certificate of zoning compliance for all dwelling units that are not part of a subdivision.
- (c) The fee shall be based on the total number of dwelling units contained in the application.
- (d) In no case shall more dwelling units be constructed than the number approved and the number for which the park impact fee has been paid.

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## **1214.04    FUND**

All park impact fees collected shall be deposited in a separate and distinct Parkland Acquisition and Capitalization Fund, which is hereby created.

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## **1214.05    USE OF FUNDS**

All park impact fees collected shall be used solely for the acquisition and capital improvement of parkland within or adjacent to the City. No fees shall be used for any other purpose, including maintenance, operation, or the replacement of any existing capital improvements in existing parkland, or the maintenance and operation of any parkland.

## **1214.06 CREDITS**

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### **(a) Credit through Public Parkland Dedication**

- (1)** The City may accept a donation of land in lieu of the payment of the park impact fee, or some portion of the fee. The applicant shall include the proposal for the donation of land in lieu of all or part of the park impact fee at or before the time final plat approval is requested.
- (2)** The City shall not be required to accept any or all land for public dedication.
- (3)** The Planning Commission shall have the authority to determine whether the proposed donation of land is suitable for use as parkland based on factors which reasonably affect its use as parkland including, but not limited to, the:
  - A.** Location;
  - B.** Size;
  - C.** Accessibility;
  - D.** Topography; and
  - E.** Proposed improvements.
- (4)** Undevelopable or unbuildable land will not be eligible for credit under this section.
- (5)** If accepted, the donated property should be dedicated to the City by the final plat or deeded to the City by general warranty deed.
- (6)** Up to 100 percent of the park impact fee may be credited through public parkland dedication based on the value of the dedicated land (See Section [1214.06\(c\)](#) for determination of value.). If the value of the land dedicated is less than 100 percent of the required park impact fee, the remaining fee shall be paid in accordance with this chapter.

### **(b) Credit for Private Open Space**

- (1)** The City may consider allowing a credit for the creation of private open space in the event that an applicant provides such space for park purposes, access to which may be restricted to future residents of the subdivision or development and their guests. For the purposes of this section, the private open space shall be privately-owned and maintained by the future residents of the subdivision or development and/or by their homeowners', property owners' or condominium association.
- (2)** In the event that the Planning Commission determines that such private open space adequately fulfills a portion of the park needs of the proposed subdivision or development, the market value of such areas, as determined in this chapter, shall be credited against the park impact fee required in this chapter.



- (3) The Planning Commission shall have the authority to determine whether the proposed private open space qualifies as credit toward the park impact fee. The Planning Commission may take into consideration the factors established in Section [1214.06\(a\)\(3\)](#) when considering whether the private open space should be used as a credit toward the required park impact fee.
- (4) The following areas shall not be counted towards private open space:
  - A. Private and public roads, and associated rights-of-way;
  - B. Public or private parking spaces, access ways, and driveways related to any residential use;
  - C. Required minimum spacing between buildings and required yard setbacks;
  - D. Vehicular use areas;
  - E. Land that is subject to pre-existing conservation easements or other similar protected open spaces;
  - F. Above-ground buildings, pipes, apparatus, and other equipment for community or individual use, septic or sewage disposal systems;
  - G. Substations, public utility easements;
  - H. Dry stormwater detention basins or facilities; and
  - I. Leftover land that has no value for development and is not a natural resource (e.g., river or stream corridor, large forest stand, wetlands) that contributes to the quality of the overall project.
- (5) The use of the private open space is restricted for park purposes by recorded covenants that run with the land in favor of the future owners of property within the subdivision or development, and which cannot by their terms be defeated or eliminated without the consent of the Planning Commission.
- (6) All private open space utilized as a credit under this chapter must be permanently protected by means as established in Section [1214.07](#).
- (7) Up to 50 percent of the park impact fee may be credited through the creation of private open space based on the value of the open space created (See Section [1214.06\(c\)](#) for determination of value.). If the value of the land dedicated is less than 50 percent of the required park impact fee, the remaining fee shall be paid in accordance with this chapter.

**(c) Determination of Fair Market Value**

- (1) Credit for park impact fees, as allowed in this section, shall be based on fair market value of the land to be dedicated or protected as private open space.
- (2) Fair market value shall equal the average value per acre of all land in each subdivision or development in its raw, undeveloped state, as determined at the time an application is submitted for a final plat or certificate of zoning compliance, whichever is applicable.

- (3) The credit to be considered shall be calculated by determining the amount of acreage proposed for public parkland dedication or private open space, as established in this chapter, to the tenth of an acre, and multiplying that by the per-acre fair market value.
- (4) The fair market value shall be determined by agreement between the applicant and the City of Middletown, which may include appraisal by a qualified appraiser approved by the City and whose fee the City may require to be paid by the applicant.
- (5) If the applicant objects to the fair market value determination provided for in (4) above, fair market value shall be determined by a three member board of appraisers, one of whom shall be appointed by the City, one of whom shall be appointed by the applicant, and one of which shall be selected by the two appraisers so appointed. The decision of a majority of such board shall be final. Each party shall pay the costs and expenses of the appraiser appointed by them, and the parties shall share equally the costs and expenses of the appraiser appointed by the other appraisers.

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## **1214.07 PROTECTION OF PRIVATE OPEN SPACE**

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- (a) Any further subdivision of the private open space for uses other than those prescribed in this chapter, the approved certificate, or the approved plat shall be prohibited.
- (b) In all cases, the long term control and protection of the open space shall be accomplished through the use of a conservation easement.

### **(c) Conservation Easements**

- (1) At the time when an applicant records the plat for the approved subdivision, a conservation easement shall be placed on all lands and private waters used to satisfy the private open space requirement.
- (2) For development that does not require a plat, the applicant shall be required to record the conservation easement before a certificate of occupancy is issued.
- (3) The conservation easement shall:
  - A. Run with the land, regardless of ownership;
  - B. Provide for protection of the land in perpetuity;
  - C. Be granted and deeded to the City, Butler or Warren County, State, park district, a City approved land trust, or other qualified organization approved by the Planning Commission;
  - D. Shall not, in any way, imply the right of public access or any other right or duty not expressly established by the terms of the easement.

- (4) While the City, Butler or Warren County, State, park district, City approved land trust, or other qualified organization may hold the conservation easement, the property itself shall still be owned by the original property owner, the applicant, or a homeowners' or property owners' association. If it is to be owned by an association, the association's documents shall be recorded with the subdivision plat or prior to issuance of the certificate of occupancy. A copy shall be submitted to the Development Code Administrator to be maintained as part of the City's records.
- (5) The conservation easement shall include information on how the property will be maintained by the applicant or owner and shall also state that failure to maintain the property in accordance with the conservation easement agreements shall be considered a violation of this code. In addition, the holder of the easement may pursue any remedy provided by law or equity, including, but not limited to, the remedies in Section 5301.70 of the Ohio Revised Code.

**(d) Homeowners', Property Owners', or Condominium Associations**

- (1) A homeowners', property owners', or condominium association shall be established to permanently maintain all open space and common areas if such areas are not transferred to, and accepted by, the City, Butler or Warren County, State, park district, City approved land trust, or other qualified organization.
- (2) All homeowners', property owners', or condominium association agreements shall be submitted to the Development Code Administrator as part of the subdivision or certificate of zoning compliance application, whichever is applicable. No set of proposed covenants, articles of incorporation, or bylaws of such an association shall permit the abrogation of any duties set forth in this section.
- (3) All homeowners', property owners', or condominium associations shall guarantee the maintenance of all open space and common areas within the boundaries of the development through the deed restrictions or covenants.
- (4) Membership in the association shall be mandatory for all purchasers of lots or units in the subdivision or development.
- (5) The association shall be responsible for maintenance, control, and insurance of all common areas, including required open space.
- (6) In the event that the homeowners', property owners', or condominium association no longer maintains the common areas and open space in a neat and orderly manner, or if the association goes defunct, the City may take over maintenance and assess a fee to cover the costs of such maintenance. The fee shall be assessed to each of the benefitting property owners within the subdivision or development.

## **1214.08 PROHIBITION**

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- (a) No plat will receive the final approval of Planning Commission, and no further approvals for certificates or permits will be considered until the fee provided for in this chapter is paid or the dedication of parkland or provision of open space as provided for in this chapter is made.
- (b) Nothing contained in this ordinance shall relieve or be interpreted as relieving any person, firm or corporation from complying with all other ordinances, law, rules, regulations of the City or any other governmental agency when they are now in force or hereafter enacted, regulating or governing the construction of residential structures in the City.

# Chapter 1216: Landscaping and Buffering

## 1216.01 PURPOSE

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It is the purpose of this section to promote and protect the public health, safety and general welfare by providing for the planting, maintenance, and preservation of trees, shrubs, and other plants within the City. It is further the purpose of this section to:

- (a) Ensure and encourage the planting, maintenance, restoration and survival of trees, shrubs, and groundcover;
- (b) Minimize soil erosion and sedimentation;
- (c) Reduce storm water runoff and the related costs;
- (d) Protect and enhance property values and aesthetic qualities through quality design and buffering of different land uses; and
- (e) Provide visual screening, where appropriate.

## 1216.02 APPLICABILITY

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- (a) The development standards of this section shall apply to new development and any collective, substantial expansion of existing structures. Substantial expansion of existing structures shall be defined as when the expansion of the structure meets or exceeds 25 percent of the square footage of the building footprint prior to expansion.
- (b) Section 1216.06 shall apply to any size expansion of a structure where such expansion will decrease the setback between the structure and a residential zoning district.
- (c) Where there is no expansion of a structure but the vehicular use area is expanded, the standards of Section 1216.08 shall apply for the newly expanded areas of the vehicular use area.

### (d) Exemptions

The following uses and activities shall be exempt from the requirements of this section.

- (1) Single-family, two-family, and three family dwellings shall be exempt from all sections of this chapter except for:
  - A. Section 1216.04; and
  - B. Section 1216.07(a).
- (2) Any vehicular use area that contains five or fewer parking spaces.

### (e) Planned Developments

All development in a PD shall be subject to the standards of this chapter unless otherwise modified through the PD review and approval process.

### (f) Landscape Plan Required

- (1) When a development is subject to the provisions of this section, a landscaping plan shall be submitted with a certificate of zoning compliance application.

- (2) A landscaping plan shall be submitted with any application for alternative equivalent review if the request includes a variation of the landscaping standards of this chapter.
- (3) The landscaping plan shall demonstrate how the development will comply with the provisions of this chapter, and shall include, at a minimum, the location, size, spacing, species, form, and quality of all existing and proposed materials intended to fulfill the requirements of this section. The landscaping plan should also illustrate topography, the location of all utilities, private irrigation wells and/or any proposed underground sprinkler system or hose bib attachments.

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### **1216.03 INSTALLATION**

Landscaping required as part of this section shall be installed prior to issuance of an occupancy permit or commencement of use, or at a different date mutually agreed to by the applicant and the Development Code Administrator if weather or material availability justifies a later installation date. In no case shall landscaping installation occur more than one year after the issuance of a certificate of occupancy.

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### **1216.04 LANDSCAPING MATERIALS**

#### **(a) Existing Landscape Material**

- (1) Unless otherwise noted, existing landscape material in healthy condition can be used to satisfy the requirements of this section in whole or in part provided they meet all requirements of this section.
- (2) The Development Code Administrator shall have the authority to determine if any existing landscape material can be used to satisfy the requirements of this section.

#### **(b) Intersection Visibility**

All landscaping shall be subject to the intersection visibility standards established in Section [1208.05](#).

#### **(c) Walls and Fences Used for Landscaping**

- (1) Walls and fences used to comply with the standards of this section shall also comply with Section [1208.06](#).
- (2) Chain link fences with or without wooden or synthetic slat material shall not be allowed when used to satisfy the buffer requirements of this section.

#### **(d) Planting Standards**

All plants utilized in the fulfillment of the requirements of this section shall meet the following requirements:

- (1) Plants installed shall meet the standards for size, form, and quality set out in the American Standard for Nursery Stock (ANSI Z60.1, latest edition); and

- (2) All planting materials shall follow the City of Middletown Comprehensive Plant Species list.
- (3) Trees shall be balled and burlapped or in containers. Shrubs, vines, and ground covers can be planted as bare root as well as balled and burlapped or from containers.
- (4) Plant materials should consist of hardy, native and/or drought-tolerant vegetation to the maximum extent feasible.
- (5) All planting materials shall be free of noxious weeds, disease, and pests.
- (6) All trees selected to be protected shall be protected according to ANSI A300 standards.
- (7) Nursery stock identification tags shall not be removed from any planting prior to inspection and approval of final installation by the City.
- (8) Vegetation shall comply with the minimum size requirements established in [Table 1216-1](#).
- (9) Vegetation shall be subject to review by the Natural Resource Coordinator when applicable.

TABLE 1216-1: MINIMUM SIZE REQUIREMENTS FOR VEGETATION	
VEGETATION TYPE	MINIMUM SIZE REQUIREMENT
Deciduous Trees (Canopy or Understory)	2 inch DBH
Evergreen Trees	6 feet in height when planted
Shrubs	2 feet in height when planted
Hedges	Size as needed so that the plant materials forms a continuous, unbroken screen within one planting season
DBH = Diameter at Breast Height	

- (10) A list of recommended trees for Middletown is on file with the office of the Development Code Administrator. Substitution can be accepted if approved by the Development Code Administrator.

**(e) Species Diversity**

To curtail the spread of disease or insect infestation in a plant species, new plantings shall comply with the standards of [Table 1216-2](#).

TABLE 1216-2: SPECIES DIVERSITY	
NUMBER OF TREES REQUIRED ON SITE	MAXIMUM PERCENTAGE OF TREES THAT MAY BE OF A SINGLE SPECIES
1-5	100%
6-19	50%
20-39	33%

40 or more	25%
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**(f) Mounding Specifications**

- (1) Mounding provided in lieu of or in combination with walls, fences, and/or evergreen plantings shall consist of a strip of land as wide as necessary to obtain a maximum slope of 3:1 (angle of repose).
- (2) Mounding may include rocks and other excavated materials, but one foot of dirt covered by six inches of topsoil shall be provided over the entire mounding. Trees, shrubs, wood, and other non-compactable items shall not be used in the construction of mounding.
- (3) No mounding will be allowed in any required utility easements, except for perpendicular utility easement crossings. Mounding shall provide adequate access to utility easements adjacent to the mounding.
- (4) Mounding shall be planted with a ground cover suitable to prevent erosion, and shall be maintained by the private property owner, in conformance with code, on which the mound rests. Other forms of vegetation may also be planted on the mounding.
- (5) A difference in elevation between areas requiring screening does not constitute an existing earth mound and shall not be considered as fulfilling any screening requirement.
- (6) Drainage patterns shall be considered, maintained and/or modified only with the approval of the City Engineer, when mounding is used.
- (7) The property on which the mound is located is responsible for the maintenance of the mound including but not limited to grass cutting, tree trimming/replacement, etc.

**1216.05 TREE PRESERVATION**

(a) Site planning efforts must preserve natural vegetative areas, to the maximum extent possible through the placement of buildings, streets, and parking areas.

(b) Tree preservation is required in the BC District as follows:

- (1) All deciduous trees measuring at least a six inches DBH shall be preserved unless such trees are exempted as follows:
  - A. Trees within public rights-of-way or utility easements, or a temporary construction easement.
  - B. Trees within the building footprint of proposed structures or within 12 feet from the perimeter of such structures.
  - C. Trees that are damaged, diseased, over mature, which interfere with utility lines or are an inappropriate or undesirable species for that specific location.
  - D. Trees removed for necessary drainage purposes.
  - E. Trees within required vehicular use areas that cannot be preserved for use as required landscaping.



- (2) Preserved trees may be credited toward overall tree density and buffering requirements as follows:
  - A. < 6" DBH = 0 trees
  - B. 6" - 8" DBH tree = 1 tree
  - C. 8" - 12" DBH tree = 2 trees
  - D. 12" - 18" DBH tree = 3 trees
  - E. 19" - 24" DBH tree = 4 trees
  - F. > 25" DBH tree = 5 trees
- (3) Trees to be credited toward buffering requirements must be located in the required buffer area.
- (4) Trees designated to be preserved must be indicated on the plans submitted with the application by establishing tree preservation zones. The boundaries of the zone must be located at the drip line of the trees and marked clearly with fencing and signage. No construction activity, including grading, stacking materials, parking construction equipment or construction traffic is permitted within a tree preservation zone.

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## **1216.06 LANDSCAPE BUFFERING REQUIREMENTS**

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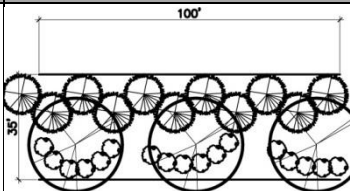
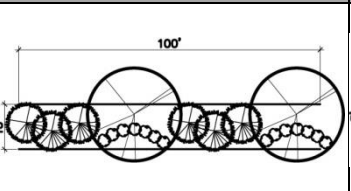
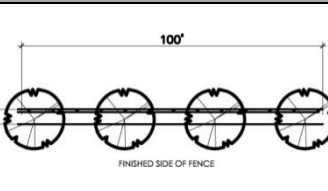
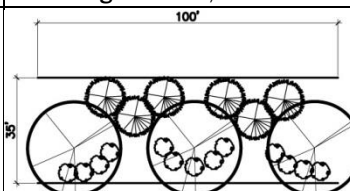
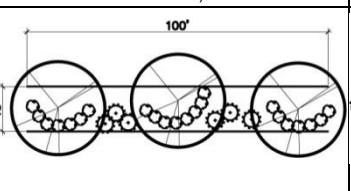
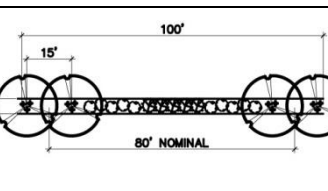
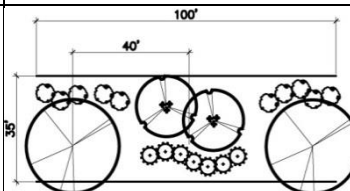
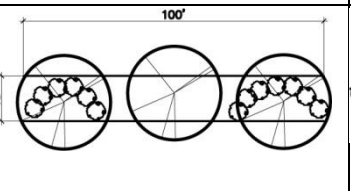
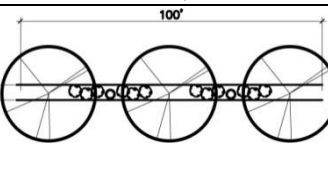
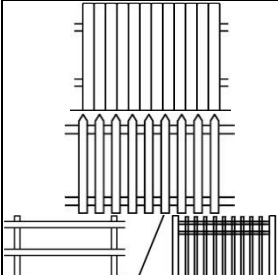







Development subject to the requirements of this section shall provide buffering in accordance with this subsection.

### **(a) Buffer Types**

Table 1216-3 describes three different buffering standards in terms of opacity. Where a particular buffer type is required in Table 1216-4, the requirements may be met with the combination of minimum buffer width and planting requirements specified in Table 1216-3 on the following page.

**TABLE 1216-3 ON FOLLOWING PAGE.**

**TABLE 1216-3: BUFFER TYPES**

	OPTION 1: BUFFER WIDTH 35'	OPTION 2: BUFFER WIDTH 15'	OPTION 3: BUFFER WIDTH 5'
<b>BUFFER TYPE A: OPAQUE</b> This perimeter buffer functions as an opaque screen and prevents visual contact between uses and creates a strong impression of total separation.	 <ul style="list-style-type: none"><li>• 3 shade trees, 40' O.C.</li><li>• 11 evergreen trees, 12' O.C.</li><li>• 17 large shrubs<sup>1</sup>, 5.5' O.C.</li></ul>	 <ul style="list-style-type: none"><li>• 2 shade trees, 40' O.C.</li><li>• 6 evergreen trees, 12' O.C.</li><li>• 14 small shrubs<sup>1</sup>, 4' O.C.</li></ul>	 <ul style="list-style-type: none"><li>• 4 fastigiated trees, 30' O.C.</li><li>• 6' opaque fence or brick or stone wall</li></ul>
<b>BUFFER TYPE B: SEMI-OPAQUE</b> This perimeter buffer functions as a semi-opaque screen.	 <ul style="list-style-type: none"><li>• 3 shade trees, 40' O.C.</li><li>• 6 evergreen trees, 12' O.C.</li><li>• 13 large shrubs<sup>2</sup>, 5.5' O.C.</li></ul>	 <ul style="list-style-type: none"><li>• 3 shade trees, 40' O.C.</li><li>• 6 large shrubs<sup>2</sup>, 5' O.C.</li><li>• 22 small shrubs<sup>2</sup>, 4' O.C.</li></ul>	 <ul style="list-style-type: none"><li>• Cluster of 2 ornamental or fastigiated trees, 80' O.C. between clusters</li><li>• 10 columnar evergreen shrubs<sup>2</sup>, 4' O.C.</li><li>• 10 small shrubs<sup>2</sup>, 4' O.C.</li></ul>
<b>BUFFER TYPE C: LIGHT</b> This buffer functions as an intermittent visual obstruction and creates the impression of spatial separation without eliminating visual contact between uses.	 <ul style="list-style-type: none"><li>• 2 shade trees and clusters of 2 ornamental trees, 40' O.C. between shade trees/ clusters</li><li>• 2 ornamental trees, 15' O.C.</li><li>• 17 large shrubs<sup>3</sup>, 5.5' O.C.</li></ul>	 <ul style="list-style-type: none"><li>• 3 shade trees, 40' O.C.</li><li>• 13 large shrubs<sup>3</sup>, 5.5' O.C.</li></ul>	 <ul style="list-style-type: none"><li>• 3 ornamental or fastigiated trees, 40' O.C.</li><li>• 14 small shrubs or mix of shrubs/perennials<sup>3</sup>, 4' O.C. or planted in clusters, 40' O.C. between clusters.</li></ul>
 <p>Opaque Fence</p> <p>Semi-Opaque Fence</p> <p>Transparent Fence</p>	 Shade tree: 2.5" caliper  Fastigiated Tree: 2.5" caliper  Ornamental Tree: 7' height	 Evergreen tree: 7' height  Columnar evergreen shrub: 6' height  Large shrub: 2'-4' height  Small shrub: 1.5'-2' height	

<sup>1</sup>: May substitute shrubs with 6' opaque fence or brick or stone wall

<sup>2</sup>: May substitute shrubs with 6' semi-opaque fence or brick or stone wall

<sup>3</sup>: May substitute shrubs with 4' transparent fence or 3' brick or stone wall segments

O.C.: On Center; all On-Center dimensions are approximate

**(b) Required Buffers**

- (1) [Table 1216-4](#) specifies the type of landscape buffer that a new development shall provide between it and adjacent properties, based on the use of the development site and that of adjacent properties. The buffer type is indicated by a letter corresponding to one of the three buffer types depicted in [Table 1216-3](#).
- (2) Landscape buffers shall only be required along lot lines that are adjacent to lots located within the Middletown municipal boundaries or are located adjacent to residential subdivisions, regardless if the subdivision is within the Middletown municipal boundaries.
- (3) No buffer shall be required in the UC District, except for when a vehicular use area has frontage along a public street, in which case, the vehicular use area shall be buffered with a Type C Buffer.
- (4) A residential subdivision or the construction of a single-family, two-family, or three-family dwelling shall not be required to install a buffer when adjacent to a different use.
- (5) When reviewing a conditional use application, the Planning Commission may require additional buffer treatments or may waive certain requirements based on a case-by-case basis.

TABLE 1216-4: REQUIRED BUFFERS						
ADJACENT TO:	ANY USE IN A R-1, R-2, OR R-3 DISTRICT	ANY LOT IN AN R-4 DISTRICT	ANY LOT WITH A PUBLIC OR INSTITUTIONAL USE IN A NONRESIDENTIAL DISTRICT	ANY LOT IN A O-1, O-2, B-1, OR UC DISTRICT	ANY LOT IN A B-2, B-3, OR BC DISTRICT	ANY LOT IN AN I-1 OR I-2 DISTRICT
<b>PROPOSED USE:</b>						
Multi-family dwellings and uses in the Group Living Use Category	C	None				
Any Public and Institutional Use	B	C	None			
Any use in the O-1, O-2, or B-1 Districts	B	B	None			
Any use in the B-2, B-3, or BC Districts	A	B	None			
Any use in the I-1 District	A	A	C	None		
Any use in the I-2 District	A	A	C	C	C	None

**(c) Alternative Buffering Options**

An applicant may propose an alternative to the buffer requirements if approved through the alternative equivalent compliance procedure. See Section [1226.09](#).

**(d) Buffer Establishment**

Once a buffer has been approved by the Development Code Administrator and established by the owner, it may not be used, disturbed or altered for any purpose unless otherwise permitted by the City.

**(e) Location of Buffers**

- (1)** The landscape buffer shall be provided along the entire lot line between the two adjacent uses identified in [Table 1216-4](#).
- (2)** Buffers required by this section shall be located completely on the lot subject to the buffer requirement and only along the outer perimeter of the lot where it abuts another lot, and shall extend to the lot line or right-of-way line.
- (3)** The only exceptions to paragraph (2) are:
  - A.** If a landscape buffer, required by this code, is established on the adjacent lot and is permanently protected as a buffer in accordance with the provisions of this code and cannot be removed or disturbed in the future; or
  - B.** If a unique characteristic of the lot (e.g., an existing stand of woods or existing vegetation that is not on the perimeter of the site) would create a better option to the required buffer type.

**(f) Development within Required Buffers**

The required buffer shall not contain any development, impervious surfaces, or site features (except fences or walls) that do not function to meet the standards of this section or that require removal of existing vegetation, except for the following features:

- (1)** Fences or walls;
- (2)** Sidewalks, trails, and other elements associated with passive recreation, if all required landscaping is provided;
- (3)** Signs and light posts;
- (4)** Driveways, access roads, and similar uses if they cross perpendicularly across a required buffer, are designed to limit disturbance of vegetation, and have a maximum width of 24 feet; or
- (5)** Overhead and underground utilities required or allowed by the City.

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**1216.07 SITE LANDSCAPING**

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**(a) Site Landscaping for Single-, Two-, Three-, and Four-Family Dwellings**

- (1) Public Space/Front Yards**
  - A.** Front yards shall be landscaped with plants and ground covers to enhance the dwelling.
  - B.** At least 15 percent of the front yard shall be landscaped with shrubbery, hedges, and flowering types of planting materials.

- C. For purposes of this section the front yard area shall be the minimum front yard setback multiplied by the minimum lot width for the specific development or zoning district in which the dwelling is located.
- D. For corner lots this landscape area shall be increased to 20 percent based on the yard area for a single frontage, however this 20 percent landscaping area may be applied to either or both street frontage.

**(2) Trees**

- A. A minimum of three trees shall be provided in each front yard area, up to two which may be planted between the sidewalk and the street curb.
- B. Each tree shall be a minimum of one and one-half inch caliper DBH.

**(b) Site Landscaping in the BC District**

- (1) A minimum of 15 trees per gross acre are required in the BC District.
- (2) This requirement may be met through any of the required landscaping (e.g., buffering, site landscaping, landscaping in vehicular use areas, etc.) as well as tree preservation.
- (3) In order to enhance and soften the appearance of buildings, at least 50 percent of the area within 10 feet of all principal buildings shall consist of planted areas and contain a combination of trees, grass, flowers, shrubs, and other ground cover. If foundation planting requirements overlap with buffer requirements in Section 1216.06, the buffer requirements may satisfy this standard. See Figure 1216-A.

Area Around Building

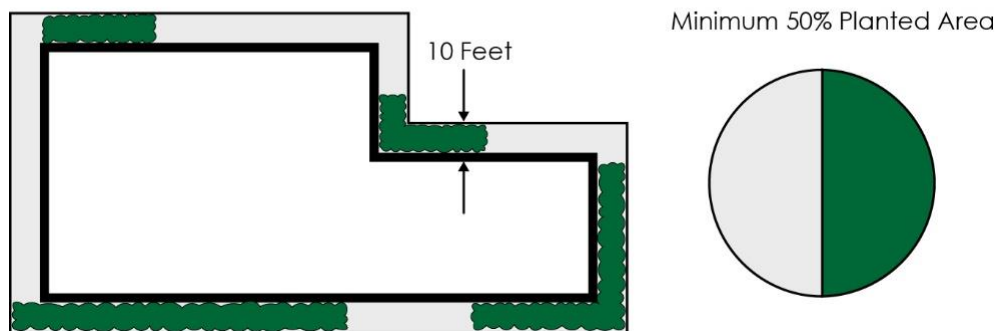


Figure 1216-A: Illustration of the location of foundation planting requirements.

**1216.08 LANDSCAPING REQUIREMENTS FOR VEHICULAR USE AREAS**

- (a) This section establishes the minimum standards by which vehicular use areas (off-street parking, loading, stacking, and access drives) will be screened from adjacent public streets or from adjacent properties. In addition, this section delineates standards for landscaping within the interior of parking areas.
- (b) Whenever required screening is adjacent to parking areas or driveways, such screening shall be protected by bollards, wheel blocks, or curbing (See Section 1218.04(g)(5).) to avoid damage by vehicles.

**(c) Applicability**

Unless otherwise stated, this section shall apply to any lot that contains 20 or more parking spaces.

**(d) Perimeter Areas Adjacent to Public Streets**

- (1) Vehicular use areas adjacent to public streets shall be separated from the edge of the right-of-way by a perimeter landscape strip no less than five feet in width, not including the sidewalk or any other paved area.
- (2) The landscape strip shall be planted with one tree for each 40 linear feet or fraction thereof and shall include a hedge, wall, or other opaque durable landscape barrier, which will be at least two feet in height at maturity, along the entire length of the landscape strip. See [Figure 1216-B](#). The landscape strip shall be covered with grass or other ground cover, e.g. wood chips.



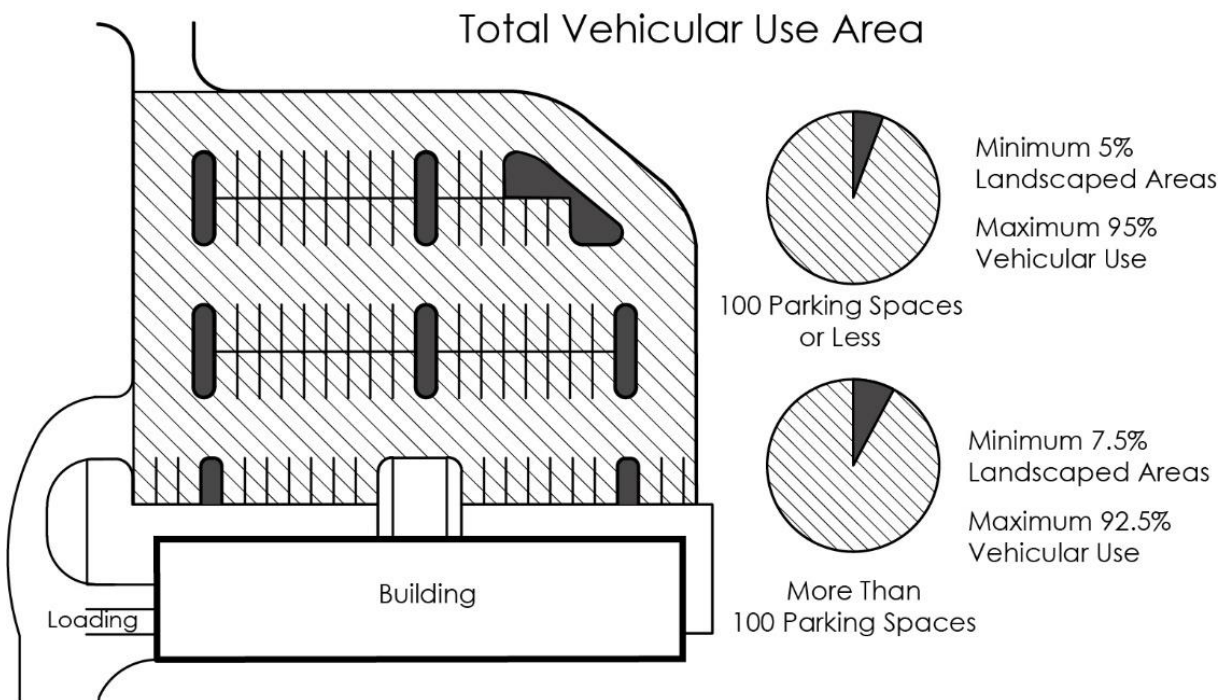
*Figure 1216-B: The above image illustrates an example the provision of a two-foot landscape barrier along the street right-of-way.*

- (3) If the above two-foot landscape barrier is constructed of non-living materials, one shrub or vine shall be planted every 10 feet along the barrier.
- (4) The remainder of the required landscaped areas shall be landscaped with grass, ground cover or other landscape treatment.
- (5) Any public right-of-way or areas reserved for future rights-of-way in compliance with the adopted thoroughfare plan shall not be used to satisfy the requirements of this section. The Development Code Administrator may waive this requirement if, with consultation from the City Engineer, they determine that thoroughfare will not realistically be expanded due to the existing development adjacent to the right-of-way or lack of need for future expansion.
- (6) Perimeter landscape strips shall be continuous and unbroken except for driveways or sidewalks required to access the parking area.



**(e) Interior Parking Area Landscaping Required**

- (1) Such landscaping shall be in addition to landscaping adjacent to public streets and screening requirements as specified in this chapter.
- (2) A minimum of five percent of the total vehicular use area shall be designed as interior landscaping areas. If the parking lot has more than 100 parking spaces, the percentage shall be increased to 7.5 percent of the total vehicular use area shall be designed as interior landscaping area.
- (3) The interior landscaping shall be located within landscaped islands that are separated from the perimeter landscaping required in Section 1216.08(d), and shall be scattered throughout the parking area to break up large areas of pavement. Landscaped islands that are designed as extensions from the perimeter landscaping areas shall also be considered as interior parking area landscaping but shall not count as the perimeter landscaping area. See Figure 1216-C.



**Figure 1216-C: Illustration of the landscaped areas that count towards the minimum interior parking area requirement.**



*Figure 1216-D: The above images show different options for landscaped islands with the top image illustrating landscaped islands that run the full length of parking spaces. The bottom image illustrates a smaller landscaped island at the end of a parking bay.*

- (4) Landscape islands shall have a minimum size of 180 square feet within a minimum dimension of eight feet in any direction to provide a suitable living environment for the landscaping.
- (5) If an existing tree is to be used to meet the requirements of this subsection, the landscape island shall be equal in size to the tree's drip line area to protect the root system of the existing tree.
- (6) At least one deciduous tree and two shrubs must be provided per ten parking spaces within landscape islands, provided there is no impairment to visibility of motorists or pedestrians. In no case shall there be less than one tree and three shrubs planted in each landscaped island.

## **1216.09 PEDESTRIAN AMENITIES IN THE BC-H**

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- (a) Pedestrian amenities shall be required in the BC District and include outdoor pedestrian plazas with benches, outdoor dining, outdoor playground area, water features, clock towers, public art, or similar outdoor feature that provides an amenity and/or focal point for pedestrians.
- (b) At least one square foot of pedestrian amenities per off-street parking space is required in the BC-H Sub-district.
- (c) Pedestrian amenities should be placed in front of a building near the public sidewalk or near building entrances.
- (d) Pedestrian amenities may be provided as an alternative to buffer requirements along arterials and foundation planting requirements, as follows:
  - (1) The length of perimeter landscaping for which landscaping is required may be reduced by the length of street frontage for which pedestrian amenities are provided.
  - (2) The area within ten feet of a building for which foundation planting areas are required may be reduced by the area for which pedestrian amenities are provided.



## **1216.10 SCREENING REQUIREMENTS**

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### **(a) General Requirements**

In addition to the other forms of required landscaping, screening shall be required to conceal specific areas of high visual or auditory impact or hazardous areas from adjacent, less intense uses and from views from public rights-of-way. Such areas shall be screened at all times, unless otherwise specified, regardless of adjacent uses, districts, or other proximate landscaping material.

### **(b) Screened Items**

- (1)** The following areas shall be screened in accordance with this section:
  - A.** Large waste receptacles (e.g., dumpsters and cardboard recycling containers) and refuse collection areas;
  - B.** Off-street loading areas;
  - C.** Pipes, conduit, and cables associated with the building or use;
  - D.** Outdoor service areas that are necessary to support common business operations (e.g., outdoor freezer or refrigeration units, storage units, etc.);
  - E.** Ground-level or façade-mounted mechanical equipment and utility structures; and
  - F.** Roof top equipment that is not otherwise hidden by the roofline, parapet wall, or other similar feature.
- (2)** Screening shall not be required if any of the above items are not visible from adjacent rights-of-way or from adjacent residential lots.
- (3)** All sides of the item shall be screened with the exception that one side of the item may be screened with a gate or other similar feature to allow access while screening the item when access is not necessary.

### **(c) Screening Methods**

- (1)** The following items are permitted for use as screening materials, and more than one method may be used on a lot or site.
  - A.** Vegetative materials that provide a fully opaque screen to the minimum height necessary to fully screen the facility from off-site views (See [Figure 1216-E.](#)); or
  - B.** An opaque fence or wall consistent with the standards for Buffer Type A in Section [1216.06\(a\)](#); or
  - C.** Integration into the building design (e.g., false walls or other architectural screening) that utilizes the same building materials and colors as the principal building.
- (2)** The required screening shall have a height sufficient enough to screen the applicable item(s) provided it is in accordance with any other applicable sections of this code including, but not limited to, Section [1208.06](#).
- (3)** Alternative screening materials that are not listed or alternative configurations may be proposed as part of an alternative equivalent review application. See Section [1226.09](#).

- (4) To the maximum extent feasible, pipes, conduit, and cables should be located along the rear facade of buildings if conditions do not allow for them to be enclosed within the building itself. Pipes, conduit, and cables shall be located as far away from public view as practical and shall be painted a similar color as the building façade to further reduce visibility.



*Figure 1216-E: The above image illustrates a vegetative screen that hides HVAC equipment and a dumpster.*

**(d) Configuration of Vegetative Materials**

In cases where vegetative materials are used for screening in accordance with this subsection, the vegetative materials shall:

- (1) Be planted around the perimeter of the site feature to be screened in a manner that screens the site feature from all off-site views;
- (2) Be configured in two staggered rows or other arrangement that provides maximum screening;
- (3) Be upright, large evergreen shrubs or a hedge and be capable of reaching at least six feet in height within three years of planting; and
- (4) Be spaced no farther than necessary to create an opaque screen when the shrubs or trees are fully grown. In no case shall trees used for screening be spaced further than eight feet apart on center.

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**1216.11 MAINTENANCE**

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- (a) The owner of the property shall be responsible for the continued property maintenance of all landscaping materials, and shall keep them in a proper, neat and orderly appearance, free from refuse, debris, and weeds at all times.
- (b) All unhealthy or dead plant material shall be replaced within one year, or by the next planting period, whichever comes first.
- (c) Violation of these installation and maintenance provisions shall be subject to the enforcement provisions of [Chapter 1228: Enforcement and Penalties](#).

# Chapter 1218: Parking, Access, and Mobility

## 1218.01 PURPOSE

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The purpose of this section is to regulate the amount and location of vehicular parking and circulation as well as pedestrian circulation in order to promote a more efficient use of land, enhance urban form, encourage the reduction of impervious surface area, and provide for better pedestrian movement. The provisions of this chapter are intended to:

- (a) Prevent and alleviate the congestion of public streets;
- (b) Encourage the incorporation of alternative modes of transportation by encouraging pedestrian and bicycle circulation;
- (c) Promote greater safety of passage between highway and land;
- (d) Minimize the detrimental effects of vehicular use areas on adjacent properties;
- (e) Encourage the reduction of impervious surfaces through effective design and the use of shared parking, where practical; and
- (f) Promote the health, safety, and public welfare by establishing minimum requirements for vehicular use areas.

## 1218.02 APPLICABILITY

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### (a) Time of Review

Compliance with this section shall be reviewed as part of an application for a certificate of zoning compliance.

### (b) New Development

- (1) The requirements of this section shall apply to all new development where there is the construction of a new structure (excluding accessory structures) or establishment of a new land use.
- (2) The number of existing parking, loading, or stacking spaces may not be reduced below the minimum requirements established within this section.

### (c) Expansions and Enlargements

The parking, loading, and stacking space requirements of this section shall apply when an existing structure is expanded or enlarged or when there is an increase in the number of dwelling units within the building. In the case of such expansions and enlargements, additional parking, loading, and stacking spaces are required to serve only the enlarged or expanded area.

### (d) Subdivisions

All subdivisions shall be subject to the requirements of Section [1218.07](#).

### (e) Nonconforming Parking, Loading, and Stacking

Where a site is legally nonconforming due to a lack of compliance with the parking, loading, or stacking space requirements of this section, a future use of the site need not comply with the required number of spaces provided:

- (1) The applicant provides the maximum amount of parking, loading, or stacking spaces possible without being required to remove or partially remove a structure.
- (2) If a structure or a portion of a structure is voluntarily removed, the resulting area shall be used to provide the additional parking, loading, or stacking spaces necessary towards fulfilling the minimum requirements of this section.
- (3) In no case shall the number of parking spaces be further reduced after the effective date of this code.
- (4) A use or structure with nonconforming off-street parking (e.g., insufficient off-street parking to meet the current requirements or insufficient landscaping) may only be expanded in compliance with the provisions of this section.
- (5) Changes or expansions of a residential dwelling shall not require the addition of parking, regardless of the number of existing spaces, provided the change does not increase the number of dwelling units, nor eliminate the only portion of the site that can be used for the required or existing parking or access.

**(f) Exemptions**

- (1) Single-family, two-family, and three-family dwellings are required to comply with this chapter as it relates to setbacks and the number of parking spaces required, as well as the general requirements in Section 1218.03, but are otherwise exempt from other standards related to the design and layout of vehicular use areas.
- (2) All development in the Urban Core Central Subdistrict shall be exempt from the off-street parking requirements of this chapter provided that any of parking areas developed at the option of the property owners shall be designed in accordance with Section 1218.04(g) and shall comply with any applicable standards in Section 1218.03.

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## **1218.03 GENERAL REQUIREMENTS**

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**(a) Traffic Impact Studies, Access Management, and Curb Cuts**

All requirements and regulations related to traffic impact studies, access management, curb cuts, and similar requirements are located in Chapter 1026 of the Middletown Code of Ordinances.

**(b) Driveways**

All private driveways shall comply with the requirements of applicable sections of Chapter 1410 of the Middletown Code of Ordinances.

**(c) Cross-Access Requirements**

- (1)** Development that includes nonresidential uses shall allow for shared, private vehicular access among all buildings and/or lots within the development and with adjacent lots to the maximum extent feasible in order to facilitate movement of customers and their vehicles without generating additional turning movements on public streets.
- (2)** Where cross access is provided across multiple lots, a cross-access easement shall be recorded with the applicable county recorder prior to issuance of a certificate of occupancy. Cross access shall be provided subject to the following provisions:
  - A.** Cross-access routes shall permit shared automobile access to driveways and parking areas for all nonresidential uses in the development, and to the maximum extent feasible, to adjacent lots and development. The use of parking spaces may be restricted to the owner's customers and tenants only.
  - B.** The Development Code Administrator may waive the requirement for cross access, in whole or in part, administratively, where cross-access is deemed impractical due to vehicular safety issues or environmental constraints such as severe topography.

**(d) Location**

- (1)** Except as otherwise expressly provided in Section [1218.04\(f\)\(2\)](#), all required off-street parking, loading, and vehicle stacking spaces shall be located on the same lot as the principal use.
- (2)** Parking lots, parking spaces, vehicle stacking spaces, and loading spaces shall be subject to this section, unless otherwise expressly stated in this code.
- (3)** Where a buffer is required pursuant to Section [1216.06](#), no vehicular use area may be located in the required buffer area and related setback.
- (4)** Vehicular use areas with five or more parking spaces shall be set back a minimum of five feet from all rights-of-way and 10 feet from all residential lots or lots used for public or institutional uses unless shared parking or joint parking arrangements are made. In cases where buffering is required, a wider setback may be required.
- (5)** Off-street parking areas shall not be permitted in the front yard (See Section [1204.10\(a\)](#).) of any use in any O-1, O-2, B-3, I-1, BC (including all subdistricts) or residential zoning districts unless located on a paved driveway.

**(e) Fire Code**

All vehicular use areas shall conform to all requirements set forth in the applicable fire code as adopted by the City of Middletown.

**(f) Accessibility**

All vehicular use areas shall be designed and improved in compliance with applicable building and design codes to ensure compliance with the Americans with Disabilities Act.

**(g) Use of Vehicular Use Areas**

- (1) Off-street vehicular use areas required by this section shall be used solely for the parking of motor vehicles in operating condition of patrons, occupants or employees of such uses.
- (2) No motor vehicle repair work or service of any kind, except emergency repairs, shall be permitted in or in association with any off-street vehicular use area, except that off-street vehicular use areas for residential uses may be used for occasional auto washing or minor repairs of vehicles owned by the occupant.
- (3) Off-street parking areas shall not be used for the storage or display of vehicles, trailers, boats, etc. for sale unless such display is in conjunction with a business establishment whose principal business is in the sale or lease of vehicles, trailers, or boats or if the vehicle being sold is the personal vehicle of the lot owner.
- (4) The sale of merchandise in a parking area shall be permitted only in accordance with [Section 1206.01](#).

**(h) Grading, Surface, and Maintenance**

- (1) All grading and storm water control plans relating to the parking areas shall be reviewed and approved by the City Engineer before any work can commence.
- (2) All parking areas shall be properly graded and drained so as to dispose of all surface water accumulated within the area of the parking lot.
- (3) Except for temporary parking permitted as part of a temporary use or any pervious surface permitted above, all open off-street parking areas shall be graded and provided with a hard surface of asphaltic, bituminous cement, concrete or other properly bound pavement so as to provide a durable and dustless surface, including private parking areas on residential lots.
- (4) Up to 50 percent of parking spaces may be constructed of a pervious surface, as approved by the City Engineer. The City Engineer shall review the design of any areas surfaced with a pervious surface. Failure to maintain the pervious surface in good working order as may be necessary dependent on the type of surface shall be considered a violation of this code subject to [Chapter 1228: Enforcement and Penalties](#).
- (5) The surfacing requirements in paragraphs (3) and (4) above shall not apply to an off-street parking area located in any I-1 or I-2 District which is located at least 100 feet from any lot in any residential zoning districts except that a dustless surface shall be provided in any case. However, any access drive to such unpaved lot shall be paved for a distance of at least 20 feet from any public right-of-way.



- (6) The total surface area of a private parking area, including driveways, in the front yard shall not exceed fifty percent of the total surface area of the front yard in all residential districts.
- (7) Parking areas with more than five spaces shall be so graded and drained as to dispose of all surface-water accumulation by means of catch basins or intakes so that water from these areas does not run across a public sidewalk or directly into a public street.

**(i) Parking and Storage of Major Recreational Equipment and Large Utility Trailers**

- (1) In any residential zoning district, there shall be no parking or storage of major recreational equipment or large utility trailers in any front yard of a dwelling (See Section [1204.10\(a\)](#).) within 35 feet of the right-of-way line. Temporary parking is allowed for a period of 72 hours within any seven consecutive days for loading and unloading purposes.
- (2) Major recreational equipment, the related trailers, and large utility trailers may be parked or stored outdoors in the side or rear yard of a residential premises, provided that:
  - A. All vehicles and trailers shall be parked or stored in a single location on the premises; and
  - B. All parking spaces shall meet the surface requirement as specified in Section [1218.03\(h\)](#). Alternative hard surface brick or interlocking paver material may be used.
- (3) Major recreational equipment or large utility trailers may be parked or stored, in any condition, within a fully enclosed garage that is located in accordance with Section [1206.01](#).
- (4) The vehicle or trailer shall be properly licensed and registered for highway use as required by the State, and the vehicle shall be maintained in good condition so that it can be readily transported (wheels shall not be removed; tires shall not be flat; and the vehicle shall not be fixed to the ground).
- (5) No business shall be conducted within major recreational equipment while it is parked on residential premises.
- (6) No major recreational equipment shall be used for dwelling purposes.

**(j) Parking of Commercial Vehicles on Residential Lots**

- (1) Only those vehicles that are classified as a Class 1 (Light Duty) or Class 2 (Light Duty) vehicle by the Federal Highway Administration are permitted to be parked or stored on residential lots. All other classification of vehicles may only be parked or stored on residential lots when within a fully enclosed building.
- (2) The above prohibition does not apply to commercial vehicles that are delivering goods to a residence, related to service calls, related to construction on the site, or other similar activities where commercial vehicles may be required.

## **1218.04 OFF-STREET PARKING REQUIREMENTS**

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### **(a) Rules for Computation**

#### **(1) On-Street Parking**

On-street parking spaces shall not be counted toward off-street parking space requirements except as may otherwise be provided for in this code.

#### **(2) Driveway Space Meeting Parking Requirements**

Entrances, exits, or driveways shall not be computed as any part of a required parking lot or area, except in the case of single-family, two-family, and three-family dwellings where driveways may be used in calculating the amount of off-street parking.

#### **(3) Multiple Uses**

- A.** If the development includes a multi-tenant development as defined in this code, such use shall comply with the parking requirements for such use as established in [Table 1218-1](#).
- B.** Where a development contains multiple buildings with different uses, the parking areas shall include a number of spaces that equals the combined total of parking spaces required for each individual use.

#### **(4) Area Measurements**

- A.** All square footage-based parking standards shall be computed based on the gross floor area of all floors in a nonresidential building. Up to 15 percent of the gross floor area may be excluded from the above calculation if the area is used for storage accessory to the principal use, restrooms, utilities or other maintenance areas, loading and unloading docks, and other areas incidental to the principal use.
- B.** When determination of the number of required parking spaces results in the requirement of a fractional space, any fraction one-half or less shall be disregarded and any fraction over one-half shall require one parking space.

#### **(5) Capacity- Based Standards**

- A.** For the purpose of computing parking requirements based on employees, students, residents, or occupants, calculations shall be based on the typical, or average, number of persons working on a single shift, the typical, or average, enrollment, or the maximum fire-rated capacity, whichever is lesser.
- B.** In hospitals, bassinets shall not be counted as beds.
- C.** In the case of benches, pews, and similar seating accommodations that do not have individual seats, each 24 inches of length of seating shall be counted as one seat for the purpose of determining the parking requirements.

#### **(6) Parking Areas within a Structure**

No parking spaces located within the interior of a structure (excluding parking garages) shall be counted in meeting the off-street parking requirements of this section except when located within a private garage, parking garage, or other facility designed for the parking of cars.



**(7) Unlisted Uses**

- A. Upon receiving an application for a use not specifically listed in the parking schedule in [Table 1218-1](#), the Development Code Administrator shall apply the parking standard specified for the listed use that the Development Code Administrator deems most similar to the proposed use in regards to use, size and intensity of use.
- B. If the Development Code Administrator determines that there is no listed use similar to the proposed use, intensity, or size, the Development Code Administrator may refer to the estimates of parking demand based on recommendations of the American Planning Association (APA), the Urban Land Institute (ULI) and/or the Institute of Traffic Engineers (ITE).
- C. The Development Code Administrator's decision regarding parking requirements for a specific use is appealable to the BZA as established in [Section 1226.13](#).

**(8) Accessory and Temporary Uses**

Accessory and temporary uses shall be exempt from off-street parking requirements unless specifically required in [Chapter 1206: Accessory and Temporary Use Regulations](#).

**(b) Number of Spaces Required**

- (1) [This section](#) defines the number of parking spaces required for each use within the City.
- (2) For all uses except single-family, two-family, and three-family dwellings, the number of parking spaces required in [Table 1218-1](#) may be modified according to the following provisions:
  - A. An application shall include the number of spaces required in [Table 1218-1](#), or up to 10 percent less without needing an administrative waiver or variance approval.
  - B. Ten percent of the spaces required in this section may be reduced as of right but the remaining percentage, with a maximum reduction of 50 percent, may be permitted only if the applicant provides off-site parking spaces, shared parking spaces, or land banked parking spaces as provided for in [Section 1218.04\(f\)](#).
- (3) References to use categories and use types are related to those in [Table 1204-3](#).

**TABLE 1218-1: NUMBER OF OFF-STREET PARKING SPACE REQUIREMENTS**

USE	PARKING SPACE REQUIREMENTS
<b>AGRICULTURAL USES</b>	
Agriculture (Raising of Crops or Livestock)	No parking spaces are required
Greenhouses and Nurseries	One space per 250 square feet of indoor display and sales area plus one space per 1000 square feet of outdoor sales / display areas
<b>RESIDENTIAL USES</b>	
Group Living Use Category (All Use Types)	One space per two beds
Household Living Category (All Use Types)	Two spaces per single-family, two-family, or three-family dwellings
	1.5 spaces per dwelling unit for multi-family dwellings or for dwelling units over nonresidential uses
<b>COMMERCIAL USES</b>	
Assembly Halls and Conference Centers	One space per two fixed seats or one space per two persons based on the maximum capacity, whichever is greater
Auction Houses and Flea Markets	One space per 300 square feet of floor area
Automotive Repair (Heavy) and Towing Services	One space per 300 square feet of indoor floor area, plus two spaces per service bay (service bay may not be counted as a parking space).
Automotive Service Station and Parts Sales	
Business Services	One space per 400 square feet of floor area with a minimum of five spaces
Bed and Breakfast Establishments	Two spaces for owner plus one space for each guest room
Business and Professional Offices	One space per 400 square feet of floor area with a minimum of five spaces
Community Centers	One space per two fixed seats or one space per two persons based on the maximum capacity, whichever is greater
Convenience Stores	One space per 300 square feet of floor area with a minimum of five spaces
Eating and Drinking Establishments Use Category (All Use Types)	One space per 100 square feet of floor area
Financial Institutions	One space per 300 square feet of floor area with a minimum of five spaces
Funeral Homes and Mortuaries	Six spaces for each parlor + one space for each fleet vehicle or one space for each 50 sq. ft. of floor area in assembly rooms used for services, whichever is greater.
Hotels and Motels	One space per room or suite plus five spaces for employees
Kennels and Animal Boarding	One space per 1,000 square feet of floor area plus one drop-off space per 20 kennel spaces.
Live/Work Units	3 space per unit
Medical or Dental Clinics or Offices and 24-Hour Urgent Care	One spaces per 200 square feet of floor area with a minimum of five spaces
Mixed Use Building (with Residential Uses)	One space per 300 square feet of nonresidential floor area + one space per dwelling unit
Mobile Home, Commercial Truck, and Recreational Vehicle Sales and Leasing	One space per 100 square feet of indoor floor area
Multi-Tenant Development	One space per 300 square feet of floor area, regardless of proposed uses.
Night Club	One space per 50 square feet of floor area

**TABLE 1218-1: NUMBER OF OFF-STREET PARKING SPACE REQUIREMENTS**

USE		PARKING SPACE REQUIREMENTS
Package Liquor Stores		One space per 300 square feet of floor area with a minimum of five spaces
Personal Service Establishments		One space per 200 square feet of floor area, or two spaces per station/chair, whichever is greater
Recreation Facilities (Indoors)		One space for each three persons at maximum building capacity
Recreation Facilities (Outdoors)		See Section <a href="#">1218.04(c)</a> .
Retail and Service Commercial Uses		One space per 300 square feet of floor area
Retail Fuel Sales		One space per 300 square feet of indoor floor area plus one space per fuel pump or service bay (service bay may not be counted as a parking space).
Theaters		One space for each four persons at maximum building capacity
Automotive Sales and Leasing		One space per 100 square feet of indoor floor area
Vehicle Washing Establishment		Three spaces per washing bay (washing bay may not be counted as a parking space).
Veterinarian Offices or Animal Grooming (No Boarding)		One space per 250 square feet of floor area with a minimum of 5 spaces
<b>INDUSTRIAL USES – ALL USE TYPES IN ALL USE CATEGORIES</b> The total number of required spaces is cumulative based on the variety of different functions present in a single use as established below		
Office or administrative area		1.0 space per 300 square feet of floor area
Indoor sales area and displays of goods manufactured on site		1.0 space per 300 square feet of indoor floor area
Indoor areas used for storage, warehousing, assembly, vehicular service, or general manufacturing activities	1-3,000 square feet of floor area	1.0 space per 250 square feet of floor area
	3,001-5,000 square feet of floor area	1.0 space per 500 square feet of floor area
	5,001-10,000 square feet of floor area	1.0 space per 750 square feet of floor area
	10,001 or more square feet of floor area	1.0 space per 1,250 square feet of floor area
Outdoor storage area (3,000 square feet or less)		1.0 space per 750 square feet of outdoor space
Outdoor storage area (more than 3,000 square feet)		1.0 space per 1,000 square feet of outdoor space
<b>PUBLIC AND INSTITUTIONAL USES</b>		
Active Recreational Facilities	Athletic/Play Field	Ten spaces per acre
	Golf Course	Four spaces for each hole plus one space for 100 square feet of net floor area in any cocktail lounge, bar, or similar facility.
	Golf Driving Range	One space for each driving tee plus one per employee
	Parks, Playgrounds	See Section <a href="#">1218.04(c)</a> .
	Skating Facility	One space per 250 square feet of floor area
	Swimming Pools, Tennis or Racquet Clubs, and Similar Recreation Facilities	See Section <a href="#">1218.04(c)</a> .

**TABLE 1218-1: NUMBER OF OFF-STREET PARKING SPACE REQUIREMENTS**

USE	PARKING SPACE REQUIREMENTS
Cemeteries	One space per four seats in a chapel or place of assembly
Passive Parks, Open Space, and Natural Areas	See Section <a href="#">1218.04(c)</a> .
Cultural Facilities	See Section <a href="#">1218.04(c)</a> .
Essential Services	No parking spaces are required
Educational Institutions (K-12)	Three spaces per classroom, one space per four seats in auditorium, or one space for each 17 classroom seats (at maximum capacity), whichever is greater
Colleges and Higher Educational Institutions	One space for each five classroom seats plus one space for each auditorium seat
Fraternal, Charitable, and Service Oriented Clubs	One space per two fixed seats or one space per two persons based on the maximum capacity, whichever is greater
Government Facilities	See Section <a href="#">1218.04(c)</a> .
Hospitals	One space for every two patient beds + four spaces per 1,000 square feet of outpatient clinics, laboratories, pharmacies and other similar uses
Nursery Schools or Day Care Centers (Children or Adults)	One space for every four children based on maximum capacity
Radio and Television Broadcasting Studios	One spaces per 350 square feet of floor area with a minimum of five spaces
Religious Places of Worship	One space per four fixed seats in the main assembly room or one space per four persons at maximum capacity, whichever is greater
Wireless Telecommunication Facilities	Two spaces per tower
Utility Facilities and Buildings	See Section <a href="#">1218.04(c)</a> .
Utility Structures	No parking spaces are required

**(c) Uses with Variable Parking Demand Characteristics**

Uses that reference this subsection in [Table 1218-1](#) have widely varying parking demand characteristics, making it difficult to establish a single off-street parking standard.

Applicants that propose a use subject to this subsection shall submit information with their application on the size of building, potential employment, proposed seating, applicable fire capacity information and similar information along with justification on how the proposed number and design of parking spaces is sufficient for the proposed use. The Development Code Administrator shall have the authority to review and make a decision on the proposed number of parking spaces based on the information submitted by the applicant and any estimates of parking demand based on recommendations of the American Planning Association (APA), the Urban Land Institute (ULI) and/or the Institute of Traffic Engineers (ITE).

**(d) City Parking Lots**

- (1)** The Planning Commission, in consultation with other City departments and agencies concerned, may undertake studies of various areas in the City for the purpose of determining areas within which there is need for establishment of off- street parking facilities to be provided by the City and to be financed wholly or in part by a special assessment district or by other means. Where such need is found, the Planning Commission shall report its recommendation for the acquisition of such off-street parking facilities to City Council. This report shall include recommendations on the type, size, location and other pertinent features of the proposed off-street parking facilities and the area they are intended to serve.
- (2)** Wherever off-street parking facilities are established by means of a special assessment district or by any other means which City Council may determine, all existing buildings and uses and all buildings erected or uses established thereafter within the special assessment district, or other district which City Council may have determined, shall be exempt from the requirements of this chapter for privately supplied off-street parking facilities, except as provided in the following.
- (3)** The City Council, upon recommendation of the Planning Commission and after public hearing, may require by resolution that a portion, not to exceed 50 percent, of the off-street parking facilities required by this chapter shall be provided in connection with occupancy or use of a building in an area that was included in a special assessment district for the provision of off-street parking facilities, or in any other district which City Council may have determined to be served by a public off-street parking facility in the following cases:

  - A.** In such cases where the use of a building, erected after the levying of the special assessment in such an area or after the establishment of the public off-street parking facility, creates a need for an unusual or exceptional amount of off-street parking facilities; and
  - B.** In such cases where alteration, extension or change in use of a building, after the levying of the special assessment in such an area or establishment of the public off-street parking facility, creates a need for off-street parking facilities more than 30% in excess of the requirements for off-street facilities for such a building or use before alteration, extension or change in use, as computed on the basis of the requirements.

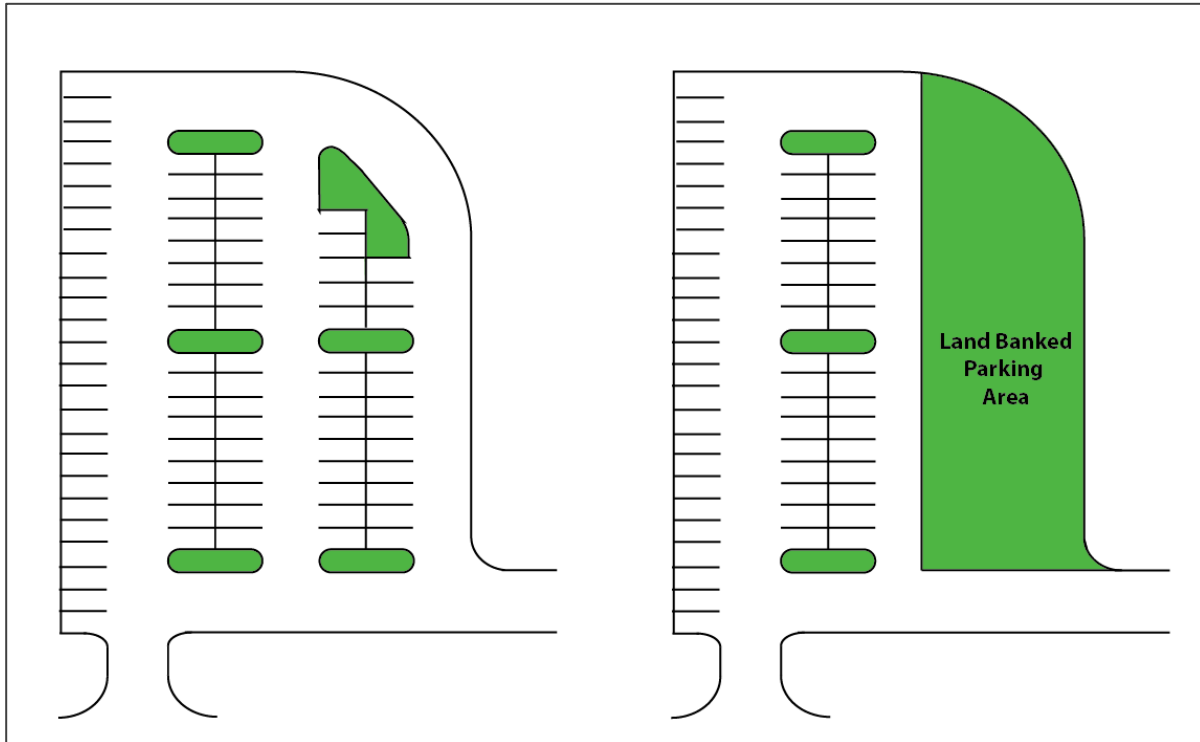
**(e) Bicycle Parking**

Any bicycle parking accommodations provided on a site shall be located in an area adjacent to the building and separate from vehicular or pedestrian (sidewalk) traffic circulation so as to prevent traffic conflicts and safety hazards between vehicles, people, and bicyclists.

**(f) Alternative Parking Options**

**(1) Land Banked Parking**

A portion of the required parking spaces may remain landscaped and unpaved or paved with pervious pavement provided that the parking and unpaved areas complies with the following standards and is authorized in accordance with this section. See Section [1218.04\(b\)](#).



*Figure 1218-A: The parking lot shown on the left is a traditional parking lot with interior parking islands while the parking lot on the right illustrates where an area is unimproved but is designated for future parking spaces if the demand arises.*

- A.** The parking plan submitted with the certificate of zoning compliance application shall denote the location and layout of that portion of the parking area that currently is deemed not required. The plan shall indicate that the “land banked” parking spaces will be constructed according to these regulations in the event that the Development Code Administrator determines at any time that all or any portion of this parking is necessary.
- B.** The applicant shall be required to design the site for full compliance with the applicable stormwater regulations, lighting regulations, and landscaping regulations even though a portion of the parking area may not be developed initially.
- C.** Any conditions required by the City, and the design for the site as established above, shall be illustrated on a final site plan that shall be recorded with the applicable county's recorder's office. The applicant shall be required to provide proof that the final site plan has been recorded with the applicable county's recorder's office prior to the issuance of a certificate of occupancy.

- D. At no time shall any portion of the required parking area that is so designated for future construction be used for the construction of any structure or paved surface with the exception that pervious pavement may be used to provide temporary parking provided that the pavers allow for grass and other vegetation to grow through the material.
- E. At no time shall any portion of the required parking that is so designated for future construction as provided herein be counted as open space or other non-paved areas required by other provisions of this section.
- F. The owner of record shall be required to begin construction of the approved land banked parking area(s), as identified on the approved parking plan, within six months of written notice from the Development Code Administrator, identifying that such parking is determined to be necessary. Such determination may be made:
  - i. When the Development Code Administrator is reviewing an application related to a change of use or activity; or
  - ii. When the Development Code Administrator, or their designee, documents that vehicles related to the use are consistently parked on the grass, landscaping area, or on the street.
- G. Construction of the land banked parking area must be completed within one year of the written notice identified in paragraph [1218.04\(f\)\(1\)F](#) above. Failure to construct the remaining parking area within the applicable timeframe shall be considered a violation of this code.

**(2) Shared Parking or Off-Site Parking**

Shared parking or off-site parking may be authorized under this code subject to the following:

- A. Shared parking is encouraged and permitted if the multiple uses that the shared parking will benefit can cooperatively establish and operate the facilities and they are located on adjacent properties.
- B. The applicant shall have the burden of proof for reduction of the total number of parking spaces and shall document and submit information substantiating their request.
- C. Shared parking may be approved if:
  - i. A sufficient number of spaces is provided to meet the highest demand of the participating uses;
  - ii. Evidence has been submitted by the parties operating the shared parking facility, to the satisfaction of the Development Code Administrator, documenting the nature of uses and the hours when the individual uses will operate so as to demonstrate the lack of potential conflict between them.
- D. Off-site parking shall not be used to satisfy the off-street parking standards for residential uses or hospitals. Required parking spaces reserved for persons with disabilities shall not be located in an off-site parking area.

- E. No off-site parking space shall be located more than 600 feet from the primary entrance of the use served, measured along the shortest legal, practical walking route. This route may include crossing a right-of-way provided it uses a legal crosswalk.
- F. If an off-site parking area is located in a different zoning district than the use served, the off-site parking areas shall still adhere to the vehicular use landscaping regulations of Section [1216.08](#).

**G. Parking Agreement Required**

A parking agreement shall be required for shared or off-site parking arrangements.

- i. The agreement shall be subject to review and approval by the City's legal counsel and shall provide for the rights of the respective parties to use the parking areas as shared or off-site parking areas.
- ii. The agreement shall include provisions and evidence of deed restrictions or other recorded covenants that ensure that the spaces will be properly maintained during the life of the development.
- iii. The approved shared agreement shall be filed with the application for a certificate of zoning compliance and shall be filed with the applicable county's recorder's office in a manner as to encumber all properties involved in the parking agreement.
- iv. The applicant shall be required to provide proof that the agreement has been recorded with the applicable county's recorder's office prior to the issuance of a certificate of zoning compliance.

**(g) Design of Off-Street Parking Areas**

**(1) Access to Parking**

Access to parking areas shall be provided as follows for all parking areas other than garages for individual dwelling units:

- A. Parking areas shall provide suitable maneuvering area so that vehicles enter from, and exit to, a public street in a forward direction only.
- B. Parking lots shall be designed to prevent access at any point other than at designated access drives.
- C. All access drives shall conform to the access management requirements in § 1026.04 of the City of Middletown Code of Ordinances.

**(2) Parking Space Dimensions**

Each parking space shall have direct and unrestricted access to an aisle of the minimum width set out in [Table 1218-2](#) and illustrated in [Figure 1218-B](#).



TABLE 1218-2: PARKING STALL AND AISLE DIMENSIONS				
PARKING ANGLE/TYPE	A		B	C
	AISLE WIDTH		STALL WIDTH (FEET)	LENGTH OF STALL (FEET)
	ONE-WAY	TWO-WAY		
0/Parallel	12 ft.	18 ft.	10	22
45	13 ft.	20 ft.	9	19
60	18 ft.	22 ft.	9	19
90	22 ft.	24 ft.	9	19
Compact [1]	Based on angle of parking, see above.		8	16
NOTE:				
[1] Compact parking spaces shall only be permitted when a minimum of 50 parking spaces is provided. In such cases, no more than 15 percent of the parking spaces may be designed as compact spaces. Such spaces shall be marked or otherwise identified as spaces for compact vehicle parking.				

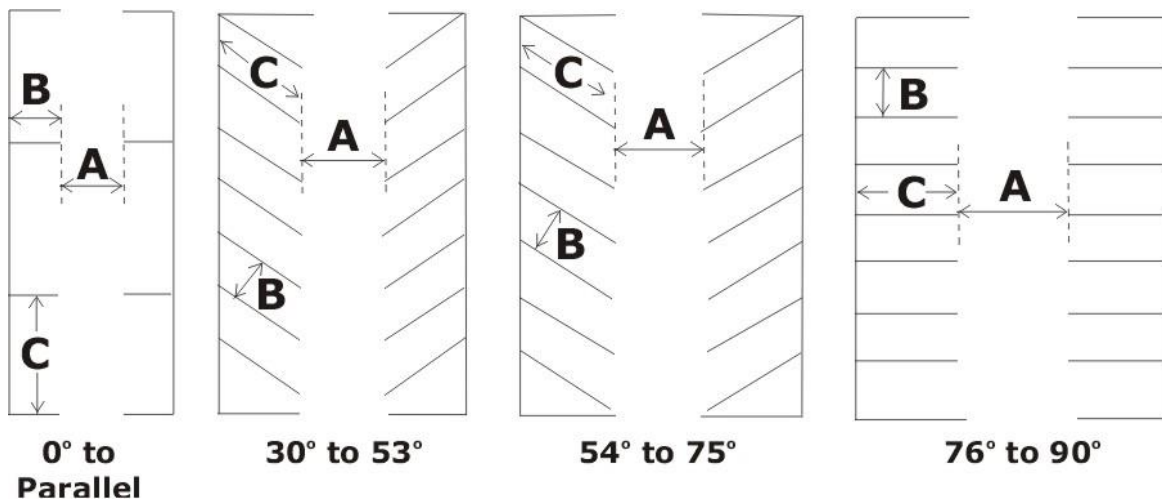


Figure 1218-B: Illustration of parking angles and related dimensional references.

- A. When the length of a parking space (full size or compact) abuts a column, fence, wall, or other obstruction, the required width of the entire parking space shall be increased by at least one foot.
- B. The required length of a parking space may include an area of overhang where a vehicle can overhang a landscape island, curb, sidewalk, or walkway provided:
- C. Such overhang does not extend over any public right-of-way; and/or
- D. Such overhang shall, if extending over a sidewalk or walkway, shall not encroach on the minimum width of sidewalk or walkway required for compliance with the Americans with Disabilities Act.

### (3) Use of Compact Vehicle Spaces

This subsection provides for the establishment of compact vehicles spaces as an alternative to full sized spaces.

- A. The minimum off-street parking dimensions for compact vehicle spaces shall be as identified in [Table 1218-2](#).
- B. For parking lots with 50 or more spaces, a minimum of five percent of the total spaces shall be designed for compact vehicle spaces.
- C. A maximum of 20 percent of spaces in any single parking lot may be dedicated to compact parking spaces.
- D. Compact spaces shall be clearly labeled for “compact cars” and grouped together in one or more locations, or at regular intervals, so that only compact vehicles can easily maneuver into the space.
- E. The compact parking spaces shall be identified by signs or painting on the pavement, as approved by the Development Code Administrator, to prevent the parking of standard size vehicles in compact parking spaces.
- F. Existing nonresidential developments that wish to utilize this section to create additional parking spaces (e.g., either by adding land area to an existing parking lot or modifying an existing parking lot to gain more spaces) shall first apply for certificate of zoning compliance.
- G. The property owner shall be responsible for any enforcement of use of the spaces for compact vehicles.

**(4) Striping and Identification**

- A. Parking spaces shall be clearly outlined with four-inch wide lines painted white on the parking surface unless required by State law (e.g., parking for the disabled).
- B. The striping shall be continuously maintained in a clear and visible manner in compliance with the approved plans.
- C. Where approaches contact the public right-of-way, the paint lines dividing vehicle paths and other pavement markings shall be in accordance with the *Ohio Uniform Traffic Control Manual*.

**(5) Wheels Stops and Curbing**

- A. All parking areas subject to this section shall be bounded by curbs with a minimum height as approved by the Development Code Administrator with consultation from the City Engineer. Such curbs may be made of concrete, stone or similar material, but shall not be made of asphalt.
- B. Continuous concrete curbing that is at least six inches high and six inches wide shall be provided for parking spaces located adjacent to fences, walls, lot lines, landscaped areas, and structures, unless the elimination of this curbing is required to adhere to storm water management requirements. Curb cuts are permitted along the curbing where it will allow for the passage of stormwater. See [Figure 1218-C](#).



*Figure 1218-C: Cuts in the continuous curb allow for stormwater to be directed into landscaped areas.*

- C.** Individual wheel stops may be provided in lieu of continuous curbing only when the parking is adjacent to a landscaped area, and the drainage is directed to the landscaped area.
- D.** When provided, wheel stops shall be placed to allow for two feet of vehicle overhang area within the dimension of the parking space.

**(h) Off-Street Parking in Parking Garages or Parking Decks**

No parking in structures shall be visible on the ground floor that faces a street frontage unless the design of the structure or natural landscape buffering is provided to fully screen the structure.

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## **1218.05 VEHICLE STACKING SPACE REQUIREMENTS**

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**(a) General Standards**

- (1)** Audible electronic devices such as loudspeakers, automobile service order devices, and similar instruments shall be set back a minimum of 250 feet from any adjacent residential dwelling unit.
- (2)** Drive-through signs shall be regulated in accordance with Section [1206.01](#).
- (3) Stacking Space and Lane Requirements**
  - A.** The number of required stacking spaces shall be as provided for in [Table 1218-3](#). See [Figure 1218-D](#) for illustration of stacking spaces:

TABLE 1218-3: STACKING SPACE REQUIREMENTS		
ACTIVITY	MINIMUM STACKING SPACES (PER LANE)	MEASURED FROM:
Financial Institution or Automated Teller Machine (ATM)	3	Teller or Window
Restaurant	6	First Pick-Up Window that is closest to the Drive- Through Sign/Order Box
Full Service Car/Truck Wash	6	Outside of Washing Bay
Self-Service or Automated Car/Truck Wash	2	Outside of Washing Bay
Other	As determined by the Development Code Administrator	

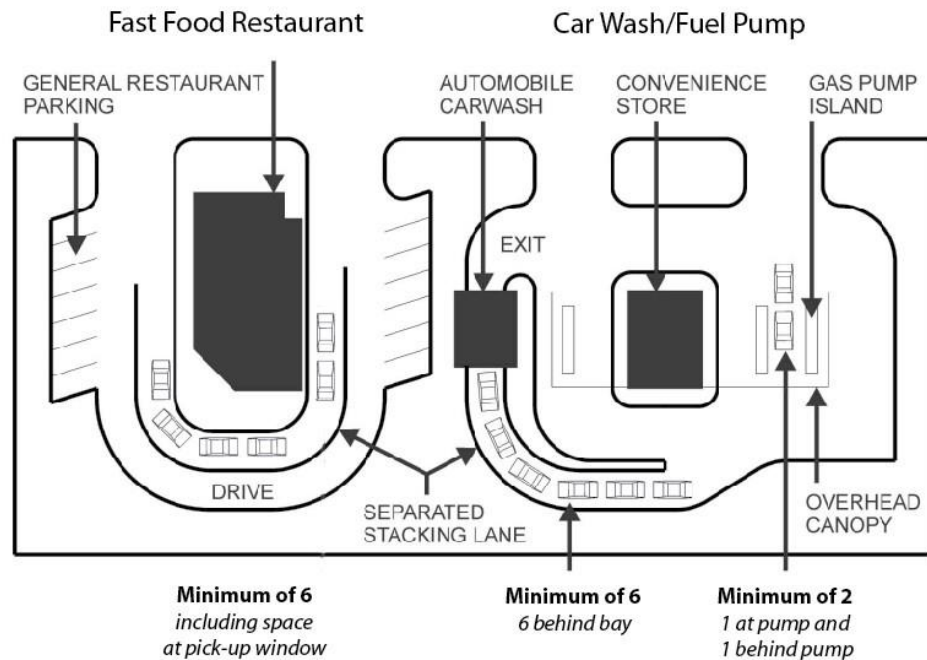


Figure 1218-D: Location of stacking spaces and lanes. Note that the stacking lanes are oriented toward the side and rear yards rather than the front yard.

- B. Stacking lanes shall be provided for any use having a drive-through establishment and shall apply comply with the following standards:**
- Drive-through stacking lanes shall have a minimum width of ten feet and a minimum length of 18 feet for each space required.
  - When stacking lanes are separated from other stacking lanes, bypass lanes or from other site areas, the separation shall be by means of a raised concrete median, concrete curb, or landscaping.
  - Stacking lanes shall be set back 25 feet from right-of-ways.

- iv. The number of stacking spaces required by [Table 1218-3](#) shall be required for each separate stacking lane. If two or more stacking lanes converge into one lane (e.g., two lane separate lanes to order at a restaurant converge to one lane after the drive-through sign), the stacking spaces shall be measured in accordance with [Table 1218-3](#) with the spaces located after the convergence point counting toward both stacking lanes.

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## **1218.06 OFF-STREET LOADING REQUIREMENTS**

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### **(a) Applicability**

- (1) This code does not require a specific number of off-street loading spaces for uses but the standards of this subsection shall apply in any instance where an applicant proposes to provide off-street loading spaces or docks.
- (2) The Development Code Administrator has the authority to deny an application if he/she deems that an adequate amount of off-street loading areas has not been provided. The Development Code Administrator shall provide, in writing, the reasons for the rejection. The Development Code Administrator may refer to any best practices information in making their determination.

### **(b) Design Standards**

- (1) Off-street loading spaces shall not overlap with any areas used for parking or vehicle stacking.
- (2) Each loading space shall have a minimum width of 12 feet, a minimum length of 30 feet, and have a minimum vertical clearance of not less than 15 feet.
- (3) Loading areas shall be located as near as possible to the main structure and shall be located in the rear yard to the maximum extent feasible. Where locating such loading areas in the rear is not feasible, as determined by the Development Code Administrator, the loading areas may be located in the side yard. The spaces shall be subject to the minimum setbacks established for the applicable zoning district.
- (4) All loading and unloading activities, including truck maneuverability, shall take place on-site. In no case shall a loading space or maneuverability area encroach on a public right-of-way or on other required vehicular use areas.
- (5) Loading spaces shall be designed and arranged to provide access to a street or alley in a manner that will create the least possible interference with traffic movement and parking lot circulation.
- (6) Loading spaces shall be designed with sufficient apron area to accommodate truck-turning movements and to prevent backing of trucks onto any street right-of-way.
- (7) All operations, materials, and vehicles within any loading space that are visible from a public street or from any residential use shall be screened. See Section [1216.10](#) for screening requirements.

- (8) Loading areas shall have lighting capable of providing adequate illumination for security and safety; lighting shall also comply with the requirements of Section [1208.04](#).

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## **1218.07 SIDEWALKS, PATHS, BIKE TRAILS, AND PEDESTRIAN CONNECTIONS**

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### **(a) Applicability**

This section shall apply to all new development that requires a certificate of zoning compliance and to all major subdivisions.

### **(b) Public Sidewalks**

- (1) Concrete sidewalks shall be required on both sides of all streets, in all major subdivisions and shall be installed as part of the public improvement requirements identified in [Chapter 1222: Subdivision Design](#).
- (2) For development projects outside of a subdivision, new public sidewalks, constructed to meet the City of Middletown standards (*Manual of Design for Public Improvements*), shall be required along the street frontage of any lot being developed when the following conditions exist:
  - A. The development includes new construction on a vacant lot or complete redevelopment of an existing principal building (e.g., the principal building is torn down and replaced);
  - B. There is no public sidewalk along one or more of the public street rights-of-way adjacent to the lot;
  - C. A public sidewalk exists in the public right-of-way on the lot adjacent to the lot being developed; and
  - D. There is adequate existing right-of-way for the public sidewalk.
- (3) All sidewalks shall be constructed with a minimum width of five feet. Wider sidewalks may be required by the Planning Commission or the Development Code Administrator, based on the applicable review procedure, where they determine:
  - A. A significant amount of pedestrian traffic is expected based on the use that requires a wider sidewalk;
  - B. The adjacent sidewalk is wider, in which case the new sidewalk should be of the same width; or
  - C. A wider sidewalk is required for the cross-section of the new proposed street.
- (4) All sidewalks at intersections will include ramps that are compliant with the American Disabilities Act.
- (5) Where unusual or exceptional factors or conditions require a modification of this section, such sidewalks may be waived, in whole or in part, by the Planning Commission as part of a major subdivision review. For waivers related to sidewalks required outside of a subdivision, the BZA shall review the request as part of a variance application.

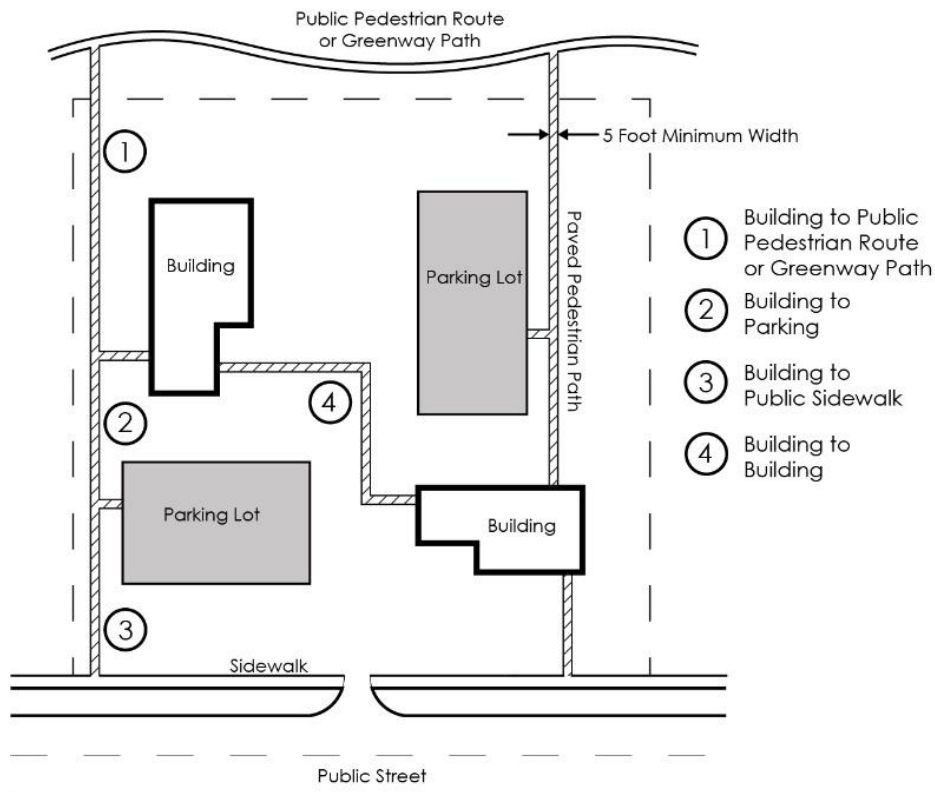


**(6) Items Allowed on Public Sidewalks**

- A.** Certain items listed below may be placed on a public sidewalk in the UC-C sub-district subject to obtaining a certificate of zoning compliance.
- B.** The applicant shall execute an agreement with the City whereby the applicant agrees to indemnify the City and hold the City harmless from any claims for injury, loss or damage arising from the use or maintenance of the sidewalk item. Any item placed on a sidewalk must allow for a minimum of five feet of sidewalk width clear for pedestrian traffic.
- C.** Benches and flower planters may be placed on the sidewalk in front of the business subject to the condition that the bench or planter contains no signage and be well maintained.
- D.** Merchandise may be placed on the sidewalk for the purpose of periodic sidewalk sales as authorized in [Section 1206.02](#).

**(c) Internal Pedestrian Connections**

- (1)** Where a sidewalk, bike trail, or greenway path, or other pedestrian route exists in a public right-of-way adjacent to the site, or is required to be constructed as part of the development approval, a paved pedestrian connection shall be constructed from the sidewalk, bike trail, or greenway path, or other pedestrian route to the entrance of the building. See [Figure 1218-E](#).



*Figure 1218-E: Illustration of required internal pedestrian connections.*

- (2) The pedestrian connection shall have a minimum width of five feet.
- (3) All pedestrian walkways located within a site (internal pedestrian circulation) shall be either physically separated from all drive lanes and driveways or shall be visually distinguishable from the adjacent pavement areas (e.g., variation in color, texture, materials, pattern, etc.). See [Figure 1218-F](#).



*Figure 1218-F: This photograph illustrates how a sidewalk connecting the public sidewalk to the business can be integrated into the required landscaping.*

**(d) Bike Trails**

Bike paths may be required as part of subdivision in accordance with [Section 1222.05](#) and the *Manual of Design for Public Improvements*.



# Chapter 1220: Signage

## 1220.01 PURPOSE

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The purpose of these standards is to balance the need to protect the public safety and welfare, the need for a well maintained and attractive community, and the need for adequate identification, communication and advertising. The regulations are further intended:

- (a) To allow businesses, institutions, and people to exercise their right to free speech by displaying messages on a sign, and to allow audiences to receive such information;
- (b) Enhance the economy and the business and industry of the City by promoting the reasonable, orderly, and effective display of signs and thereby encourage increased communication with the public;
- (c) To ensure that signs are designed, constructed, installed and maintained according to minimum standards to safeguard life, health, property, and public welfare;
- (d) To reflect and support the desired ambience and development patterns of the various zoning districts and sub-districts, and promote an attractive built environment; and
- (e) To allow for adequate and effective signs whose dimensional characteristics further the interests of public safety and the needs of the motorist, where signs are viewed from a street, sidewalk, bike path, or other form of transportation infrastructure.

## 1220.02 APPLICABILITY

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- (a) It shall hereafter be unlawful for any person to erect, place, relocate, expand, modify, maintain, or otherwise alter a sign in the City except in accordance with the provisions of this chapter.
- (b) Unless otherwise provided, this chapter shall apply to any sign, in any zoning district, that is visible from a public right-of-way or from an adjacent property.
- (c) Any sign established prior to the effective date of this code, and which sign is rendered nonconforming by the provisions herein, shall be subject to the nonconforming sign regulations of Section [1220.10](#).

### (d) Exemptions

The following signs are entirely exempt from this chapter:

- (1) Any sign located entirely within buildings or other structures and/or otherwise not visible from a public right-of-way or adjacent property;
- (2) Any sign located on umbrellas or similarly related private patio furniture or seating provided it is located outside of the right-of-way and complies with any other applicable standards of this code;
- (3) Any sign on a truck, bus or other vehicle that is used in the normal course of a business for transportation (See also Paragraph [1220.03\(n\)\(1\)](#).) or signage required by the State or federal government; and
- (4) Any holiday lighting, signs, or related decorations.

**(e) Certificate of Zoning Compliance Required**

Unless otherwise provided by this chapter, all signs shall require a certificate of zoning compliance.

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**1220.03 GENERAL REGULATIONS**

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Unless otherwise specifically stated, the following regulations shall apply to all signs within the City:

- (a) Permanent signs shall be constructed in compliance with all applicable regulations of the City or State's applicable building, fire, or electrical codes, as may be applicable.
- (b) No sign or sign structure shall be placed on private or public property without the written consent of the owner or agent thereof.
- (c) No sign or sign structure shall be erected at any location where it may interfere with, obstruct the view of or be confused with any authorized traffic sign, signal or device.
- (d) No rotating beam, beacon, or flashing illumination resembling an emergency light shall be used in connection with any sign display.
- (e) No sign shall obstruct or interfere with fire ingress or egress from any door, window, or fire escape, nor shall it obstruct or interfere with traffic or traffic visibility, or resemble or imitate signs or signals erected by the City or other governmental agency for the regulation of traffic or parking.
- (f) No part of a sign shall have animation, moving parts, flashing lights or changing colors unless specifically permitted in Section [1220.03\(I\)](#).
- (g) All signs shall be secured in such a manner as to prevent swinging or other significant noticeable movement, not including movement related to electronic message centers.
- (h) Unless otherwise specifically stated, all permanent signs hereafter erected, constructed or modified shall be set back at least five feet from all rights-of-way and in all cases shall comply with Section [1208.05](#).
- (i) A sign in dangerous or defective condition, as determined by the Chief Building Official, shall not be permitted on any premises. The Chief Building Official may immediately remove or cause to be removed any dangerous or defective sign which, in the opinion of the Chief Building Official creates an immediate danger to persons or an immediate threat of the destruction of property due to structural deficiencies, inadequate maintenance, improper installation, or because of the location of the sign.
- (j) Signs, sign posts, or sign mounting hardware which are no longer functional, or are abandoned, shall be removed in compliance with the provisions of this code, within 90 days following such dysfunction or abandonment. For purposes of this section, "abandoned" means the owner or user of the sign has completely given up the use of the sign for the purpose it was intended as ascertained by the reasonable investigation and inquiry of the Development Code Administrator.

**(k) Signs in Rights-of-Way**

- (1) Signs shall be prohibited in the right-of-way with the exception of:
  - A. Signs installed by the City, Butler or Warren Counties, State of Ohio, or approved transit agency that are allowed pursuant to the latest version of the Manual on Uniform Traffic Control Devices (MUTCD);
  - B. Any warning signs or traffic safety signs required by public utility providers; or

**C. Sidewalk signs as allowed in Section 1220.09.**

- (2) Any sign to be installed in the right-of-way by an agency other than the City shall require prior approval of the City Engineer.
- (3) The Development Code Administrator may remove or cause to be removed any unlawful sign in the public right-of-way.

**(I) Changeable Copy Signs**

- (1) For any sign that has a sign area of 50 square feet or less of sign area, up to two-thirds of a permitted freestanding sign may incorporate a changeable copy sign.
- (2) For any sign that exceeds 50 square feet in area, up to 50 percent of the sign may incorporate a changeable copy sign.
- (3) The following standards shall apply to all electronic message centers allowed in this chapter:
  - A. Electronic message centers are prohibited in the UC-C and UC-S Subdistricts.
  - B. Electronic message centers are permitted in residential zoning districts only for lots used for public and institutional uses that have a lot area of five acres or more. Signs with electronic message centers in residential districts shall be set back 75 feet from any adjacent residential lot line.
  - C. Any message change shall be a static, instant message change;
  - D. Messages can only change once every eight seconds or more;
  - E. The transition time between messages shall be less than one second;
  - F. All electronic message centers shall contain a default mechanism that will cause the sign to revert immediately to a black screen if the sign malfunctions;
  - G. Only Light Emitting Diodes (LED) technology or similar quality signs shall be permitted for electronic message centers; and
  - H. **Brightness Controls**
    - i. The electronic message center shall come equipped with an automatic dimming photocell, which automatically adjusts the display's brightness based on ambient light conditions.
    - ii. The brightness level shall not increase by more than 0.3 foot candles (or 3.23 lumens per square meter or lux) (over ambient levels) as measured using a foot candle meter at a pre-set distance.
    - iii. The procedure and distances for measurement of brightness shall be as established by the International Sign Association's Recommend Night-time *Brightness Levels for On-Premise Electronic Message Centers*.

**(m) Illumination**

- (1) All signs, except as specifically stated in this chapter, may be illuminated by internal or external light sources, provided that such illumination shall:
  - A. Be shielded from all adjacent residential buildings and all streets;

- B.** Not have an intensity to cause glare visible to pedestrians or vehicle drivers, nor shall the illumination be of such brightness as to cause reasonable objection from adjacent residential districts; and
  - C.** No illuminated sign shall be permitted if any part of the sign flashes on or off, has lighting that moves or illustrates movement, or displays changing degrees of intensity in illumination. This regulation applies to signs located outside of buildings and to window signs inside buildings that can be seen from the outside. This prohibition on flashing, moving, or intermittent lighting shall not apply to permitted electronic message centers in Section [1220.03\(I\)](#).
- (2)** Signs shall not be lighted so as to obstruct traffic control or other public information signs.

**(n) Prohibited Signs**

The following types of signs are specifically prohibited within the City:

- (1)** Vehicle signs viewed from a public road with the primary purpose of providing signage not otherwise allowed by this code. Vehicle signs include those attached to or placed on a vehicle or trailer. Vehicles or trailers shall not be parked continuously in one location to be used primarily as additional signage. This does not apply to a vehicle parked at a driver's residence and is the primary means of transportation to and from his or her place of employment.
- (2)** Signs that are applied to trees, bus shelters, utility poles, benches, trash receptacles, newspaper vending machines or boxes, or any other unapproved supporting structure, or otherwise placed in the public right-of-way;
- (3)** Signs which are not securely affixed to the ground or otherwise affixed in a permanent manner to an approved supporting structure unless specifically permitted as a temporary sign.
- (4)** Signs that employ any parts or elements which revolve, rotate, whirl, spin or otherwise make use of motion to attract attention;
- (5)** Beacons and searchlights, except for emergency purposes; and
- (6)** Signs mounted above the roofline of a building.
- (7)** Deteriorated Signs that are unsafe and or insecure;
- (8)** Abandoned Signs;
- (9)** Windblown devices, not including projecting signs,
- (10)** Blade/Feather Signs;
- (11)** Signs that obstruct or substantially interfere with any window, door, fire escape, stairway, ladder, or opening intended to provide light, air, ingress, or egress to any building;
- (12)** Balloon signs or air activated signs; and
- (13)** Any sign not specifically allowed by this chapter.

## **1220.04 SIGNS NOT REQUIRING A CERTIFICATE OF ZONING COMPLIANCE**

The following signs or activities do not require a certificate of zoning compliance. Each sign exempt from the permit process shall still comply with any applicable safety, height, area, and locational standards established in this chapter.

- (a) Noncommercial message flags provided there shall be no more than three such flags on any lot and each flag shall not exceed 100 square feet in area;
- (b) Signs and/or notices issued by any court, officer, or other person in performance of a public duty;
- (c) For the purposes of safety and emergency access, signs indicating the street number of a building or structure are permitted without a certificate of zoning compliance but shall not exceed three square feet in sign area.
- (d) Interior signs within a stadium, open-air theater, shopping center, arena or other use, which signs can be viewed only by persons within such stadium, open-air theater, shopping center, parks, arena, or other use;
- (e) Sign face changes where there is no change to the structure including change in sign face area, height, or alteration of the sign cabinet, if applicable (e.g., replacement of a sign face, repainting of a sign face, etc.);
- (f) Certain temporary signs as established in Section [1220.09](#).
- (g) A certificate of zoning compliance is not required for a change of copy on signs with changeable copy (See Section [1220.03\(l\)](#)).
- (h) A certificate of zoning compliance is not required for general maintenance, painting, repainting, cleaning and other normal maintenance and repair of a sign or any sign structure unless a structural change is made that results in anything more than a minor modification.

### **(i) Window Signs**

Window signs do not require a certificate of zoning compliance provided they comply with the following standards:

- (1) Window signs shall not occupy more than 50 percent of the window area in all nonresidential districts except the UC-C and UC-S Subdistricts where the maximum coverage shall be 25 percent of the window area. See [Figure 1220-A](#) for locations used in the calculation of sign area. The sign area is based on the window area, regardless of the presence of an awning.



*Figure 1220-A: The window area is illustrated within the dashed line area for the two storefronts in the above image.*

- (2) One window signs may be placed in one window of a space used for residential uses or purposes provided the sign does not exceed 50 percent of that window area.

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## **1220.05 MEASUREMENTS AND CALCULATIONS**

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- (a) Freestanding sign height shall be measured from the average elevation of the finished grade of the road that the sign immediately fronts. Height of sign is measured from the base of the sign and/or structure along the road to the highest point of the sign and/or structure. The use of berms, grading or other means in order to achieve the full allowable sign height shall not be permitted unless site conditions are such that the proposed sign location is below the grade of the adjacent roadway. In such cases, the sign height shall be measured from the adjacent roadway elevation closest to the base of the sign. For signs along waterways, the sign height shall be measured from the base of the sign.
- (b) The sign area shall be computed by means of the smallest square, rectangle, triangle or circle that encompasses the extreme limits of the sign message. See [Figure 1220-B](#), [Figure 1220-C](#), and [Figure 1220-D](#).

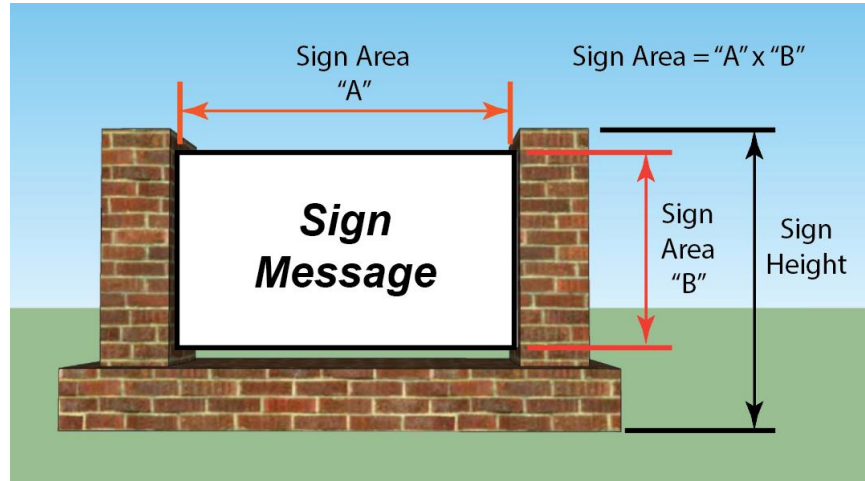


Figure 1220-B: Illustrative example of the calculation of the sign area and height of a freestanding sign.

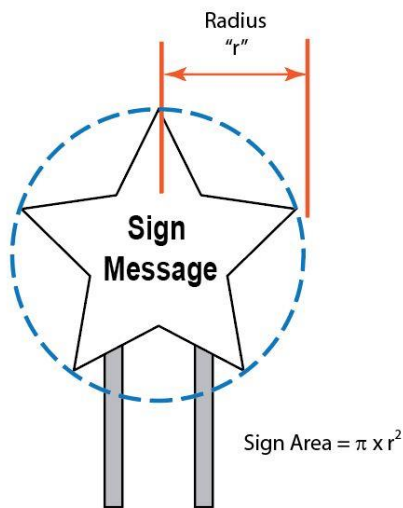


Figure 1220-C: Example of sign area computation by the smallest circle encompassing the extreme limits of the sign message. For the purposes of calculations, circle equals 3.14.



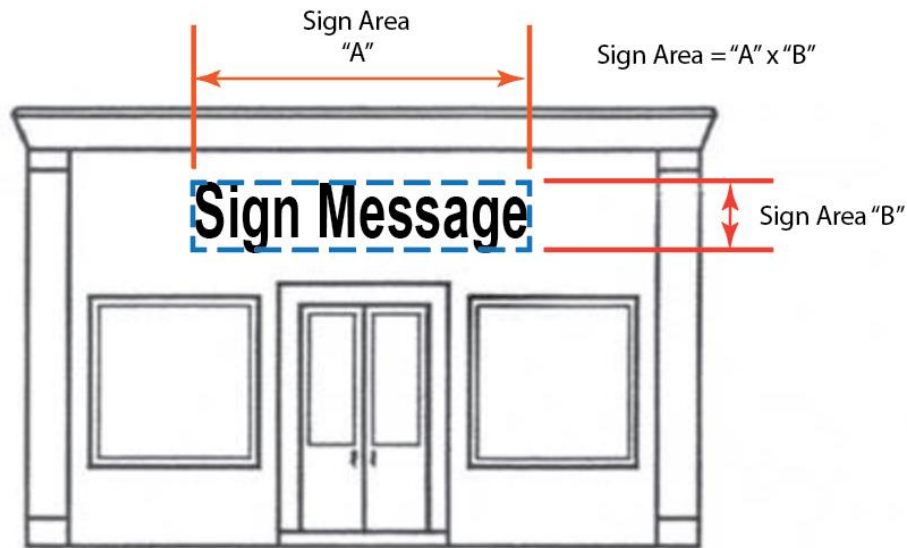


Figure 1220-D: Example of sign area calculation for wall signs.

- (c) In the case of a three-dimensional sign where the sign faces are not mounted back-to-back, the sign area shall be calculated by the smallest square, rectangle or circle that encompasses the profile of the sign message and multiplying by two. The profile used shall be the largest area of the sign message visible from any one point.
- (d) Except for three-dimensional signs, the sign area for a sign with more than one face (multi-faced signs) shall be computed by adding together the area of all sign faces when the interior angle is greater than 91 degrees.
- (e) When two identical sign faces are placed back to back, so that both faces cannot be viewed from any one point at the same time, and when such sign faces are part of the same sign structure and are not more than 24 inches apart, the sign area shall be computed by the measurement of one of the faces. If the two faces are unequal, the sign area shall be calculated based on the larger of the two faces.
- (f) All fractions will be rounded to the closest integral number.

## **1220.06 PERMANENT SIGNS PERMITTED IN PD DISTRICTS**

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All development in a PD District shall be subject to the standards of this chapter unless otherwise modified through the PD review and approval process.

## **1220.07 PERMANENT SIGNS PERMITTED IN RESIDENTIAL DISTRICTS**

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The following are the permanent signs permitted in residential zoning districts or for residential developments, along with all applicable standards:



**(a) Signs for Individual Dwellings**

- (1) One wall sign is permitted on each individual lot used for residential purposes provided the sign is mounted flush to the façade of the principal dwelling and does not exceed one square foot. Such sign shall not be directly illuminated. A certificate of zoning compliance shall not be required for this type of sign.
- (2) For dwellings where a home occupation or bed and breakfast is located, one ground-mounted sign is permitted per lot with a maximum sign area of two square feet and a maximum height of three feet.

**(b) Signs at Entrances**

Two wall signs or one permanent ground-mounted sign may be permitted at the entrance of any subdivision or multi-family dwelling development provided that the sign meets the following requirements:

**(1) General Standards**

- A. Each sign may have a maximum sign area of 30 square feet.
- B. No such sign or any portion of the structure shall exceed six feet in height.
- C. The sign may only be illuminated through an external light source.

**(2) Ground-Mounted Sign**

- A. A maximum of one ground-mounted sign may be permitted for each entrance to the subdivision or development on a collector or arterial street, as determined by the Development Code Administrator.
- B. The sign shall be setback five feet from the public right-of-way and 10 feet from any adjacent lot lines.
- C. If an applicant proposes to use a ground-mounted sign, no wall signs, as allowed in Section [1220.07\(b\)\(3\)](#), below shall be permitted.

**(3) Wall Signs on Entry Fences or Walls**

- A. A maximum of two wall signs may be permitted for each entrance to the subdivision or development on a collector or arterial street, as determined by the Development Code Administrator.
- B. The signs shall be mounted to a decorative wall or fence that generally runs parallel with the street.
- C. The sign shall be setback five feet from the public right-of-way with no minimum setback from adjacent lot lines.
- D. If an applicant proposes to use wall signs, no ground-mounted sign, as allowed in Section [1220.07\(b\)\(2\)](#), above shall be permitted.

**(c) Signs for Nonresidential Uses in Residential Zoning Districts**

- (1) One permanent ground-mounted sign may be permitted on a lot containing a nonresidential use in a residential zoning district provided the sign meets the following requirements:

- A. The sign shall be set back five feet from the public right-of-way and 10 feet from any adjacent lot lines.
  - B. The maximum sign area shall be 40 square feet.
  - C. No such sign or any portion of the structure shall exceed six feet in height.
  - D. The sign may only be illuminated through an external light source.
- (2) Building signs shall be permitted for all nonresidential uses in a residential district in the same manner as permitted for nonresidential uses in the B-1 District. This shall not apply signs located on lots used exclusively for residential dwellings where signage is controlled by Section [1220.07\(a\)](#).

## **1220.08 PERMANENT SIGNS PERMITTED IN NONRESIDENTIAL DISTRICTS**

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- (a) All sign structures in the nonresidential districts shall be accessory to the principal use.
- (b) Buildings, developments, or subdivisions that are 100 percent residential in any nonresidential district, including the BC-R Subdistrict, shall be subject to the permanent sign allowances established in Section [1220.07](#).

### **(c) Building Signs**

Building signs are permitted on all principal structures in accordance with the following:

- (1) The building sign area allowed in [Table 1220-1](#) shall include the total amount of all awning, canopy, marquee, projecting, or wall signs on each wall. Standards for each individual building sign type follow [Table 1220-1](#).
- (2) Building signs shall not extend above the roofline of the building to which it is attached.
- (3) Building signs may not be attached to a penthouse or roof structure including but not limited to mechanical equipment or roof screening.
- (4) **Size**
  - A. [Table 1220-1](#) establishes the maximum sign area for building signs based on the district, building, and/or use they serve.
  - B. There is no maximum number of building signs but the total square footage of building signs located on a single façade shall comply with the requirements of this section.
  - C. Where there are multiple facades that face a public street (e.g., corner lots or double frontage lots), the maximum building sign area shall apply to the individual façade. An applicant shall not combine the total amount of building sign area permitted on all facades and apply it to a single façade.
  - D. Any sign that is incorporated into a building as an architectural element shall be classified as a wall sign.

**TABLE 1220-1: MAXIMUM BUILDING SIGN AREA ALLOWANCE**

TABLE 1220-1: MAXIMUM BUILDING SIGN AREA ALLOWANCE		
	UC-C, UC-S, OR BC-R SUBDISTRICTS	ALL OTHER NONRESIDENTIAL ZONING DISTRICTS AND NONRESIDENTIAL USES IN A RESIDENTIAL DISTRICT
Buildings with Multiple Tenant Spaces [1]	1.5 square foot of sign area per lineal foot	2.0 square feet of sign area per lineal foot
Buildings with Single Tenant Occupancy		
Large-Scale Nonresidential Buildings with a Single Tenant [2]	The sign area shall not exceed 5 percent of the total facade area and shall not exceed 35 percent of the height of the facade, as measured from the bottom most point of the message to the top most point of the message [3]	
Notes:		
[1] The ratio shall be applied to each lineal foot of building facade width assigned to each individual tenant.		
[2] Large-scale nonresidential buildings shall be defined as a building, with a single tenant that exceeds 150,000 square feet of gross floor area.		
[3] Signs shall be limited to wall signs.		

**(5) Wall Signs**

- A.** Wall signs shall be mounted on or flush with a wall and shall not protrude more than 18 inches from the wall or face of the building to which it is attached.
- B.** A wall sign may be painted directly on a building wall, mounted on the façade wall, or mounted on a raceway.
- C.** Wall signs shall not include electronic message centers.
- D.** Wall signs located in the UC-C District may only be illuminated through the following methods, if approved as part of the Certificate of Appropriateness:
  - i. Indirect lighting methods such as gooseneck lighting;
  - ii. Individual reverse channel letters (halo-lit or reverse-lit); or
  - iii. Individual channel letters with transparent plastic covering to shield the source of illumination.

**(6) Canopy or Awning Signs**

Any awning or canopy sign allowed pursuant to this section shall comply with the following standards:

- A.** Signage shall not cover more than 25 percent of any awning or canopy in the Business Center subdistricts and 50 percent in all other districts.
- B.** All components of the awning or canopy shall have a minimum clearance of eight feet from the sidewalk and 15 feet above any driveway or vehicular use area. See [Figure 1220-E](#).

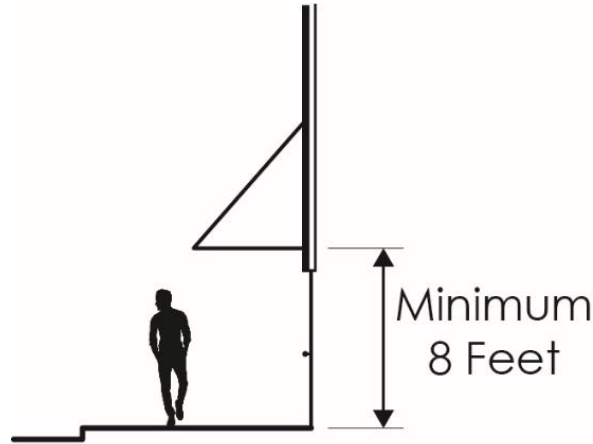


Figure 1220-E: Minimum clearance for canopies and awnings.

- C. An awning or canopy sign shall in no case project any closer than two feet from a curb.

#### (7) Projecting Signs

- A. A projecting sign shall be perpendicular to the wall of the building to which it is attached. A projecting sign may also be attached to the ceiling of an outdoor arcade if it complies with the sign area, height, and clearance standards of this section.
- B. A projecting sign that is attached perpendicular to the wall to which it is affixed may project up to four feet from the front of the building including into a right-of-way.
- C. The maximum sign area for any single projecting sign shall be 15 square feet.
- D. A projecting sign shall in no case project any closer than two feet from a curb.
- E. All components of the projecting sign shall have a minimum clearance of nine feet from the sidewalk and 15 feet above any driveway or vehicular use area.
- F. Projecting signs shall be separated from other projecting signs by a minimum of 30 feet.
- G. Projecting signs may be internally illuminated.
- H. Projecting signs must be suspended from brackets approved by the Building Department and contain no exposed guy wires or turnbuckles.

#### (d) Freestanding Signs

- (1) Freestanding signs shall either be a pole sign or ground-mounted sign. A sign that is placed on two posts, which are no more than two feet in height to the base of the sign cabinet or sign face, shall be considered a ground-mounted sign for the purposes of this chapter.
- (2) [Table 1220-2](#) establishes the maximum sign area and sign height allowed for freestanding signs in nonresidential zoning districts.
- (3) One freestanding sign of a size and height permitted in [Table 1220-2](#) shall be permitted on each street frontage.

- (4) All freestanding signs shall be set back a minimum of 10 feet from all rights-of-way and from adjacent lot lines and 50 feet from any adjacent lot in a residential zoning district or used solely for residential uses.
- (5) Pole signs must have a minimum height of 10 feet from the ground to the bottom of the sign face.
- (6) **Landscaping Permanent Freestanding Signs**
  - A. All permanent freestanding signs shall be located in a landscaped area equal to or larger than the total sign area of the applicable sign. Such landscaped area may be an area that fulfills any landscaping requirements of this code.
  - B. The landscaped area shall include all points where sign structural supports attach to the ground.
  - C. Exposed sign foundations shall be constructed with a finished material such as brick, stone, or wood, or be screened with evergreens to the top of the anchor bolts.

**TABLE 1220-2: MAXIMUM SIGN AREAS AND HEIGHT FOR FREESTANDING SIGNS**

ZONING DISTRICTS AND SUBDISTRICTS	LOT FRONTAGE WIDTH					
	0 TO 150 FEET		151 TO 300 FEET		301 OR MORE FEET	
	MAXIMUM SIGN AREA	MAXIMUM SIGN HEIGHT	MAXIMUM SIGN AREA	MAXIMUM SIGN HEIGHT	MAXIMUM SIGN AREA	MAXIMUM SIGN HEIGHT
O-1, B-1, and BC-H [1]	40	6	60	8	80	10
O-2, B-2, B-3, BC-I, BC-O, BC-R, BC-F, and PI [1][2]	50	8	80	10	150	20
UC-C and UC-S [1]	50	6	50	6	50	6
I-1 and I-2	50	8	80	10	100	15

**NOTES:**

The maximum sign area is in square feet and the maximum sign height is in feet.

[1] Pole signs are prohibited in the UC-C, UC-S, BC-H, BC-I, BC-O, BC-R, and BC-F Subdistricts.

[2] A ground-mounted sign with a maximum sign area of 400 square feet is allowed in the O-2 District if the sign is located within 850 feet of the I-75 right-of-way, west of I-75.

**(e) Driveway Signs**

Permanent signs shall be permitted near driveway entrances to a street and at intersections of internal drives under the following provisions:

- (1) The signs shall be set back at least five feet from all lot lines but in no case shall the sign be set back more than 25 feet from the driveway entrance or intersection of internal drives;
- (2) One sign may be permitted per individual driveway or internal intersection;
- (3) The sign may not exceed five square feet in area and 30 inches in height.

- (4) In cases where a single development has 150,000 square feet or more of gross floor area, the maximum sign area shall be 16 square feet with a maximum height of six feet. In such cases, the sign shall be located in a manner that complies with the intersection visibility requirements of Section [1208.05](#).

**(f) Signs at Entrances**

For subdivisions in an O-2, B-3, BC, I-1, or I-2 District that are designed for nonresidential uses and contain five or more individual lots, such subdivision or park may incorporate a freestanding ground-mounted sign within 150 feet of an entrance point into the subdivision in accordance with the following:

- (1) The sign shall be subject to the same standards as Section [1220.07\(b\)](#), with the following exceptions:
  - A. The maximum sign area shall be 50 square feet.
  - B. The maximum height of a ground-mounted sign shall be 10 feet.
  - C. The sign shall be set back a minimum of 75 feet from any residential lot line.
  - D. Such sign may be located on a lot with another freestanding sign as allowed in Section [1220.08\(d\)](#).
  - E. If this sign is utilized, no other freestanding pole or ground-mounted sign shall be located within 50 feet of the entrance sign on the same street or road on which the park has access.
- (2) Provided the subdivision is recorded and the zoning is for a nonresidential zoning district, the sign may be placed even if no construction has taken place on any of the lots.

**(g) Signs Near a Drive-Through**

- (1) One freestanding sign (monument or pole sign) shall be allowed for each stacking lane in a drive-through facility provided it does not exceed 36 square feet in sign area. If the sign is completely screened from view from any right-of-way or adjacent residential uses, there shall be no maximum sign area.
- (2) Signs near drive-throughs shall only be permitted in the rear yard.
- (3) The signs shall not be included in the total calculated allowed signage for a property under the remainder of this chapter. Any signs attached to a wall of building or the structure shall be calculated as part of the building signage allowance in Section [1220.08\(c\)](#).
- (4) The sign shall not exceed six feet in height measured from the grade of the adjacent driving surface to the top of the sign.
- (5) The sign may be internally or externally illuminated.

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## **1220.09 TEMPORARY SIGNS**

The following temporary signs shall be permitted anywhere within the City provided they meet the established standards.

**(a) Standards that Apply to all Temporary Signs**

- (1) Temporary signs shall not be mounted, attached, affixed, installed, or otherwise secured in a manner that will make the sign a permanent sign.
- (2) No temporary sign shall be mounted, attached, affixed, installed, or otherwise secured so as to protrude above the roofline of a structure.
- (3) Unless otherwise specifically stated, temporary signs shall not be illuminated.
- (4) No temporary sign shall require a foundation, support, wiring, fittings, or elements that would traditionally require a building permit or electrical permit.
- (5) No streamers, spinning, flashing, or similarly moving devices shall be allowed as part of or attachments to temporary signs.
- (6) All temporary signs shall be secured in such a manner as to prevent swinging or other significantly noticeable movement resulting from the wind that could pose a danger to people, vehicles, or structures.
- (7) Mobile signs on wheels, runners, casters, parked trailers, parked vehicles, or other temporary or movable signs shall not be permitted unless otherwise specifically stated in this chapter.
- (8) Because of the nature of materials typically used to construct temporary signs and to avoid the unsightliness of deteriorating signs and all safety concerns which accompany such a condition, temporary signs shall be removed or replaced when such sign is deteriorated.

**(b) Temporary Signs in Residential Zoning Districts**

- (1) The following temporary signs are allowed on any lot in a residential zoning district or in a residential PD:
  - A. Up to a total of 24 square feet of temporary signs are permitted on each lot in a residential zoning district, including any lot in a residential PD.
  - B. The signs are limited to yard signs or banner signs subject to the sign-specific standards in Section [1220.09\(d\)](#).
  - C. There shall not be a maximum number of signs but the maximum sign area for any individual sign shall be six square feet with a maximum height of four feet.
  - D. A certificate of zoning compliance shall not be required for these signs.
- (2) In lieu of the above regulations, any nonresidential use located in a residential zoning district shall be permitted the same amount of temporary signs as allowed in the B-1 District pursuant to Section 1220.09(c).

**(c) Temporary Signs in Nonresidential Zoning Districts**

**(1) Year Round Signage Allowance**

The following temporary signs are allowed on any lot in a nonresidential zoning district or in a nonresidential PD, without time restrictions:



- A. Up to a total of 24 square feet of temporary signs are permitted on each lot.
- B. The signs are limited to yard signs or banner signs subject to the sign-specific standards in Section 1220.09(d).
- C. There shall not be a maximum number of signs but the maximum sign area for any individual sign shall be six square feet with a maximum height of four feet.
- D. A certificate of zoning compliance shall not be required for these signs.

**(2) Additional Signage**

- A. In addition to the signage allowed year round above, Table 1220-3 establishes the total square footage, height, and allowances for temporary signs allowed on each individual lot, in the applicable nonresidential zoning district.
- B. Each sign type shall be subject to the standards established for each sign type in this section.
- C. There shall be no maximum number of signs provided the aggregate total square footage of sign does not exceed the amount established in Table 1220-3 unless limited by the sign type standard.
- D. A certificate of zoning compliance shall be required for any sign over 16 square feet in sign area unless otherwise stated in this section.

**TABLE 1220-3: TEMPORARY SIGN ALLOWANCES**

SIGN TYPE	DISTRICTS AND SUBDISTRICTS ALLOWED	MAXIMUM SIGN AREA (SQUARE FEET)	MAXIMUM SIGN HEIGHT (FEET)	TIME LIMITS
A-Frame or T-Frame Sidewalk Signs	All Districts and Subdistricts	8	4	See Section 1220.09(d)(1).
Banner Signs	All Districts and Subdistricts	See Section 1220.09(d)(2).		
Flag Banner Signs	All Districts and Subdistricts	20	None	14 consecutive days, four times per calendar year
Yard Signs	All Districts and Subdistricts	24	5	14 consecutive days, four times per calendar year

**(d) Standards for Temporary Sign Types**

**(1) A-Frame or T-Frame Sidewalk Signs**

A-Frame or T-Frame sidewalk signs are permitted in any nonresidential district in accordance with the following requirements;

- A. A certificate of zoning compliance shall be required for the initial placement of a sign. If a sign with an approved certificate of zoning compliance is replaced by a sign identical in size and location, a new certificate of zoning compliance shall not be required for the replacement sign.
- B. The sign may be located on a public or private sidewalk or walkway provided it is placed on pavement and not in any landscaped areas.



- C. If the sign is placed on a sidewalk or walkway, the sign can only be placed where the paved sidewalk or walkway width, not including curb top, is at least seven feet wide.
- D. The sign must be free-standing and shall not be affixed, chained, anchored, or otherwise secured to the ground or to any pole, parking meter, tree, tree grate, fire hydrant, railing, or other structure.
- E. The sign must not obstruct access to parking meters, bicycle racks and other features legally in the right-of-way. The sign must not interfere with the opening of car doors in legal spaces, or with the operation of wheelchair lifts and ramps, cab stands, loading zones or bus stops.
- F. The sign shall be internally weighted so that it is stable and windproof.
- G. The sign shall only be placed outside during the hours of the establishment's operation.
- H. The City of Middletown shall be held harmless from any liability resulting from accident or injury caused by erection and maintenance of such sign.

**(2) Banner Signs**

- A. Banner signs may be attached to a building, fence, or other similar structure. Banners attached to posts and mounted in a yard or landscape area shall be regulated as a temporary yard sign.
- B. The maximum height standard for temporary signs shall not apply to a banner sign but such signs shall not be mounted in a manner that extends above the roofline of a building or the top of the structure on which it is mounted.
- C. The maximum sign area for banner signs shall be 32 square feet.
- D. Banner signs shall be permitted for up to 15 consecutive days, four times per calendar year with the exception of paragraph (E) below.
- E. For certificates of zoning compliance applications related to the establishment of a new use within an existing building where there is existing permanent signage, a banner sign may be approved for up to 45 consecutive days to cover the existing permanent signs. Such banner sign shall not exceed the sign area of the permanent sign and shall require a certificate of zoning compliance.

**(3) Flag Banner Signs**

- A. Flag banner signs shall be mounted on the building wall either by bracket or by a pole.
- B. The bottom of the flag banner sign shall be no lower than nine feet measured from grade of the property line closest to the banner.
- C. Flag banner signs shall not extend beyond three feet over the sidewalk measured from their point of mounting on the storefront wall.
- D. Flag banner sign mounting devices shall have structural integrity as authorized by the Chief Building Official.

**(4) Yard Signs**

There shall be a maximum of two faces to the sign, mounted back-to-back.

## **1220.10 NONCONFORMING SIGNS**

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- (a) All signs that do not conform to the specific standards of this code may be considered legally nonconforming if the sign was erected in conformance with a valid certificate of zoning compliance and complied with all applicable laws at the time of the sign's installation or if the sign was part of a property that was annexed to the City.
- (b) A sign shall lose its legal nonconforming status and must be brought into compliance with the provisions of this chapter by an application for and issuance of a certificate of zoning compliance or by complete removal, if any of the following occurs:
  - (1) If such sign is damaged to an amount exceeding 50 percent of the sign's replacement value, as determined by at least two sign companies requested to provide a quote;
  - (2) The sign type or structure is altered in any form;
  - (3) The sign is relocated;
  - (4) The nonconforming sign and its structure (including support and frame and panel) are determined by the Development Code Administrator to be unsafe or in violation of this code or the building code, and are declared a nuisance.
- (c) Failure to bring a sign into compliance after loss of a legal nonconformity status as defined in (b) above shall cause the sign to be considered an illegal sign.
- (d) Minor repairs and maintenance of nonconforming signs, such as repainting, electrical repairs and neon tubing repair shall be permitted. Maintenance does not include making changes in the words, symbols, or design on the current sign unless the words and symbols are part of the changeable reader board or removable panels on a sign cabinet.
- (e) Sign face changes where there is no change to the nonconforming sign structure including change in sign face area, height, or alteration of the sign cabinet, if applicable, may be made without a certificate of zoning compliance and without losing the legal nonconforming status of the sign. These actions include, but is not limited to, replacement of a sign face, repainting of a sign face, etc.

## **1220.11 MAINTENANCE**

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- (a) Every sign shall be maintained in a safe, presentable, and good structural condition at all times, including the replacement of a defective part, painting, cleaning, and other acts required for the maintenance of the sign.
- (b) Whenever a sign is to be removed pursuant to the requirements of this section, all parts of the sign and supporting structure (e.g., pole, monument, cabinet structure, etc.), excluding buildings for wall, projecting, or similar signage, shall be removed in its entirety. This section shall not require the removal of a raceway if mounted to such structure on a building.

# Chapter 1222: Subdivision Design

## 1222.01 PURPOSE

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The purpose of this chapter is to protect and provide for the public health, safety, morals, and general welfare of the City and its people, and specifically to achieve the following purposes:

- (a) To implement the Master Plan and further the purpose of this code when considering the subdivision of land;
- (b) To establish standard requirements and conditions for the design and review of subdivisions;
- (c) To provide for the orderly subdivision of land, and to ensure proper legal descriptions and monumentation of subdivided land;
- (d) To ensure that adequate public infrastructure, facilities, and services are available concurrent with development;
- (e) To require applicants to furnish land, install infrastructure, pay fees, and establish mitigative measures to ensure that development provides its fair share of capital facilities;
- (f) To encourage a beneficial relationship between the uses of land and circulation of traffic throughout the City, and to provide for the proper location and design of streets;
- (g) To prevent problems associated with inappropriately subdivided lands, including excess subdivision, partial or incomplete subdivision, or scattered subdivision; and
- (h) To assure that new subdivisions will contribute toward an attractive, orderly, stable, livable, and safe community.

## 1222.02 BASIC SUBDIVISION REGULATIONS

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### (a) Issuance of Certificates of Occupancy

- (1) The Chief Building Official shall not issue a certificate of occupancy until the City Engineer has signed the application for the certificate of occupancy as evidence that granting of the proposed street right-of-way has been completed and that water mains, storm and sanitary sewers, curbs, gutters, street base and at least one course of asphalt have been installed to City standards.
- (2) Sidewalks for any individual lot shall be installed before a certificate of occupancy is issued. Subdivisions having uncompleted sidewalks will be reviewed annually by the City for possible inclusion into the City's Sidewalk, Curb and Gutter Program. If either 80 percent of the lots in the development have been issued a certificate of occupancy or three years have passed since the performance of the pre-final inspection, any sidewalk not yet constructed will be installed as part of the above said program and the current owners of the lot will be assessed in accordance with Ohio R.C. Chapter 729. When severe weather has significantly delayed construction, the Chief Building Official may authorize occupancy of a structure, provided that the developer submits suitable plans for construction of the sidewalks to be installed a maximum of 120 days after occupancy.

- (3) When a certificate of occupancy has been issued as provided in division (1) hereof, the City shall have the right to permit connection of other sanitary sewers, water mains and storm sewers to those of the subdivision for which the certificate has been issued, whether such other sanitary sewers, water mains and storm sewers are owned by the City at the time or are in the process of being installed in other subdivisions by other subdividers under this chapter. Before receiving a permit for such connection, the connecting subdivider shall file a bond conditioned upon his or her repair of any damage done to the sanitary sewer, water main or storm sewer to which the connection is made, or for other damage caused by reason of such connection, and upon his or her indemnification of the owner of the latter sanitary sewer, water main or storm sewer for any liability arising on account of such connection.

**(b) Disposition of Applications for Building Permits**

- (1) After the plat has been filed with the Chief Building Official, he or she shall not, during the effective period thereof, issue a building permit for the rehabilitation, extension or erection of any building or structure, or the moving thereon of any existing building or structure, within the mapped street lines without first directing the attention of the applicant for building permit to the plat and acquainting such applicant with the provisions of this chapter and its purposes.
- (2) Forthwith, the Chief Building Official shall refer the application for building permit to the City Manager who shall, within 15 days, transmit such application to City Council together with an appraised present market value of the land and structures, if any, comprising the real estate on which the proposed construction is to be done, his recommendation relative to the advisability of immediately purchasing such real estate, and the status of the fund from which the purchase money is to be appropriated.
- (3) Within eight days of the receipt of the application and the report of the City Manager, City Council shall determine whether the immediate acquisition of such property within such mapped street lines is in the best interests of the public. In the event of an affirmative decision, City Council shall direct the City Manager to take the necessary steps for immediate acquisition. In the event of a negative decision, City Council shall direct the issuance of a building permit in accordance with applicable law.

**(c) Construction Procedures and Materials**

- (1) The design and construction of improvements shall be in accordance with the standards outlined in these regulations and other pertinent regulations. The work shall be done under City supervision and inspection, and shall be completed within the time fixed as agreed upon by the City.

- (2) The City Engineer is hereby authorized to establish, or adopt by reference, the following manuals that establish the minimum requirements for drawings, materials, installation procedures, and design requirements for public improvements and infrastructure related to subdivisions:
  - A. *Construction Standard Drawings*;
  - B. *Manual of Design for Public Improvements*;
  - C. *Erosion and Sediment Control Regulations*;
  - D. *Flood Damage Prevention Regulations*;
  - E. *Right-of-Way Regulations*;
  - F. *Street Master Plan*; and
  - G. *Water and Sewer Rules and Regulations*; and
  - H. The Ohio Department of Natural Resources' *Rain Water and Land Development Manual*.
- (3) The above manuals are hereby incorporated as part of this code and may be administered and enforced in the same manner as established in this code.
- (4) It shall be the duty of the owner, his agent or engineer to consult with public service and utility companies as to location of all underground conduits, pipe lines, cable and telephone conduit, overhead poles, street lights, wires, etc., and to provide necessary easements for such facilities on the final plat.

**(d) Construction Drawings, Changes, and Inspections**

- (1) No construction of improvements listed herein shall be done in any manner different from that indicated on the approved construction drawings, approved as part of the major subdivision review.
- (2) Any changes to the approved construction plans shall be submitted to the City Engineer for review and a decision.
- (3) Prior to starting any of the work covered by the approved construction drawings, arrangements shall have been made to provide for inspection of the work which are sufficient, in the opinion of the City Engineer, to insure compliance with the plans and specifications, as approved.
- (4) Construction activities may commence upon receipt of written notification from the City Engineer to proceed, to be issued after a preconstruction meeting between the subdivider's contractor and the City Engineer and payment of the plan review fees.
- (5) After completion of all improvements, except for the final course of asphalt, the City Engineer will perform a pre-final inspection at the request of the subdivider. The construction of sidewalks throughout the subdivision is not required prior to the pre-final inspection.

**(e) Requirements for Future Expansion and Oversizing of Public Improvements**

- (1)** For the purposes of long-term planning for the City's overall transportation and utility network, Middletown has established the requirements of this section related to the sizing and future expansion of such public improvements.
- (2)** Upon submission of the preliminary plat and/or traffic impact study, the City Engineer will review the plat, and, based upon the proposed development, will make a determination of the minimum size water mains, sanitary sewer mains, street width, pavement cross-section, and traffic signalization required to serve such a development.
- (3)** In some cases, based on the Master Plan or other approved plans, the City Engineer may determine that there is a need to oversize the proposed improvements for future capacity. Where the City requires infrastructure development beyond that determined above, the City shall share in the cost as set forth below:
  - A.** Where extra pavement width is required for streets, the City shall pay for the extra pavement width required beyond the development requirements;
  - B.** Where additional water system improvements are needed, the City shall pay for the additional cost as estimated by the City Engineer for the additional labor and material cost (per linear foot of mains and fittings, per unit cost of valves) associated with a water main diameter required by the City in excess of the diameter (eight-inch minimum) required for the development. In no case shall the City share in the cost of water mains connected to a water system other than that of the City.
  - C.** Where additional sanitary sewage system improvements are needed, the City shall pay for the additional cost as estimated by the City Engineer for the additional labor and material cost associated with a sanitary sewer main diameter required by the City in excess of the diameter (eight-inch minimum) required for the development, unless excess diameter was required to meet minimum velocity requirements due to grade.

**(f) Financial Guarantees for Public Improvements**

- (1)** A subdivider may execute and file a written financial guarantee with the City in lieu of actual installation or completion of the required public improvements when requesting approval of a final plat. See also Section [1226.07](#).
- (2)** The financial guarantee shall be an obligation for the faithful performance of any and all work and the construction and installation of all public improvements required to be done by the subdivider, together with all engineering and inspection costs and fees incurred by the City.
- (3)** The guarantee shall contain the further condition that should one of the following conditions exist, the City may, at its option, cause all required work to be done and public improvements constructed by using the financial guarantee.

- A. The installation of all required public improvements as called for in these regulations has not taken place within the time period agreed on in the construction agreement with the City, and the subdivider has failed to establish reasonable cause for such delay to the satisfaction of City Council and thereby to receive a time extension; and/or
  - B. The subdivider has not constructed the required public improvements in accordance with the minimum standards specified by these regulations, and the subdivider is unwilling to modify and upgrade said public improvements within a six-month time period of notice so as to be in compliance with the provisions of these regulations.
- (4) The parties executing the guarantee shall be firmly bound for the payment of all necessary costs therefor.
  - (5) The guarantee may take the form of a bond, cash deposit, or an irrevocable letter of credit as further outlined in this subsection.
  - (6) Unless otherwise specified, the amount of the financial guarantee for installation of public improvements shall be based on an engineer's cost estimate, approved by the City Engineer, for 100 percent of the cost to complete the unfinished public improvements.
- A. Where applicable, engineering, plan review, and construction review fees, etc., shall be required to be a part of the engineers cost estimate.
  - B. After a period of two years from the date of submittal, the City Engineer may require that a revised engineer's estimate and bond be submitted that reflects updated unit prices.
- (7) Unit prices used in the engineers cost estimate shall be based upon unit costs associated with public contracting (i.e., prevailing wage rates).
  - (8) Guarantees shall be made payable to the City of Middletown and be acceptable to the City Engineer and the City's legal counsel. Final guarantees shall be filed with the Clerk of City Council.
  - (9) Incomplete public improvements that the City Engineer determines will constitute a safety hazard or maintenance issue, or will prevent the effective functioning of the public improvements, shall be required to be completed prior to the approval of a final plat.
  - (10) Upon completion of the final inspection, the subdivider shall furnish a one-year maintenance financial guarantee in the amount of 10 percent of the cost of improvements.

**(11) Types of Guarantees**

The following are the types of financial guarantees allowed by the City. The standards for each type of guarantee shall apply to any situation where a financial guarantee is required, regardless if it is related to a subdivision application or not.

**A. Bond**

The following standards shall apply if a bond is utilized as a financial guarantee:

- i. A bond in the amount determined in accordance with this section shall be filed with the City of Middletown.
- ii. The bond may be in the form of a surety bond or a cash bond of the kind approved by law for securing deposits of public money.
- iii. The bond shall be executed by the subdivider as principal, and if a surety bond, shall be executed by a corporation authorized to act as a surety under the laws of the State of Ohio.

**B. Irrevocable Letter of Credit**

The following standards shall apply if an irrevocable letter of credit is utilized as a financial guarantee:

- i. The subdivider shall provide an irrevocable letter of credit from a bank or other reputable institution or individual subject to the approval of the City's legal counsel and City Manager.
- ii. The letter shall be deposited with the City, and shall certify the following:
  - a. The creditor guarantees funds in an amount equal to 130 percent of the cost, as estimated in accordance with Section [1222.02\(f\)](#) for completion all required public improvements.
  - b. In the case of failure on the part of the subdivider to complete the specified public improvements within the required time period, the creditor shall pay to the City immediately and without further action such funds as are necessary to finance the completion of those public improvements, up to the limit of credit stated in the letter.
  - c. The irrevocable letter of credit shall not have an expiration date.
  - d. This irrevocable letter of credit may not be withdrawn or reduced in amount until released by the City Manager in accordance with this chapter.

**C. Cash**

The following standards shall apply if cash is utilized as a financial guarantee:

- i. The subdivider shall provide a certified check for the amount of the guarantee, payable to the City of Middletown.
- ii. When the public improvements are complete, the City shall issue a check for the released amount based on this subsection.
- iii. The City shall not be responsible for paying interest for the period of time the City retains the guarantee.

**(12) Reduction of Financial Guarantees**

Upon completion of all improvements as per the pre-final inspection, submittal of as-built drawings, and a Mylar copy of the signed and recorded subdivision plat, financial guarantee may be reduced to an amount sufficient to cover the cost of outstanding improvements as determined by the City Engineer. Additionally, after completion of the improvements, the subdivider shall furnish a maintenance financial guarantee as established in Section [1222.02\(f\)](#).



**(g) As-Built Drawings**

The applicant or his/her engineer shall file copies of the “as-built” drawings, corrected to show exact location, grades, and necessary elevations and other pertinent data, for all structures or facilities installed as part of a subdivision. Such drawings shall be in compliance with the *Manual of Design for Public Improvements*.

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**1222.03 GENERAL DESIGN STANDARDS**

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**(a) Monuments and Markers**

Monuments and surveyor markers shall be provided in accordance with the *Manual of Design for Public Improvements*.

**(b) Street Lighting**

- (1) Street lighting shall be provided in accordance with the *Manual of Design for Public Improvements*.
- (2) Overhead wiring may be used with lights located at intersections and at such other points as are required with approval from the City Engineer.

**(c) Street Names, Signs, and Traffic Control Devices**

- (1) The subdivider shall furnish and install, at its cost, all necessary street signs and traffic control devices (signs, markings, signals, etc.) in accordance with the *Manual of Design for Public Improvements*.
- (2) Appropriate street signs and names as specified by the City shall be installed by the applicant at all street intersections. The timing of the sign installations shall be directed by the City.
- (3) Street signs shall be of the same material, design and color as other street signs in the City unless otherwise permitted by the City Engineer.
- (4) Street signs and names shall not be duplicated nor closely approximate any existing street name in the City, except the extension of an existing street.
- (5) If duplicate names of streets are found to exist during an annexation process, the renaming of one or both of the streets shall be addressed during the annexation process.

**(d) Subdivision Names**

The proposed name of the subdivision shall not duplicate or too closely approximate phonetically, the name of any other subdivision in the City or County. The City shall have final authority to designate the name of the subdivision.

**(e) Preservation of Natural Features**

Natural features shall be preserved, to the maximum extent feasible, in accordance with the City of Middletown’s *Manual of Design for Public Improvements*.

## **1222.04 LOT AND BLOCK DESIGN STANDARDS**

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### **(a) Lots**

- (1) All lots shall abut on a dedicated street of right-of-way and shall comply with the applicable site development standards in Section [1204.10](#).
- (2) Side lots lines shall be at approximately right angles to straight streets and on radial lines on curved streets. Some variation from this rule is permissible, but points or very irregular lots shall be avoided. For hillside areas, side lines of lots shall be located as to provide the most suitable building site.
- (3) Minimum lot areas, widths, and setback lines shall be as provided in this code for the district in which the subdivision is located. In cases where a water main supply system or a sanitary sewer system is not available, the minimum lot area shall be established by the applicable county's board of health, the Ohio EPA, or the Ohio Department of Health, as applicable, to accommodate a private water supply or sewage disposal system. In such cases, the minimum lot area may be larger than that established in this code.
- (4) Typically, panhandle lots, double frontage lots, or triple frontage lots shall be discouraged and may only be approved if necessitated by unique features or other special physical conditions as deemed necessary by the Planning Commission. These lots shall meet the requirements established for the applicable lot type in Section [1204.10\(a\)](#). However, panhandle, double frontage lots, or triple frontage lots may be approved by the Development Code Administrator during minor subdivision if necessitated by unique features.

### **(b) Blocks**

- (1) Blocks shall not normally exceed 1,250 feet in length, unless unusual circumstances justify greater length.
- (2) Blocks shall be of sufficient width to permit two tiers of lots of appropriate depth, except where an interior street parallels a limited access highway, arterial street, or railroad right-of-way.
- (3) No other specific rule is made concerning the shape of blocks, but blocks shall fit easily into the overall plan of the subdivision and their design must evidence consideration of lot planning, traffic flow and public areas.
- (4) Within blocks of over 700 feet in length, the Planning Commission may require, at or near the middle of the block, a public walk connecting adjacent streets or other public areas, shopping centers, etc.

## **1222.05 STREETS**

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- (a) All requirements and regulations related to traffic impact studies, access management, curb cuts, and similar requirements are located in Chapter 1026 of the Middletown Code of Ordinances.

- (b) Any street which is located partially or totally within a development project may be dedicated as a public street, provided that it is constructed in accordance with the *Manual of Design for Public Improvements* and further provided that a record subdivision plat be submitted and approved by the Planning Commission and dedication of the street accepted by City Council in accordance with Section [1226.07](#).
- (c) Private streets may be permitted within a development project, provided that the streets are located completely within project boundaries and further provided that the private street is designed and constructed to meet the standards of a public street in accordance with the *Manual of Design for Public Improvements* and that all police, fire, and emergency service vehicles are provided with permanent access rights.

**(d) General Street Requirements**

- (1) A street that is not constructed to City standards will not be accepted by the City for dedication as a public street.
- (2) Gated communities shall only be permitted as part of an approved PD District.

**(e) Street Layout**

- (1) The street layout shall provide access to all lots within the subdivision.
- (2) New subdivisions shall be based on a grid or modified grid system to the maximum extent feasible.
- (3) Local streets shall be designed by pattern and layout so as to discourage through traffic unless otherwise shown in the Street Master Plan or applicable county plan, as determined by the City Engineer.
- (4) Proposed streets shall be adjusted to the contour of the land so as to produce usable lots and streets of reasonable gradient.
- (5) Proposed streets, where appropriate, shall be extended to the boundary of the lot to be subdivided so as to provide for normal circulation of traffic with adjacent existing or future subdivisions or developed areas.

**(f) Dead-End Streets, Stub Streets, and Cul-de-Sac Streets (Permanent and Temporary)**

- (1) Dead-end streets shall be prohibited, except as stub streets.
- (2) Stub streets shall be installed to permit future street extensions into adjoining lots, where appropriate. Barricades shall be installed at the end of stub streets and signage may be provided indicating a future street connection. Stub streets shall not exceed 150 feet in length. Where required by the City Engineer, a temporary connection to another street, or a temporary turnaround, shall be provided by the applicant.
- (3) Where a stub street has two or more lots fronting thereon ends at a subdivision line for future extension, it shall be provided with a temporary paved turnaround until such extension is completed. The size of the turnaround shall not be less than 60 feet in diameter.

- (4) Permanent cul-de-sac streets are discouraged and should only be used where necessary due to topography, configuration of land, existing road layouts or other special circumstances. All cul-de-sacs shall have a pavement width of 86 feet in diameter and circular right-of-way width of 100 feet. Cul-de-sacs shall not exceed 700 feet in length as measured from the centerline of the nearest intersection to the center point of the cul-de-sac.
- (5) No parking shall be permitted in a cul-de-sac terminus. The developer shall be required to place "No Parking" signs at the beginning radius, center and ending radius of the cul-de-sac with signs approved by the Ohio Manual of Uniform Traffic Control Devices.

**(g) Street and Intersection Design Standard**

- (1) All streets and street intersections shall be designed and constructed in accordance any applicable standards in the Middletown Code of Ordinances and the *Manual of Design for Public Improvements*.
- (2) Any new local street shall have a minimum right-of-way width of 50 feet and all other new streets shall have a minimum right-of-way width of 60 feet with final determination made based on the functional roadway classification as identified in the *Manual of Design for Public Improvements*.
- (3) **Additional Requirements for Streets in the Business Center District**
  - A. In addition to the requirements of the *Manual of Design for Public Improvements*, the design of all new public or private streets within all of the Business Center Subdistricts must be consistent with the recommendations of the East End Master Plan, as included below.
    - A. Major Arterials**
      - i. New major arterial streets shall be designed in accordance with the cross-section in [Figure 1222-A](#).
      - ii. Street trees shall be installed within the tree lawns and street median with a maximum separation distance of 70 feet on center.

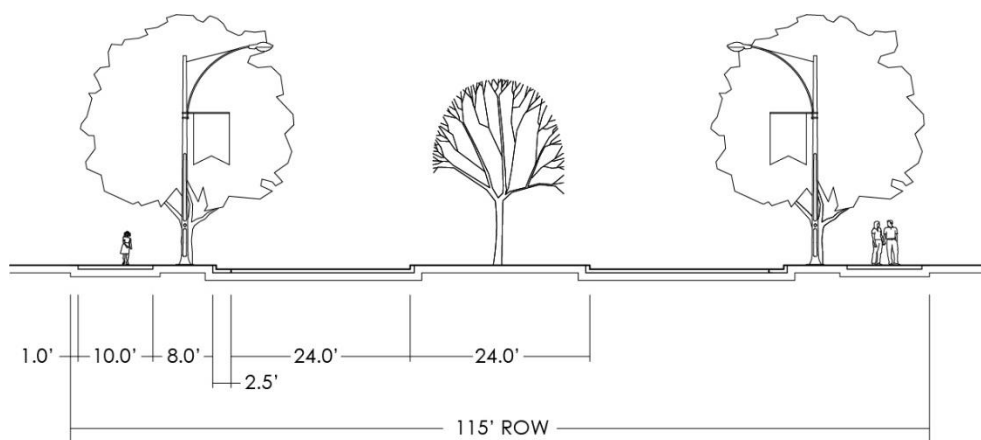


Figure 1222-A: Major arterial cross-section

### B. Minor Arterials

- i. New minor arterial streets shall be designed in accordance with the cross-section in [Figure 1222-B](#).
- ii. Street trees shall be installed within the tree lawns and street median with a maximum separation distance of 55 feet on center.
- iii. A sidewalk is required along one side of the street and a bike path is required along the opposite side of the street. The Development Code Administrator shall determine the appropriate side of the street for each pathway type at the time of development, based on factors such as topographical conditions, location of existing or planned pathways, as well as existing and planned land uses.

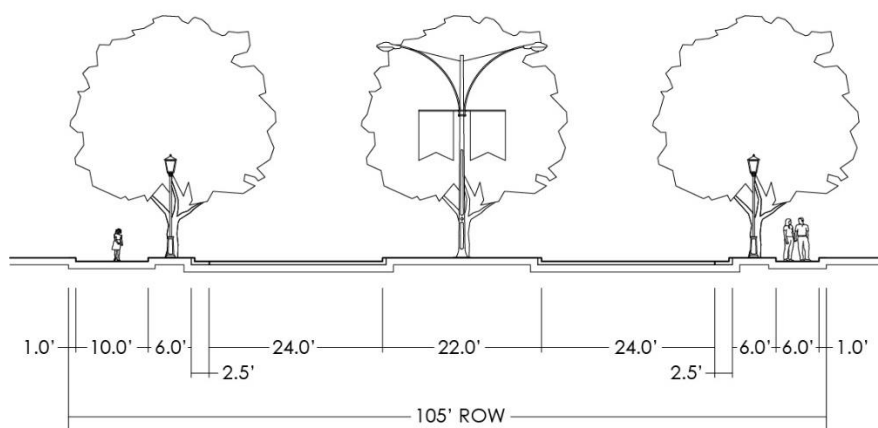


Figure 1222-B: Minor arterial cross-section

### C. Collector Streets

- i. New collector streets shall be designed in accordance with the cross-section in [Figure 1222-C](#).

- ii. Street trees shall be installed within the tree with a maximum separation distance of 40 feet on center.
- iii. A sidewalk is required along one side of the street and a bike path is required along the opposite side of the street. The Development Code Administrator shall determine the appropriate side of the street for each pathway type at the time of development, based on factors such as topographical conditions, location of existing or planned pathways, as well as existing and planned land uses.

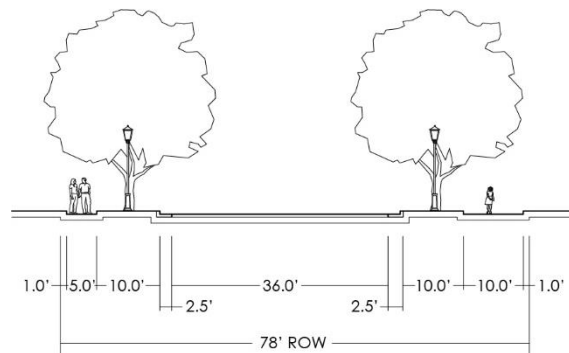


Figure 1222-C: Collector street cross-section

#### D. Local Streets

- i. New local streets shall be designed in accordance with the *Manual of Design for Public Improvements*.
- ii. Street trees shall be installed within the tree with a maximum separation distance of 40 feet on center.
- iii. The tree lawn width may be reduced to accommodate wider sidewalks with approval of the Development Code Administrator and City Engineer.

## 1222.06 SIDEWALKS

Sidewalks for subdivisions shall be required and installed as established in Section [1218.07](#).

## 1222.07 UTILITIES AND UNDERGROUND FACILITIES

### (a) General Requirements

- (1) All utilities and related infrastructure shall be subject to the applicable requirements established in the *Manual of Design for Public Improvements* and other applicable manuals as specified in Section [1222.02](#).
- (2) All public and common electric, cable, and telephone lines and other utilities shall be located underground in all residential, office, commercial and industrial subdivisions and districts, and shall be placed in their own easement, to the maximum extent practical as determined by the City Engineer.

- (3) These underground utility requirements shall also apply to any lines required to serve the new development that extend outside the boundary of the development. The conduits or cables shall be located within easements or public right-of-ways in separate trenches, in a manner which will not conflict with other underground services.
- (4) Utility construction within the rights-of-way following subdivision completion shall be subject to applicable permit fees as defined in other chapters of the Middletown Code of Ordinances
- (5) In commercial or industrial subdivisions where the electric power provider advises the City that the power load requirements are sufficiently large as to make underground service impractical or unfeasible, electric, cable, and telephone lines may be installed overhead along rear lot lines with the approval by the City Engineer. Should the City Engineer approve an overhead distribution system, all connections to it shall be made underground. All facilities are to be constructed on one side of the road without overhead crossovers.
- (6) Where cable and television service or conduit is or will be in operation, the applicant shall install cable or conduit for such service simultaneously with and in the same manner as electric and telephone cables are installed, both within the right-of-way and to individual building connections.
- (7) All sewer and utility pipelines shall preferably be placed outside the limits of the pavement. All excavations for public utilities made under paved areas shall be properly backfilled with approved granular materials thoroughly compacted in place and subject to the requirements of the *Manual of Design for Public Improvements* and the City's *Construction Standard Drawings*.

**(b) Large Utility Structures**

Any utility cabinet or structure that is larger than six square feet on any face, other than a principal building, shall be subject to the following requirements:

- (1) The utility structure shall be located to the rear or side of lots to the maximum extent feasible.
- (2) If the applicant demonstrates to the Planning Commission or Development Code Administrator, as applicable to the subject review procedure, that the utility structure can only be located in a front yard, the structure shall be landscaped in a manner that will allow access to the unit but otherwise buffer the view of the structure. The applicant shall be required to provide a landscaping plan as part of the installation of such structure, regardless if the utility is exempt from zoning.
- (3) Utility structures in the I-1 or I-2 Districts shall not be subject to this screening requirement.

**(c) Sanitary Sewer**

The subdivider shall install or cause to be installed a system for addressing sanitary sewage subject to the following:

- (1) Where a public sanitary sewer main is reasonably accessible, in the judgment of the City Engineer, the subdivision shall be provided with a complete sanitary sewer system connected with such sewer main, including a lateral connection for each lot.
- (2) Where a public sanitary sewer main is not reasonably accessible, in the opinion of the City Engineer, proper provisions shall be made for the disposal of sanitary wastes, subject to review and approval by the City Engineer and/or the applicable county health department.
- (3) In general, sewerage works and facilities shall be designed in accordance with State Health Department requirements, and all rules and regulations of the applicable county's sanitary engineer, and will be subject to State EPA approval.
- (4) After a determination has been made as to the size sewer mains necessary to serve the subdivision, larger mains may be required in order to adequately serve subsequently developed areas.

**(d) Water Distribution System**

- (1) The subdivider shall install or cause to be installed a water system for the subdivision by one of the following methods:
- (2) **Public System**
  - A. A complete water main system which shall be connected to a public or other community water supply shall meet the requirements of the State of Ohio or other government authority having jurisdiction, and shall be approved by the City Engineer.
  - B. The water distribution system shall be adequate to serve the area being platted, including a connection for each lot and appropriately spaced fire hydrants.
  - C. After a determination has been made as to the size water mains necessary to serve the subdivision, larger mains may be required in order to adequately supply subsequently developed areas.
  - D. A water main shall be required to extend across the complete frontage of the subdivision to facilitate future development.
- (3) **Individual Supply**
  - A. If the subdivider submits proper evidence to the City Engineer that no other form of water supply is possible or economically feasible, then the City Engineer may authorize an individual water supply on each lot in the subdivision, subject to compliance with all recommended design standards of the applicable county's health department and the State of Ohio.
  - B. Such individual systems are discouraged by the City



## **1222.08 STORM WATER AND DRAINAGE**

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- (a) Every subdivision shall be provided with a storm water sewer or drainage system which is adequate to serve the platted area and which otherwise meets standards and specifications of the City.
- (b) All subdivisions shall be subject to the storm water requirements established in the *Manual of Design for Public Improvements* and adhere to the *Erosion and Sediment Control Regulations*;
- (c) Where feasible, and where a storm sewer of 48 inches or larger would otherwise be required, storm water drainage may be provided by means of ditches in drainage courses, either of grass or paved concrete, approved by the City Engineer, provided that such type of drainage is not located within a street right-of-way. An easement shall be required for such storm sewer.
- (d) The determination of the necessity for storage basins will be based upon, but not limited to, existing storage basins and existing storm sewer and open channel capacities. Where deemed necessary by the City, the developer shall provide storm water storage basins in accordance with the *Manual of Design for Public Improvements*.
- (e) Where detention or retention is required, the basins shall be:
  - (1) Constructed on-site; and
  - (2) Privately maintained by an individual, up to four lot owners, a private company, an association or some other private organization. A maintenance plan shall be included in the subdivision protective covenants and recorded with the subdivision plat.
- (f) The subdivider may request that the City accept a regional detention/retention basin for perpetual ownership and maintenance by the City, predicated upon guidelines as stated in the *Manual of Design for Public Improvements*. Conditions of such acceptance include, but are not limited to, the subdivider paying for all costs associated with:
  - (1) The design and construction of all items associated with the basin, including inlet/outlet structures, sewers and other appurtenances; and
  - (2) The transfer of required deeds for land ownership and access easements to the City.

## **1222.09 GREEN INFRASTRUCTURE**

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### **(a) Green Infrastructure Techniques**

- (1) The City encourages the use of green infrastructure techniques because of their connection to sustainable development practices and environmental quality. The proper use of green infrastructure can dramatically improve storm water runoff quality, decrease runoff volume, protect downstream streams and rivers, and create more interesting places to live.
- (2) The following green infrastructure techniques may be incorporated into new subdivisions with approval from the City Engineer:
  - A. Grassy swales and shoulders without curb and gutter;

- B. Pedestrian walkways that do not constitute the sidewalks required by Section [1218.07](#).
- C. Permeable pavements (e.g., pavers, permeable concrete, permeable asphalt pavement);
- D. Bioretention swales;
- E. Planter boxes;
- F. Curb extensions; or
- G. Other techniques if the applicant submits documentation that the proposed green infrastructure technique will equal or exceed the function of traditional infrastructure techniques.

**(b) Criteria for Green Infrastructure Waivers**

The City Engineer may grant a green infrastructure waiver for use of the green infrastructure techniques provided:

- (1) The techniques will utilize the landscape or nature's ability to reduce, slow, filter, and/or absorb storm water runoff from streets, parking lots, and buildings in a method that equals or exceeds the existing infrastructure requirements of the City;
- (2) The techniques are consistent with best management practices; and
- (3) The technique has been designed by a professional engineer and is accompanied by documentation stating that the proposed technique does not pose a threat to the public safety.

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## **1222.10 EASEMENTS**

- (a) Easements shall be provided for all utilities and storm water facilities as required by the City Engineer and in accordance with any applicable manuals as specified in Section [1222.02](#).
- (b) All easements shall be shown on the final or record plat.

# **Chapter 1224: Nonconformities**

## **1224.01 PURPOSE**

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Within the districts established by this code, some lots, uses of lands or structures, or combinations thereof may exist which were lawful prior to the effective date or amendment of this code, but that are prohibited, regulated, or restricted under the terms of this code. The legitimate interests of those who lawfully established these nonconformities are herein recognized by providing for the continuance of such uses, subject to regulations limiting their completion, restoration, reconstruction, extension, and/or substitution. Nevertheless, while it is the intent of this code that such nonconformities be allowed to continue until removed, they should not be encouraged to survive, unless otherwise allowed in this chapter or specifically addressed in this code.

## **1224.02 GENERAL PROVISIONS**

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- (a) Any use, building, structure, land, or premises that existed at the time of the effective date of this code, which was legally established under a previous code amendment or versions, may be continued even if such use, building, structure, land, or premises does not conform to the provisions of this code.
- (b) Passage of this code in no way legalizes any illegal uses existing at the time of its adoption and such illegal uses shall not be considered a legal nonconforming use subject to the provisions of this chapter.
- (c) An applicant for any development review procedure that deals with a nonconformity shall bear the burden of proof in demonstrating that the use was a legal nonconformity on the effective date of this code.

## **1224.03 DETERMINATION OF LEGAL NONCONFORMITY STATUS**

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- (a) At the time of application for a building permit, certificate of zoning compliance, request for variance, or any other development review regarding a nonconforming lot, building, structure or use, the property owner shall submit sufficient evidence for the applicable staff or review board to determine that such lot, building, structure, or use was lawfully created or established in accordance with the code regulations in existence at that time.
- (b) If the evidence submitted indicates the lot, building, structure or use was legally established and has since become nonconforming because of the establishment of, or amendment to, this code, the Development Code Administrator shall issue a certificate of zoning compliance identifying it as a legal nonconformity. A copy of such certificate shall be kept on file in the offices of the Development Code Administrator.

## **1224.04 NONCONFORMING USES AND VARIANCES OR CONDITIONAL USES**

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- (a) Whenever a nonconforming use has been changed to a conforming use, such use shall no longer be defined as a nonconforming use, nor shall the property be returned to the former nonconforming use.
- (b) When a property owner or authorized agent is granted a variance for a nonconformity that addresses the nonconformity, the use, structure, or lot shall no longer be considered nonconforming. In no case shall the resolved nonconformity be expanded or altered to create further nonconformities.

- (c) If a property owner or authorized agent is granted a variance for a nonconformity that addresses some nonconformities but additional nonconformities continue, the use, structure, or land shall still be subject to the provisions of this chapter.
- (d) Any use for which a conditional use is granted as provided in this code shall not be deemed a nonconforming use, but shall without further action be deemed a conforming use in such district.

## **1224.05 NONCONFORMING USES**

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Where, at the time of adoption of this code, lawful uses of land or structures exist that would not be permitted by the regulations of this code, the uses may be continued so long as they remain otherwise lawful and provided:

- (a) No such nonconforming uses shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this code unless it complies with the provisions of Section [1224.05\(e\)](#).
- (b) No such nonconforming use shall be moved, in whole or in part, to any portion of the lot or lot other than that occupied by such uses at the effective date of adoption or amendment of this code.
- (c) No additional structures shall be constructed on a lot with a nonconforming use unless such new structure complies with the requirements of this code and the applicable zoning district.

### **(d) Change or Substitution of Nonconforming Use**

- (1) The lawful use of an existing building or structure can be continued even if such use is not permitted in the applicable district. If no structural alterations are made that increase the nonconformity, a nonconforming use of a building may be changed to another nonconforming use of the same or of a more restricted use, as determined by the BZA. Such determination shall be made at a public hearing held in the same manner as a variance (See Section [1226.10](#).), including notice, but the variance review criteria of Section [1226.10\(c\)](#) shall not apply. At the hearing, the BZA shall make a determination if the proposed use is similar in nature and intensity, or is a more restricted use, allowable as a change or substitution under this section.
- (2) Whenever a nonconforming use is changed to a less intensive nonconforming use, such use shall not thereafter be changed to a more intensive nonconforming use.
- (3) Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the applicable zoning district in which such structure is located, and the nonconforming use may not thereafter be resumed.
- (4) In permitting such change, the BZA may impose appropriate conditions and safeguards to protect adjacent properties.

**(e) Expansion of a Nonconforming Use**

- (1) Notwithstanding the foregoing provisions to the contrary, a structure containing a nonconforming residential use (not including mixed use buildings or live/work units) may be increased or improved, regardless of the applicable zoning district, provided the structure continues to be used for residential purposes only and meets all required setbacks.
- (2) Any nonconforming, nonresidential use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the effective date of this code, but no such use shall be extended to occupy any land outside such building.
- (3) Variances to expand a nonconforming use into a required setback or to otherwise vary a regulation that applies to the subject site shall be prohibited.

**(f) Existing Use Reclassified as a Conditional Use**

In the event an existing use that was permitted by right at the time the use was established is thereafter reclassified as a conditional use in the applicable district due to a zoning text amendment, such use shall be considered to be an approved conditional use without any further action. However, any subsequent change to such use shall require review and approval by the Planning Commission in accordance with this chapter and Section 1226.05. Such use, provided it is conditionally permitted in the applicable district, shall not be considered a nonconforming use.

**(g) Termination of Nonconforming Uses**

**(1) Termination of Use through Discontinuance**

- A. When any nonconforming use is discontinued or abandoned for more than 12 consecutive months, any new use shall conform to the regulations of the district in which it is located, and the nonconforming use may not thereafter be resumed. The intent to continue a nonconforming use shall not be evidence of its continuance.
- B. There may be cases when a structure, or structure and premises in combination, may not be converted to a conforming use because of the original floor plan and design (e.g. townhouses into a single-family residentially zoned area). In these cases, the BZA may determine that the nonconforming use may continue if the nonconforming use is the original use of the structure and/or premises. Appropriate safeguards, conditions and design standards may be required by the BZA so as to minimize the impact of such continuance on the area. Such review and determination shall be made at a public hearing held in the same manner as a variance (See Section 1226.10.), including notice, but the variance review criteria of Section 1226.10(c) shall not apply.

**(2) Termination of Use by Damage or Destruction**

- A.** If a nonconforming residential dwelling in any district is damaged or destroyed to any extent, such structure and use may be reestablished on the same lot provided it meets the same size in height and footprint, as well as complying with the same setbacks as previously existed.
- B.** If a nonconforming, nonresidential use in a residential district is damaged, but not to an extent greater than 50 percent of the principal structure's market value according to the applicable county auditor, such structure and use may be reestablished on the same lot to the same size and intensity of use as was previously existing immediately prior to the damage or destruction. Such reestablishment of the use shall require the issuance of a certificate of zoning compliance.
- C.** If a nonconforming, nonresidential use in a residential district is damaged beyond 50 percent of the principal structure's market value according to the applicable county auditor, such structure and use may only be reestablished with approval by the BZA after consideration of surrounding uses and the impact of the nonconforming use. Such review and determination shall be made at a public hearing held in the same manner as a variance (See Section [1226.10](#).), including notice, but the variance review criteria of Section [1226.10\(c\)](#) shall not apply.

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**1224.06 NONCONFORMING STRUCTURES**

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A nonconforming building or structure may continue to be used or occupied by a use permitted in the applicable zoning district so long as it remains otherwise lawful and does not constitute a public nuisance, subject to the following provisions:

- (a)** Any nonconforming structure or site may be enlarged, maintained, repaired, or altered provided, however, no such enlargement, maintenance, repair or alteration shall either create an additional nonconformity or increase the degree of the existing nonconformity of all or any part of such structure or site, unless otherwise specified in this code.
- (b)** A nonconforming structure shall not be relocated in whole or in part to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the applicable zoning district after being relocated.
- (c)** The principal use of a nonconforming building may be changed to any other use permitted in the applicable zoning district as long as the new use complies with all regulations of this code specified for such use, except the regulations to which the building did not conform prior to the change in use.
- (d)** The governmental acquisition of a portion of a lot for a public purpose that results in reduction in a required yard or setback below that required in the applicable zoning district shall not render a structure nonconforming.

**(e) Damage or Destruction of a Nonconforming Structure Containing a Conforming Use**

- (1)** If a nonconforming structure is damaged, but not to an extent greater than 50 percent of the structure's market value, as determined by the applicable county's auditor, such structure and use may be reestablished on the same lot to the same size and intensity of use as was previously existing immediately prior to the damage or destruction. Such reestablishment of the use shall require the issuance of a certificate of zoning compliance. If an owner rebuilds a legally nonconforming structure under this provision, they may expand the structure provided, as stated in Paragraph [1224.06\(a\)](#), any expansion or change does not increase the nonconformity that existed prior to the damage.
- (2)** If a nonconforming structure is damaged beyond 50 percent of the structure's market value, such structure shall only be rebuilt in compliance with the requirements of this code.
- (3)** If the owner voluntarily removes the structure or reduces the nonconformity, that has not been damaged or destroyed, that owner shall not be permitted to rebuild the structure to the original height, size, or setback.

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**1224.07 NONCONFORMING LOTS OF RECORD**

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A nonconforming lot of record may be used in accordance with this section.

- (a)** If an existing nonconforming lot of record is occupied by a building with a use that complies with the code, such building shall be maintained and may be repaired, modernized or altered, provided that:
  - (1)** The building shall not be enlarged in floor area unless the enlarged section complies with all regulations of this code, with the exception of the lot area and the lot width regulations.
  - (2)** The number of dwelling units, if applicable, shall not be increased unless in conformance with this code.
- (b)** In any residential district, a single-family dwelling and its customary accessory uses, may be erected on a vacant single lot of record after the effective of this code provided the buildings comply with the minimum setbacks to the maximum extent practical.
- (c)** In any nonresidential district, a use that is permitted in the applicable district, and its customary accessory uses, may be erected on a vacant single lot of record after the effective of this code provided the buildings comply with the minimum setbacks to the maximum extent practical.

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**1224.08 NONCONFORMING SIGNS**

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See Section [1220.10](#) for the regulation of nonconforming signs.

## **1224.09 REPAIR AND MAINTENANCE**

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- (a) On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring, or plumbing, provided that the footprint and height of the structure as it existed, when it became nonconforming, shall not be increased unless in accordance with this chapter.
- (b) Nothing in this section shall be deemed to prevent the strengthening or restoring to safe condition of any building, or part thereof, declared to be unsafe by any official charged with protecting the public safety, including, but not limited to the City Manager, Development Code Administrator, or Chief Building Official, upon order of such official. Where appropriate, a building permit for such activities shall be required.



# Chapter 1226: Review Authority and Procedures

## **1226.01 REVIEW AND DECISION-MAKING AUTHORITIES**

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### **(a) City Council**

In addition to any other authority granted to City Council by charter, ordinance, or State law, City Council shall have the following powers and duties, as it relates to this code.

- (1)** Appoint members to the Planning and Zoning Commission, Historic Commission, and the Board of Zoning Appeals, in accordance with the charter and this code;
- (2)** Initiate, hear, review, and make decisions related to amendments to the text of this code, the zoning map, or planned developments;
- (3)** Review and accept, where appropriate, any proposed dedication of street, utilities, other public improvements, financial guarantees in lieu of construction of those public improvements, and maintenance bonds as may be required by these regulations;
- (4)** Establish fees for development review and permits; and
- (5)** Perform any other duties related to the administration and enforcement of this code as authorized by the charter, this code, and the ORC.

### **(b) Planning Commission**

#### **(1) Establishment**

- A.** The Middletown Planning Commission is hereby established by City Council.
- B.** The Middletown Planning Commission may be hereafter referred to as the "Planning Commission."

#### **(2) Membership**

The Planning Commission shall be comprised of nine members as follows:

- A.** The City Council shall appoint six voting members of the Planning Commission who shall each be a citizen of the United States and a resident of the City.
- B.** One additional voting member shall be appointed by the Board of Education for the Middletown City School District.
- C.** In addition to the seven voting members, there shall be the following two additional members who shall not vote on any matters before the Planning Commission:
  - i.** One member of City Council, as designated by Council; and
  - ii.** The Development Code Administrator or other staff member as may be appointed by City Council.
- D.** Each member shall serve four-year terms. The terms of existing members shall continue until expiration.

- E. Any such member of the Planning Commission may serve on other administrative boards of the City, if such other office is not incompatible with membership on the Planning Commission.
- F. Members of the Planning Commission may be removed for misfeasance, malfeasance, or nonfeasance by City Council.
- G. A vacancy occurring during the term of any member of the Planning Commission shall be filled, by appointment from City Council or Board of Education, as applicable, for the unexpired term in a manner authorized for the original appointment.

**(3) Roles and Powers of the Planning Commission**

The Planning Commission shall have the following roles and powers to:

- A. Consider all questions relating to the City's planning policies;
- B. Advise on all matters involving acquisition or disposal of public real estate;
- C. Advise in the preparation of a budget for capital improvements and recommend the priority of acquisition of such improvements;
- D. Initiate, hear, review, and make recommendations to City Council related to amendments to the text of this code, the zoning map, or PD plans and related zoning map amendments;
- E. Hear, review, and make decisions related to the PD final development plans;
- F. Hear, review, and make decisions on conditional uses in the respective zoning district;
- G. Hear, review and make decisions on alternative equivalent review applications on standards except for historic preservation standards;
- H. Hear, review, and decide on any proposed amendments to previously approved planned use modification approvals and documents;
- I. Review and make decisions on minor subdivisions when such application is forwarded to the Planning Commission by the Development Code Administrator;
- J. Review and make decisions on the preliminary plat, construction drawings, and final plats of major subdivisions;
- K. Review and make decisions on requests for subdivision modifications; and
- L. Perform any other duties related to the administration and enforcement of this code as authorized by the charter and this code.

**(4) Bylaws, Rules, and Regulations**

The Planning Commission shall, by a majority vote of its entire membership, adopt bylaws, rules, or regulations for the governance of Planning Commission activities provided they are consistent with the charter or with any other ordinances of the City.

**(5) Meetings**

- A. The Planning Commission shall hold such meetings as it may require for conducting its business.

- B.** The Development Code Administrator or staff appointee to the Planning Commission shall serve as secretary of the Planning Commission.
- C.** The Planning Commission shall elect a Chairperson and a Vice-Chairperson from among the members of the Planning Commission at the Commission's first meeting of the year. During the temporary absence of the Chairperson, the Vice-Chairperson shall fulfill the duties of the Chairperson. If both the Chairperson and Vice-Chairperson are absent, a member of the Planning Commission may make a motion to appoint an acting Chairperson for that meeting.
- D.** All meetings shall be open to the public, except as exempted by law.

**(6) Quorums and Decisions**

- A.** Any combination of four or more regular voting members of the Planning Commission shall constitute a quorum.
- B.** The Planning Commission shall act when at least four voting members concur.
- C.** Non-decision items, such as continuance or approval of minutes, shall require a majority of the quorum to concur.
- D.** The Planning Commission may be required to make an annual report and such other reports as may be requested by City Council.

**(c) Historic Commission**

**(1) Establishment**

- A.** The Middletown Historic Commission is hereby established by City Council.
- B.** The Middletown Historic Commission may be hereafter referred to as the "Historic Commission."

**Membership**

- a.** The Historic Commission shall be comprised of seven members, all of whom shall be residents of the City and appointed to the Historic Commission by City Council.
- b.** All members shall have, to the greatest extent practical, interest and proficiency in historic preservation, reconstruction, rehabilitation and restoration. Every attempt shall be made to include the following areas of expertise in the appointment of members:
  - ii.** A registered architect;
  - iii.** A professional landscape architect, historian, archaeologist, or city planner;
  - iv.** A person whose education and experience qualify him or her in building construction;
  - v.** A member of the Middletown Historical Society;
  - vi.** One elector who neither resides nor owns property in a designated historic district or a zoning district which requires approval of City Council for alterations and/or modifications;

- vii. One elector from each historic district or zoning district which requires approval of this City Council for alterations and/or modifications, who shall reside or own property in such district;
  - viii. An attorney; and
  - ix. A member of the Planning Commission.
- C. Each member shall serve four-year terms. Terms shall be staggered so as no more than two members are up for appointment each year. The terms of existing members shall continue until expiration.
- D. Any such member of the Historic Commission may serve on other administrative boards of the City, if such other office is not incompatible with membership on the Historic Commission.
- E. Members of the Historic Commission may be removed for misfeasance, malfeasance, or nonfeasance by City Council.
- F. A vacancy occurring during the term of any member of the Historic Commission shall be filled, by appointment from City Council for the unexpired term in a manner authorized for the original appointment.
- G. To the extent practical, vacancies shall be filled within sixty (60) days for the remainder of any unexpired terms in the same manner as the original appointments and confirmations.
- H. Additional Qualifications
  - (i) All members shall have, to the greatest extent practical, interest and proficiency in historic preservation, reconstruction, rehabilitation and restoration and a determination to work for the overall improvement of the quality of the physical environment of the City.

**(3) Roles and Powers of the Historic Commission**

The Historic Commission shall have the following roles and powers to:

- A. Conduct a continuous survey of all areas, places, structures, works of art, or similar objects in the City which the Historic Commission has reason to believe are or will be eligible for designation as historic sites, landmarks or districts according to guidelines established by the State Historic Preservation Office;
- B. Make recommendations for designation of landmarks and historic districts to the City Council;
- C. Establish and implement written guidelines for the conservation of designated local landmarks and historic districts;
- D. Act in an advisory role to other officials and departments of local government regarding the protection of local cultural resources;
- E. Act as a liaison on behalf of the local government to individuals and organizations concerned with historic preservation;

- F.** Work for the continuing education of the residents of the City in regard to the archaeological, historical, and architectural heritage of the City and the historic sites and historic districts designated under the provisions of this chapter;
- G.** Conduct or encourage members to attend training/educational sessions at least once a year, or in-depth consultation with the State Historic Preservation Office, pertaining to work and functions of the Commission or on specific historic preservation issues;
- H.** Provide a public forum for the review of nominations of areas, places, structures, works of art, landmarks or similar objects within the City to the National Register of Historic Places of the U.S. Department of the Interior. Review shall include the relationship of the proposed nomination to the Historic Preservation Plan of the City and any other consideration which may be relevant to the proposed nomination. Such nominations may be generated from the Historic Commission or from any other source;
- I.** Adopt and periodically modify the Historic Preservation Plan as the general policy for designation of Historic Landmarks and Historic Districts and for the issuance or denial of certificates of appropriateness;
- J.** Hear, review, and make decisions on alternative equivalent review applications related to the historic preservation standards;
- K.** Review and make decisions on certain certificates of appropriateness;
- L.** Perform any other duties related to the administration and enforcement of this code as authorized by the charter and this code; and
- M.** Undertake additional responsibilities upon mutual written agreement between the State Historic Preservation Office and the City.
- N.** Seek outside guidance, expertise, or assistance for commission decisions.

**(4) Bylaws, Rules, and Regulations**

The Historic Commission shall, by a majority vote of its entire membership, adopt bylaws, rules, or regulations for the governance of Historic Commission activities provided they are consistent with the charter and with any other ordinances of the City.

**(5) Meetings and Records**

- A.** Rules of procedure shall be established and made public. At least (4) meetings must be held every year at regular intervals. All meetings of the Commission shall be held in an accessible public place.
- B.** All decisions must be made at public meetings. Applicants must be notified of meetings and advised of decisions in writing.
- C.** No Commission member shall take part in the hearing, consideration, determination, or vote of any case in which the member is involved or has a financial interest.

- D. Planning Director or their designate will serve as Secretary to the Commission and will keep minutes of all meetings. The Secretary shall keep, or cause to be kept, a complete record of all decisions and actions of the Commission. In addition, the Secretary shall prepare an annual report of Commission activities, cases, decisions, special projects, and qualifications of its members.
- E. All minutes and annual reports will be kept on file at the Planning Department and available for public inspection subject to the City's public records retention schedule.
- F. The Historic Commission shall hold such meetings as it may require for conducting its business.
- G. The Historic Commission shall elect a Chairperson and a Vice-Chairperson from among the members of the Historic Commission at the Commission's first meeting of the year. During the temporary absence of the Chairperson, the Vice-Chairperson shall fulfill the duties of the Chairperson. If both the Chairperson and Vice-Chairperson are absent, a member of the Historic Commission may make a motion to appoint an acting Chairperson for that meeting.
- H. All meetings shall be open to the public, except as exempted by law.

**(6) Quorums and Decisions**

- A. Any combination of four or more members of the Historic Commission shall constitute a quorum.
- B. The Historic Commission shall act when at least four members concur. Non-decision items, such as continuance or approval of minutes, shall require a majority of the quorum to concur.
- C. The Historic Commission may be required to make an annual report and such other reports as may be requested by City Council.

**(d) Architectural Review Board**

**(1) Establishment**

- A. The Middletown Architectural Review Board is hereby established by City Council.
- B. The Middletown Architectural Review Board may be hereafter referred to as the "Architectural Review Board" or the "ARB."

**(2) Membership**

- A. The ARB shall be comprised of three members that shall include one member of City Council and two members of Planning Commission. The members shall be selected by their respective board.
- B. Each member shall serve four-year terms or until the expiration of their term on their respective board. Terms shall be staggered so as one member is up for appointment each year. The terms of existing members shall continue until expiration.

- C. Each member shall name one alternate, from the same body as that from which the member was appointed, who shall attend meetings of the ARB and vote in their absence.
- D. A vacancy occurring during the term of any member of the ARB shall be filled by appointment of a new board member from the respective boards and shall be for the unexpired term in a manner authorized for the original appointment.

**(3) Roles and Powers of the ARB**

The ARB shall have the following roles and powers to:

- A. Review and make decisions on the architectural and landscaping standards that apply to developments in cases where the Development Code Administrator determines that the plans and elevations do not meet the standards of Section [1210.03](#).
- B. Perform any other duties related to the administration and enforcement of this code as authorized by the charter and this code.

**(4) Bylaws, Rules, and Regulations**

The ARB shall, by a majority vote of its entire membership, adopt bylaws, rules, or regulations for the governance of ARB activities provided they are consistent with the charter and with any other ordinances of the City.

**(5) Meetings**

- A. The ARB shall hold such meetings as it may require for conducting its business.
- B. The Development Code Administrator or staff appointee shall serve as secretary of the ARB.
- C. The ARB shall elect a Chairperson from among the members of the ARB at the Board's first meeting of the year. If the Chairperson is absent, a member of the ARB may make a motion to appoint an acting Chairperson for that meeting.
- D. All meetings shall be open to the public, except as exempted by law.

**(6) Quorums and Decisions**

- A. Any combination of two or more regular or alternate members of the ARB shall constitute a quorum.
- B. The ARB shall act when at least two voting members concur.
- C. The ARB may be required to make an annual report and such other reports as may be requested by City Council.

**(e) Board of Zoning Appeals (BZA)**

**(1) Establishment**

- A. The Middletown Board of Zoning Appeals is hereby established by City Council.
- B. The Middletown Board of Zoning Appeals may be hereafter referred to as the "Middletown Board of Zoning Appeals," "Board of Zoning Appeals," or "BZA."

**(2) Membership**

- A.** The BZA shall be comprised of seven members, all of whom shall be residents of the City and appointed to the BZA by City Council. Every attempt shall be made to include the following areas of expertise in the appointment of members:
  - i. A member of the Planning Commission;
  - ii. An attorney;
  - iii. A registered architect or a builder
  - iv. A person engaged in the real estate business; and
  - v. The remaining members may be selected from any residents of the City.
- B.** Each member shall serve four-year terms except that the term of the member of the Planning Commission shall expire at the same time as their term on the Planning Commission. Terms shall be staggered so at least one member is up for appointment each year. The terms of existing members shall continue until expiration.
- C.** Any such member of the BZA may serve on other administrative boards of the City, if such other office is not incompatible with membership on the BZA.
- D.** Members of the BZA may be removed for misfeasance, malfeasance, or nonfeasance by City Council.
- E.** A vacancy occurring during the term of any member of the BZA shall be filled by appointment from City Council for the unexpired term in a manner authorized for the original appointment.

**(3) Roles and Powers of the BZA**

The BZA shall have the following roles and powers to:

- A.** Hear, review, and decide on appeals of any administrative decision where it is alleged there is an error in any administrative order, requirement, decision, or determination made by the Development Code Administrator, Planning Commission, or Historic Commission, unless another appeals board is established by this code;
- B.** Hear, review, and decide on variance requests as established in Section [1226.10](#); and
- C.** Perform any other duties related to the administration and enforcement of this code as authorized by the charter and this code.

**(4) Bylaws, Rules, and Regulations**

- A.** The BZA may, by a majority vote of its entire membership, adopt bylaws for the governance and procedures of the BZA provided they are consistent with the charter and with any other ordinances of the City.
- B.** The privilege of cross-examination of witnesses shall be accorded all interested parties or their counsel in accordance with the rules of the BZA.



- C. The Chairperson, or, in his or her absence, the Vice-Chairperson, shall administer oaths and compel the attendance of witnesses.

**(5) Meetings**

- A. The BZA shall hold such meetings as it may require for conducting its business.
- B. The BZA shall elect a Chairperson and a Vice-Chairperson from among the members of the BZA at the board's first meeting of the year. During the temporary absence of the Chairperson, the Vice-Chairperson shall fulfill the duties of the Chairperson. If both the Chairperson and Vice-Chairperson are absent, a member of the BZA may make a motion to appoint an acting Chairperson for that meeting.
- C. All meetings shall be open to the public, except as exempted by law.
- D. The BZA shall act by resolution or motion and shall keep minutes of its proceedings, showing the vote of each member or if any member is absent or fails to vote, the facts of each application considered by the BZA, and, where applicable, the section of this code, under which the BZA has considered the application, petition or other matter brought before the BZA.
- E. The BZA shall make and enter findings and conclusions which support all of its decision. The findings and conclusions shall set forth and demonstrate the manner in which the decision recommended carries out and helps to implement the goals and objectives of the master plan, the purpose of this code, and other official policies and objectives of the City, and that the granting of the request for which application is made will not be unreasonably incompatible with or detrimental to the affected properties and to the general public.

**(6) Quorums and Decisions**

- A. Any combination of four or more members of the BZA shall constitute a quorum.
- B. The BZA shall act when at least four members concur.
- C. Non-decision items, such as continuance or approval of minutes, shall require a majority of the quorum to concur.

**(f) Development Code Administrator**

**(1) Appointment**

The City Manager shall appoint a Development Code Administrator to administer and enforce the provisions of this code. The City Manager may also appoint additional staff to provide assistance to the Development Code Administrator.

**(2) Roles and Powers of the Development Code Administrator**

The Development Code Administrator shall have the following roles and powers to:

- A. Enforce the provisions of this code. All officials and employees of the City may assist the Development Code Administrator by reporting to the Development Code Administrator any new construction, reconstruction, land uses, or violations that are observed;

- B. Review and prepare a staff report, as needed, for the various procedures where the Planning Commission, Historic Commission, ARB, BZA, or City Council reviews an application;
- C. Serve as the secretary for any board where such role is required;
- D. Review and make decisions on certificate of zoning compliance and administrative waiver applications;
- E. Review and make decisions on certain certificates of appropriateness;
- F. Review and make decisions on questions of interpretation related to this code;
- G. Participate in any pre-application conferences as may be encouraged or required by this code;
- H. Review and make decisions on minor subdivision applications;
- I. Refer requests for appeals of decisions to the BZA pursuant to the procedures established in Section [1226.13](#);
- J. Maintain permanent and current records of all applications and the decisions related to those application;
- K. Review, inspect property, and make decisions on compliance with the provisions of this code;
- L. Investigate complaints and issue citations or other forms of enforcement and penalties for any violations and keep adequate records of all violations;
- M. Order discontinuance of any illegal work being done;
- N. Revoke a permit or approval issued contrary to this code or based on a false statement or misrepresentation on the application; and
- O. Take any other action authorized by this code to ensure compliance with or to prevent violation(s) of this code.

**(3) Decisions of the Development Code Administrator**

A decision of the Development Code Administrator may be appealed to the BZA in accordance with Section [1226.13](#) unless another appeals board is established by this code.

**(g) City Engineer**

**(1) Appointment**

The City Manager shall appoint a City Engineer to administer and enforce the provisions of this code under the City Engineer's authority, where stated. The City Manager may also appoint additional staff to provide assistance to the City Engineer.

**(2) Roles and Powers of the City Engineer**

In addition to any other authority granted to the City Engineer by charter, ordinance, or State law, the City Engineer shall have the following powers and duties related to these regulations:

- A. Develop and recommend the City of Middletown Streets Master Plan, City of Middletown *Manual of Design for Public Improvements*, and other documents as may be approved by City Council related to subdivision improvement specifications;
- B. Review and make comments or recommendations on any applications where the Development Code Administrator or a review board requests such feedback;
- C. Review and make recommendations to the Planning Commission and City Council on major subdivision applications;
- D. Maintain permanent and current records of all public improvements and construction drawings that are part of major subdivision applications;
- E. Inspect, or cause to be inspected, all construction or installation work related to public improvements as required by this code; and
- F. Take any other action authorized by this code to ensure compliance with or to prevent violation(s) of this code.

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## **1226.02 COMMON REVIEW REQUIREMENTS**

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The requirements of this section shall apply to all applications and procedures subject to development review under this code, unless otherwise stated.

### **(a) Authority to File Applications**

- (1) Unless otherwise specified in this code, development review applications defined in this code may be initiated by:
  - A. An owner of the property that is subject of the application; or
  - B. An agent authorized by the owner, which may include a lessee of the property.
- (2) For zoning map amendments, all property owners subject to the amendments application shall be required to sign the application.
- (3) If the application applies to more than one lot or property, the owner or their authorized agent of each property shall be required to sign the application.
- (4) The Planning Commission or City Council may initiate code text and map amendments under this code with or without written authorization or application from the property owner who may be affected.

### **(b) Application Submission Schedule**

The schedule for the submission of applications in relation to scheduled meetings and hearings of the review bodies shall be established by the Development Code Administrator, and made available to the public.

### **(c) Application Contents**

- (1) Applications required under this code shall be submitted in a form and in such numbers as established by the Development Code Administrator, and made available to the public.

- (2) Applications shall be accompanied by a fee as established by City Council pursuant to Section [1226.02\(g\)](#).

**(3) Complete Application Determination**

- A. The Development Code Administrator shall only initiate the review and processing of applications submitted under this chapter if such application is determined to be complete.
- B. An application shall be determined to be complete if the applicant has submitted all of the forms, maps, and other submittal requirements required for the specified application as identified in Section [1226.02\(c\)](#).
- C. The Development Code Administrator shall make a determination of application completeness within five business days of the application filing.
- D. If the application is determined to be complete, the application shall then be processed according to the procedures and timelines set forth in this code.
- E. If an application is determined to be incomplete, the Development Code Administrator shall provide written notice to the applicant along with an explanation of the application's deficiencies. No further processing of an incomplete application shall occur until the deficiencies are corrected and the Development Code Administrator determines that the application is complete.
- F. The City shall not be required to process an incomplete application, forward an incomplete application to any decision-making body, or be subject to any required timelines of review for incomplete applications.
- G. If the applicant fails to correct all deficiencies and submit a complete application within 60 days of the notice provided by the Development Code Administrator, the incomplete application shall not be reviewed, the applicant's original filing fee shall be forfeited, and the incomplete application shall be deemed withdrawn. The Development Code Administrator may grant one 60 day extension if just cause is shown.
- H. No reconsideration of an incomplete application shall occur after expiration of the 60-day period, and an applicant in need of further development approval under the code shall, pursuant to all of the original requirements of Section [1226.02](#), submit a new application, and submit a new filing fee.
- I. If any false or misleading information is submitted or supplied by an applicant on an application, that application shall be deemed incomplete.
- J. No duplicate application can be submitted within 365 calendar days after it is formally denied by a City Board or Commission.

**(d) Simultaneous Processing of Applications**

- (1) Whenever two or more forms of review and approval are required under this code, the Development Code Administrator shall determine the order and timing of review.
- (2) The Development Code Administrator may authorize a simultaneous review of applications, so long as all applicable requirements are satisfied for all applications.

**(e) Pre-Application Conferences or Meetings**

- (1)** Prior to filing an application, an applicant may request a meeting with the Development Code Administrator or other City staff for a pre-application conference to discuss the proposed application.
- (2)** The purpose of the pre-application conference shall be to discuss the proposed development, review submittal requirements, and discuss compliance with the provisions of this code prior to the submission of an application.
- (3)** No action can be taken by the staff and/or any boards until the applicant submits an actual application and/or plan to the City pursuant to the laws and policies of the City. Therefore, all discussions that occur between the applicant and/or applicant's representative(s) and staff, and/or City boards, that occur prior to the date applicant submits an actual application and/or plan including, but not limited to, any informal meetings with City staff, boards, any pre-application conferences or meetings, are not binding on the City and do not constitute official assurances or representations by the City or its officials regarding any aspects of the plan or application discussed.

**(f) Amendment or Modifications after an Approval**

Unless otherwise stated in this chapter, any request for an amendment or modification to the approved plans or conditions shall be done in accordance with the procedures and standards established for its original approval.

**(g) Fees**

- (1)** Any application for development review under this code shall be accompanied by such fee as shall be specified by ordinance of City Council. There shall be no fee, however, in the case of applications filed by City Council or the Planning Commission.
- (2)** The fees shall be in addition to any other fees that may be imposed by the City, State, the applicable county, or other agency having jurisdiction.
- (3)** Such fees are adopted to cover the cost to the City for investigations, legal advertising, postage, and other expenses resulting from the administration of the respective zoning activities.
- (4)** No application shall be processed or determined to be complete until the established fee has been paid.
- (5)** If the City determines that the costs on a particular application will exceed the filing fee as established by City Council as a result of preparation of legal descriptions, maps, studies, or other required information, or as a result of the need for professional expert review, study, or testimony, the Development Code Administrator is authorized to collect such additional costs from the applicant.

- (6) Application fees are not refundable except where the Development Code Administrator determines that an application was accepted in error, or the fee paid exceeds the amount due, in which case the amount of the overpayment will be refunded to the applicant.

**(7) Subdivision Related Fees**

All application fees established in Section [1226.02\(g\)](#) are due upon submission of the application. Additional fees related to the subdivision process are due as established below or otherwise approved as part of the preliminary plat.

- A. The park impact fee required by [Chapter 1214: Parkland Dedication](#) and Open Space, shall be paid, in full, at the time the final plat is submitted to the City for review. The fee shall be based on the total number of units contained in the final plat. The number of units in a multi-family dwelling shall be calculated based on the maximum number permitted by this code, unless the plat specifically limits the number of units to be constructed.
- B. All required engineering review fees shall be paid, in full, at the time the final plat is submitted to City Council.
- C. Fees for inspections made during and upon completion of all public improvements for subdivisions shall be paid, in full, at the time the final plat is submitted to City Council. If the applicant chooses to submit a financial guarantee in lieu of completion of improvements prior to submission of the final plat, fees shall be paid prior to the City accepting any improvements.

**(h) Public Notification for Public Meetings**

Applications for development approval that require public meetings shall, at a minimum, comply with Chapter 208 (Public Meetings) of the City of Middletown Code of Ordinances and all applicable State requirements.

**(i) Public Notification for Public Hearings**

- (1) Applications for development approval that require public hearings shall comply with all applicable State requirements and the public meeting notice requirements established in Section [1226.02\(h\)](#), above.
- (2) The Development Code Administrator shall be responsible for providing the published and written notice as required by this subsection.

**(3) Content**

Notices for public hearings, whether by publication or mail (written notice), shall, at a minimum:

- A. Identify the address or location of the property subject to the application and the name and address of the applicant or the applicant's agent;
- B. Indicate the date, time, and place of the public hearing;
- C. Describe the land involved by street address or by the applicable county parcel identification number, and project area (size);
- D. Describe the nature, scope, and purpose of the application or proposal;

- E. Identify the location (e.g., the offices of the Development Code Administrator) where the public may view the application and related documents;
- F. Include a statement that the public may appear at the public hearing, be heard, and submit evidence and written comments with respect to the application; and
- G. Include a statement describing where written comments will be received prior to the scheduled hearing.

**(4) Notice Requirements**

Published and mailed notice for public hearings shall be provided as defined in [Table 1226-1](#), below.

TABLE 1226-1: NOTICE REQUIREMENTS		
DEVELOPMENT REVIEW PROCEDURE	PUBLISHED NOTICE	WRITTEN (MAILED) NOTICE
Code Text Amendment	Published notice required a minimum of 30 days before the initial public hearing of Planning Commission and City Council	No written notice is required for a text amendment.
Zoning Map Amendment and PD Preliminary Development Plan		For rezonings that include 10 or fewer properties owned by different property owners, written notice shall be sent to all owners of property within 200 feet from the boundary of all properties subject to the rezoning application. The notice shall be required a minimum of 14 days before the initial public hearing of Planning Commission and City Council.
Conditional Use	Published notice required a minimum of 10 days before a public hearing	Written notice to the applicant and all property owners contiguous and directly across the street or public right-of-way of the subject property shall be required a minimum of 10 days prior to the hearing.
Alternative Equivalent Review		
Variance		
Appeals		
Historic Designation (See Section <a href="#">1212.01(a)</a> .)	Published notice required a minimum of 14 days before a public hearing	Written notice to the all property owners subject to the designation shall be required a minimum of 14 days prior to the hearing.

**(5) Published Notice**

- A. Published notice shall be provided in a newspaper of general circulation.
- B. The content and form of the published notice shall be consistent with the requirements of this section, Chapter 208 (Public Meetings) of the City of Middletown Code of Ordinances, and State law.

**(6) Written (Mailed) Notice**

- A. Written notification shall only be required for the initial public hearing for an application in front of the applicable review board. A continuation of the hearing shall not require additional written notice.
- B. Written notice shall be postmarked no later than the number of days specified in [Table 1226-1](#) prior to the hearing date where the item will be considered.

**(7) Constructive Notice**

- A. Minor defects in any notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with applicable notice requirements. Minor defects in notice shall be limited to errors in a legal description, typographical or grammatical errors, or errors of actual acreage that do not impede communication of the notice to affected parties. Failure of a party to receive written notice shall not invalidate subsequent action. In all cases, however, the requirements for the timing of the notice and for specifying the time, date, and place of a hearing shall be strictly construed. If questions arise at the hearing regarding the adequacy of notice, the decision-making body shall direct the department having responsibility for notification to make a formal finding as to whether there was substantial compliance with the notice requirements of this code, and such finding shall be made available to the decision-making body prior to final action on the request.
- B. When the records of the City document the publication, mailing, and/or posting of notices as required by this chapter, it shall be presumed that notice of a public hearing was given as required by this section.

**(j) Conduct of Public Hearing**

**(1) Rights of All Persons**

Any person may appear at a public hearing and submit information or evidence, either individually or as a representative of a person or an organization. Each person who appears at a public hearing shall be identified, state his or her address, and if appearing on behalf of a person or organization, state the name and mailing address of the person or organization being represented.

**(2) Continuance of a Public Hearing or Deferral of Application Review**

- A. An applicant may request that a review or decision-making body's consideration of an application at a public hearing be deferred by submitting a written request for deferral to the Development Code Administrator prior to the publication of notice as may be required by this code. The Development Code Administrator may grant such requests, in which case, the application will be considered at the next regularly scheduled meeting.
- B. A request for deferral of consideration of an application received by the Development Code Administrator after publication of notice of the public hearing as required by this code shall be considered as a request for a continuance of the public hearing, and may only be granted by the review or decision-making body.



- C. The review or decision-making body conducting the public hearing may, on its own motion or at the request of the applicant, continue the public hearing to a fixed date, time, and place.

**(k) Withdrawal of Application**

Any request for withdrawal of an application shall be submitted in writing to the Development Code Administrator prior to action by the review or decision-making body.

- (1) The Development Code Administrator shall approve a request for withdrawal of an application if it has been submitted prior to publication of notice for the public hearing on the application in accordance with this code.
- (2) If the request for withdrawal of an application is submitted after publication of notice for the public hearing in accordance with this code, the request for withdrawal shall be placed on the public hearing agenda and acted upon by the review or decision-making body.
- (3) In all cases where the applicant has requested the withdrawal of an application, the application fee paid shall not be refunded.

**(l) Examination and Copying of Application and Other Document**

Documents and/or records may be inspected and/or copied as provided for by State law.

**(m) Effect of any Approvals**

- (1) The issuance of any approval or permit under this code shall authorize only the particular development, alteration, construction, or use approved in the subject application.
- (2) All approvals shall run with the land or use and shall not be affected by change in ownership.

**(n) Amendments or Modifications of Approvals**

Any approval may be amended, extended or modified only in accordance with the procedures and standards established for its original approval unless the Development Code Administrator determines that the request amendment, extension, or modification, is minor in nature and does not substantively change the approval and is in compliance with this code.

**(o) Subsequent Development**

- (1) Development authorized by any approval under this section and this code shall not be carried out until the applicant has secured all other approvals required by this code or any other applicable provisions of the City, or other agencies having jurisdiction over the development.
- (2) The granting of any approval or permit shall not guarantee the approval of any other required permit or application.

- (3) The City shall not be responsible for reviewing the application for compliance with any permits, certificates, or other approvals that may be required by the county, State, or other agencies having jurisdiction.

**(p) Computation of Time**

- (1) In computing any period of time prescribed or allowed by this code, the date of the application, act, decision, or event, from which the designated period of time begins shall not be included. The last date of the period of time to be computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which case the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday as observed by the City of Middletown where the City administrative offices are closed for the entire day.
- (2) When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation (i.e., business days and not calendar days).
- (3) When the City offices are closed to the public for the entire day which constitutes the last day of the period of time, then such application, act, decision, or event may be performed on the next succeeding day which is not a Saturday, a Sunday, or a legal holiday observed by the City of Middletown in which the City administrative offices are closed for the entire day.

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**1226.03 CODE TEXT AND MAP AMENDMENTS**

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**(a) Purpose**

The purpose of the code text and zoning map amendment procedure is to provide a process for amending the zoning map and text of this code.

**(b) Applicability**

This section shall apply to requests to amend the text of this zoning code or amend the Official Zoning Map of the City of Middletown, Ohio, hereafter referred to as the “zoning map.”

**(c) Initiation**

- (1) For a zoning map amendment of a specific property, any person who has authority to file an application (See Section [1226.02\(a\)](#).) for such property may initiate an amendment by filing an application with the Development Code Administrator.
- (2) City Council may initiate a code text or map amendment by referring a recommendation on an amendment to the Planning Commission by adopting a motion to make such an amendment.
- (3) The Planning Commission may initiate a code text or map amendment by adopting a motion to make such amendment.

**(d) Code Text or Map Amendment Review Procedure**

The review procedure for a code text or map amendment shall be as follows:

**(1) Step 1 – Application**

- A. For amendments that are not initiated by the Planning Commission or City Council, the applicant shall submit an application in accordance with Section [1226.02](#), and with the provisions of this section.
- B. Amendments initiated by City Council shall be referred to the Planning Commission for review.

**(2) Step 2 – Staff Review and Staff Report**

- A. Upon determination that a text or zoning map amendment application is complete, the Development Code Administrator shall schedule the review of the application at the next available Planning Commission meeting.
- B. Prior to the Planning Commission hearing for the text or map amendment, the Development Code Administrator shall review the application and prepare a staff report.

**(3) Step 3 – Planning Commission Review and Recommendation**

- A. The Planning Commission shall hold a public hearing on the code text or map amendment at its next regularly scheduled meeting or at a special meeting after the application is determined to be complete, subject to the submittal deadlines established by the Development Code Administrator.
- B. Notification of the public hearing shall be provided in accordance with Section [1226.02\(i\)](#).
- C. In reviewing the application, the Planning Commission shall at a minimum, consider the staff report from the Development Code Administrator and the review criteria of this section.
- D. Within a reasonable amount of time from the close of the public hearing, the Planning Commission shall make a recommendation to City Council on the application. In making its recommendation, the Planning Commission may recommend approval, approval with some modification, or denial of the application.

**(4) Step 4 – City Council Review and Decision**

- A. Following receipt of the recommendation from the Planning Commission (Step 4), City Council shall set a time for a public hearing on the proposed amendment.
- B. Notification of the public hearing shall be provided in accordance with Section [1226.02\(i\)](#).
- C. City Council shall review a text or zoning map amendment application during a public hearing. In reviewing the application, City Council shall at a minimum, consider the staff report from the Development Code Administrator, recommendation from Planning Commission, and the review criteria of this section.

- D. City Council shall adopt, adopt with some modification, or deny the recommendation of the Planning Commission. City Council shall not alter or make a decision that varies from the Planning Commission without a majority vote of City Council.
- E. The effective date of any amendment shall be 30 days following final action by City Council unless subject to a referendum in accordance with the Ohio Revised Code.

**(e) Review Criteria**

Recommendations and decisions on code text or map amendment applications shall be based on consideration of the following review criteria. Not all criteria may be applicable in each case, and each case shall be determined on its own facts.

- (1) The proposed amendment is consistent with the master plan, other adopted City plans, and the stated purposes of this code;
- (2) The proposed amendment is necessary or desirable because of changing conditions, new planning concepts, or other social or economic conditions;
- (3) The proposed amendment will promote the public health, safety, and general welfare;
- (4) The proposed amendment, if amending the zoning map, is consistent with the stated purpose of the proposed zoning district;
- (5) The proposed amendment is not likely to result in significant adverse impacts upon the natural environment, including air, water, noise, storm water management, wildlife, and vegetation, or such impacts will be substantially mitigated; and/or
- (6) The proposed amendment is not likely to result in significant adverse impacts upon other property in the vicinity of the subject lot.

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**1226.04 PLANNED DEVELOPMENT DISTRICT REVIEW**

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**(a) Purpose**

The purpose of the planned unit development procedure is to provide a special review process for developments that are subject to Section [1204.07\(b\)\(15\)](#) of this code.

**(b) Applicability**

This section shall apply to all applications for the creation of a Planned Development District or modification of a Planned Use Modification District that was approved prior to the effective date of this code.

**(c) Planned Development Review Procedure**

The review procedure for planned unit development shall be as follows:

**(1) Step 1 – Application (Preliminary Development Plan and Zoning Map Amendment)**

The applicant shall submit an application in accordance with Section [1226.02](#), and with the provisions of this section.

**(2) Step 2 – Staff Review and Staff Report**

- A. Upon determination that a planned development application and related preliminary development plan is complete, the Development Code Administrator shall schedule the review of the application at the next available Planning Commission meeting.
- B. Prior to the Planning Commission hearing for the PD preliminary development plan and zoning amendment, the Development Code Administrator shall review the application and prepare a staff report.

**(3) Step 3 – PD Preliminary Development Plan and Zoning Map Amendment**

- A. The PD preliminary development plan approval procedure involves a zoning map amendment to rezone the subject property to a PD District with an approved PD preliminary development plan.
- B. The procedure for this stage shall comply with the requirements of Section [1226.03](#).
- C. The preliminary PD plan shall be reviewed as part of the zoning map amendment. Upon approval of the zoning map amendment and preliminary PD plan, the zoning map shall be revised to show the PD District on the applicable property.
- D. The applicant may only proceed with the PD final development plan approval (Step 4) after the PD zoning map amendment becomes effective.

**(4) Step 5 –PD Final Development Plan Approval**

- A. Within one year after the approval of the PD preliminary development plan, the applicant shall file with the Development Code Administrator a PD final development plan for the entire development, or when submission in stages was authorized by the Planning Commission during the PD preliminary development plan review (Step 4), for the first phase of the development. If more than one year passes from the date of approval of the PD preliminary development plan and the PD final development plan has not been submitted for approval or a request for an extension not to exceed 12 months has been filed with Planning Commission, the PD preliminary development plan shall be deemed expired and the applicant will have to resubmit such plan. In no case shall PD preliminary development plan be valid for more than two years.
- B. The PD final development plan shall be sufficiently detailed to indicate fully the ultimate operation and appearance of the development. Copies of legal documents required by the Planning Commission for the dedication or reservation of public facilities, or for the creation of a homeowners', property owners', or condominium association shall also be submitted.

- C. Upon receipt of the PD final development plan, the plan shall be submitted to the City Engineer for review and approval of plans regarding water, sewerage and drainage, and street construction drawings.
- D. The Planning Commission shall review the PD final development plan at a public meeting to determine whether it conforms to all substantial respects to the previously approved PD preliminary development plan and to all other applicable standards of this code.
  - i. The Planning Commission may approve, approve with modifications, or deny the PD final development plan.
  - ii. In its decision, the Planning Commission may impose such conditions of approval as are in its judgment necessary to insure conformity to the applicable criteria and standards. In so doing, the Planning Commission may permit the applicant to revise the plan and resubmit it as a PD final development plan within 60 days of such action.

**(d) Review Criteria**

**(1) Review Criteria for the PD Preliminary Development Plan and Zoning Map Amendment**

The following criteria shall serve as conditions that should generally be satisfied before the approval of the PD preliminary development plan and zoning map amendment:

- A. The proposed development is consistent with the master plan, other adopted City plans, and the stated purposes of this code and [Section 1204.07\(b\)\(15\)](#);
- B. The proposed development is necessary or desirable because of changing conditions, new planning concepts, or other social or economic conditions;
- C. The proposed development will not be detrimental to present and potential surrounding uses, but will have a beneficial effect which could not be achieved as well under other zoning districts;
- D. The proposed development will promote the public health, safety, and general welfare;
- E. The proposed development is not likely to result in significant adverse impacts upon the natural environment, including air, water, noise, storm water management, wildlife, and vegetation, or such impacts will be substantially mitigated; and
- F. The preliminary development plan has been transmitted to all other agencies and departments charged with responsibility of review.
- G. The proposed development has provided evidence of assured access (IE: access agreement with the neighboring property owner, etc.) to the development site upon submission of the Preliminary Development Plan application.

**(2) Review Criteria for the PD Final Development Plan**

The following criteria shall serve as conditions that should generally be satisfied before the approval of the PD final development plan:

- A. Appropriate arrangements with the applicant have been made which will ensure the reservation of common greenspace as indicated on the PD preliminary development plan and PD final development plan.
- B. Appropriate agreements with the applicant have been made to ensure the proper completion of public improvements in compliance with [Chapter 1222: Subdivision Design](#);
- C. The proposed PD final development plan for the individual section(s) of the overall PD is consistent in contents (building location, land uses, densities and intensities, yard requirements, and area and frontage requirements) with the approved PD preliminary development plan;
- D. The minimum common greenspace area(s) have been designated and shall be duly transferred to a legally established homeowner's, property owners', or condominium association, or has been dedicated to the City or another public or quasi-public agency.
- E. Each individual phase of the development can exist as an independent unit that is capable of creating an environment of sustained desirability and stability, or that adequate assurance will be provided that such objective can be obtained;
- F. That any part of the planned development not used for structures, parking and loading areas, or streets, shall be landscaped or otherwise improved; or if approved by the Planning Commission, left in its natural state;
- G. That any exception from the design standards provided in the PD preliminary development plan is warranted by the design and amenities incorporated in the detailed PD final development plan;
- H. That the internal streets and thoroughfares proposed are suitable and adequate to accommodate the anticipated traffic within and through the development; and
- I. The PD final development plan has been transmitted to all other agencies and departments charged with responsibility of review.

**(e) Time Limit**

- (1) Any PD final development plan shall be valid for a period of two years after the date of approval by City Council. If no development has begun (development being defined as the start of construction of the required public/private improvements as shown on the approved final development plan for one or more phases of the project) in the PD within two years from the date of approval, such approval shall lapse and be of no force and effect.
- (2) Two one-year extensions of the time limit set forth in subsection (1) hereof may be granted by the Planning Commission, provided that such extension is not in conflict with the most current master plan and that such extension is in the best interests of the entire community. The developer/owner shall apply for an extension and shall state the reason for the extension. City Council shall be notified of all extensions granted.



- (3) If an approved PD shall lapse as provided in subsection (1) hereof, notice of such lapse shall be filed by the Planning Commission and forwarded to City Council. The City Council may initiate a rezoning to a base zoning district in accordance with Section [1226.03](#).

**(f) Changes to Approved Planned Developments**

A planned development shall be constructed and completed in accordance with the approved PD final development plan and all supporting data. The PD final development plan and supporting data, together with all recorded amendments, shall be binding on the applicants, their successors, grantees and assignees, and shall limit and control the use of premises (including the internal use of buildings and structures) and the location of structures in the planned unit development as set forth therein.

**(1) Major Change**

- A. Major changes to a PD generally require the prior approval of the Planning Commission and City Council. The Development Code Administrator shall have the authority to determine if a proposed change is a major change. Such changes include, but are not limited to:
- i. Expansion of the PD project beyond the original lot coverage;
  - ii. Removal or subtraction of land from the original lot coverage; and
  - iii. Proposed changes in the mix or combination of land uses.
- B. Changes that require the approval of only the Planning Commission include, but are not limited to, the following:
- i. Changes in the plans relative to the size and arrangement of buildings, the layout of streets or circulation patterns, the size, configuration and location of common open space, and changes in any approved elements of the PD that may affect adjacent property owners; and
  - ii. Amendments to the conditions that were attached to the original PD approval.

**(2) Minor Changes**

- A. Minor changes are those proposed by the developer/owner which do not disturb or affect the basic design and approved preliminary development plan of the PD and which are essentially technical in nature, as determined by the Development Code Administrator.
- B. Examples of minor changes include, but are not limited to, change in the intensity of lighting, changes in the size and location of water and sewer lines within approved easements and changes in the location and number of fire hydrants.
- C. The Development Code Administrator shall notify the Planning Commission of all such approved minor changes.



## **1226.05    CONDITIONAL USE APPROVAL**

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### **(a) Purpose**

The purpose of a conditional use procedure is to allow consideration for certain uses that due to their unique and special nature relative to location, design, size, operations, circulation, and general impact on the community, need to be evaluated on an individual basis.

### **(b) Applicability**

This section shall apply to all applications for establishment of a conditional use as may be identified in this code.

### **(c) Conditional Use Review Procedure**

The review procedure for a conditional use review shall be as follows:

#### **(1)     Step 1 – Application**

The applicant shall submit an application in accordance with Section [1226.02](#), and with the provisions of this section.

#### **(2)     Step 2 – Staff Review and Staff Report**

- A. Upon determination that a conditional use application is complete, the Development Code Administrator shall refer the application to the Planning Commission.
- B. Prior to the Planning Commission hearing for the conditional use application, the Development Code Administrator shall review the application and prepare a staff report.

#### **(3)     Step 3 – Planning Commission Review and Decision**

- A. The Planning Commission shall hold a public hearing on the conditional use application at its next regularly scheduled meeting or at a special meeting after the application is determined to be complete, subject to the submittal deadlines established by the Development Code Administrator.
- B. In reviewing the application, the Planning Commission shall at a minimum, consider the staff report from the Development Code Administrator and the review criteria of this section.
- C. Notification of the public meeting or hearing shall be provided in accordance with Section [1226.02\(h\)](#) or Section [1226.02\(i\)](#), as applicable.
- D. In making its decision, the Planning Commission may approve, approve with modifications or supplementary conditions, or deny the application.
- E. If approved, the Planning Commission shall direct the Development Code Administrator to issue a conditional use certificate listing any conditions specified by the Planning Commission in granting its approval.

- F.** If approved, the applicant shall be required to submit revised plans to the Development Code Administrator that illustrate plans as approved by the Planning Commission. Only after such plans have been submitted may the applicant submit an application for a certificate of zoning compliance.

**(d) Review Criteria**

Decisions on a conditional use application shall be based on consideration of the following review criteria. All conditional uses shall be subject to review under the criteria of this section, as applicable, and may be subject to additional use-specific standards.

- (1)** The proposed conditional use is established as an allowed conditional use in the applicable zoning district;
- (2)** The proposed use is consistent with the spirit, purpose and intent of the master plan and the general purpose of this code;
- (3)** The proposed use complies with any use-specific standards as may be established for the use;
- (4)** Any building or structure constructed, reconstructed, or altered as part of a conditional use in a residential zoning district shall, to the maximum extent feasible, maintain the exterior appearance of residential buildings of the type otherwise permitted and shall have suitable landscaping, screening, and fencing wherever deemed necessary by the Planning Commission;
- (5)** The proposed use will comply with all applicable development standards, except as specifically altered by the Planning Commission in the approved conditional use;
- (6)** The proposed use will be harmonious with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area;
- (7)** The proposed use will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors;
- (8)** The circulation on and access to the property shall be so designed as not to create an interference with traffic on surrounding public thoroughfares;
- (9)** The design of the buildings, structures, and site will not result in the destruction, loss or damage of a natural, scenic, or historic feature of major importance;
- (10)** The proposed use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district; and
- (11)** Wherever no specific areas, frontage, height, or setback requirements are specified in provision for a specific conditional uses, then such use shall be subject to the site development standards for the applicable zoning district.

**(e) Additional Criteria and Conditions**

- (1)** The Planning Commission shall be authorized to waive or modify requirements that apply to the conditional use as may be necessary to achieve compatible development with adjacent land areas as well as in the interest of the community in general where the Planning Commission finds that such waiver or modification will further the protection of the general welfare, protect individual property rights, and ensure that the conditional use will meet the intent and purposes of this code.
- (2)** The Planning Commission may also impose additional conditions, guarantees, and safeguards as it deems necessary to protect the general welfare and individual property rights, and to ensure that the conditional use will meet the intent and purposes of this code.

**(f) Revocation of a Conditional Use Approval**

Planning Commission may revoke a conditional use approval after holding a hearing if it is determined that the terms and conditions of the conditional use approval have not been or are not presently being met.

**(g) Time Limit**

- (1)** A conditional use permit shall be deemed to authorize only one particular conditional use and said permit shall automatically expire if, for any reason, the conditional use shall cease for more than one year.
- (2)** The applicant shall submit a completed application for a certificate of zoning compliance within one year of the date the conditional use permit was issued or the approval shall expire.
- (3)** Upon expiration of a conditional use permit approval, a new application, including all applicable fees, shall be required before a conditional use application will be reviewed.
- (4)** Upon written request, one extension of six months may be granted by the Development Code Administrator if the applicant can show good cause for a delay.
- (5)** As part of the conditional use approval, the Planning Commission may authorize alternative time limits for issuing a certificate of zoning compliance based on the scale of the proposed development.

**(h) Appeals**

Any person or entity claiming to be injured or aggrieved by any final action of the Planning Commission shall have the right to appeal the decision the court of common pleas as provided in ORC Chapters 2505 and 2506.

## **1226.06 MINOR SUBDIVISIONS**

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### **(a) Purpose**

The purpose of the minor subdivision process is to allow for small subdivisions of land, consolidation of lots, or transfer of a portion of a lot to an adjacent lot where there will not be the creation of a new street, dedication of right-of-way, or a need for any public improvements.

### **(b) Applicability**

- (1)** For the purposes of these regulations, a minor subdivision is a lot split, lot consolidation, or transfer of land between adjacent property owners that complies with all of the following requirements:
  - A.** The subdivision shall not result in or create more than five lots, including the remainder of the original lot;
  - B.** The subdivision shall be in compliance with all applicable site development standards in this code or with any approved variance from such standards;
  - C.** All lots resulting from the minor subdivision shall have frontage and access on an existing street and shall not require the construction, expansion, or improvement of any street;
  - D.** The subdivision shall not require any public improvements or the dedication of rights-of-way;
  - E.** The property has been surveyed and a survey sheet or record plan, in the form provided for in this code, and a full legal description of the changes resulting from the split, are submitted with the application; and
  - F.** No landlocking of lots shall occur as a result of the minor subdivision.
- (2)** A minor subdivision also includes the recombination of land, consolidation of lots, transfer of property from one lot to an adjacent lot, and for the dedication of additional land for the widening of existing streets, where no new lots are created.
- (3)** Any subdivision of land within a previously platted subdivision which results in six or more additional lots shall adhere to the procedures for an amendment to a major subdivision, as applicable, and as set forth in Section [1226.07](#).

**(c) Sale of Land in Subdivisions; Start of Construction**

- (1)** No owner, or authorized agent, of any land located within a subdivision shall transfer, sell, agree to sell or negotiate to sell any land by reference to, by exhibition of, or by the use of, a plan or plat of a subdivision, nor proceed with any construction work before such plan or plat has been approved and recorded in the manner prescribed in these regulations. Any sale or transfer contrary to the provisions of this section is void. The description of such lot by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring shall not exempt the transaction from the provisions of these regulations.
- (2)** The Development Code Administrator shall not issue certificates of zoning compliance for any structure or activity on a lot in a subdivision for which a plat has not been approved and recorded in the manner prescribed in these regulations.

**(d) Minor Subdivision Review Procedure**

The review procedure for a minor subdivision shall be as follows:

- (1) Step 1 – Application**
  - A.** The applicant shall submit an application in accordance with Section [1226.02](#).
  - B.** The application shall include a deed or other instrument of conveyance in compliance containing an accurate and current legal description based on a boundary survey, of each proposed new lot.
  - C.** If the minor subdivision involves the transfer of land area from one lot to an adjacent lot, both property owners shall be required to authorize the application and deeds or other instruments of conveyance shall be submitted for both lots.
- (2) Step 2 – Review and Comment by Applicable Agencies**
  - A.** Upon determination that the application for a minor subdivision is complete, the Development Code Administrator may transmit copies of the application for review by applicable agencies including, but not limited to, the City Engineer and any other agencies having authority over streets, water, sewer, gas, or other utilities and other public improvements.
  - B.** Such agencies may supply comments, recommendations, and approvals as applicable, to the Development Code Administrator for consideration prior to the Development Code Administrator's decision (Step 3).
- (3) Step 3 – Review and Decision by the Development Code Administrator**
  - A.** Within 14 days of the determination that the application (Step 1) is complete, the Development Code Administrator shall review the application and approve or deny the application for a minor subdivision based on the review criteria established in this section.

- B.** In reviewing the minor subdivision, the Development Code Administrator, on recommendation of the City Engineer or other agencies having authority over streets, water, sewer, gas, or other utilities and other public improvements, may require the addition of easements and/or setbacks as part of a transfer of land area between two lots.
- C.** If the Development Code Administrator denies an application for a minor subdivision, the Development Code Administrator shall provide the applicant with written finding for the denial.
- D.** If the application is approved, the Development Code Administrator shall be required to sign the minor subdivision/plat.

**E. Authority to Forward to the Planning Commission**

- i.** The Development Code Administrator shall have the authority to forward the minor subdivision application to the Planning Commission for review and final action if the Development Code Administrator determines that the subdivision's complexity, projected impacts, or proximity to conflicting land uses merit such action.
- ii.** At their next regularly scheduled meeting, the Planning Commission shall review the minor subdivision and make a final decision to either approve, approve with conditions, or deny the application based on the review criteria for minor subdivisions.

**(e) Review Criteria**

In order to approve a minor subdivision, the Development Code Administrator shall determine the following:

- (1)** That the minor subdivision complies with all applicable provisions of this code;
- (2)** That the minor subdivision complies with all other applicable regulations and plans of the City; and
- (3)** That the applicable review agencies have no objections that cannot be resolved by the applicant.

**(f) Recording**

- (1)** The Development Code Administrator shall sign and date the minor subdivision/plat.
- (2)** The subdivider shall then be responsible for submitting the signed conveyance with the applicable county's auditor office for the transfer of property and to applicable county's recorder office for the recording of the lots as legal lots of record and providing a copy of said minor subdivision/plat to the Development Code Administrator after recording.

**(g) Administrative Waivers and Variances**

If the proposed subdivision requires a deviation from the minimum site development standards (e.g., lot area, lot width, etc.) or other standards mandated by this code in Section [1204.10](#), the applicant will be required to apply for and received all the necessary variance or administrative waiver approvals, as established in this chapter, prior to approval of the minor subdivision.

**(h) Time Limit**

The minor subdivision approval shall expire one year after the Development Code Administrator signs and dates the minor subdivision unless the minor subdivision is recorded in the office with the applicable county's recorder office during said period.

**(i) Appeals**

Any person or entity claiming to be injured or aggrieved by any final action of the Development Code Administrator shall have the right to appeal the decision to the BZA as established in Section [1226.13](#).

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**1226.07 MAJOR SUBDIVISIONS**

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**(a) Purpose**

The purpose of the major subdivision process is to provide a method of review for any subdivision that exceeds the scope of a minor subdivision and which includes multiple lots, the creation or expansion of new streets, and/or the installation of public improvements.

**(b) Applicability**

Any subdivision of land or replat of an existing subdivision that does not meet the applicability requirements of a minor subdivision in Section [1226.06\(b\)](#) shall be subject to the requirements of this section.

**(c) Sale of Land in Subdivisions; Start of Construction**

- (1)** No owner, or authorized agent, of any land located within a subdivision shall transfer, sell, agree to sell or negotiate to sell any land by reference to, by exhibition of, or by the use of, a plan or plat of a subdivision, nor proceed with any construction work before such plan or plat has been approved and recorded in the manner prescribed in these regulations. Any sale or transfer contrary to the provisions of this section is void. The description of such lot by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring shall not exempt the transaction from the provisions of these regulations.
- (2)** The Development Code Administrator shall not issue certificates of zoning compliance for any structure or activity on a lot in a subdivision for which a plat has not been approved and recorded in the manner prescribed in these regulations.

**(d) Major Subdivision Review Procedure**

**(1) Step 1 – Application and Filing of the Preliminary Plat**

- A.** The applicant shall submit an application along with a preliminary plat in accordance with Section [1226.02](#).
- B.** The preliminary plat shall be prepared, signed, and sealed by an engineer or surveyor who is qualified and registered in the State of Ohio.
- C.** Upon determination by the Development Code Administrator that the application is complete, the preliminary plat shall be accepted as being officially filed.

**(2) Step 2 – Staff Review and Staff Report on the Preliminary Plat**

- A.** Upon determination that the application for a major subdivision is complete, the Development Code Administrator shall transmit copies of the application for review by applicable agencies including, but not limited to, the City Engineer, City Manager, Middletown Fire Department, Middletown Police Department, agencies having jurisdiction for water and/or sanitary sewer, or other agencies the Development Code Administrator deems appropriate.
- B.** Such agencies shall supply comments and recommendations to the Development Code Administrator prior to the regularly scheduled Planning Commission meeting where the preliminary plat will be reviewed.
- C.** Prior to the Planning Commission meeting where the preliminary plat is scheduled for review, the Development Code Administrator shall review the preliminary plat and prepare a staff report.

**(3) Step 3 – Review and Decision on the Preliminary Plat by the Planning Commission**

- A.** The Planning Commission shall hold a public meeting to review and decide on the preliminary plat. The Planning Commission shall approve, approve with conditions, or deny the preliminary plat. The Planning Commission may also continue the meeting if questions regarding the plat are not satisfactorily addressed by the applicant.
- B.** If the Planning Commission denies the preliminary plat, the applicant shall not move forward in the review process until a preliminary plat is approved by the Planning Commission.
- C.** In the event the Planning Commission denies the preliminary plat or approves with conditions, the City staff, on behalf of the Planning Commission shall provide the subdivider with a statement in writing setting forth the reasons for the denial or the conditions of approval.
- D.** Approval of the preliminary plat by the Planning Commission does not constitute approval of the subdivision, but is merely an authorization to proceed with the preparation of the final plat and construction drawings.



**(4) Step 4 – Submission and Review of Construction Drawings**

- A.** The applicant shall submit the construction drawings and specifications for the subdivision or applicable phase in accordance with [Chapter 1222: Subdivision Design](#) and with the provisions of this section. Construction drawings shall be submitted to the City Engineer.
- B.** In cases where the applicant proposes to develop the subdivision in phases, the construction drawings shall be submitted for each individual phase.
- C.** The applicant shall submit all necessary construction drawings for review within one year of the decision on the preliminary plat (if a preliminary plat was submitted) unless an alternative schedule is approved as part of the preliminary plat approval or the subdivider can show just cause for extending the deadline. For phased subdivisions, the deadline shall apply to the first phase of the subdivision. Failure to submit the construction drawings within this time frame shall void the preliminary plat approval and the subdivider will be required to submit a new application in accordance with these regulations.
- D.** If the applicant proposes to provide a financial guarantee for the public improvements in-lieu of installing all public improvements prior to approval of the final plat, the applicant shall be required to provide all information required as part of Section [1222.02\(f\)](#).
- E.** Upon determination by the City Engineer that the final plat has been properly submitted, the final plat shall be accepted as being filed.
- F.** The construction drawings shall be prepared, signed, and sealed by an engineer or surveyor who is qualified and registered in the State of Ohio.
- G.** The City Engineer shall review the construction drawings and make a decision to approve, approve with conditions, or deny the construction drawings. In reviewing the drawings, the City Engineer may seek input from any other agency having jurisdiction over public improvements.
- H.** Prior to starting any of the work covered by the construction drawings approved as set out in this section, arrangements shall have been made to provide for inspection of the work which are sufficient, in the opinion of the City Engineer, to insure compliance with the plan and specifications as approved. The signature of the City Engineer on the title sheet of the plans shall constitute approval of the construction plans. Construction activities may commence upon receipt of written notification from the City Engineer to proceed, to be issued after a preconstruction meeting of the applicant's contractor and the City Engineer.
- I. Completion of Improvements**
  - i.** Applicants shall have the choice to construct all public improvements prior to the approval of the final plat, without a financial guarantee, but such public improvements must be completed and then inspected and approved by the City Engineer before the City can approve the final plat. The improvements shall be constructed within a reasonable time as determined by the City Engineer, but not to exceed two years.

- ii. All required subdivision improvements shall be maintained in a satisfactory condition by the subdivider during any interim period between their construction and final approval and acceptance of the subdivision by the City. See Section [1222.02\(f\)](#).
- iii. If the applicant requests approval of a final plat prior to installation of the public improvements, the applicant shall be required to provide a financial guarantee in accordance with the regulations of this code at the time the final plat is submitted for review.
- iv. The only exception shall be the completion of sidewalks which shall be completed in accordance with Section [1222.02\(a\)](#).
- J. After completion of all improvements, except for the final course of asphalt, the Engineering Division will perform a pre-final inspection at the request of the applicant. The construction of sidewalks throughout the subdivision is not required prior to the pre-final inspection.

**(5) Step 5 – Submission of the Final Plat**

- A. The applicant shall submit the final plat in accordance with Section [1226.02](#) and with the provisions of this section. The final plat shall be submitted to the Development Code Administrator.
- B. In cases where the applicant proposes to develop the subdivision in phases, the final plat shall be submitted for each individual phase.
- C. If a preliminary plat has been previously approved, the final plat shall have incorporated all changes in the preliminary plat approval.
- D. The applicant shall submit a final plat for review within one year of the decision on the preliminary plat (if a preliminary plat was submitted) unless an alternative schedule is approved as part of the preliminary plat approval or the subdivider can show just cause for extending the deadline. For phased subdivisions, the deadline shall apply to the first phase of the subdivision. Failure to submit the final plat within this time frame shall void the preliminary plat approval and the subdivider will be required to submit a new application in accordance with these regulations.
- E. Upon determination by the Development Code Administrator that the final plat has been properly submitted, the final plat shall be accepted as being filed.
- F. The final plat shall be prepared, signed, and sealed by an engineer or surveyor who is qualified and registered in the State of Ohio.

**(6) Step 6 – Staff Review and Staff Report on the Final Plat**

- A. Upon determination that the submission of the final plat is complete, the Development Code Administrator shall transmit copies of the application for review by applicable agencies including, but not limited to, the City Engineer, City Manager, Middletown Fire Department, Middletown Police Department, agencies having jurisdiction for water and/or sanitary sewer, or other agencies the Development Code Administrator deems appropriate.

- B. Such agencies shall supply comments and recommendations to the Development Code Administrator prior to the regularly scheduled Planning Commission meeting where the final plat and construction drawings will be subject to review.
- C. Prior to the Planning Commission meeting where the final plat is scheduled for review, the Development Code Administrator shall review the final plat and prepare a staff report.

**(7) Step 7 – Review and Decision on the Final Plat by the Planning Commission**

- A. The Planning Commission shall hold a public meeting to review and decide on the final plat. The Planning Commission shall approve, approve with conditions, or deny the final plat. The Planning Commission may also continue the meeting if questions regarding the plat are not satisfactorily addressed by the applicant.
- B. If the Planning Commission denies the final plat, the applicant shall not move forward in the review process until a final plat and the construction drawings are approved by the Planning Commission.
- C. In the event the Planning Commission denies the final plat or approves with conditions, the Planning Commission shall provide the subdivider with a statement in writing setting forth the reasons for the denial or the conditions of approval.
- D. The Planning Commission, with approval of City Council, may give final approval on the final plat before all required public improvements are installed, provided that a construction agreement and a financial guarantee (See Section [1222.02\(f\)](#).) is provided and accepted by City Council.
- E. Approval of the final plat by the Planning Commission shall not be an acceptance by the public of the offer of dedication of any street, public improvement, or other public ways or open space on the final plat unless they are accepted by City Council in the form of the adoption of a motion.
- F. No final plat shall be recorded until all areas offered for parks, open space, or public rights-of-way been accepted by City Council.

**(8) Step 7 – Acceptance of Improvements by City Council**

The City, through action by City Council, may accept public improvements made by a subdivider which meet the following conditions:

- A. The public improvements have been made in accordance with the requirements of this code and City of Middletown *Manual of Design for Public Improvements*;
- B. Installation of the public improvements has been completed in accordance with the applicable design standards;
- C. All final inspections required by these regulations have been carried out by the City, and said public improvements were found to be acceptable by the City Engineer and the Development Code Administrator; and

- D. After all public improvements have been installed to the satisfaction of the City, the applicant shall submit an original copy of as-built construction drawings (showing how all public improvements were actually installed) to the City Engineer in a format acceptable to the City.
- E. After all public improvements have been installed in accordance with the construction agreement and these regulations and the subdivider has complied with this section, City Council may, by motion, accept the public improvements for maintenance with any applicable guarantee.

**(9) Step 8 – Disposition of Approved Plat and Recordation**

- A. After approval of the original drawing of the final plat by the Planning Commission, such final plat shall be transmitted to City Council or other appropriate public body for necessary acceptance of all public dedications.
- B. After approval of the final plat and after acceptance of all land to be dedicated on the plat by City Council or other appropriate public bodies, the plat shall be filed with the applicable county's recorder office in a format set by the county. The plat shall be filed within 60 days after date of final approval and after all necessary certifications have been noted thereon. Failure to record the approved final plat within the 60 days shall result in the final plat being considered void.
- C. Upon recording of the final plat with the applicable county, the applicant shall return one original tracing for the City's permanent records, the return of which shall demonstrate compliance with this section.

**(e) Review Criteria**

In order to approve a major subdivision, the Planning Commission and City Council, as appropriate, shall determine the following:

- (1) That the major subdivision complies with all applicable provisions of this code;
- (2) That the major subdivision does not conflict with other regulations, plans, or policies of the City;
- (3) That applicable review agencies have no objections that cannot be resolved by the applicant; and
- (4) That the final plat and construction drawings conform to the approved preliminary plat, if submitted and approved.

**(f) Amendments and Withdrawal of Application**

- (1) No changes, modifications, or revisions shall be made in any plat of a subdivision after final approval has been given by the Planning Commission and an endorsement is made in writing on the plat, unless the plat is first resubmitted and the changes approved by the Planning Commission.

- (2) If the applicant finds, in the process of preparing construction drawings, that the approved preliminary plat is not workable and changes in layout are required, the applicant shall inform the Development Code Administrator and City Engineer. The Development Code Administrator may require that a revised preliminary plat be submitted for re-approval following the review procedure in Section [1226.07\(d\)](#) above if the changes significantly alter the design of the subdivision. The Development Code Administrator and City Engineer are authorized to allow minor changes related to the public improvements or design where there is minimal impact to the overall design of the subdivision. This shall not give the Development Code Administrator or City Engineer the authority to vary the requirements of this code.
- (3) Before approval of the final plat, the submitted plat may be withdrawn or modified. If modified, the review process shall be repeated. If the application is withdrawn, any application fees shall be forfeited.
- (4) If during the course of construction, any changes or modifications are encountered that are not in conformance with the original approved construction drawings, the subdivider shall submit the modified construction drawings (which have now become as-built drawings) to the City Engineer, who, if in agreement with such modifications, shall affix their signature to these drawings indicating approval of the modifications.

**(g) Subdivision Modifications**

In any case where the subdivider can show that, by reason of exceptional topographic or other physical conditions, strict compliance with the provisions of [Chapter 1222: Subdivision Design](#) would cause practical difficulty or exceptional or undue hardship, the Planning Commission may relax the requirements to the extent deemed just and proper so as to relieve such difficulty or hardship, provided that such relief may be granted without detriment to the public good and without impairing the intent and purpose of this chapter or the desirable general development of the neighborhood and the community in accordance with the master plan.

**(1) Applicability**

- A. If the proposed subdivision requires a deviation from the minimum site development standards (e.g., lot area, lot width, etc.) or other standards identified in Section [1204.10](#), the applicant will be required to apply for and receive all the necessary variance (See Section [1226.10](#).) or administrative waiver (See Section [1226.11](#).) approvals prior to approval of any plat.
- B. If the applicant seeks a modification of standards required by [Chapter 1222: Subdivision Design](#), then the request for a modification shall be accomplished through the procedure outlined in this section.

**(2) Consideration**

A request for a subdivision modification shall be made simultaneously with the initial plat submitted to the Planning Commission.

**(3) Review Criteria**

The review criteria for a subdivision modification shall be the same as those for a variance as established in Section [1226.10\(c\)\(3\)](#).

**(4) Modification Review Timing**

If the preliminary plat is denied or if the approval of the preliminary plat expires, so does the approval of the subdivision modification. Any future request for preliminary plat approval that includes the same modifications shall require a new review and decision on the request for modifications.

## **1226.08 CERTIFICATE OF APPROPRIATENESS (COA)**

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### **(a) Purpose**

The purpose of the certificate of appropriateness (COA) is to provide a procedure by which to review construction, renovation, expansion, and demolition projects on structures located in the Highlands Historic District and the South Main Historic District, Main Street Commercial District, Central Avenue Commercial District, Oakland Conservation District, or a structure that is designated by the City Historic Commission or National Register. In an effort to preserve the character of this area, the City has established reasonable development standards and design guidelines for buildings and structures within the district and this procedure allows for a comprehensive review of the activities against the adopted standards and guidelines.

The Development Code Administrator will review Certificate of Appropriateness applications based on the review criteria outlined in this code as well as the Secretary of the Interior Standards for the Treatment of Historic Properties and the Rehabilitation Bulletin. Applicants are encouraged to use the Secretary of the Interior Standards for the Treatment of Historic Properties and the Rehabilitation Bulletin as a reference for preservation projects.

### **(b) Applicability**

#### **(1) Historic District**

- (2)** No person owning, renting, or occupying property which has been designated a landmark or which is situated in a designated historic district shall carry out any exterior alteration, restoration, reconstruction, demolition, new construction or moving of a historic landmark or property within a historic district, nor shall any person make any material change in appearance of such property, its light fixtures, signs, awnings, windows, siding, roof, doors, shutters, sidewalks, fences, walls, retaining walls, steps, paving, or other exterior elements which affect the appearance and cohesiveness of the historic landmark or historic district, without first obtaining a certificate of appropriateness from the Historic Commission or Development Code Administrator, as applicable. No permits for zoning, building or demolition shall be issued without first obtaining a certificate of appropriateness.
- (3)** Site improvements such as the establishment of a parking lot or structure, landscaping, or other site work shall also be subject to this section unless otherwise waived by the Historic Commission.

**(2) Conservation District**

No person owning, renting, or occupying property that is located within a designated Conservation District shall carry out any major exterior alteration such as an addition, new construction, or demolition of a structure that is visible from the public right-of-way without first obtaining a Certificate of Appropriateness from the City Historic Commission or Development Code Administrator, as applicable. No permits for zoning, building or demolition shall be issued without first obtaining a required certificate of appropriateness.

The Development Code Administrator has the authority to review and forward any exterior alterations to the City Historic Commission that they feel do not preserve/enhance the neighborhood Conservation District.

- (4)** Any application to the City for a building permit for any change in the environment or the exterior of a building shall be forwarded to the Commission, together with copies of all detailed plans, designs, elevations, specifications and documents relating thereto, within seven days after receipt thereof. An application may be filed by the applicant directly with the Commission at the same time that an application for a building permit is filed or in lieu of filing for a building permit if no building permit is required for the proposed change. A building permit shall not be issued until a Certificate of Appropriateness is issued.

- (4)** Projects and activities that are exempt from the design review process are the following:

- A.** Ordinary repair and maintenance of a building or structure which does not change or alter the exterior appearance of the building or structure;
- B.** Changes in occupancy not involving structural or exterior work;
- C.** Interior electrical wiring, VAC or plumbing work on an existing structure;
- D.** Work that is related to the replacement of existing materials and architectural elements with the same materials, colors, and designs; and
- E.** Interior building renovations which will not alter and/or affect the exterior elevations and facade of the building or structure or any architectural features that are visible from the outside, unless otherwise prohibited in Section 1212.03.
- F.** No certificate of appropriateness shall be required if immediate action, including demolition, is necessary to remedy conditions imminently dangerous to life, health or property as determined by the Chief Building Official or the Division of Fire or the Department of Public Health.

**(c) Determining the Significance of a Structure**

- (1)** When making decisions or recommendations about changes to structures subject to the COA requirement, the Historic Commission shall have the authority to make a determination of the historical or architectural significance of the structure based on this section.



- (2)** For structures that the Historic Commission finds are not historically or architecturally significant, the Historic Commission may relax or waive the standards or guidelines that apply to the project.
- (3)** If the Historic Commission finds that the structure is historically or architecturally significant, the standards and guidelines of this code may be fully applied at the discretion of the Historic Commission.
- (4)** The Historic Commission shall determine whether a structure or site is significant based on the structure's:
  - A.** Value as a reminder of the cultural, historical, or archaeological heritage of the City, State, or nation;
  - B.** Location as a site of a significant local, State, or national event;
  - C.** Identification with a person or persons who significantly contributed to the development of the City, State, or nation;
  - D.** Identification as the work of a master builder, designer, or architect whose individual work has influenced the City, State, or nation;
  - E.** Value as a building that is recognized for the quality of its architecture and that it retains sufficient elements showing such architectural significance;
  - F.** Example of an architectural style or period; and/or
  - G.** Character as a contributing element in the applicable historic district.

**(d) Review Authority**

- (1)** All applications for a COA that include any of the following work shall be subject to review by the Historic Commission in accordance with Section 1226.08(f)
  - A.** Construction, expansion, or demolition (partial or complete) of all new or existing buildings and structures;
  - B.** Any application that includes a related alternative equivalent review application;
  - C.** Exterior fences and walls; or
  - D.** Any substantial change in building materials, building elements (e.g., doors, windows, architectural ornamentation, etc.) as may be determined by the Development Code Administrator.
  - E.** Any removal of architectural details or elements.
- (2)** Applications where the applicant proposes replacement of an architectural element or feature with the same type, with no change in color, material, or size, may be reviewed by the Development Code Administrator in accordance with Section 1226.08(e). In all cases, the Development Code Administrator shall have the authority to forward an application to the Historic Commission for review if he or she cannot determine if the proposed work is minor enough to allow administrative review by the Development Code Administrator.

**(e) COA Review Procedure by the Development Code Administrator**

The review procedure for a COA subject to review by the Development Code Administrator shall be as follows:

**(1) Step 1 - Application**

The applicant shall submit a completed application in accordance with Section [1226.02](#) and with the provisions of this section.

**(2) Step 2 - Development Code Administrator Review and Decision**

- A.** Within 30 calendar days after the application is determined to be complete, the Development Code Administrator shall make a decision on the application. The Development Code Administrator is to determine whether the application is ordinary repair and maintenance or change that requires review by the Historic Commission. In making its decision, the Development Code Administrator may approve or deny the application. The Development Code Administrator shall also have the authority to forward the application to the Historic Commission for a full board review.
- B.** Prior to making a decision on the application, the Development Code Administrator shall have the authority to provide comments to the applicant regarding necessary revisions to bring the application into full compliance. The application shall not be deemed formally approved until the applicant makes all of the appropriate changes and submits all necessary revised forms, maps, and documents to the Development Code Administrator through the Development Code Administrator.

**(3) Step 3 - Certificate of Zoning Compliance Application**

- A.** Following the formal approval of the COA application, the Development Code Administrator shall issue a COA.
- B.** Following issuance of a COA, the applicant may immediately submit an application for a certificate of zoning compliance.

**(f) COA Review Procedure by the Historic Commission**

**(1) Step 1 - Application**

- A.** The applicant shall submit a completed application in accordance with Section 1226.02 and with the provisions of this section.
- B.** Application Requirements:

- i. A complete detailed description of the proposed alteration, construction, demolition, removal, or other external change to structures or site
- ii. A plot plan, legibly drawn and to scale, indicating all existing and proposed structures, drives, walks, signs, and other significant features.
- iii. A description or sample of materials to be used in the proposed project.
- iv. Sketches, photographs and other illustrative material relevant to the proposed project.
- v. Any additional information as is deemed necessary to review the application by the Commission

**(2) Step 2 - Staff Review and Staff Report**

- A. Upon determination that a COA application is complete, the Development Code Administrator shall refer the application to the Historic Commission.
- B. Prior to the Historic Commission meeting for the subject application, the Development Code Administrator shall review the application and present a staff report at the meeting when the application is reviewed.

**(3) Step 3 – Historic Commission Review and Decision**

- A. The Historic Commission shall review the application during a public meeting. In reviewing the application, the Historic Commission shall at a minimum, consider the staff report from the Development Code Administrator, the applicable standards, and the review criteria of this section.
- B. Notification of the public meeting shall be provided in accordance with Section 1226.02(h).
- C. The Historic Commission may review any related alternative equivalent compliance applications simultaneously with the COA application.
- D. Within 45 calendar days after the COA application is determined to be complete or is forwarded to them by the Development Code Administrator, the Historic Commission shall hold a public meeting to review the application and make a decision on the application. In making its decision, the Historic Commission may approve, approve with modifications, table or deny the application. The applicant, or his representative or agent, is encouraged to be present at the meeting at which action on the request is to occur
- E. If the Historic Commission does not make a decision within 60 calendar days of the date the application is determined to be complete, the COA shall be deemed approved unless the applicant authorizes an extension of the deadline. This provision shall not apply if the application is tabled due to lack of information provided by the applicant, or due to the applicant requesting that the application remain tabled.

**(4) Step 4 - Certificate of Zoning Compliance Application**

- A. Following the formal approval of the COA application, the Development Code Administrator shall issue a COA.

- B.** Following issuance of a COA, the applicant may immediately submit an application for a certificate of zoning compliance.

**(g) COA Design Review Criteria**

Decisions on a COA application shall be based on consideration of the following criteria:

- (1)** A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
- (2)** The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
- (3)** Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
- (4)** Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
- (5)** Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
- (6)** Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
- (7)** Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
- (8)** Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
- (9)** New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
- (10)** New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.
- (11)** The proposed development is in compliance with all the requirements of this code and other related codes and ordinances enforced by the City;
- (12)** Properties which contribute to the character of the historic district shall be retained, with their historic architectural features intact and altered as little as possible;

- (13)** Any alteration of an existing property shall be compatible with its historic character, as well as with the surrounding district;
- (14)** New construction shall be compatible with the district in which it is located;
- (15)** The application demonstrates compliance with any historic guidelines or policies adopted by the Historic Commission that are applicable to the subject application;
- (16)** In determining compatibility the Historic Commission shall consider the following:
  - A.** The general design, character, and appropriateness to the property of the proposed alteration or new construction;
  - B.** The scale of the proposed alteration or new construction in relation to the property itself, surrounding properties, and the neighborhood;
  - C.** The texture, materials, and color and their relation to similar features of other properties in the neighborhood;
  - D.** The visual compatibility with surrounding properties, including proportion of the properties façade, roof shape, and the rhythm of spacing of properties on streets, including setback; and
  - E.** The importance of historic, architectural, or other features to the significance of the property.
  - F.** Traditional building materials such as wood, brick, metal, or stone shall be used for construction, reconstruction, exterior alteration, or other exterior structure or site element change. Modern man-made materials may be utilized at the discretion of the Commission if the proposed project keeps in character with the existing building, site, area structures, and any applicable design guidelines.
  - G.** For new construction and additions, the structure's width, height, surrounding setbacks and style shall be considered in relationship to adjacent structures. This relationship between structures shall allow for consistency of style, size and density in each given neighborhood area.
  - H.** Where possible, elements which can contribute to the quality of the pedestrian environment and other public amenities should be promoted. Included among these may be benches, water features, seating areas, arcades, awnings or canopies.
  - I.** Signage shall be proportionally scaled and appropriately designed to coalesce with the subject building, site and area.
- (17)** The proposed development is in compliance with the applicable base zoning district and any applicable overlay districts; and
- (18)** The proposed development meets all the requirements or conditions of any applicable development approvals (e.g., PD approvals, conditional use approvals, variance approvals, etc.).

**(h) Time Limit**

- (1)** The applicant shall submit a completed application for a certificate of zoning compliance within one year of the date the COA was approved or the approval shall expire. The date of approval shall be the date the Development Code Administrator issues the COA.
- (2)** Upon expiration of a COA, a new application, including all applicable fees, shall be required before a new application will be reviewed.
- (3)** Upon written request, one extension of one year may be granted by the Development Code Administrator if the applicant can show good cause for a delay.
- (4)** The Historic Commission may authorize alternative time limits for certificate of zoning compliance issuance based on the scale of the proposed development.

**(i) Appeals**

Any person directly affected by a decision of the Historic Preservation Administrator or the Historic Commission, shall have the right to appeal to the Planning Commission, provided that a written application for appeal is filed within twenty (20) calendar days after the decision, notice or order was serviced. An application for appeal shall be based on a claim that; 1) the true intent of the applicable code section or the rules legally adopted thereunder have been incorrectly interpreted, 2) the provisions of this code do not fully apply, or 3) the requirements of this code are adequately satisfied by other means. No building permit or other permit required for the activity applied for shall be issued during the twenty-day period or while an appeal is pending.

2. The Planning Commission shall consider an appeal within thirty (30) calendar days of receipt and shall utilize the written findings of the Historic Preservation Administrator or the Historic Commission in rendering their decision. A majority vote of the Planning Commission shall be required to overturn a decision of the Historic Preservation Administrator or the Historic Commission.

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## **1226.09 ALTERNATIVE EQUIVALENT REVIEW**

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**(a) Purpose**

Alternative equivalent review is a procedure that allows applicants to propose unique design options as an alternative to a development standard established in this code provided it meets or exceeds the intent of the design-related provisions of this code. It is not a variance, waiver or weakening of regulations; rather, this procedure permits a site-specific plan that is equal to or better than the strict application of a design standard specified in this code. Alternative equivalent compliance shall apply only to the specific site for which it is requested and does not establish a precedent for assured approval of other requests.

**(b) Applicability**

The alternative equivalent review procedure shall be available only for the following sections of this code:

- (1) Section [1208.04: Outdoor Lighting Standards](#);
- (2) [Chapter 1210: Architectural Standards](#);
- (3) [Chapter 1212: Historic Preservation](#);
- (4) [Chapter 1216: Landscaping and Buffering](#); and
- (5) [Chapter 1218: Parking, Access, and Mobility](#).

**(c) Review Authority**

- (1) A request for alternative equivalent review related to standards in [Chapter 1212: Historic Preservation](#) shall be made concurrently with a COA application and decided by the Historic Commission.
- (2) All other requests for alternative equivalent review shall be heard and decided by the Planning Commission.

**(d) Alternative Equivalent Review Procedure**

The review procedure for any alternative equivalent review application shall be as follows:

**(1) Step 1 – Application**

The applicant shall submit an application in accordance with Section [1226.02](#) and with the provisions of this section.

**(2) Step 2 – Staff Review and Staff Report**

- A. Upon determination that an alternative equivalent review application is complete, the Development Code Administrator shall refer the application to the applicable commission.
- B. Prior to the applicable commission's hearing for the alternative equivalent review application, the Development Code Administrator shall review the application and prepare a staff report.

**(3) Step 3 – Commission Review and Decision**

- A. The applicable commission shall consider the alternative equivalent review at its next regularly scheduled meeting or at a special meeting after the application is determined to be complete, subject to the submittal deadlines established by the Development Code Administrator.
- B. If the alternative equivalent review application is related to other applications such as a COA, conditional use, planned development, or other application subject to review by the same commission, both reviews may take place simultaneously.

- C. In reviewing the application, the applicable commission shall at a minimum, consider the staff report from the Development Code Administrator and the review criteria of this section.
- D. Notification of the public meeting or hearing, whichever is applicable, shall be provided in accordance with Section 1226.02(h) or Section 1226.02(i), as applicable.
- E. The applicable commission shall make a decision on the application. In making its decision, the applicable commission may approve, approve with modifications or supplementary conditions, or deny the application.
- F. If approved, any certificate of zoning compliance or other related applications shall demonstrate compliance with the alternative equivalent review approval.

**(e) Review Criteria**

Decisions on an alternative equivalent review application shall be based on consideration of the following criteria:

- (1) That the proposed alternative achieves the intent of the subject design or development standard to the same or better degree than the subject standard;
- (2) That the proposed alternative achieves the goals and policies of the master plan;
- (3) That the proposed alternative results in benefits to the community that are equivalent to or better than compliance with the subject standard; and
- (4) That the proposed alternative imposes no greater impacts on adjacent properties than would occur through compliance with the specific requirements of this code.

**(f) Conditions**

The applicable review board may impose conditions on an approval for alternative equivalent review provided such conditions are related to ensuring the performance of the alternative equivalent review to meet or exceed the subject standard. Such conditions may include financial guarantees, required timeframes, amendments or revisions to the proposal, or the ability to revoke an approval for alternative equivalent review.

**(g) Decisions**

Any decision on an alternative equivalent review application shall not be binding on the City related to future applications requesting an alternative to any of the applicable standards. Each case shall be review and decided upon based on the individual circumstances.

**(h) Time Limit**

- (1) An approval of an alternative equivalent review application shall expire if the certificate of zoning compliance or COA to which it applies expires.



- (2) Upon expiration of an alternative equivalent review approval, a new application, including all applicable fees, shall be required before a new application will be reviewed.

**(i) Appeals**

Any person or entity claiming to be injured or aggrieved by any final action of the Planning Commission or the Historic Commission shall have the right to appeal the decision to the BZA as established in Section [1226.13](#).

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## **1226.10 VARIANCES**

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**(a) Purpose**

- (1) The purpose of a variance is to provide limited relief from the requirements of this code in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of land in a manner otherwise allowed under this code. It is not intended that a variance be granted merely to remove inconveniences or financial burdens that the requirements of this code may impose of property owners in general. Variances are intended to address extraordinary, exceptional, or unique situations that were not caused by the applicant's act or omission.
- (2) Standards found in [Chapter 1222: Subdivision Design](#) may not be altered through this variance process. Any modification to those standards shall be reviewed as a subdivision modification pursuant to Section [1226.07\(g\) Subdivision Modifications](#).

**(b) Variance Review Procedure**

The review procedure for variances shall be as follows:

**(1) Step 1 – Application**

The applicant shall submit an application in accordance with Section [1226.02](#) and with the provisions of this section.

**(2) Step 2 – Staff Review and Staff Report**

- A. Upon determination that a variance application is complete, the Development Code Administrator shall refer the application to the BZA.
- B. Prior to the BZA hearing for the variance application, the Development Code Administrator shall review the application and prepare a staff report.

**(3) Step 3 – BZA Review and Decision**

- A. The BZA shall hold a hearing on the variance application at its next regularly scheduled meeting or at a special meeting after the application is determined to be complete, subject to the submittal deadlines established by the Development Code Administrator.

- B. The BZA shall review the variance application during a hearing. In reviewing the application, the BZA shall at a minimum, consider the staff report from the Development Code Administrator and the review criteria of this section.
- C. Notification of the hearing shall be provided in accordance with Section [1226.02\(i\)](#).
- D. In making its decision, the BZA may approve, approve with modifications or supplementary conditions, or deny the application.
- E. In approving a variance, the BZA may impose conditions on the approval, the proposed use, and the premises to be developed or used pursuant to such approval as it determines are required to be ensure compliance with the standards of this section and the purpose of this code. Any violation of the conditions of approval shall be a violation of this code, subject to the enforcement and penalties of [Chapter 1228: Enforcement and Penalties](#).
- F. For use variances, an automatic condition to any approval shall be that should the existing structure be torn down or damaged beyond 50 percent of the market value as established by the applicable county auditor, the use variance shall expire.

**(c) Review Criteria**

- (1) Where an applicant seeks a variance to any of the area or dimensional standards in this code, said applicant shall be required to supply evidence that demonstrates that the literal enforcement of this code will result in practical difficulty for an area/dimensional variance as defined in Section [1226.10\(c\)\(3\)](#) below.
- (2) Where an applicant seeks a use variance that would allow for a use not otherwise permitted in the applicable zoning district, said applicant shall be required to supply evidence that demonstrates that the literal enforcement of this code will result in an unnecessary hardship as defined in Section [1226.10\(c\)\(4\)](#) below.
- (3) **Area and Dimensional Variance Review Criteria**
  - A. The following factors shall be considered and weighed by the BZA to determine practical difficulty:
    - i. Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district; examples of such special conditions or circumstances are: exceptional irregularity, narrowness, shallowness or steepness of the lot, or adjacency to nonconforming and inharmonious uses, structures or conditions;
    - ii. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
    - iii. Whether the special conditions and circumstances are a direct result from the actions of the applicant, his or her agents, or prior property owners;

- iv. Whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land or structures;
  - v. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;
  - vi. Whether the variance would adversely affect the delivery of governmental services such as water, sewer, electric, refuse pickup, or other vital services;
  - vii. Whether special conditions or circumstances exist as a result of actions of the owner;
  - viii. Whether the property owner's predicament can feasibly be obviated through some method other than a variance;
  - ix. Whether the spirit and intent behind the code requirement would be observed and substantial justice done by granting a variance; and/or
  - x. Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.
- B.** No single factor listed above may control, and not all factors may be applicable in each case. Each case shall be determined on its own facts.

**(4) Use Variance Review Criteria**

In order to grant a use variance, the BZA shall determine that strict compliance with the terms of this code will result in unnecessary hardship to the applicant. The applicant must demonstrate such hardship by clear and convincing evidence that all of the following criteria are satisfied:

- A.** The property cannot be put to any economically viable use under any of the permitted uses in the zoning district in which the property is located;
- B.** The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district;
- C.** The variance requested cannot otherwise be resolved by a zoning map amendment or a zoning map amendment is not the most beneficial approach;
- D.** The essential character of the neighborhood will not be substantially altered as a result of the variance;
- E.** There is an existing structure that cannot be reasonably used for a permitted use or a conditionally permitted use in the applicable zoning district;
- F.** The proposed use is listed in [Table 1204-3](#);
- G.** The hardship condition is not created by actions of the applicant;
- H.** The granting of the variance will not adversely affect the rights of adjacent property owners or residents;
- I.** The granting of the variance will not adversely affect the public health, safety or general welfare;

- J. The variance will be consistent with the general spirit and intent of this code;
- K. The requested use is permitted in another district in this code; and
- L. The variance sought is the minimum that will afford relief to the applicant.

**(d) Time Limit**

- (1) The applicant shall submit a completed application for a certificate of zoning compliance within one year of the date the variance was approved or the approval shall expire.
- (2) Upon expiration of a variance approval, a new application, including all applicable fees, shall be required before a new variance will be reviewed.
- (3) Where a variance applies to a structure, the variance approval shall expire if the structure is demolished or otherwise torn down unless the requirements of [Chapter 1224: Nonconformities](#) applies.

**(e) Appeals**

Any person or entity claiming to be injured or aggrieved by any final action of the BZA shall have the right to appeal the decision the court of common pleas as provided in ORC Chapters 2505 and 2506.

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## **1226.11 ADMINISTRATIVE WAIVERS**

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**(a) Purpose**

This section sets out the procedures to follow when an applicant requests a very minor waiver to a certain area or dimensional requirement of this code.

**(b) Applicability**

- (1) The Development Code Administrator may grant administrative waivers for any area or dimensional regulation that does not exceed 10 percent of the applicable minimum or maximum regulation. Area and dimensional regulations include, but are not limited to, minimum front, side, and rear yard setbacks; maximum height of structures; maximum sign height; maximum sign area, etc.
- (2) An administrative waiver request regarding a minimum lot area or lot width requirement is prohibited.
- (3) The minimum number of parking spaces required may be reduced in accordance with [Section 1218.04\(b\)](#), without an administrative waiver.
- (4) The applicant shall be required to apply for a variance for any waiver request that exceeds 10 percent or other variations from the code that do not qualify for administrative waivers.

**(c) Administrative Waiver Review Procedure**

The review procedure for an administrative waiver shall be as follows:

**(1) Step 1 - Application**

The applicant shall submit an application in accordance with Section [1226.02](#) and with the provisions of this section.

**(2) Step 2 – Development Code Administrator Review and Decision**

- A.** The Development Code Administrator shall review the administrative waiver application within 30 days after the application (Step 1) is determined to be complete.
- B.** In making a decision on the administrative waiver, the Development Code Administrator may approve or deny the application.
- C.** The Development Code Administrator may refer the administrative waiver to the BZA to request assistance in determining the reasonableness of an administrative waiver request.

**(d) Review Criteria**

Decisions on an administrative waiver shall be based on consideration of the following criteria:

- (1)** The waiver will allow the proposed development to reflect the predominant development character of surrounding, similar uses and properties (e.g., similar setbacks, similar sign areas, etc.).
- (2)** Special circumstances exist that make the precise compliance with the subject standards impractical or unreasonable;
- (3)** The waiver request is minor in nature;
- (4)** The waiver request does not substantially deviate from the development character of the surrounding properties; and
- (5)** The waiver request does not deviate from the overall purpose of this code or the intent and objective of the original regulation.

**(e) Time Limit**

- (1)** The applicant shall submit a completed application for a certificate of zoning compliance within one year of the date the administrative waiver was approved or the approval shall expire.
- (2)** Upon expiration of an administrative waiver approval, a new application, including all applicable fees, shall be required before a new administrative waiver will be reviewed.

**(f) Appeals**

Any person or entity claiming to be injured or aggrieved by any final action of the Development Code Administrator shall have the option to seek a variance in accordance with the procedures in Section [1226.10](#) or the right to appeal the decision of the Development Code Administrator to the BZA as established in Section [1226.13](#).

## **1226.12 CERTIFICATE OF ZONING COMPLIANCE**

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### **(a) Purpose**

A certificate of zoning compliance shall be required in accordance with the provisions of this section in order to ensure that proposed development complies with the standards of this code, and to otherwise protect the public health, safety, and general welfare of the citizens of the City.

### **(b) Applicability**

- (1)** No land shall be used and no permits for excavation or construction shall be issued by the Chief Building Official, other than alterations or remodeling not affecting the size, character or use of a structure, until a plan showing such intended use and construction of structures or alterations thereof has been submitted to the Development Code Administrator for their review, and a certificate of zoning compliance issued. Such certificate shall show that the proposed building or premises, or parts thereof, and the proposed use thereof, are in conformance with all provisions of this code.
- (2)** A change in tenancy or ownership of a residential dwelling unit shall be exempt from the certificate of zoning compliance requirement.
- (3)** A certificate of zoning compliance shall be required for the establishment of any temporary or accessory use as established in [Chapter 1206: Accessory and Temporary Use Regulations](#).
- (4)** Unless otherwise exempted in [Chapter 1220: Signage](#), signs shall require a certificate of zoning compliance.
- (5)** Certificates of zoning compliance shall be issued only in conformity with the provisions of this code unless the Development Code Administrator receives a written order from the BZA or Planning Commission providing for conditions or modifications of such compliance as may be permitted by this section and this code.
- (6)** Failure to obtain a certificate of zoning compliance shall be a violation of this code subject to the provisions of [Chapter 1228: Enforcement and Penalties](#).
- (7)** The Development Code Administrator shall have the authority to develop separate application forms and permits or certificates for special purposes that are reviewed in the same manner as the certificate of zoning compliance. These special permits or certificates may include, but are not limited to, sign permits, temporary use permits, fence permits, etc. For the purposes of this code, such permits shall be considered a certificate of zoning compliance.

### **(c) Certificate of Zoning Compliance Review Procedure**

The review procedure for a certificate of zoning compliance shall be as follows:

**(1) Step 1 – Application**

The applicant shall submit an application in accordance with Section [1226.02](#) and with the provisions of this section.

**(2) Step 2 – Development Code Administrator Review and Decision**

- A.** The Development Code Administrator may distribute the application to other staff members and other City departments to solicit comment on the certificate of zoning compliance application.
- B.** Within seven days after the application is determined to be complete, the Development Code Administrator shall make a decision on the application. In making its decision, the Development Code Administrator may approve or deny the application.
- C.** Prior to finalizing approval of the application, the Development Code Administrator shall have the authority to provide comments to the applicant regarding necessary revisions to bring the application into full compliance. The application shall not be deemed formally approved until the applicant makes all of the appropriate changes and submits all necessary revised forms, maps, and documents to the Development Code Administrator.

**(d) Review Criteria**

In order to approve any certificate of zoning compliance, the Development Code Administrator shall determine the following:

- (1)** The application complies with all applicable provisions of this code and the applicable zoning district;
- (2)** The application complies with all other applicable codes in the Middletown Code of Ordinances including, but not limited to, Chapter 1026 (Traffic Impact Study, Access Management, and Curb Cut Regulations); and
- (3)** The application complies with all approved plans, conditions, or other development approvals.

**(e) Occupancy and Use of Property or Building**

- (1)** No person shall use or occupy, or permit the use or occupancy of any building or premises or part thereof, hereafter created, erected, changed, converted or enlarged wholly or in part, in its use or structure until a certificate of occupancy has been issued by the Chief Building Official. Such certificate shall only be issued after the final construction inspection has been conducted and all water, sanitary, electrical and/or heating systems are determined by the Chief Building Official to be operable. A copy of the certificate of occupancy shall be forwarded to the Development Code Administrator upon issuance to the applicant.



- (2) A temporary certificate of occupancy may be issued by the Chief Building Official for a period not exceeding 12 months during alterations, for partial occupancy of a building pending its completion, provided that such temporary certificate may require such conditions and safeguards as will protect the safety of the occupants and the public. In no case shall such a temporary certificate be issued for a new structure.

**(f) Time Limit**

- (1) All certificates of zoning compliance shall expire six (6) months from the date of issuance, unless otherwise stated.
- (2) The applicant shall obtain an approved building permit within one year of the date the certificate of zoning compliance was approved or the approval shall be revoked. The date of approval shall be the date the Development Code Administrator provides a signed copy of the permit to the applicant.
- (3) Time limits for permitted temporary uses and structures shall be as authorized in Section [1206.02](#). An approval of a certificate of zoning compliance for a temporary use shall include the approved start and end dates for the proposed temporary use.
- (4) Upon written request, up to two extensions of six months may be granted by the Development Code Administrator if the applicant can show good cause for a delay.
- (5) If a certificate of zoning compliance expires, a new application, including all applicable fees, shall be required before a new certificate of zoning compliance application will be reviewed.
- (6) The above time limits shall not apply if alternative time limits that have been approved by the Development Code Administrator or Planning Commission in accordance with the applicable review procedure.

**(g) Appeals**

Any person or entity claiming to be injured or aggrieved by any final action of the Development Code Administrator shall have the right to appeal the decision to the BZA as established in Section [1226.13](#).

## **1226.13 APPEALS**

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**(a) Purpose**

This section sets out the procedures to follow when a person claims to have been aggrieved or affected by an administrative decision made in the administration or enforcement of this code.



**(b) Applicability**

- (1)** An appeal may be made regarding any administrative decision made in the administration and enforcement of this code including administrative decisions by the Development Code Administrator, Historic Commission, City Engineer, or other staff member authorized to make decisions under this code.
- (2)** An appeal may not be made to the BZA when the Planning Commission is making a recommendation to City Council as part of a legislative action such as a code text or map amendment.

**(c) Initiation**

Appeals shall be initiated by the person aggrieved or affected by any order, decision, determination, or interpretation made by the authority having jurisdiction who is charged with the administration or enforcement of this code.

**(d) Appeals Review Procedure**

The review procedure for appeals shall be as follows:

**(1) Step 1 – Submission of Appeal**

Within 20 days of the administrative order, decision, determination, or interpretation, the person appealing the decision or their authorized agent shall submit all required information in accordance Section [1226.02](#).

**(2) Step 2 – Forwarding of the Record to the BZA**

Upon receiving the written appeal of an administrative decision or determination, the Development Code Administrator shall transmit the written appeal with all papers, documents, and other materials related to the appealed decision or determination to the BZA. This material shall constitute the record of the appeal.

**(3) Step 3 – BZA Review and Decision**

- A.** The BZA shall hold a hearing within a reasonable amount of time of the filing of the appeal.
- B.** Notification of the hearing shall be provided in accordance with Section [1226.02\(i\)](#).
- C.** Any person whose legal interests are affected by the appeal may appear at the hearing and testify in person or through an authorized agent, and be represented by an attorney.
- D.** In making its decision, the BZA may uphold, overturn, or modify the decision being appealed. The Development Code Administrator shall notify the appellant in writing of the decision of the Board.

**(e) Review Criteria**

A decision or determination shall not be reversed or modified unless there is competent, material, and substantial evidence in the record that the decision or determination fails to comply with either the procedural or substantive requirements of this code.

**(f) Stay**

A properly submitted appeal shall stay all administrative proceedings by the City in furtherance of the action appealed, unless the Development Code Administrator certifies to the BZA that a stay would cause imminent peril to life or property, in which case the administrative proceedings shall not be stayed unless a restraining order is granted by the BZA or by a court of competent jurisdiction, for good cause shown.

**(g) Appeals of BZA Decisions**

Any person or entity claiming to be injured or aggrieved by any final action of the BZA shall have the right to appeal the decision to the applicable court of common pleas as provided in ORC Chapters 2505 and 2506.

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## **1226.14 INTERPRETATION OF THE CODE**

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It is the intent of this code that all questions of interpretation related to the administration and enforcement of this code shall be first presented to the Development Code Administrator, and that such questions shall be presented to the BZA only on appeal from the decision of the Development Code Administrator. Such appeals shall be in accordance with Section [1226.13](#).

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## **1226.15 FEES**

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The following fee schedule is established to cover administrative expenses for the processing and review of various development and zoning activities in accordance with Section 1226.01(a)(4). This fee schedule shall be posted in the office of the Development Code Administrator and may be altered or amended only by action of City Council. (Amended September 7, 2018)

### **FEE SCHEDULE**

Zone Change	\$500.00
Preliminary Development Plan	\$300.00
Final Development Plan	\$500.00
Development Plan: minor amendment	\$200.00
Conditional Use Plan (Residential)	\$200.00
Conditional Use Plan (Commercial)	\$350.00
Conditional Use Plan: Minor Amendment	\$100.00
Appeals	\$150.00
Certificate of Zoning Compliance: residential	\$100.00 plus \$0.01 per sq. ft.
Certificate of Zoning Compliance: residential accessory structures/use	\$30.00
Certificate of Zoning Compliance: residential driveway expansion	\$30.00
Certificate of Zoning Compliance: non-residential (new construction)	\$200.00 plus \$0.01 per sq. ft. (max of \$1,000.00)
Certificate of Zoning Compliance: non- residential	\$100.00
Sign	\$50.00
Home Occupation	\$30.00
Historic Commission Certificate of Appropriateness (COA)	\$25.00
Architecture Review Board Variance Request	\$25.00
Zoning Verification Letter	\$75.00

**Double Fees:** Prices stated on this fee schedule shall be doubled for work done without a zoning certificate.

**Administrative Waiver:** The City Manager, at their discretion, may waive any fees as listed on this fee schedule.

**Urban Renewal Plan Approval Submittal \$20.00**

**Plan Use Development (PUD): engineering review** One and one-half percent of public infrastructure cost\*

\*The engineering fees for PUD plan review shall consist of one and one-half percent of the total construction cost of public infrastructure with a minimum fee of \$500.00. Payment will be collected as follows:

1. Five hundred dollars with the initial PUD plan submittal
2. One percent of the construction costs minus \$500.00 prior to approval by the City Engineer of the construction plans; and
3. The remaining one-half percent prior to final inspection of the site.

No application for any item listed in the table above shall be accepted until the appropriate fee has been paid in full. All fees shall be submitted to the Development Code Administrator, who shall submit the same to the Finance Department in accord with all applicable state and local laws, and city policies.

## **Chapter 1228: Enforcement and Penalties**

### **1228.01 VIOLATIONS**

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- (a) The erection, construction, enlargement, conversion, moving or maintenance of any building or structure, and the use of any land or building which is continued, operated or maintained, contrary to the provisions of this code is hereby declared to be a violation of this code and unlawful.
- (b) The failure of any person, firm or corporation to comply with a lawful order of the Development Code Administrator is hereby declared to be a violation of this code and unlawful.
- (c) Whenever the Development Code Administrator, or their designee, determines that there has been a violation of any provision of this code, the Development Code Administrator, or their designee, shall give notice of such violation to the person in accordance with [Section 1228.06](#).

### **1228.02 COMPLIANCE OF OTHER CITY DEPARTMENTS**

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All departments, officials and public employees of the City vested with the duty or authority to issue permits or licenses shall comply with the provisions of this code and shall issue no permit or license for any use, building or purpose in conflict with the provisions of this code. Any permit or license, issued in conflict with the provisions of this code, shall be null and void and of no effect whatever, and no utility or other public service shall be provided to any property used in violation of this or any other applicable ordinance of the City.

### **1228.03 FILING OF COMPLAINTS AND ENFORCING OFFICER**

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Whenever a violation of this code occurs or is alleged to have occurred, any person may file a complaint with the Development Code Administrator. The Development Code Administrator shall record such complaint, investigate the complaint, and take action as provided by this code.

### **1228.04 AFFECTED PARTIES**

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The owner and/or tenant of any building, structure, premises, or part thereof, and any architect, engineer, surveyor, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains a violation may be found guilty of a separate offense and suffer the penalties herein provided.

### **1228.05 ENTRY AND INSPECTION OF PROPERTY**

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The Development Code Administrator, or their designee, is authorized to make inspections of properties and structures for the purpose of enforcing the provisions of this code. Prior to seeking entry to any property or structure for such examination, the Development Code Administrator, or their designee, shall attempt to obtain the permission of the owner or occupant to inspect the property or structure. If such permission is denied or cannot be obtained, the Development Code Administrator shall request the assistance of the Middletown Law Director in securing a valid search warrant prior to entry.

### **1228.06 PROCEDURES UPON DISCOVERY OF VIOLATIONS**

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#### **(a) Initial Written Notice**

- (1) If the Development Code Administrator, or their designee, finds that any provision of this code is being violated, a written notice shall be sent to the person responsible for such violation.
- (2) Such notice shall:
  - A. Be in writing;
  - B. Identify the violation;
  - C. Include a statement of the reason or reasons why it is being issued and refer to the applicable sections of this code; and
  - D. State the time by which the violation shall be corrected.
- (3) Service of notice of violation shall be as follows:
  - A. By personal delivery to the person or persons responsible, or by leaving the notice at the usual place of residence of the owner with a person of suitable age and discretion;
  - B. By certified mail, return receipt requested, and addressed to the person or persons responsible at a last known address;

- C. If a certified mail envelope is returned with endorsement showing that the envelope is unclaimed, then service shall be sent by ordinary mail, and the mailing shall be evidenced by a certificate of mailing. Service shall be deemed complete when the fact of mailing is entered of record, provided the ordinary mail envelope is not returned by the postal authorities with an endorsement showing failure of delivery; or
  - D. By posting a copy of the notice form in a conspicuous place on the property where the violation is located.
- (4) Additional written notices may be sent at the Development Code Administrator's, or their designee's, discretion.

**(b) Order**

An order (the initial written notice may include the order) shall be sent to the person responsible for such violation. The order shall be in writing and may order the remediation of a condition found in violation of this code, within a reasonable time. In the case of imminent danger to life or property, a reasonable time may be immediately. If the order requires cessation of use, it may include an order to vacate the premises or to remove any building or structure as a method of remedying the condition. If not served with the initial written notice, the order shall be served in a manner provided by § 1228.06(a)(3). It shall state what action the Development Code Administrator, or their designee, intends to take if the violation is not corrected.

**(c) Emergency Enforcement**

Notwithstanding the foregoing, in cases when delay would seriously pose a danger to the public health, safety, or welfare, the Development Code Administrator, or their designee, may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized in Section [1228.06\(a\)](#).

## **1228.07 PENALTIES AND REMEDIES FOR VIOLATIONS**

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If no action is taken within the time period allowed for correction of the violation of this Code, the Development Code Administrator may in their sole discretion pursue compliance with this Code through any or all of the remedies provided in this Section 1228.07. The use of any remedy herein does not constitute a waiver of any other remedy, except as specifically provided herein.

### **(a) Civil Enforcement**

In case any building is or is proposed to be located, erected, constructed, reconstructed, enlarged, changed, maintained, or used or any land is or is proposed to be used in violation of this code, or any amendment or supplement thereto, City Council, the Law Director, the Development Code Administrator, City Engineer, or any adjacent or neighboring property owner who would be especially damaged by such violation, in addition to other remedies provided by law, may institute injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful location, erection, construction, reconstruction, enlargement, change, maintenance, or use.

### **(b) Civil Penalty**

1. The Development Code Administrator may, as an alternative to criminal prosecution, cite a person who violates any provision of this code or fails to obey any lawful order of the Development Code Administrator issued in pursuit of conformity to this code, for a civil offense and collect a civil penalty in the amount of one hundred and fifty dollars (\$150.00) for the first citation and two hundred and fifty dollars (\$250.00) for all subsequent citations within a three year period. A person may not be cited for a civil penalty if that person is charged with a misdemeanor under division (c) hereof for the same offense.
2. The Development Code Administrator, or their designee shall issue that citation in accordance with Chapter 214 of the Middletown Codified Ordinances, and the citation shall be processed in accordance with the requirements of that chapter.

### **(c) Criminal Enforcement**

Whoever violates any provision of this Code or fails to conform to any provision thereof or fails to obey any lawful order of the Development Code Administrator issued in pursuance thereof, is guilty of a misdemeanor of the third degree on the first offense and guilty of a misdemeanor of the second degree on the second and subsequent offense. Each day's continuation of a violation or failure to comply is a separate offense.

**(d) Abatement**

The Development Code Administrator may notify the person in violation of this Code of the City's intent to correct the violation and bill the person in violation an amount equal to two and one-half times the actual cost incurred by the City to correct the violation. This Notice of Abatement shall accompany the Order issued under Section 1228.06(b) of this Chapter. The Notice of Abatement shall further notify the person in violation that the Development Code Administrator's, or their designee's, decision and/or order may be appealed to the Board of Zoning Appeals in accordance with Section 1226.13 of this Code.

**(e) Other Enforcement Actions**

Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation, including, but not limited to, the revocation of any permit or certificate, if the terms or conditions of such permit or certification are not met.

**(f) Multiple Violations**

Each day that any violation continues (for each citation) after notification by the Development Code Administrator, or their designee, that such violation exists may be considered at the discretion of the City to be a separate offense for purposes of the penalties and remedies specified in this Chapter.

# Chapter 1230: Definitions

## 1230.01 RULES OF CONSTRUCTION AND INTERPRETATION

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### (a) Intent

All provisions, terms, phrases, and expressions contained in this code shall be construed according to stated purpose and intent of this code.

### (b) Lists and Examples

Unless otherwise specifically indicated, lists of items or examples that use terms such as including, such as, or similar language are intended to provide examples, and not to be exhaustive lists of all possibilities.

### (c) References to Other Regulations, Publications and Documents

Whenever reference is made to an ordinance, statute, regulation, or document, that reference shall be construed as referring to the most recent edition of such regulation (as amended), ordinance, statute, or document, or to the relevant successor document, unless otherwise expressly stated.

### (d) Public Officials and Agencies

- (1) All public officials, bodies, and agencies to which references are made are those of the City of Middletown, unless otherwise expressly stated.
- (2) Any staff member identified as having a responsibility for the administration or enforcement of this code (e.g., Development Code Administrator, City Engineer, Chief Building Official, etc.) shall be so appointed by the City Manager and the title given by this code may, in certain instances, not correspond directly with any official job titles at the City of Middletown.

### (e) Delegation of Authority

Whenever a provision appears requiring the head of a department or another staff person or employee of the City to perform an act or duty, that provision shall be construed as authorizing the department head or staff member to delegate the responsibility to a designee, unless the terms of the provision specify otherwise.

### (f) Technical Words

Technical words and phrases not otherwise defined in this code that may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

### (g) Mandatory and Discretionary Terms

The word “shall” is always mandatory, and the words “may” or “should” are always permissive.

### (h) Conjunctions

Unless the context clearly suggests the contrary, conjunctions shall be interpreted as follows:



- (1) “And” indicates that all connected items, conditions, provisions, or events shall apply; and
- (2) “Or” indicates that one or more of the connected items, conditions, provisions, or events shall apply.

**(i) Tense and Usage**

Words used in one tense (past, present, or future) include all other tenses, unless the context clearly indicates the contrary. The singular shall include the plural, and the plural shall include the singular.

**(j) Gender**

The masculine shall include the feminine, and vice versa.

**(k) Meaning**

For the purpose of this code, words and phrases shall have the meanings set forth in this chapter.

**(l) Other Terms Not Defined**

Words and phrases not otherwise defined in this code shall be construed according to the common and approved usage of American English.

**(m) Percentages and Fractions**

When a calculation required by this code results in a fractional number or percentage, any fraction of  $\frac{1}{2}$  or less shall be rounded down to the next lower whole number and any fraction of more than  $\frac{1}{2}$  shall be rounded up to the next higher whole number. Any percentage of #.5 percent or less shall be rounded down to the next lower whole number and any percentage greater than #.5 percent shall be rounded up to the next higher whole number.

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## **1230.02 DEFINITIONS**

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**Abutting, Adjoining, or Adjacent**

The land, lot, or property adjoining the property in question along a lot line or separated only by an alley, easement, or street.

**Access**

Any driveway or other point of entry and/or exit onto or from a street, road, or thoroughfare, which connects to the general street system.

**Accessibility Ramps**

Permanent or portable ramps utilized to provide a disabled person with accessibility to a structure.

**Active Recreational Facilities**

Any park or recreational facility that is owned or operated by a government agency, which requires grading of the land, construction of facilities, lighting, or is developed for athletic fields, tennis courts, swimming pools, skate parks, disc golf, and other similar outdoor facilities.

**Addition**

Any act or process that changes one or more of the exterior architectural features of a building or structure by adding to, joining with, or increasing the size, height, or capacity of the building or structure.

**Administrative Waiver**

A review process that allows the City Planner to waive certain dimensional standards by up to 10 percent based on the provisions of Section [1226.11](#).

**Agricultural and Agricultural Services (Use Category)**

The agricultural and agricultural services use category is comprised of uses characterized by general active and on-going agricultural uses, activities, and related uses. An agricultural use, in general, means the use of land for the growing and/or production of field crops, livestock, and livestock products for the production of income.

**Agriculture (Livestock)**

Any use of land for the raising and caring of livestock. This includes necessary buildings and structures which shall be used for agriculture, raising and caring for livestock and animal and poultry husbandry including necessary accessory uses for parking, treating or sorting the products; provided, however, that the operation of any such accessory uses shall be secondary to that of the normal agricultural activities. Buildings occupied as residences by persons engaged in agricultural operations shall not be considered to be used for agricultural purposes.

For the purposes of this code, this use shall also include commercial stables and riding academies defined as the use of a building for animals to lodge and feed in, especially having stalls for horses. Such building may also be used for educational instruction in the care or riding of horses.

**Agriculture (Raising of Crops)**

Any use of land for the growing and harvesting of legal agricultural crops and trees for commercial agricultural purposes. Agricultural uses include, but not limited to, raising of crops, horticulture, floriculture, and viticulture and the necessary accessory uses for parking, treating or sorting the products; provided, however, that the operation of any such accessory uses shall be secondary to that of the normal agricultural activities. Buildings occupied as residences by persons engaged in agricultural operations shall not be considered to be used for agricultural purposes.

**Air Activated Graphic**

A sign, all or any part of, which is designed to be moved by action of forced air so as to make the sign appear to be animated or otherwise have motion.

**Airport**

Any runway, landing area or other facility designed, used or intended to be used for the landing or taking off of aircraft, either public or private, including the necessary taxiways, storage and tie-down areas, hangars and other necessary buildings and open spaces.

**Alley**

Any dedicated public way affording a secondary means of access to abutting property and not intended for general traffic circulation.

**Alteration**

- Any change, addition or modification in construction, any change in the structural members of a building, such as walls or partitions, columns, beams or girders, the consummated act of which may be referred to herein as "altered" or "reconstructed;" any act or process that changes one or more of the exterior architectural features of a structure, including, but not limited to, the erection, construction, reconstruction or removal of any structure.
- Any change of copy, sign face, color, size, height, shape, illumination, position, location, construction, or supporting structure of any sign.

**Alternative Equivalent Review**

A review procedure by which an applicant can propose an alternative approach to meeting a standard of this code that meets or exceeds the original standard. See Section [1226.09](#).

**Amateur Radio Antenna**

A system of cables, electrical conductors, insulators, metallic or non-metallic tubing, poles, reflecting discs, rods, wires, or similar objects used for transmission or reception of radio signals or electromagnetic waves for amateur radio service.

**Amateur Radio Service**

A radio communication service for the purpose of self-training, intercommunication and technical investigations carried out by amateurs, that is, duly authorized persons interested in radio technique solely with a personal aim and without pecuniary interest.

**Amateur Radio Tower**

A structure whose principal function is to support one or more amateur radio antennas.

**Animal Care (Use Category)**

The animal care use category is comprised of uses characterized by the caring, grooming, and treatment of animals, including vet services.

**Antenna-Tower**

A standard aerial and its supporting mast or tower structure in combination. It is contrasted to the more typical chimney mounted aerial.

**Appeal**

A review procedure by which a person may call into question an administrative decision made in accordance with this code. See Section [1226.13](#).

**Applicant**

Unless otherwise specified, an owner of a property or an agent for the owner, including, a subdivider, developer, attorney, or similar representative, who has filed an application for development review pursuant to [Chapter 1226:Review Authority and Procedures](#).

**Application**

The process by which the applicant submits a request for any type of development review or approval identified in [Chapter 1226:Review Authority and Procedures](#). Applications include all written documentation, verbal statements, and representations, in whatever forms and quantities as required by the City.

**Archeology**

The study of human history and prehistory through the excavation of sites and the analysis of artifacts and other physical remains.

**Architectural Feature**

A prominent or significant part or element of a building, structure or site.

**Architectural Review Board (ARB)**

The Architectural Review Board of the City of Middletown as established in Section [\(1\)](#).

**Assembly Halls or Conference Centers**

Facilities or buildings available for lease by private parties that may include kitchen facilities for the preparation or catering of food, the sale of alcoholic beverages for on-premises consumption during scheduled events not open to the public, and/or outdoor gardens, decks, or reception facilities.

**Auction Houses or Flea Markets**

Establishments used for the sale of goods that were homemade, homegrown, handcrafted, old, obsolete or antique that are either:

- Places where the goods are temporarily stored until they are sold at auction, by an auctioneer, who operates out of the establishment; or
- Buildings or open areas in which sales areas or stalls are set aside or rented and which are intended for use by individuals or by educational, religious or charitable organizations to sell such goods.

**Automotive Repair (Heavy) or Towing Services**

Any general repair, rebuilding, reconditioning, body or fender work, framework, painting or the replacement of major parts of motor vehicles (e.g., major engine repair). This use type may also include towing services that provide towing or conveyance of a wrecked, inoperable, disabled, or illegally parked motor vehicle.

**Automotive Sales and Leasing**

Any building or land used for the display, sale or rental of new or used motor vehicles in operable condition. This use type is intended to be for the sale and lease of typical passenger vehicles including, but not limited to, cars, passenger trucks, and motorcycles.

**Automotive Service Station and Part Sales**

Any structure or premises used for dispensing or sale of automotive vehicle fuels or lubricants, including lubrication of motor vehicles and replacements or installation of minor parts and accessories, but not including major repair work such as motor replacement, body and fender repair, or spray painting. Such uses shall also include establishments that sell parts or tires for vehicles as a retail establishment, regardless if the parts are installed on-site.

**Awning**

As defined in Chapter 1434 of the City of Middletown Code of Ordinances.

**Balloon**

A sign that is an air inflated object, which may be of various shapes, made of flexible fabric, resting on the ground or a structure, and equipped with a portable blower motor that provides a constant flow of air into the device. Balloon signs are restrained, attached or held in place by a cord, rope, cable, or similar method. See also "Air Activated Graphic."

**Bars and Taverns**

Establishments providing or dispensing, for on-site consumption, any fermented malt beverage, malt beverage, special malt, vinous, or spirituous liquors. The sale of food products including, but not limited to, sandwiches and light snacks may be a secondary use to the service of the aforementioned drinks.

**Base**

The structural elements, design features, and materials associated with the first floor elevation of a building façade.

**Basement**

A portion of a building located partly underground but having half or more of its floor-to-ceiling height below the average grade of the adjoining ground.

**Basketball Hoops**

Small accessory basketball hoops, not related to a "tennis or other recreational court" either mounted to a wall or freestanding, by which occupants of the principal use can play basketball.

**Bed & Breakfast Establishments**

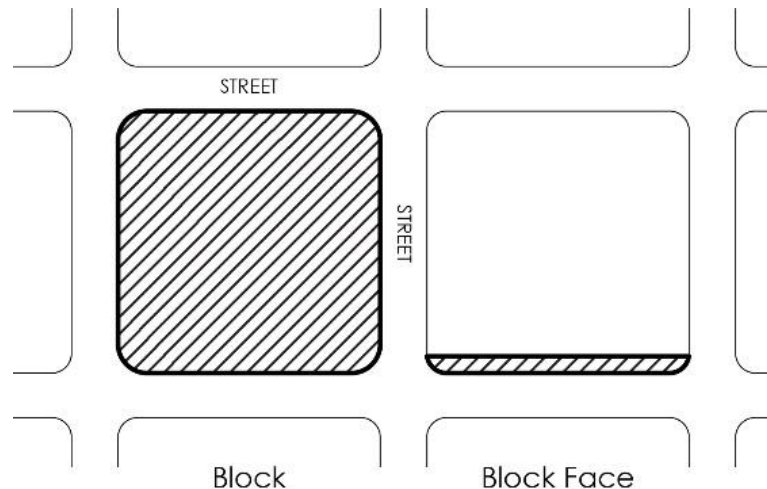
A resident-managed and resident-occupied residential structure used as a lodging establishment where up to five rooms are rented on a nightly basis and in which breakfast is the only meal and is included as part of the basic compensation.

**Bike and Skateboard Ramps**

An accessory structure utilized for recreational purposes related to bicycle and skateboard use.

**Block**

All land and or lots that, as a whole, are bordered on all sides by streets, or by one or more streets and a railroad right-of-way, stream, ravine, canal, or unsubdivided acreage. See [Figure 1230-A](#).



*Figure 1230-A: Illustration of a block versus a block face.*

**Block Face**

The properties abutting on one side of a street and lying between the two nearest intersecting or intercepting streets, or nearest intersecting or intersecting street and railroad right-of-way, un-subdivided land, watercourse or City boundary. See [Figure 1230-A](#).

**Board of Zoning Appeals (BZA)**

The Board of Zoning Appeals for the City of Middletown, Ohio as established in Section [1226.01\(e\)](#).

**Body**

The remainder of the building visible between the building base and cap.

**Buffer**

An area of natural or planted vegetation adjoining or surrounding a land use and unoccupied in its entirety by any building structure, paving (with limited exceptions) or portion of such land use, for the purposes of separating, screening, and softening the effects of the land use. A buffer may include a wall, fence, or berm as provided in accordance with the provisions of [Chapter 1216:Landscaping and Buffering](#).

**Building**

A structure, of more or less permanent construction, having a roof and intended to be used for sheltering people, animals, property, or business activity.

**Building Height**

The vertical distance of a building or structure, measured in a manner established in Section [1204.10\(a\)\(6\)](#).

**Building Line**

A line running parallel to applicable lot line (e.g., the front building line runs parallel to the front lot line).

**Building Material Sales and Contractor Yards**

An establishment engaged in the sale of building supplies or equipment that typically includes lumber yards, builder supplies, and other related activities.

**Building or Structure, Detached**

Any building or structure not sharing common walls with another building.

**Building, Accessory**

See definition for “Structure, Accessory.”

**Building, Nonconforming**

See “Structure, Nonconforming.”

**Building, Principal**

A building that is the primary use of the lot.

**Bulk Storage of Liquids**

A use associated with the bulk storage of oil, gasoline, liquid fertilizer, chemicals, food products, and similar liquids.

**Business and Professional Offices**

Establishments providing executive, management, administrative, or professional services including, but not limited to, real estate, architecture, legal, travel, employment, advertising, design, engineering, accounting, and similar uses.

**Business Services**

Establishments primarily engaged in rendering services to office, business, or industrial establishments on a fee or contract basis, such as advertising and mailing; building maintenance; employment services; management and consulting services; protective services; office equipment rental and leasing; commercial research; development and testing; photo finishing; machine repair, and personal supply services.

**Canopy**

As defined in Chapter 1434 of the City of Middletown Code of Ordinances.

**Cap**

The structural elements, design features, and materials associated with the top floor elevation of a building façade.

**Cemeteries**

Land used for the burial of the human dead and dedicated for cemetery purposes, including columbariums, crematories, mausoleums, and mortuaries when operated in conjunction with and within the boundary of such cemetery. This definition shall not be construed to include the burial of animals or pets.

**Certificate of Appropriateness**

A certificate issued by the Historic Commission indicating that a proposed change, alteration, addition or demolition of a historic building or structure within a historic landmark or historic district is in accordance with the provisions of this chapter and the adopted design guidelines. See Section [1226.08](#).

**Certificate of Zoning Compliance**

A certificate issued by the Development Code Administrator stating that a proposed development or activity complies with this code as established in Section [1226.12](#).

**Change**

Any alteration, addition, demolition, removal or construction involving any property subject to the provisions of this chapter.

**City**

The City of Middletown, Ohio

**City Council**

The City Council of the City of Middletown, Ohio

**City Engineer**

The City Engineer of the City of Middletown, Ohio

**Code Text or Map Amendment**

An amendment or change to the text of this code or to the zoning map as reviewed and decided upon by City Council in accordance with Section [1226.03](#).

**Colleges and Higher Educational Institutions**

Any private or public secondary educational institution that includes, but is not limited to: secretarial schools, colleges and universities, business schools, seminaries, or any other institution providing collegiate level curriculum.

**Co-Location**

The process of providing space for more than one user on a telecommunications tower or facility.

**Community Centers**

A building used for the meeting, recreation, or social activity designed to accommodate and serve the residents of a subdivision or development to which the use is associated with and that may be privately owned or jointly owned by property owners.

**Community Gardens**

A single piece of land that is gardened collectively by a group of people that may include individual garden plots designated for individual gardens.

**Completed Application**

An application that contains all information and/or data necessary to enable an informed decision to be made with respect to an application.

**Condominium**

A multi-family dwelling or development containing individual owners' dwelling units and jointly owned and shared areas and facilities, which dwelling or development is subject to the provisions of a homeowners' or property owners' association and/or Ohio law.

**Conforming Commercial Earth Station**

Is a satellite earth station that is two meters or less in diameter and is located in an area where commercial, office or industrial uses are permitted under this code. Such an area would not extend to those portions of a site where most land uses are forbidden or severely restricted, such as, for example, street areas, utility easements, visibility triangles, required setback areas, and bufferyards.

**Conservation District (CD)**

Any area designated by ordinance of the City to preserve a defined district's character, architecture styles, densities, massing, and similar features.

**Construction**

The act of constructing an addition to an existing structure or the erection of a new principal or accessory structure on a lot or property subject to the provisions of this chapter.

**Construction Dumpster**

A container used for the temporary storage of rubbish or materials related to the related construction site or project.

**Construction Trailer or Office**

A mobile home, trailer, or similar temporary structure that is used as an office or for storage in conjunction with a construction project.

**Contractor Offices**

General office uses that are used by contractors (e.g., painters, HVAC, construction firms, etc.) solely for their administrative activities, but which do not have any storage of materials or storage of vehicles.

**Convenience Stores**

A retail store that caters to the public where the sale of food items such as hot or cold drinks, prepackaged foods, and tobacco, road maps, magazines and other publications, automotive maintenance items such as brake fluid, oil, polishes, anti-freeze, and similar products, and other retail items that may be readily purchased. A convenience store does not sell gasoline or other fuels unless associated with a "retail fuel sales" use.

**County**

Butler or Warren County, Ohio, as applicable

**Court**

Means an open, unoccupied and unobstructed space, other than a yard, on the same lot with a building or a group of buildings, which is enclosed on three or more sides.

**Cultural Facilities**

Public or private facilities use for display, performance, or enjoyment of heritage, history, or the arts. This use includes, but is not limited to, museums, libraries, art performance venues, cultural centers, and interpretative sites but does not include "theaters."

**Curb Cut**

The area where a curb is level with the roadway to provide vehicular access from the roadway to an adjoining property.

**DBH**

See "Diameter at Breast Height."

**Demolition**

Any act or process that destroys in part or in whole any building or structure.

**Density**

The number of dwelling or dwelling units per acre expressed as a number.

**Detached Garages and Carports**

An accessory building primarily intended for and used for the enclosed storage or shelter of private motor vehicles of the owner or occupant of the principal building that is detached from the principal building.

**Detached Storage/Utility Sheds, Gazebos, Pool Houses, and other Similar Buildings**

An accessory building, other than a detached garage, that are typically uses for storage of items utilized by the occupants of the dwelling or a building used for the general enjoyment of the occupants including, but not limited to, gazebos, structural trellises, playsets, storage sheds, etc.

**Developer**

Any person, corporation, association, partnership or other entity who or which creates or proposes to create a development, all or a portion of which will be located within the City.

**Development**

Any manmade change to improved or unimproved land, including but not limited to the construction of buildings or other structure, mining, dredging, filling, grading, paving, excavation, or drilling.

**Development Code Administrator**

The staff person at the City of Middletown who has the primary responsibility for administering the duties of this code. Such person shall be appointed by the City Manager.

**Diameter at Breast Height (DBH)**

Diameter-at-breast-height. DBH is used to measure the caliper of a tree trunk at the specific height of 4.5 feet above the ground.

**Distribution Centers**

A use where goods are received and/or stored for delivery to the ultimate customer or user at remote locations.

**District,**

See "Zoning District."

**Dormitories**

A building used principally to provide rooms for sleeping accommodations at an educational, public, or religious institution. Common kitchen, sanitary, and social gathering rooms may also be provided.

**Drive-Through Facility**

An establishment that encourages or permits customers to receive services, or obtain goods while remaining in their motor vehicles.

**Driveway, Paved**

A driveway comprised of a surface of asphaltic, bituminous cement, concrete, or other properly bound pavement so as to provide a durable and dustless surface.

**Dwelling**

A building or portion thereof designed or used for residential occupancy, but not including hotels, motels, bed and breakfasts, or dormitories.

**Dwelling Unit**

A single unit of one or more rooms providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation but not including a tent, cabin, hotel, motel, recreational vehicle, or other temporary or transient structure or facility.

**Dwelling Unit above Nonresidential Uses**

A single or multiple dwelling units that are located in a building with a nonresidential use on the first floor.

**Dwelling, Multi-Family (Apartment Building)**

A building designed to incorporate nine to 12 dwelling units, each dwelling unit to be totally separated from the other by a wall or a ceiling.

**Dwelling, Multi-Family (Apartment House)**

A building designed to incorporate four to eight dwelling units, each dwelling unit to be totally separated from the other by a wall or a ceiling. The apartment house is designed to appear as a large single-family dwelling unit rather than a traditional apartment building.

**Dwelling, Multi-Family (Attached up to 4 Units)**

A group of up to four attached dwelling units, separated by fire walls, in which each residence has its separate exterior entrance and there is no internal access to adjacent dwelling units.

**Dwelling, Single-Family**

Housing located on individual lots, physically unconnected with any adjacent homes, occupied by a single housekeeping unit. The term "single-family dwelling" shall also include permanently sited manufactured homes when such homes meet all standards that apply to single-family dwellings.

**Dwelling, Three-Family**

A building or portion thereof, designed to contain three dwelling units.

**Dwelling, Two-Family**

A building or portion thereof, designed to contain two dwelling units.

**Easement**

A grant by the property owner of the use of a strip of land by the public or a person for specified purposes.

**Eating and Drinking Establishments (Use Category)**

The eating and drinking establishments use category is comprised of uses characterized by the preparation and selling of food and beverages for immediate or direct on- or off-premise consumption.

**Eave**

The projecting lower edges of a roof that overhangs the wall of a building.

**Educational Facilities (K-12)**

A public or private facility that provides a curriculum of primary, elementary, secondary or college preparatory academic instruction, including, but not limited to, kindergartens, elementary schools, junior high schools, and high schools. This definition shall not be deemed to include colleges, trade or business schools, or other post-secondary education facilities. See "colleges and higher educational institutions."

**Electronic Message Centers (EMC)**

A sign designed so that the characters, letter or illustrations can be changed or rearranged automatically on a lampbank or through mechanical means (e.g. electronic or digital signs).



**Entertainment Device**

Any mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of the person, for the purpose of playing a game, viewing a video display, hearing an audio transmission, or reading entries or outcomes from any other kind of device. An “entertainment device” does not include any vending machines, juke boxes, audio books, video players, or any other device that gives anything of value where the only value given, directly or indirectly, is a video or audio transmission.

**Entertainment Device Arcades**

Establishments where four or more entertainment devices are kept for use by the general public or by persons other than the owner of the devices, where persons give anything of value to access the use of the entertainment devices or the premises, and the person may be given anything of value by the operator, whether the giving occurs on or off the premises or at the same time or a later time. Entertainment device arcades may include or be referenced to as internet cafes, cybercafes or lounges, internet sweepstakes, video sweepstakes, video gaming arcades, electronic gaming operations, or other similar establishments.

**Essential Services**

See Section [1202.05\(b\)](#) for a full definition of essential services.

**Façade**

The exterior wall on the front, side, or rear elevation of the building regardless of whether the building side faces a street.

**Façade, Front**

The façade of a building that contains the primary entrance of the building.

**Face Change**

The removal or replacement of an existing surface display panel where the remaining structural frame is not altered. The changing of copy or poster on bulletin boards is not considered a face change.

**Fence**

An artificially constructed barrier of wood, masonry, stone, wire, metal, or other manufactured material or combination of materials erected to enclose, screen, or separate areas.

**Fence, Temporary**

A fence that temporarily erected for the purposes of construction, erosion control, etc. that will be removed upon completion of the related activity.

**Financial Agreement**

Cash, bonds, or other sureties, provided to the City to ensure the construction of parks, open space, public improvements, infrastructure, landscaping, or similar improvements.

**Financial Institutions**

Establishments engaged in deposit banking. Banks and financial institutions may include, but are not limited to, commercial banks, loan or mortgage companies, stockbrokers, savings institutions, credit unions, and other similar uses.

**Flag**

Any fabric or other flexible material attached to or designed to be flown from a flagpole or similar device.

**Floor Area**

The sum of the gross horizontal areas of each floor of the principal building measured from the exterior faces of the exterior walls or from the centerline of common walls separating two buildings. See also the definition of “floor area, livable” as it relates to residential dwelling floor area.

**Floor Area, Livable**

The livable floor area of a dwelling shall include all finished and habitable spaces including the basement floor area when more than one-half of the basement height is above the finished lot grade level at the front of the building. Garages, outdoor vestibules, and open or closed verandas or porches shall not be included in the floor area of a structure.

**Foot-Candle**

A unit of illumination produced on a surface, all points of which are one foot from a uniform point source of one standard candle

**Fraternal, Charitable, and Service Oriented Clubs**

A building or portion thereof or premises owned or operated by a corporation, association, or group of persons for a social, educational, religious, or recreational purpose, but not primarily for profit or to render a service which is customarily carried on as a business.

**Fraternities or Sororities**

A building used for a meeting place for a women's or men's organization that has been officially recognized by a college, university, or seminary, in which sleeping accommodations may or may not be provided for members.

**Frontage**

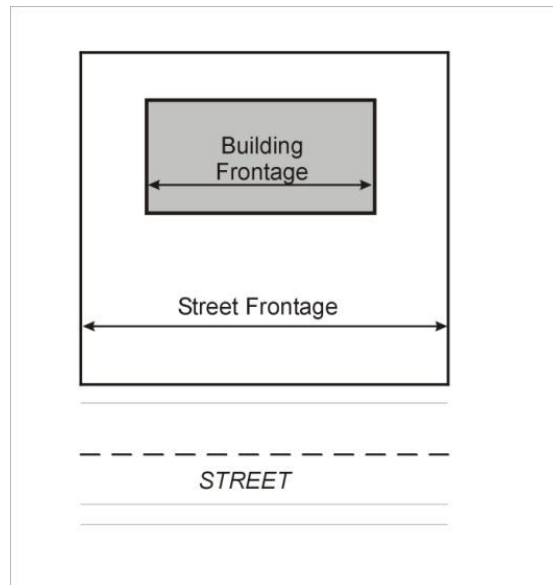
The portion of the boundary of a lot which abuts an existing or dedicated public street right-of-way or easement.

**Frontage, Building**

The length of an enclosed building facing a public or private street. When a business does not front a public right-of-way the Code Enforcement Officer shall have the authority to designate the building frontage. In structures with more than one business, the frontage of each business shall be calculated separately in determining its sign area. See [Figure 1230-B](#).

**Frontage, Street**

The distance for which the front boundary line of the lot and the street line are coincident. See [Figure 1230-B](#).



*Figure 1230-B: Illustration of building frontage versus street frontage.*

**Funeral Homes and Mortuaries**

Any dwelling or establishment used and occupied by a professional licensed mortician for human burial preparation and funeral services.

**Garage Sales**

Sales by residents of used or surplus personal possessions including, but not limited to all sales entitled garage, yard, lawn, basement, attic, porch, room, tent, backyard, patio, or moving. This term shall include garage sales, lawn sales, attic sales, rummage sales or any similar casual sale of tangible personal property which is advertised by any means whereby the public at large can be made aware of such sale.

**Government Facilities**

Any building or structure or portion thereof, used by a government agency for administrative or service purposes. "Government facilities" includes but is not limited to fire stations, police stations, government offices, salt storage, and other similar uses.

**Grade**

The average level of the finished surface of the ground adjacent to the sign, building, or other structure being measured.

**Grass**

A species of perennial grass grown as permanent lawns or for landscape purposes.

**Green Infrastructure**

Stormwater management techniques that use natural systems, or engineered systems that mimic natural process.

**Greenhouses and Nurseries**

An establishment used for the growing, storage, and sale of legal garden plants, shrubs, trees, or vines for retail or wholesale sales. Greenhouses and nurseries that are part of a larger agricultural use shall be considered accessory to the principal agricultural use of the land.

**Ground Cover**

A plant growing less than two feet in height at maturity that is grown for ornamental purposes. Ground covers are used as an alternative to grasses. On slopes, ground covers control erosion while eliminating the maintenance of mowing on hillsides. Ground covers also provide permanent covering of open ground to prevent erosion and/or create visual appeal.

**Ground Floor**

The first floor or floor level of any building or structure above or on the same plan as the surface of the sidewalk or street grade. There shall be excluded from this definition basements or cellars the floors of which are below the plane of the surface of the sidewalk.

**Group Home**

Any residential facility meant as a permanent residence for persons, licensed by the State of Ohio, designed to allow not more than sixteen (16) persons, needing specialized care, counseling, ongoing medical treatment or supervision to live in the same building or complex of buildings and engage in some congregative living activity in a non-institutional environment as regulated by Chapters 5119, 5120 and 5123 of the Ohio Revised Code.

**Group Living (Use Category)**

The group living use category is comprised of residential uses characterized by a group of unrelated persons living in a group setting where there are shared bedroom, kitchen, and/or bathroom facilities and where the group is not living as a single housekeeping unit.

**Hedge**

A barrier of natural vegetation usually consisting of evergreen trees, shrubs, or tall grasses that can be used to enclose, screen, or separate areas.

**Historic Commission**

The Historic Commission of the City of Middletown, Ohio as established in Section [1226.01\(c\)](#).

**Historic District**

Any area designated by ordinance of the City which may contain within definable geographical boundaries, buildings, structures, or sites of historic, architectural or archaeological significance.

**Historic Landmark**

Any individual site designated by ordinance which contains within definable geographical boundaries, buildings, structures, or sites of historic, architectural or archaeological significance.

**Historic Structure**

Any building or structure which has historic, architectural or archaeological significance and has been designated according to the provision of this chapter. This designation is based on the significance of a property to the history, architectural, archaeology or culture of the community, State or nation. It may be achieved in several ways:

- Association with broad patterns of our history, events, or activities;
- Association with important persons;
- Distinctive physical characteristics of design, construction, workmanship or form;
- Potential to yield information important in history or pre-history.

**Home Occupations**

A business, profession, occupation, or trade that is conducted within a residential dwelling unit for the economic gain or support of a resident of the dwelling and is incidental and secondary to the residential use of the lot and does not adversely or perceptively affect the character of the lot or surrounding area.

**Hospitals**

An institution providing health services primarily for human in-patient medical/surgical care for the sick or injured and including related facilities such as laboratories. The use may also include out-patient departments, training facilities, central service facilities and staff offices that are an integral part of the facility and goes beyond general care typically administered within a doctor's office.

**Hotels**

A building or portion thereof used for providing lodging for transient guests and operated for profit which may provide additional services such as restaurants, meeting rooms and recreational facilities. Hotels shall provide access to the rooms via an interior lobby and hallways. See also "motels."

**Household Living (Use Category)**

The group living use category is comprised of residential uses characterized by a family or group of unrelated persons living together as a single housekeeping unit.

**Housekeeping Unit**

One or more persons occupying a dwelling unit and living as a single group, and doing their own cooking on the premises as distinguished from a group occupying a bed and breakfast establishment, hotel, or motel.

**Impervious Surface**

Any hard-surfaced, man-made area that does not readily absorb or retain water, including but not limited to buildings, roofs, parking and driveways, sidewalks, and pavement.

**Industrial Uses and Services (Use Category)**

The industrial uses use category is comprised of use characterized by the manufacturing, processing, fabrication, packaging, or assembly of goods. Use types also may include those uses that involve the repair or servicing of industrial, business, or consumer machinery equipment, products, or by-products.

**Institutional Uses (Use Category)**

The institutional uses use category is comprised of uses that are generally public or quasi-public in nature that include uses such as schools, parks, cemeteries, religious places of worship, etc. and are generally provided for the betterment of the community.

**Junk and Salvage Uses (Use Category)**

The junk salvage use category are generally comprised of businesses that deal with the storage of inoperable or damaged vehicles, storage of junk or junk vehicles, and/or the salvage of materials.

**Junkyard or Salvage Center**

Land or buildings used for one of the following operations:

- The purchase, sale, exchange, storage, baling, packaging, disassembly, or handing of waste, used materials, or secondhand materials including, but not limited to, batteries, scrap iron and other old scrap ferrous or non-ferrous materials, metals, paper, rubber tires, tires, debris or waste, electronic parts, and bottles;
- The dismantling or wrecking of motor vehicles or trailers, or the storage, sale or dumping of dismantled, or partially dismantled, obsolete, or wrecked vehicles or their parts; or
- The storage, keeping, buying or selling of wrecked, scrapped or dismantled motor vehicles or motor parts. The presence on any lot of two or more motor vehicles, which, for a period exceeding 30 days, have not been capable of operating under their own power and from which parts have been removed for reuse or sale, shall constitute a vehicle or automotive wrecking or salvage yard.

**Kennels and Animal Boarding**

A facility for the boarding, breeding, raising, grooming, selling, training, or other animal husbandry activities for dogs, cats, or other animals for financial or other compensation.

**Landscaping**

The improvement of a lot, parcel, tract of land, or portion thereof, with grass, shrubs, and trees. Landscaping may include pedestrian walks, flower beds, trees, shrubs, and ornamental objects such as fountains, statuary, and other similar natural and artificial objects.

**Large Utility Structure**

Utility equipment and cabinets that exceed six square feet of surface area on any one side. Such equipment may be associated with telecommunications, video-ready access devices, fiber optics, cable, or similar utility provisions.

**Lighting, Cutoff**

An artificial outdoor light source designed to ensure that no light is directly emitted above a horizontal line parallel to the ground as regulated and illustrated in Section [1208.04](#).

**Lighting, Non-Cutoff**

An artificial outdoor light source designed to allow light to be directly emitted above a horizontal line parallel to the ground as regulated and illustrated in Section [1208.04](#).

**Live/Work Units**

A use that combines a commercial activity allowed in the zoning district with a residential living space for the owner of the commercial business, or the owner's employee, and that person's household. The unit is also where the resident owner or employee of the business is responsible for the commercial activity performed.

**Loading Area**

An off-street space or berth for the loading or unloading of freight carriers on the same lot as the structure they serve.

**Loading Space**

An off-street space having access to a street or alley for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials.

**Lot**

A parcel of land designated by metes and bounds, plat, registered land survey, auditor's plot, or other accepted means and separated from other lots or portions by the description for the purpose of sale, lease, or separation thereof.

**Lot Area**

The total area within the lot lines of a lot, excluding any street right-of-way or other legal public dedication.

**Lot Coverage**

That portion of a lot that is covered by the principal and accessory buildings, structures, and surfaces that prevent the passage or absorption of stormwater including paving and driveways (impervious surfaces).

**Lot Depth**

The mean horizontal distance between the front and rear property lines.

**Lot Line**

The property lines bounding the lot.

**Lot Line, Front**

The line separating the lot from the public street on which it fronts.

**Lot Line, Rear**

A lot line opposite a front yard. A rear lot line is generally parallel to or less than 45 degrees to the front street right-of-way line. See Section [1204.10\(a\)](#).

**Lot Line, Side**

A lot line generally extending perpendicular to the front and rear lot lines. The side lot line extends between the front lot line and the rear lot line. See Section [1204.10\(a\)](#).

**Lot of Record**

A lot which is part of a subdivision, the plat of which has been recorded in the office of the Recorder of Butler County, or a lot, the deed of which was on record as of the effective date of this code (Ordinance 4886, passed December 27, 1968).

**Lot Width**

The horizontal distance between the side lot lines, measured in accordance with Section [1204.10\(a\)](#).

**Lot, Corner**

A lot abutting on and at the intersection of two or more streets and/or alleys. See Section [1204.10\(a\)](#).

**Lot, Curved or Cul-De-Sac**

A lot with frontage along a curved street or cul-de-sac. See Section [1204.10\(a\)](#).

**Lot, Double Frontage**

A lot having a frontage on two non-intersecting streets, as distinguished from a corner lot. See Section [1204.10\(a\)](#).

**Lot, Interior**

A lot that has a single street frontage, a rear lot line, and at least two side lot lines. See Section [1204.10\(a\)](#).

**Lot, Nonconforming**

A vacant lot that does not meet the minimum lot width, street frontage, and/or lot area requirements of the applicable zoning district.

**Lot, Panhandle (Flag)**

A lot not fronting or abutting a public street and where access to the public street is limited to a narrow strip of land. See Section [1204.10\(a\)](#).

**Major Recreational Equipment**

A term encompassing any type of vehicle used primarily for recreational pleasure. Examples include, but are not limited to, travel trailers, motor homes, boats, snowmobiles, etc. Recreational vehicles shall include any mobile structure designed for temporary occupancy, but shall exclude manufactured homes.

**Manufacturing and Production (Heavy or Outdoors)**

An establishment engaged in manufacturing, assembly, fabrication, packaging or other industrial processing of products primarily from extracted or raw materials, or the bulk storage and handling of such products and materials, or an industrial establishment having potential to produce noise, dust, glare, odors or vibration beyond its lot line. Such use shall also include any manufacturing or assembly facility that requires outdoor storage areas that exceed 200 square feet in area.

**Manufacturing and Production (Indoors)**

The manufacturing, processing, or assembly of products within a fully enclosed structure where noise, odor, light, or vibrations is not noticeable from the adjacent properties. This use type shall not include establishments that provide electroplating, metal stamping or forging, or vehicle processing. See also “manufacturing and production (heavy or outdoors)” and “manufacturing and production with caustic or hazardous materials.”

**Manufacturing and Production with Caustic or Hazardous Material**

An establishment that is defined as a “manufacturing and production (heavy or outdoors)” use above but that also utilizes caustic or hazardous materials as determined by the Development Code Administrator.

**Marquee**

As defined in Chapter 1434 of the City of Middletown Code of Ordinances.

**Maximum Extent Feasible**

That no feasible and prudent alternative exists, and all possible efforts to comply with the regulation or minimize the potential harm or adverse impacts have been undertaken. Economic considerations may be taken into consideration.

**Mechanical Equipment**

Equipment, devices and accessories, the use of which relate to water supply, drainage, heating, ventilating, air conditioning and similar purposes.

**Medical or Dental Clinics/Offices and 24-Hour Urgent Care**

Office or clinic uses concerned with the diagnosis, treatment, and care of human beings related to medicine or dental. This term shall also include the operation of an urgent care clinic that may be opened for 24 hours and that is meant to accommodate non-emergency medical situations. This definition does not include “hospitals,” “skilled nursing facilities” or “personal care facilities.”

**Message, Commercial**

Any sign, wording, logo or other representation that, directly or indirectly, names, advertises or calls attention to a business, product, service or other commercial activity.

**Message, Noncommercial**

Any sign, wording or logo that does not represent a commercial message or commercial speech. See also “speech, commercial.”

**MICROBREWERY, MICRODISTILLERY, OR MICROWINERY**

An establishment with a primarily use as a bar or tavern where beer, liquor, wine, or other alcoholic beverage is manufactured on the premises in a limited quantity subordinate to the primary table service restaurant use. The gross floor area utilized in a microbrewery, microdistillery or microwinery for the production of beer, liquor, wine, or other alcoholic beverage shall be no greater than the gross floor area utilized for the associated bar or tavern. A microbrewery, microdistillery or microwinery may include some off-site distribution of its alcoholic beverages consistent with state law. A

tasting room or taproom may exist in a microbrewery, microdistillery or microwinery where patrons may sample the manufacturer's products

**Mining and Extraction (Use Category)**

The mining and extraction use category is where the use types typically involve the extraction, removal, or basic processing of minerals, soil, or other natural resources from the earth. Such uses also include quarrying, mining, or other procedures typically done at an extraction site.

**Mixed Use Buildings (With Residential Uses)**

A lot or building that contains a mixture of uses that are permitted in the applicable zoning district but that exclude any uses permitted in the agricultural use category but does include residential dwelling units.

**Mixed Uses (Use Category)**

Development of a lot or structure with two or more different uses such as, but not limited to, residential, office, retail, public, or institutional.

**Mobile Food Vending**

See Chapter 1037 of the City of Middletown Code of Ordinances.

**Mobile Home**

A vehicle or movable structure mounted on wheels, designed and equipped to provide living and sleeping facilities for one or more persons, drawn by its own or other motive power and containing more than two rooms exclusive of a bathroom.

**Mobile Home, Commercial Truck, and Recreational Vehicle Sales and Leasing**

Facilities where new or used boats, trailers, commercial trucks (not passenger pick-up trucks), mobile homes, and/or recreational vehicles, in operational condition, are sold or leased to customers.

**Motels**

A building or portion thereof used for providing lodging for transient guests and operated for profit which may provide additional services such as restaurants, meeting rooms and recreational facilities. Motels shall provide access to the rooms via outdoor hallways or sidewalks. See also "hotels."

**Multi-Tenant Buildings (Without Residential Uses)**

A principal building with multiple nonresidential use types that are all allowed in the applicable zoning district but are located in separate tenant spaces. A strip center with a mixture of retail uses such as restaurants, retail stores, and personal service establishments is an example of a multi-tenant building.

**Night Clubs**

A place operated for profit, where food may or may not be served for consumption on the premises and one or more forms of amusement are provided or permitted for a consideration that may be in the form of a cover charge or may be included in the price of the food and beverages, or both, purchased by patrons. This use type does not include "entertainment device arcades."

**Nonconformity**

Lots, uses of land, structures, and uses of structures and land in combination, lawfully existing at the time of enactment of this ordinance or its amendments, which do not conform to the regulations of the applicable zoning district, and are therefore incompatible. See also the definitions for "use, nonconforming," "lot of record," "building, nonconforming," and "structure, nonconforming."

**Nursery Schools or Day Care Centers (Children or Adults)**

A facility administering to the needs of infants, toddlers, pre-school children, and school children outside of school hours, by persons other than their parents or guardians, custodians, or relatives by blood, marriage or adoption for any portion of the 24-hour day in a building other than the child's own home. This use may include, but is not limited to, after school programs, office day care centers and principal structures used for only day care/nursery school programs. This term may also include adult day care centers where persons other than children, family members, or guardians care for adult for a portion of a 24-hour day in a building other than the adult's home.

**Nursery Schools or Day Care Centers (Children or Adults) (Accessory Use)**

This accessory use shall allow for the same activities as defined for "nursery schools or day care centers (child or adult)" except the use shall be accessory to another principally permitted use.

**Offices (Use Category)**

The offices use category is characterized by commercial uses that are generally not retail-oriented that are utilized to provide services to residents and business.

**Official Thoroughfare Plan**

The Official Thoroughfare Plan for the Middletown urban area as adopted by the Planning Commission, establishing the location and right-of-way width of principal streets in the City, on file in the office of the Director of Planning and Community Development together with all amendments thereto subsequently adopted.

**Official Zoning Map**

The Official Zoning Map of the City, establishing certain zoning districts in the City, on file in the office of the Planning Commission together with all amendments thereto subsequently adopted, as set forth in Section [1204.02](#).

**Open Space**

Open areas, including parks, nature areas, playgrounds, and trails. This does not include holding ponds, streets, driveways, or vehicular use areas.

**Open Space, Private**

An open space that is privately owned and maintained in accordance with [Chapter 1214: Parkland Dedication](#) and Open Space.

**Outdoor Displays and Sales**

The placement of products or materials for sale outside of a retail or wholesale sales establishment.

**Outdoor Storage and Bulk Sales (Accessory Use)**

The keeping, storage, or sales of any goods, material, merchandise, or vehicles in the same place for more than 24 hours in an area that is not fully enclosed by a structure. This may include areas established for the sale of large and/or bulk items.

**Outdoor Storage and Sales**

A facility or lot used for the outdoor sales and storage of materials that are to be used for construction or for manufacturing processes and where such uses are the principal use of the lot.

**Outdoor Vending Machines and Drop-Off Boxes**

Vending machines are small machines that are capable of accepting money in return for the automatic dispensing of goods (e.g., drink machines, snack machines, video machines). Drop-off boxes are small collection facilities where recyclable materials, clothing, or household goods are accepted from the public (e.g., neighborhood recycling stations and thrift store collection boxes).

**Outdoor Wood Boiler**

Any equipment, device, appliance or apparatus, or any part thereof, which is installed, affixed or situated outdoors for the primary purpose of combustion of fuel to produce heat or energy used as a component of a heating system providing heat for any interior space or water source. An outdoor wood furnace may also be referred to as an outdoor wood furnace or outdoor wood-fired hydronic heater.

**Owner**

Any individual, firm, association, syndicate, co-partnership corporation, trust or any other legal entity, having legal title to or sufficient proprietary interest in the land sought to be subdivided to commence and maintain proceedings to subdivide the same under these regulations.

**Package Liquor Stores**

Any establishment where the primary business is the sale of alcoholic beverages for off-premises consumption.

**Parapet or Parapet Wall**

A building façade that rises above the roof level, typically obscuring a gable or flat roof as well as any roof-mounted equipment.

**Parking Aisle**

The driveway or access drive by which a car enters and departs a parking space.

**Parking Area**

An area designed for the parking of vehicles that includes parking spaces and any driveways or access drives specifically related to the parking spaces.

**Parking Garages**

Structures used to provide parking spaces along with adequate drives and aisle, for maneuvering, so as to provide access for entrance and exit for the parking of more than two vehicles. This may be permitted as a principal use of the lot in



accordance with [Chapter 1204: Zoning Districts and Use Regulations](#) or as an accessory to a principal use as established in [Chapter 1218: Parking, Access, and Mobility](#).

**Parking Space**

A suitably surfaced and permanently maintained area on privately owned property either within or outside of a building of sufficient size to store one standard automobile.

**Parking, Land Banked**

A portion of a parking area that is not initially constructed with the principal use but where the land is reserved for future use as a parking area upon notice by the Development Code Administrator in accordance with Section [1218.04\(f\)](#).

**Parking, Off-Site**

Parking areas that are located on a separate and removed lot from the use that the parking serves.

**Parking, Shared**

Parking areas that are used by multiple uses on the same or on adjoining lots.

**Passive Parks, Open Space, and Natural Areas**

Parks, open spaces, and natural areas where there is no grading of the land, the construction of facilities, lighting, or development of ball fields with the exception that open spaces and conservation areas may include the development of trails and sidewalks.

**Patios (Unenclosed)**

Uncovered, non-enclosed outdoor hard surfaced areas that are no higher than 18 inches above the ground and does not require a building permit for construction.

**Pedestrian Connection**

A pedestrian walkway that includes sidewalks but may also include sidewalks on private property (not in the right-of-way) through the form of trails, designated walking areas, and similar walkways that are strictly used for pedestrian activity.

**Permanently Sited Manufactured Home**

A building unit or assembly of closed construction that is fabricated in an off-site facility and constructed in conformance with applicable laws subject to the following:

- The structure is affixed to a permanent foundation and is connected to appropriate facilities;
- The home is constructed in accordance with the requirements of Section 3781.184 of the ORC;
- The structure was manufactured after January 1, 1995; and
- The structure is not located in a manufactured home park as defined in the ORC.

The term “permanently sited manufactured home” shall not include travel trailers, park trailers, or mobile homes, as defined in the ORC.

**Person**

Any individual, corporation, partnership, joint venture, agency, unincorporated association, municipal corporation, Greene County or State agency within Ohio, the federal government, or any combination thereof. An agency is further defined in the Ohio R.C. 111.15 as any governmental entity of the State and includes, but is not limited to, any board, department, division, commission, bureau, society, council, institution, state college or university, community college district, technical college district or state community college. Agency does not include the general assembly, the controlling board, the adjutant general's department, or any court.

**Personal Care**

Personal care means the provision of personal services such as help in walking and getting in and out of bed; assistance with bathing, dressing, and feeding; preparation of a special diet; and supervision over medications which can be self-administered.

**Personal Care Facility**

A long-term or short-term residential facility that provides personal care in a facility that is not in a traditional dwelling type (e.g., single-family dwelling). Such facility shall not mean the same as “hospitals,” “group home,” “skilled nursing facility,” or “transitional housing.”

**Personal Service Establishments**

Establishments that are primarily engaged in providing services generally involving the care of the person or person's possessions. Personal services may include, but are not limited to, laundry and dry-cleaning services, barber shops, beauty salons, health and fitness studios, music schools, informational and instructional services, tanning salons, and portrait studios.

**Planned Development**

A development that is planned for a single use, or to integrate a variety of uses with collateral uses, in which lot size, setback lines, yard areas, and building types may be varied and modified to achieve particular design objectives and make provision for open spaces, common areas, utilities, public improvements, and collateral uses.

**Planning Commission**

The Planning Commission of the City of Middletown, Ohio as established in Section [1226.01\(b\)](#).

**Plat, Final**

The final map of all or a portion of the subdivision which is presented to the Planning Commission and City Council for final approvals in accordance with this code, and which, if approved, shall be filed with the proper county recording officer.

**Playsets, Treehouses, and Trampolines**

Recreational equipment for children that may include, but is not limited to, swings, slides, monkey bars, and play enclosures.

**Porches and Decks**

An unenclosed surface area attached to a building, that is not used for livable space but that is elevated above the ground, at its highest point, by at least 18 inches. Porches and decks may have siding and or roof structures but shall not be fully enclosed and protected from the environment. Any such structure that is fully enclosed shall be considered part of the principal structure and subject to any applicable standards.

**Preservation**

The act or process of applying measures necessary to sustain and retain the original historic form, integrity and materials of a historic property.

**Private Water Towers, Tanks, or Reservoirs**

A large container designed to hold water for the private use of the associated, principal industrial use.

**Public**

Owned, operated or controlled by a public or governmental agency, either Federal, State, county, township or City, including a corporation created by law to perform certain specialized governmental functions.

**Public Improvements**

All public streets, utilities, and infrastructure installed in accordance with [Chapter 1222: Subdivision Design](#).

**Public or Quasi-Public Facilities (Use Category)**

The public and quasi-public facilities use category is comprised of uses characterized by the provision of noncommercial or governmental services to the public including, but not limited to, infrastructure, government offices, parks, and other utilities.

**Radio and Television Broadcasting Studios**

Facilities used to produce, operate, or develop radio or television programs for distribution through various telecommunication formats but that do not include on-site towers or satellites.

**Raising of Small Livestock**

The non-commercial raising and caring of rabbits on a residential lot, as an accessory use.

**Real Estate Sales/Model Homes**

A dwelling unit temporarily converted into a sales and display office or a temporary sales office established in a development or subdivision for the purpose of providing an example of the units in the development.

**Reconstruction**

The act or process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure or object for the purpose of replicating its appearance at a specific period of time and in its historic location.

**Recreation and Entertainment (Use Category)**

The recreation and entertainment use category is comprised of uses characterized by public or commercial indoor or outdoor activities and recreation including, but not limited to, pool halls, athletic clubs, video arcades, bowling alleys, batting cages, etc.

**Recreational Facilities (Indoors)**

Facilities operated by a business, non-profit, or group other than a government agency that is open to the general public for a fee that shall include, but is not limited to: roller blade rental, billiard parlors, ice skating rinks, indoor swimming pools, bingo parlors, and other similar activities. All activities take place within an enclosed building. Indoor recreation facilities shall not include "entertainment device arcades."

**Recreational Facilities (Outdoors)**

Land or facilities operated by a business, non-profit, or group other than a government agency that is open to the general public for a fee that shall include, but is not limited to: pay-to-play athletic fields, golf courses, outdoor swimming pools, amusement parks, racetracks (animal racing only) and other similar activities. Outdoor recreation facilities shall not include "entertainment device arcades."

**Redevelopment**

The demolition or major structural renovation of existing structures or the clearance and re-use of a lot.

**Regional Detention/Retention Basin**

A detention/retention basin designed for storm water runoff from the entire drainage area contributing runoff to the basin. Detention basins are dry during dry weather and retention basins are partially filled with water during dry and wet weather.

**Rehabilitation**

The act or process of making possible a compatible use for a property through repair, alteration, and addition while preserving those portions or features which convey its historic, cultural, or architectural values.

**Religious Institutions**

A building, together with its accessory buildings and uses, where persons regularly assemble for religious worship and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain public worship.

**Research and Development Facilities**

A facility for that includes offices and laboratories for operation and/or functioning of a research and development facility.

**Residential Facility**

A home or facility, as defined and regulated in Section 5123.19 of the ORC, in which a mentally retarded or developmentally disabled person resides, except the home of a relative or legal guardian in which a mentally retarded or developmentally disabled person resides, a respite care home certified under Section 5126.05 of the Ohio Revised Code, a county home or district home operated pursuant to Chapter 5155 of the Ohio Revised Code, or a dwelling in which the only mentally retarded or developmentally disabled residents are in an independent living arrangement or are being provided supported living.

**Restaurants**

An establishment whose principal business is the selling of food and beverages to the customer in a ready to consume state, in individual servings.

**Restaurants, Drive-In or Drive-Through**

A restaurant where customers order and are served food while remaining in their motor vehicles. Such purchases are either made at the building by utilizing a drive-through or the restaurant is designed so that vehicles can drive in and park in a designated parking space, allowing the occupants to be served and consume the food in the vehicle.

**Restoration**

The act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and the reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-related work to make properties functional is appropriate within a restoration project.

**Retail and Service Commercial Uses**

Establishments primarily engaged in the sale of goods and materials to the general public. Retail commercial uses may include, but are not limited to, bookstores, antique stores, convenience stores, bakeries, grocery stores, and other similar uses.

**Retail Fuel Sales**

An establishment that sells unleaded and diesel gasoline or any other fuel used for in vehicles.

**Retail Sales (Accessory Use)**

The sale of goods, products, drinks, or food as an accessory use to another nonresidential use cafeterias, and food or beverage kiosks, book sales, sale of products built on-site, etc. where the retail sales are clearly incidental to the principal use.

**Retail Sales and Service (Use Category)**

The retail sales and service use category is comprised of uses characterized by the sale, lease, or rental of new or used products to the general public. They may also provide personal services or entertainment, or provide product repair or services for consumer and business goods.

**Right-of-Way**

A strip or area of land dedicated for use as a public roadway, railroad, or dedicated for other public uses. For streets, the right-of-way includes the paved roadway, curbs, lawn strips, sidewalks, lighting, drainage facilities and utilities and may include special features (required by the topography or treatment) such as grade separation, landscaped areas, viaducts, and bridges.

**Roof Line**

Either the edge of the roof or the top of the parapet, whichever forms the top line of the building silhouette. Where a building has several roof levels, the pertinent roofline or parapet shall be the one belonging to that portion of the building on whose wall the sign is located.

**Rooming Houses**

A private dwelling unit where rooms are leased out to unrelated individuals with shared kitchen and bathroom facilities.

**Screening**

A method of visually shielding or obscuring one abutting or nearby structure, mechanical equipment, refuse collection center or incompatible land use, from another and from public view by fencing, walls, beams or densely planted vegetation.

**Seasonal Agricultural Sales**

A temporary structure or vehicle used in the sale of agricultural products such as fruits, vegetables, and juices where such facilities may sell agricultural products not grown on site. Seasonal sales, including the sale of such items as Christmas trees, pumpkins, seasonal produce, and similar agricultural products, which may be permitted on a temporary basis pursuant to Section [1206.02](#).

**Self-Storage Facilities**

A structure containing separate, individual and private storage spaces of varying sizes which are leased or rented on individual leases for varying periods of time and whose tenants have access to such space for the purpose of storing and removing personal property.

**Setback**

The minimum distance a building or structure must be built from a property line or road right-of-way as defined further in Section [1204.10\(a\)](#).

**Setback Line**

The line created when applying the required setback distance to a lot. See Section [1204.10\(a\)](#).

**Setback, Front**

The minimum distance required between a building, structure, or improvement and the front lot line. See Section [1204.10\(a\)](#).

**Setback, Rear**

The minimum distance required between a building, structure, or improvement and the rear lot line. See Section [1204.10\(a\)](#).

**Setback, Side**

The minimum distance required between a building, structure, or improvement and a lot that that is shared with another lot where such lot line is defined as a side lot line. See Section [1204.10\(a\)](#).

**Shrub**

A multi-stemmed woody plant other than a tree.

**Sidewalk**

That portion of the road right-of-way outside the roadway, which is improved for the use of pedestrian traffic.

**Sidewalk Sales**

The temporary sale of goods or products on a sidewalk that is located adjacent to the principal building where the goods or products are typically sold as part of the principal use of the lot.

**Sign**

Any object, device, display or structure or part thereof situated outdoors or adjacent the interior of a window or doorway which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means including words, letters, pictures, logos, figures, designs, symbols, fixtures, colors, illumination or projected images.

**Sign Area**

The entire display area of a sign including the advertising surface located on one or more sign faces and any framing, trim and molding, but not including the supporting structure as measured pursuant to Section [1220.05](#).

**Sign Copy**

Those letters, numerals, and figures, symbols, logos, and graphic elements comprising the content or message of a sign.

**Sign Face**

The surface of the sign upon, against or through which the message of the sign is exhibited.

**Sign Height**

The vertical distance to top of sign structure as measured pursuant to Section [1220.05](#).

**Sign, Awning**

A sign painted on, printed on or attached flat against the surface of an awning.

**Sign, Banner**

A temporary sign constructed of canvas, plastic, fabric or similar lightweight, non-rigid material that can be mounted to a structure with cord, rope, cable, or a similar method. Where a banner sign is supported by stakes or another type of supporting structure for posting in the ground, such sign shall be classified as a "Sign, Yard."

**Sign, Blade**

A temporary sign that is constructed of cloth, canvas, plastic fabric or similar lightweight, non-rigid material and that is supported by a single vertical pole mounted into the ground or on a portable structure.

**Sign, Building**

Signs that are attached to the building including wall signs, projecting signs, awning signs, and canopy signs.

**Sign, Canopy**

A sign attached to the soffit or fascia of a canopy of a covered entrance or walkway, or to a permanent awning or marquee.

**Sign, Changeable Copy**

A sign designed so that the characters, letter or illustrations can be changed or rearranged manually or electronically without altering the sign display surface. May also be known as readerboards. See also the definition of "electronic message center."

**Sign, Driveway**

A small permanent sign located near driveway access points and/or at the intersection of internal access drives.

**Sign, Flag Banner**

Any rigid cloth, plastic or canvas sign with no enclosing framework that is mounted to a building at one or more edges or on a pole. Flags with noncommercial speech shall not be considered flag banner signs.

**Sign, Freestanding**

Any sign supported upon the ground by a monument, pedestal, pole, bracing, or other permanent measure and not attached to any building. See also the definition of "Sign, Ground-Mounted" and "Sign, Pole."

**Sign, Ground-Mounted**

A permanent freestanding sign other than a pole sign, not attached to a building, which is placed upon or supported by the ground independently of any other structure, typically on a monument or pedestal structure.

**Sign, Illuminated**

A sign designed to give forth any artificial light or to reflect such light from an artificial source located internally or externally from the sign.

**Sign, Nonconforming**

Any sign which was erected legally prior to the adoption of this code, but which does not comply with subsequently enacted sign restrictions and regulations or a sign which does not conform to the sign code requirements.

**Sign, Permanent**

A sign permitted by this code to be located on the premises for an unlimited period of time and designed to be permanently attached to a structure or the ground.

**Sign, Pole**

A permanent freestanding sign supported by one or more uprights, poles or braces placed in or upon the ground surface and not attached to any building.

**Sign, Projecting**

A sign that is affixed perpendicular to a building or wall and extends more than eighteen inches beyond the face of such building or wall and the lowest point of which sign is not less than ten feet above the sidewalk or ground level.

**Sign, Sidewalk (A-Frame)**

A freestanding sign which is ordinarily in the shape of an "A" or some variation thereof, which is readily moveable, and is not permanently attached to the ground or any structure. See also the definition of T-frame signs. Such signs are placed on a public sidewalk, private sidewalk, or similar walkway, in a manner established in Section [1220.09](#).

**Sign, Sidewalk (T-Frame)**

A freestanding sign which is ordinarily in the shape of an upside down "T" or some variation thereof, which is readily moveable, and is not permanently attached to the ground or any structure. See also the definition for A-frame signs. Such signs are placed on a public sidewalk, private sidewalk, or similar walkway, in a manner established in Section [1220.09](#).

**Sign, Temporary**

A sign that is neither permanently anchored to the ground, nor permanently affixed to a structure, nor mounted on a chassis, and/or is intended for a limited period of display.

**Sign, Wall**

A sign attached directly to an exterior wall of a building and which does not extend more than eighteen inches from nor above the roof line or beyond the limits of the outside wall, with the exposed face of the sign in a plane parallel to the building wall.

**Sign, Window**

A sign attached to, in contact with, placed upon or painted on the window or door of a building which is intended for viewing from the outside of such building. This does not include merchandise located in a window.

**Sign, Yard**

Any temporary sign placed on the ground or attached to a supporting structure, posts, or poles, that is not attached to any building.

**Skilled Nursing**

Those nursing services and procedures employed in caring for the sick which require training, judgment, technical knowledge, and skills beyond those which the untrained person possesses. It involves administering medications and carrying out procedures in accordance with the orders, instructions, and prescriptions of the attending physician or surgeon.

**Skilled Nursing Facility**

A long-term or short-term residential facility that provides skilled nursing services in a facility that is not in a traditional dwelling type (e.g., single-family dwelling). Such facility shall not mean the same as "hospitals" or "group home." See also "personal care facility" or "transitional housing."

**Small Antenna**

Includes the following:

- An antenna that is designed to receive direct satellite service, including direct-to-home satellite service, that is one meter or less in diameter;
- An antenna that is designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instruction television fixed services, and local multipoint services, and that is one meter or less in diameter or diagonal measurement; and
- An antenna that is designed to receive television broadcast or radio signals and is not parabolic in shape.

**Small Wind Energy Conservation Systems**

A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics. SWETs shall have a rated capacity of not more than 60 Kilowatts, be intended primarily to produce energy for on-site power consumption and reduce the need to purchase utility power from the grid, and have the ability to sell power back to the grid.

**Soil and Mineral Extraction Activities**

See definition of "soil and mineral extraction."

**Solar Energy Systems**

A structure designed to utilize solar energy as an alternate for, or supplement to, a conventional energy system.

**Stacking Lane**

A length of the vehicular use area where stacking spaces are lined up together in a lane.

**Stacking Space**

A portion of the vehicular use area on a site that is dedicated to the temporary storage or "standing" of vehicles engaged in drive-through use of the site or development.

**Static, Instant Message Change**

On electronic message centers, a static or instant message change is when one message changes to another message instantly without scrolling, flashing, or other movement of the message.

**Storage and Distribution (Use Category)**

The storage and distribution use category is characterized by use types that provide individual, self-contained units or areas leased to individuals, organizations, or businesses for storage of household and personal property, equipment, vehicles, goods, etc.

**Story**

The part of a building, except a mezzanine as defined herein, included between the surface of one floor and the surface of the next floor, or, if there is no floor above, then the ceiling next above, and having a height consistent with the requirement of occupiable space as defined in the residential building code.

**Story, Half**

An uppermost story lying under a sloping roof having an area of at least 200 square feet with a clear height of seven feet, six inches.

**Street**

A public right-of-way 50 feet or more in width, which provides a public means of access to abutting property, or a public right-of-way more than 30 feet and less than 50 feet in width, provided that it existed prior to the effective date of this code. The term street includes avenue, drive, circle, road, parkway, boulevard, lane, place, highway, thoroughfare or any other similar term.

**Street, Collector**

Collector streets are designed to collect and distribute traffic between local access streets and other minor street streets to arterial streets and freeways.

**Street, Cul-de-Sac**

A street with a single means of ingress/egress and having a turnaround at the terminus.

**Street, Dead End**

A street temporarily having only one outlet for vehicular traffic and intended to be extended or continued in the future.

**Street, Local**

A street that is not a freeway, arterial, or collector street, intended to provide access exclusively to the properties abutting thereon.

**Street, Major Arterial**

Principal arterial streets are streets designed for the movement of large amounts of fast traffic between points of heavy traffic generation (e.g., freeways, large residential areas or business and industrial areas) and from one section of the community or communities to another. Major arterial streets have the widest right-of-ways and carry the largest volumes of traffic within the City.

**Street, Minor Arterial**

Minor arterial streets are intended to collect and distribute traffic in a manner similar to principal arterial streets, except that these streets service smaller traffic generating uses and areas within the City and can serve in place of collector streets for the purposes of moving traffic in between other collector streets and the freeway or other arterial streets.

**Street, Stub**

A street that terminates at a property line with the intention of future expansion to the adjacent property or development.

**Structure, Accessory**

A structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal structure.

**Structure, Nonconforming**

A structure where the use is permitted in the applicable zoning district but the structure does not meet the setbacks, development standards, site development standards, or other dimensional or numerical standards for the applicable district.

**Structure, Temporary**

A structure permitted for limited duration with the intent that such use will terminate or the structure will be removed automatically upon expiration of the fixed time period. A temporary structure is without a foundation or footing.

**Subdistrict**

A portion or subdivision of a regular zoning district with special or separate provisions in replace of, or in addition to, the regular provisions of the standard district.

**Subdivider**

Any individual, firm, corporation or other legal entity commencing proceedings under this chapter to effect a subdivision of land for himself or herself or for another.

**Subdivision Modification**

A modification to any of the public improvement or subdivision design standards of [Chapter 1222: Subdivision Design](#), as authorized by the Planning Commission in accordance with Section [1226.07\(g\)](#).

**Subdivision, Major**

A subdivision that is not classified as a minor subdivision in Section [0](#).

**Subdivision, Minor**

A division of a parcel of land along an existing street not involving the opening, widening or extension of any street or road and involving no more than three lots after the original tract has been completely subdivided. See further distinction in Section [1226.06\(b\)](#).

**Swimming Pools (Outdoors)**

A water filled enclosure, permanently or portable, having a depth of more than eighteen inches below the level of the surrounding land, or an above-surface pool, having a depth of more than 36 inches, designed, used and maintained for swimming or bathing by the residents, tenants, or occupants of the subject property.

**Temporary Classrooms**

A temporary structure that is temporarily used as classrooms in situations where an educational facility needs temporary space while planning for or constructing permanent space.

**Temporary Events**

A temporary use on private property that is not usual or customary for that property and the zoning district in which the subject property is located (e.g., festivals, circuses, block parties, events that are not of a personal nature to the property owner, and other temporary events).

**Temporary Storage**



A portable structure or container that allows for storage of goods or materials, on or off-site and which is not permanently affixed to a foundation. This category may be further divided into temporary storage for commercial uses and residential uses

**Tennis and Other Recreational Courts (Outdoor)**

An area of a yard that is permanently improved and surfaced for the recreational use of the property owner for games such as tennis, basketball, racquetball, and similar sports or games.

**Theaters**

Any building or part of a building used for the showing of motion pictures or for dramatic, dance, musical, live or pre-recorded performances. Such use may include a lobby area and refreshment stand for the patrons.

**Trailer**

Any vehicle or structure constructed in such a manner as to permit the conduct of any business, trade or occupation, or use as a selling or advertising device, or for storage or shipping of goods, equipment or machinery, and so designed that it is or may be mounted on wheels and used as a conveyance on streets and highways, drawn by a motor vehicle. See also "mobile home."

**Trailer, Large Utility**

Any trailer that is longer than eight feet.

**Train Spurs and Yard Tracks**

The extension of a railroad to provide direct access to a private property and where the extension of the railroad line is located on the private property. Yard tracks are where there is additional railroad tracks on the private lot to allow for temporary storage of rail cars.

**Transitional Housing**

A temporary housing arrangement designed to assist persons to obtain skills, financial wherewithal and/or the physical, psychological and emotional stability necessary for independent living in permanent housing in a community. Transitional housing is housing in which:

- An organization provides a program of therapy, counseling, supervision and/or training for the occupants;
- The organization operating the program may or may not be licensed or authorized by a governmental authority; and
- The program is for the purpose of assisting the occupants in one or more of the following types of care:
  - Protection from abuse and neglect;
  - Developing skills and the personal stability that is necessary to adjust to life in the community; and
- Treatment of the effects of substance abuse, even if under criminal justice supervision.

The definition of "transitional housing" includes the terms halfway house, safe house, temporary care home, and other similar uses. The definition of "transitional housing" does not include the terms "group home", as defined in the Code, or other similar permanent group living facilities.

**Tree, Canopy**

A tree that has an expected height at maturity greater than 40 feet and which produces significant shade because it has a crown that is oval, round, vase-shaped, or umbrella-shaped.

**Tree, Deciduous**

Generally, a tree that loses all of its leaves for part of the year. Sometimes called a broad-leaf tree or a hardwood tree.

**Tree, Evergreen**

A tree that remains green throughout the year.

**Tree, Understory**

A tree that has an expected height at maturity of no greater than 30 feet.

**Type-B Day Care Home (1-6 Children)**

A permanent residence of the provider in which child care is provided for one to six children at one time and in which no more than three children are under two years of age at one time. In counting children for the purposes of this division, any children under six years of age who are related to the provider and who are on the premises of the type B home shall be counted; or as defined in the Ohio Revised Code.

**Use**

Any purpose for which a lot, building, or other structure, or land may be designated, arranged, intended, maintained, or occupied; or any activity, occupation, business, or operation carried on or intended to be carried on in a building or other structure or on a lot of land.

**Use, Accessory**

A use subordinate to and servicing the principal use or structure on the same lot and customarily incidental thereto.

**Use, Conditional**

A use which may be appropriate or desirable in a specified zone, but requires special approval through the Conditional Use Permit (See Section [1226.05](#).) because, if not carefully located or designed, it may create special problems such as excessive height or bulk or abnormal traffic congestion.

**Use, Nonconforming**

Any use lawfully being made of any land, building, or structure on the effective date of this code or any amendment thereto rendering such use nonconforming, which does not comply with all of the regulations of this code or any amendment thereto.

**Use, Principal**

The main use of land or buildings as distinguished from subordinate or accessory uses. A principal use may be either permitted or conditional.

**Use, Temporary**

A use that may be permitted for a specified period of time. Temporary uses may require a certificate of zoning in compliance with Section [1206.02](#) and may be subject to additional building and zoning requirements.

**Utility Boxes**

Any utility equipment or structure that does not meet the definition of a "Large Utility Structure."

**Utility Facilities and Buildings**

Buildings, structures, or facilities used by a public utility or similar agency for the provision of water, sewer, electric, and other public utilities that is not exempted as essential services. This use may include, but not limited to, electric substations, sewer plants, etc.

**Varlance**

A modification of the strict terms of these regulations where such modification will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the action of the applicant, a literal enforcement of these regulations would result in a practical difficulty or unnecessary hardship. See Section [1226.10](#).

**Vehicle Sales and Services (Use Category)**

The vehicle sales and services use category is comprised of uses characterized by the direct sale and/or service of passenger vehicles, trucks, motorcycles, farm machinery, and other consumer motor vehicles intended for transport of goods or persons over land, water, or in the air; whether for recreation, commerce, or personal transport.

**Vehicle Washing Establishments**

A building that has its primary purpose as washing vehicle and may include self-service facilities or automatic washing facilities.

**Vehicle, Commercial**

Any vehicle that does not fall within the Class 1 (Light Duty) or Class 2 (Light Duty) vehicle classifications as designated by the Federal Highway Administration.

**Vehicular Use Area**

The entire paved area that encompasses all parking spaces, loading areas, stacking spaces, and the access drives that provide access to those spaces but that does not include the entry drive or driveway with no direct access to a parking space, stacking space, or loading space.

**Veterinarian Offices or Animal Grooming (No Boarding)**

A place where animals or pets are given medical or surgical treatment and are cared for during the time of such treatment. Use as a kennel shall be limited to short-time boarding of animals being treated at the facility. This use type shall also include establishments where the primary service provided is the cleaning and grooming of domestic pets including bathing, brushing, combing, nail and hair trimming, etc., and where there are no boarding facilities.

**Violation**

The failure of a structure or other development to be fully compliant with these regulations.

**Wall**

An architectural partition with a height and length greater than its thickness; used to divide or enclose an area or to support another structure

**Wall Offset**

Projections or recesses organized in a random or repeating pattern along a building wall used to visually interrupt the mass of the façade plane.

**Wall Opening**

Openings in a façade wall that may include windows or doors.

**Wall, Retaining**

A retaining wall is a structure that holds back soil or rock from a building, structure or area. Retaining walls prevent downslope movement or erosion and provide support for vertical or near-vertical grade changes.

**Warehouses**

A business establishment primarily engaged in the storage of merchandise, goods, and materials, not including “self-storage facilities.”

**Wholesale Establishments**

An establishment for the sale of merchandise to retail and service commercial uses, office uses, or institutional uses, or to other wholesalers. Wholesale business may also mean acting as an agent or broker in the buying or selling of merchandise; but not selling to the general public.

**Wireless Telecommunication Facilities (Antenna Only)**

The establishment of a new wireless telecommunication facility through the attachment of an antenna to an existing tower, structure or building.

**Wireless Telecommunication Facilities (New Towers)**

The establishment of a new wireless telecommunication facility tower.

**Wireless Telecommunication Facility**

A facility consisting of the equipment and structures involved in receiving telecommunications or radio signals from a mobile radio communications source and transmitting those signals to a central switching computer which connects to the mobile unit with land-based telecommunications lines for the provision of “personal wireless services” as defined by federal law and as authorized by the Federal Communications Commission. “Wireless telecommunications facility” does not include amateur radio operators’ facilities and equipment.

**Wireless Telecommunication Tower**

A structure that includes, but is not limited to, monopole, lattice and guyed towers on which wireless telecommunication facility antennas are installed.

**Wireless Telecommunications Antenna**

An antenna that constitutes or is included as part of a wireless telecommunications facility.

**Yard**

An open space on the same lot with a building unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided in this code. See Section [1204.10\(a\)](#) for rules of measurement and determination for all yard types.

**Yard, Front**

A yard that extends across the front of a lot between the side lot lines, and being the minimum horizontal distance between the front lot line and the main building or the extension thereof, not including the usual steps and entryway. See Section [1204.10\(a\)](#).

**Yard, Rear**

A yard that extends across the rear of a lot, measured between the side lot lines, and being the minimum horizontal distance between the rear lot line and the main building or the extension thereof, not including the usual steps and entryway. See Section [1204.10\(a\)](#).

**Yard, Side**

A yard that is located between the main building and the side lot line and extending from the front yard line to the rear yard line. See Section [1204.10\(a\)](#).

**Zoning District**

An area within the City limits for which the regulations and requirements governing use are uniform as defined by [Chapter 1204: Zoning Districts and Use Regulations](#).

**Zoning District, Base**

The base zoning district is the zoning district established for each property that includes any of the residential zoning districts, nonresidential zoning districts, or special zoning districts established in [Table 1204-1](#). A base zoning district may also be referred to as the underlying base zoning district in cases where a property is subject to an overlay zoning district.

**Zoning District, Nonresidential**

The term “nonresidential zoning district” shall include the O-1, O-2, B-1, B-2, B-3, BC-I, BC-H, BC-O, BC-F, UC-C, UC-S, I-1, I-2, and PI districts as well as any planned development where the uses are solely nonresidential. Nonresidential zoning district may also include any district that allows residential uses as part of a mixed use development or building.

**Zoning District, Overlay**

A district described by the zoning map within which, through super-imposition of a special designation, certain regulations and requirements apply in addition to those of the underlying zoning districts to which such designation is added.

**Zoning District, Residential**

The term “residential zoning district” shall include the R-1, R-2, R-3, R-4, BC-R districts as well as any planned development where the uses are solely residential.

**Zoning Map**

See “Official Zoning Map.”