

ZONING ORDINANCE

TOWN OF MIDDLETOWN, NEW YORK

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ZONING ORDINANCE

Town of Middletown, New York

ARTICLE I. GENERAL PROVISIONS

Section 101 Title

This document shall be known and may be cited as the "Town of Middletown, New York, Zoning Ordinance" and shall include this text, Schedule I, the Zoning Map, and the Development Limitations Overlay Maps.

Section 102 Enacting Clause

Pursuant to the authority conferred by Article 16, Section 261 of the Town Law of the State of New York, the Town Board of the Town of Middletown hereby adopts and enacts as follows.

Section 103 Purpose of Zoning Ordinance

The purpose of this Zoning Ordinance, its regulations and its zoning districts as outlined on the zoning map is to:

- A) protect and promote the public health, safety, and general welfare of the town consistent with the objectives of Town Law 263,
- B) guide the future growth and development in accordance with a master plan,
- C) protect the character and the social and economic stability of all parts of the town, and to encourage the orderly and beneficial development of all parts of the town,
- D) protect and conserve the economic and aesthetic value of land and buildings appropriate to the various districts established by this ordinance,
- E) minimize conflicts among the uses of land and buildings,
- F) provide a guide for public policy and action in the efficient provision of public facilities and services, and for private enterprise in building development, investment and other economic activity relating to uses of land and buildings,
- G) prevent the pollution of air, streams and ponds; to assure the adequacy of drainage facilities; to safeguard the water table; and to encourage the wise use and sound management of the town's natural resources in order to preserve the integrity, stability and beauty of the community and the value of the land,
- H) preserve the natural beauty of the topography of the town and to insure appropriate development with regard to these natural features,
- I) encourage and make suitable provisions for the accommodation of solar energy systems and equipment and access to sunlight necessary therefore.

Section 104 Conflict With Other Laws

Whenever the requirements of this ordinance are at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances, the most restrictive, or that imposing the higher standards shall govern.

Section 105 Interpretation

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, or the general welfare.

Section 106 Validity and Separability

Should any clause, sentence, subdivision, paragraph, section, or part of this ordinance be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any part thereof, other than the clause, sentence, subdivision, paragraph, section or part so decided to be unconstitutional or invalid.

Section 107 Effective Date

This ordinance shall take effect ten days after publication in a newspaper having general circulation in the town, but said ordinance shall take effect from the date of its service as against a person served personally with a copy thereof, certified by the Town Clerk under the corporate seal of the town; and showing the date of its passage and entry in the minutes.

Town Clerk, Town of Middletown

Effective Date

Section 201 General

For the purpose of this Ordinance, the following terms and words shall be interpreted as follows:

- 1) The word "person" includes a firm, association, organization, partnership, trust, company, agency, society or corporation as well as an individual.
- 2) Words used in the present tense include the future tense.
- 3) The singular includes the plural and the plural includes the singular.
- 4) The words "shall" and "must" are mandatory.
- 5) The words "used" or "occupied" include the words intended, designed or arranged to be used or occupied.
- 6) The word "lot" includes the words plot or parcel.

Section 202 Definition of Key Terms

Accessory Building - Any building which is subordinate to and which use is incidental to the use of the principal building located on the same lot. Where an accessory building is attached to the main building in a substantial manner, as by a wall or roof, such accessory building shall be considered part of the main building.

Accessory Use - A use subordinate to the main use. In no case shall such dominate in area, extent or purpose, the principal lawful use.

Acre - For the purpose of calculating lot area under this Ordinance, an acre shall be considered to consist of 43,260 contiguous square feet.

Adult Body Painting Studio - An establishment or business which provides the service of applying paint or other substance whether transparent or non-transparent to or on the human body and which is not open to the public generally, but excludes any minor by reason of age.

Adult Book Store/Video Store - An establishment having as a substantial or significant portion of its stock-in-trade, books, magazines, other periodicals, films, slides, video tapes or adult toys/marital aides, and which establishment is customarily not open to the public generally, but excludes any minor by reason of age.

Adult Drive-In Theater - A drive-in theater that customarily presents motion pictures that are not open to the public generally, but excludes any minor by reason of age.

Adult Entertainment Cabaret - A public or private establishment which presents topless dancers, strippers, male or female impersonators, lingerie or other private modeling, exotic dancers or other similar entertainment, and which establishment is customarily not open to the public generally, but excludes any minor by reason of age.

Adult Massage Establishment - Any establishment having a fixed place of business where massages are administered for pay, including, but not limited to, massage parlors, licensed masseuse, licensed acupuncture, sauna baths and steam baths. This definition shall not be construed to include a hospital, nursing home or medical clinic or the office of a physician, surgeon, chiropractor, osteopath or duly licensed physical therapist or barber shops or beauty salons at which massages are administered only to the scalp, face, neck, or shoulders. This definition also shall exclude health clubs, hotels, motels or inns which have facilities for physical exercise, such as tennis courts, racquetball courts or exercise rooms, which do not receive their primary source of revenue through the administration of massages.

Adult Model Studio - Any establishment where, for any form of consideration or gratuity, figure models are provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by a person other than the proprietor, paying such consideration or gratuity and which is not open to the public generally, but excludes any minor by reason of age. This provision shall not apply to any school of art which is operated by an individual, firm, association, partnership, corporation or institution, which meets the requirements established by the New York State Education Law for the issuance of diplomas and is in fact authorized to issue and confer diplomas.

Adult Motel/Hotel - A motel/hotel which is not open to the public generally, but excludes minors by reason of age, or which makes available to its patrons in their rooms, films, slide shows, or video tapes which if presented in a public movie

theater would not be open to the public generally, but would exclude any minor by reason of age.

Adult Peep Shows - A theater or other establishment which presents material in the form of live shows, films or video tapes, viewed from an individual enclosure or private room for which a fee is charged and which is not open to the public generally, but excludes any minor by reason of age.

Adult Theater - A theater that customarily presents motion pictures, films, video tapes or slide shows, that are not open to the public generally, but excludes any minor by reason of age.

Adult Use - Any use or establishment constituting an adult book store/video store, adult drive-in theater, adult entertainment cabaret, adult massage establishment, adult motel/hotel, adult peep shows, adult theater, adult body painting studio, or adult model studio as defined herein.

Agriculture - The use of a parcel of land for agricultural purposes, including tilling of the soil, dairying, pasture, apiculture, arboriculture, horticulture, floriculture, aquatic farming, harvesting of trees and tree products, and animal husbandry. It includes the necessary accessory uses and structures for packing, treating, and storing of products, produce and equipment, provided that the operation of any such accessory use shall be secondary to that of normal agricultural activities.

Alteration - A change or rearrangement in the structural parts of a building or an enlargement, whether by extending to a side or by increasing the height or the moving from one location to another.

Alternative Energy Systems - Structures, equipment, devices, or construction techniques used for the production of heat, light, cooling, electricity, or other forms of energy, from solar, wind, water and other sources.

Animal Hospital - A business that treats animals and regularly houses them on the premises overnight and for extended periods for treatment.

Animal Husbandry - The care and breeding of domestic animals, including but not limited to cattle, hogs, horses, poultry and sheep. For purposes of this Ordinance

operation of a kennel shall not be considered animal husbandry. Animals for educational or cultural projects are exempted.

Apartment - See Dwelling, Multi-Family

Bed and Breakfast - An establishment in a private dwelling that supplies temporary accommodations to overnight guests for a fee. Meals may or may not be provided. Tourist homes, boarding houses, and inns are included here; however, rest homes or homes for the aged are not.

Building - A structure wholly or partially enclosed with exterior walls and a roof, affording shelter to persons, animals or property.

Bulk Storage - The storage of chemicals, petroleum products and other materials in above-ground containers for subsequent resale to distributors or retail dealers or outlets, or the general public.

Business and Professional Offices - Offices in which an occupation or vocation in a specified field is practiced: medical, law, engineering, surveying, insurance and real estate offices.

Camouflage - A means of concealing a building or other man-made structure that creates the effect of that the camouflaged object is part of the natural surroundings.

Camouflaging - The construction of facilities to house or support telecommunication towers or antennas so that the towers or antennas blend readily with the landscape, neighborhood, and adjacent architectural features. Examples of camouflaging that could be used are: silo and barn, windmill, and simulated tree.

Campground - A parcel of land used or intended to be used to provide two or more sites for the parking of travel trailers, placement of tents, or other temporary or movable sleeping accommodations.

Cell Tower - Any type of structure or building used for signaling or for any other form of communications.

Certificate of Conformity - A certificate issued by the Code Enforcement Officer to indicate that specified work has been completed to code specifications.

Certificate of Occupancy - A form of protection afforded the owner or occupant of a structure by serving as proof of compliance with the regulations in effect at the time of construction or alteration.

Civic Facility - Buildings, structure and uses owned and operated by the Town of Middletown and regularly used for neighborhood meetings and other forms of public assembly.

Clearcutting - Denuding the land vegetation, expressly trees, in excess of one acre, excluding commonly accepted agricultural activities.

Club - Any organization catering exclusively to members and their guests, or premises and buildings, for recreational or athletic purposes and not open to the general public, which are not conducted primarily for gain, provided there are no vending stands, merchandising or commercial activities, except as required for the membership and purposes of such club. Clubs shall include lodges, fraternal organizations, social and service organizations; gun, hunt and fish clubs, mutual benefit societies, and other like organizations.

Cluster Subdivision - A form of development for single-family residential subdivisions that permits a reduction in lot area and bulk requirements, provided there is no increase in the number of lots permitted under a conventional subdivision and the resultant land area is devoted to open space.

Code Enforcement Officer (CEO) - An individual appointed by the Town Board and given the responsibility to oversee and enforce all codes set forth in the Town relating to the maintenance of the general public welfare.

Co-located Antennas - Telecommunications facilities which utilize existing towers, buildings or other structures for placement of antenna(s) and which do not require construction of a new tower.

Commercial Recreation - A parcel of land which may include facilities for recreation purposes, utilized by the public for a fee. Activities include, but are not limited to, bowling alleys, ski slopes, tennis courts, golf courses, swimming pools, movie houses, and drive-in theaters, health clubs, reducing salons and tanning parlors, and cooperative hunting preserves where a fee to hunt is required.

Commercial Storage - A structure or set of structures containing separate storage spaces of varying sizes leased or rented on an individual basis.

Condominium - A building or group of buildings, in which units are owned individually; and the structure, common areas and facilities are owned by all the owners on a proportional, undivided basis.

Cultural Recreation - Indoor or outdoor establishments promoting social and intellectual advancement such as libraries, museums, art galleries, concert halls and theaters, but excluding movie houses and drive-ins.

Development Limitations - An assessment of existing natural and manmade elements relating to land, water, air, plant, animal, people, and community character in Middletown and an indication of the suitability of particular areas for development.

Dish Antenna - Any concave, circular or dish-shaped device designed for receiving communication or television signals from space, but does not include conventional television, radio and amateur radio antennas.

Drive-In Use - An establishment, which by design, physical facilities, service, or by packaging procedure, encourages or permits customers to receive services, obtain goods, or be entertained while remaining in their motor vehicles.

Dump - Any place used for the disposal and leaving of paper, garbage, rubbish, trash, toxic chemicals and substances, and other waste material of any nature by the public or by any person.

Dwelling - A building designed or used as the living quarters for one or more families. The term dwelling shall include seasonal homes, modular homes, and mobile homes, provided that they meet all of the requirements of this Ordinance, the New York State Uniform Fire Prevention and Building Construction Code, and all other regulations or ordinances applicable to dwellings.

Dwelling, Farm Labor - A building containing only one dwelling unit and occupied by one family, members of which are employed on a farm, as hereinafter defined.

Dwelling, Multiple-Family - A residential building designed for or occupied by three or more families with the number of families in residence not exceeding the number of dwelling units provided.

Dwelling, One Family - A building containing only one dwelling unit and occupied by one family.

Dwelling, Townhouse - A one-family dwelling in a row of at least three such units in which each unit has its own front and rear access to the outside; no unit is located over another unit; and each unit is separated from any other unit by one or more common fire resistant walls.

Dwelling, Two-Family - A building designed for and occupied exclusively as a home or residence for not more than two families.

Dwelling Unit - A building or entirely self-contained portion thereof containing housekeeping facilities for only one family, including any domestic servants employed on the premises, and having no enclosed space (other than vestibules, entrances or other hallways or porches) and no cooking or sanitary facilities in common with any other "Dwelling Unit." A boarding house, dormitory, hotel, inn, nursing home or similar structure shall not be deemed to constitute a dwelling unit.

Eating and/or Drinking Establishment - A parcel of land which includes facilities primarily used for the sale of prepared food or beverages for public consumption.

Educational Institution - An institution, either public or private, providing full-time day instruction and a course of study which meets the requirements of the New York State Education Law or a nursery, day care or kindergarten which meets all pertinent requirements set by the New York State Education Law and/or the New York State Health Code.

Family - One or more individuals occupying a dwelling unit and living as a single household unit. No more than five persons, unless related by a legal adoption, blood or marriage, or lawful foster children, shall occupy a single family dwelling unit.

Farm - An agricultural operation where the principal income is from agricultural sources.

Farmer's Market - An anchorless retail center with a mix of small specialty shops with at least 50 percent of the vendors therein must offer agricultural products for sale.

Farm, Hobby - An agricultural operation where the keeping of animals is primarily for the enjoyment and/or food for the household.

Financial Guarantee - A financial security in an amount sufficient to guarantee the installation of basic public improvements. Such improvements may include, but are not limited to, public water supply, sewage disposal systems, storm drains and sewers, roads, pavement markings, traffic signs and signals and sidewalks. Acceptable financial securities must be approved by the Town Attorney and the Town Board and may be in one of several forms, including, but not limited to, a performance bond executed by a surety company, a certified check, an irrevocable letter of credit drawn in favor of the Town.

Flag Lot - A lot not meeting the required frontage along a public or private road and where access to this road is by a fifty-foot (50') strip of land.

Flea Market - An occasional or periodic market held in an open area or structure where individuals or groups of individual sellers offer goods for sale to the public.

Flood Plain - Any land area susceptible to being inundated by water from any source.

Forest Management - Management of natural vegetation for timber harvesting, firewood, wildlife habitat improvement, and water quality.

Garage, Private - An accessory building or part of a principal building used for the storage of one or more motor vehicles provided that no business, occupation or service is conducted for profit therein. A carport or similarly covered area for the storage or housing of one or more automobiles, with or without walls, but not fully enclosed, is part of this definition.

Garage, Public - Any garage, other than a private garage, operated for gain and available on a rental basis for the storage of motor vehicles.

Garage Sale - The sale of used personal and/or household items by an individual or family from their home, porch, lawn or garage.

Habitable Floor Area - The total number of square feet of floor space within a building, which is enclosed and usable for human occupancy and/or the conduct of business. Unheated basements and attached gar-ages are excluded.

Health Care Facility - A facility or institution, whether public or private, principally engaged in providing services for health maintenance, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, including, but not limited to, a general hospital, special hospital, public health center, diagnostic center, treatment center, rehabilitation center, extended care facility, skilled nursing home, nursing home, and home health care agency.

Height - The vertical distance measured from the lowest elevation of the finished grade to the high point of a structure.

Home Occupation - An occupation or other subordinate use of a nonresidential nature which is conducted within a dwelling unit, or building accessory thereto, by an occupant of the dwelling unit, which is clearly incidental and accessory or secondary to the use of the property for residential purposes. Permissible home occupations include, but are not limited to: art studio; skilled or professional craftsmen; child care, either licensed or not, with no more than five children; dressmaking; teacher of music, dance or song, and limited to one pupil at a time; and the professional home office of a clergyman, physician, surgeon, dentist, lawyer, engineer, architect, accountant, real estate broker or insurance agent.

However, a home occupation shall not be construed to include such uses as the following: clinic or hospital, restaurant, animal hospital, kennel or other similar uses.

Hotel - A facility offering transient lodging accommodations to the general public and providing additional service such as restaurants, meeting rooms, and recreation facilities.

Household Pet - An animal that is normally or can generally be kept within the immediate living quarters of a dwelling unit. Any member of the swine, sheep, bovine, poultry, or equine family of quadrupeds, deer, or reptiles having a venomous or dangerous nature are not to be considered household pets. Exotic birds and the pit bull variety of the canine family are not to be considered household pets under this definition.

Junk - Including, but not limited to, the outdoor storage or deposit of any of the following, which constitutes junk:

- Two or more unregistered vehicles, that have been abandoned, wrecked, being held for storage dismantled or even partially dismantled;
- Vehicle parts, tires
- Old lawn mowers, of which are no longer being used, snowmobiles, motorcycles, etc. that are no longer used;
- Any build up of scrap metal, any appliances being deposited or any property in view of the public;
- Any deposit of garbage such as papers, rags, old scrap wood piles, old furniture no longer intended for use;
- Any unusable mobile homes such as any structure that is built on a permanent chassis and designed to be used as a dwelling unit, which is not currently inhabitable. This also includes but is not limited to mobile homes, travel trailers, campers, etc.

Junkyard -- Any area or parcel of land that has the outdoor storage or deposit of any of the items defined as junk in this ordinance. Any items listed as junk in this ordinance that are screened from public view, such as adjoining properties and/ or any road, with a wood fence at a minimum height of 8 foot that does not allow any area of view of the items being screened shall be the proper means of storing these items. Also any of these items listed as junk in this ordinance being stored within an enclosed building as long as any DOH, DEC, or DEP regulations are not violated then this will be an accepted standard.

Kennel - A commercial place or establishment for the care and/or breeding of four or more dogs.

Lot - A parcel of land occupied or used by one principal building or use with its accessory buildings and required open space and yards.

Lot, Area - The total horizontal area included within lot lines and shall be as determined by the most recent official records or recordings on the Middletown Tax Maps or by survey calculation. Land with-in road rights-of-way shall not be used to comply with the minimum lot area requirements.

Lot, Corner - A lot or parcel of land abutting upon two or more roads at their intersection, or upon two parts of the same road forming an interior angle of less than 135 degrees.

Lot, Coverage - The percentage of the lot area that is covered by the buildings or paved areas on the lot.

Lot, Depth - The minimum distance from the road right-of-way line of a lot to the rear lot line of such lot.

Lot, Line - Any boundary of a lot. Any lot line not a rear line nor a front line shall be deemed a side line.

Lot, Line, Front - The front of a lot shall be construed to be the portion adjacent to or nearest the road. On corner lots and through lots, all sides adjacent to roads shall be considered front yards.

Lot Line, Rear - The lot line generally opposite the front lot line.

Lot, Through - A lot which fronts upon two parallel roads, or which fronts upon two roads which do not intersect at the boundaries of the lot.

Lot Width - The distance between side lot lines at the front building line as prescribed by the front setback regulations.

Migrant Farm Labor Housing - A house or dwelling on the same lot as the farm, occupied by no more than 15 unrelated individuals, all of whom are employed on the farm on a seasonal basis.

Mineral Extraction - Operations where more than 1000 cubic yards of gravel, rock, stone, sand, fill, topsoil or minerals are extracted from the surface or below the ground for sale as an industrial or commercial operation, but does not include the process of grading a lot preparatory to the construction of a building.

Mixed Use Building - A building or structure with two or more different uses, such as, but not limited to, residential, office, manufacturing, retail, public or entertainment.

Mobile Home - A factory-built, one-family dwelling constructed on a chassis to facilitate its transportation to the site. Such structures shall be a self contained single unit (excludes modular homes) and shall meet the Mobile Home Construction and Safety Standards of the U.S. Department of Housing and Urban Development and the applicable codes of the New York State Uniform Fire and

Building Code. A mobile home shall not be construed to be a travel trailer or recreational vehicle.

Mobile Home Park - A parcel of land under single ownership which has been specifically planned and improved for the long term placement (over 30 days) of three or more mobile homes for nontransient use.

Model Home - A dwelling unit used initially for display purposes which typifies the type of units that will be constructed in the subdivision.

Motel - A building or group of buildings providing individual sleeping accommodations complete with bathrooms for travelers. Each lodging unit has direct access to the outside and a parking spot. Swimming pools, restaurants and meeting rooms may exist as part of the complex.

Motor Vehicle Repair Shop - A building or portion of a building arranged, intended or designed to be used for making repairs to motor vehicles and operated for gain.

Non-Conforming Building, Use, or Lot - A building, structure, use of land or lot, lawfully existing at the time of enactment of this Ordinance, which does not conform to the regulations of the district or districts in which it is located.

Nursery or Greenhouse - Land or greenhouses used to raise flowers, shrubs, trees, and plants.

Open Space - An area between buildings, or between a building and a boundary line of the parcel, that is situated for recreation, gardening, or other outdoor activities conducive to the principal lot use and size. Such space must be free of undue hazards as well as being readily accessible to all those by whom it shall be used.

Outdoor Recreation - Any recreational use particularly oriented to and utilizing the outdoor character of a parcel, including, but not limited to, snowmobile, trail bike, jeep and all-terrain vehicle trails; bicycle trail, horse trail, playground, picnic area or similar use in which no physical alteration to the land occurs.

Parking Space - An off-street paved or unsurfaced space which is accessible and available for the parking of one motor vehicle.

Performance Bond - See Financial Guarantee

Performance Standards - A criterion established to control nuisances, including, but not limited to, noise, odor, smoke, toxic or hazardous matter, vibration, fire and explosive hazards, and glare or heat generated by, or inherent to, uses of land or buildings.

Permitted Principal Use - For the purpose of this Ordinance, any use which is allowed by right in a zoned district without review by the Planning Board.

Personal Wireless Telecommunications Services - Means commercial mobile services, unlicensed wireless services, and common carrier exchange access services.

Planned Unit Development - A tract of land upon which residential, commercial, or industrial buildings, or a mixture thereof are designed, maintained, or operated as a unit in single ownership or control by an individual, partnership, corporation, or cooperative group. Such developments may have certain facilities in common, such as yards and open spaces, recreation, garages and parking areas, and are based upon a plan having flexibility of design, allowing for the modification of normal zoning district requirements.

Planning Board - The Town of Middletown Planning Board.

Public Facilities and Utilities - All village, town, city, county, state and Federal government owned buildings and land including, but not limited to, town halls and highway department garages. In addition are telephone, electric and cable television lines, poles, equipment and structures; water or gas pipes, mains, valves or structures; sewer pipes, valves or structures; pumping stations; telephone exchanges and repeater stations; and all other facilities, equipment and structures necessary for conducting a service by a government or a public utility.

Public Parks and Recreational Facilities - Land in public ownership set aside for public use, which may or may not have developed recreational facilities, such as playgrounds, tennis courts, baseball fields, picnic areas, bike and horse trails, swimming pool, and/or lavatories.

Recreational Vehicles and Equipment - Includes boats and boat trailers, pick-up campers or coaches (designed to be mounted on automotive or truck vehicles),

motorized dwellings, travel trailers, and the like, and cases or boxes used for transporting recreational equipment, whether occupied by such equipment or not.

Religious Institution - Church, temple, parish home, convent, seminary, and retreat house.

Resort - A facility for transient guests where the primary attraction is generally recreational facilities or activities.

Retail Trade - An enclosed store engaged in selling goods or merchandise to the general public, for personal or household consumption, and rendering services incidental to the sale of such goods.

Road - A public or private way which affords the principal means of access to abutting properties.

Road Right-of-Way - The right-of-way line of a road as indicated by usage, dedication, or by deed or record.

Roadside Stand - A permanent or temporary structure used for the display, support, and protection of products with the intent to sell to buyers.

Seasonal Business - A retail or service establishment, not to include motor cross or snowmobile track, that is carried on for only a portion of the year.

Service Establishment - Establishments providing services, as opposed to products, to the general public, including, but not limited to, personal, business, repair, educational, and other personal convenience services, including, but not limited to, coin-operated laundry, cleaning and garment services, photographic studios, beauty shops, barber shops, shoe repair, funeral services and clothing rental.

Service Station - An establishment available to the public, operated for gain, and which is used for storage, repair, rental, greasing, washing, servicing, adjusting, fueling, or equipping of automobiles or other motor vehicles.

Setback, Front - The required open space extending across the entire width of the lot between the road right-of-way line and the front of the main building.

Setback, Rear - The required open space extending across the entire width of the lot between the rear lot line and the back of the main building.

Setback, Side - The required open space extending from the rear setback line and the front setback line between the side lot line and the side of the main building.

Shopping Center - A group of commercial establishments planned, constructed, and managed as a total entity with customer and employee parking provided on-site, provisions for goods delivery separated from customer access, aesthetic considerations and protection from the elements.

Sign - Any material, object, device, display, or structure, or part thereof, situated outdoors or indoors, 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, announcement, direction, advertisement or any other similar message either free standing or printed on a building or structure.

Sign, Advertising - A sign which directs attention to a business, commodity, service or entertainment conducted, sold or offered at a location other than premises on which the sign is located.

Sign Area - The entire face of a sign, including the advertising surface and any framing, trim or molding, but not including the supporting structure, unless the support is used to form an integral background for the display. Both faces of a double-faced sign shall be included as surface area of a sign.

Sign, Billboard - See Sign, Advertising

Sign, Directional - A sign, either on or off premises, limited to providing information on the location of an activity, business, or event.

Sign Face - The area or display surface used for the message.

Sign, Free Standing - Any non-movable sign not affixed to a building.

Sign, Illuminated - A sign lighted by or exposed to artificial lighting, either by lights on or in the sign or directed towards the sign.

Sign, Off Premise - A sign unrelated to a business or a profession conducted or to a commodity or service sold or offered upon the premises where such sign is located.

Sign, Window - A sign that is applied to or attached to the exterior or interior of a window or located in such a manner within the building that it can be seen from the exterior of the structure through a window.

Site Plan - A plan of a lot or subdivision on which is shown topography, location of all buildings, structures, roads, rights-of-way, boundaries, all essential dimensions and bearings and any other information deemed necessary by the Planning Board.

Site Plan Review - A review and approval process, conducted by the Planning Board, whereby site plans are reviewed utilizing criteria stated in this Ordinance and as authorized by Town Law.

Special Permit Use - A use which, because of its unique characteristics, require individual consideration through a review procedure established by the Planning Board, and may require certain conditions and safeguards before being permitted.

Stable, Private - See Farm, Hobby

Structure - Anything constructed or erected, the use of which requires location on the ground or attached to something having a location on the ground.

Subdivision - The division of a lot, tract, or parcel of land into two or more lots, tracts, parcels or divisions of land for any purpose.

Substantial Improvement - Any extension, repair, reconstruction, or other improvement of a structure, the cost of which equals or exceeds 50 per cent of the fair market value of the structure, either before the improvement is started or, if the property has been damaged and is being restored, before the damage occurred. The term does not include any project for improvement of a structure to comply with existing State or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions.

Telecommunications Accessory Structure - Means accessory buildings and structures, including base stations, designed and used to shelter telecommunications, equipment and/or to support personal wireless

telecommunication facilities and located on the same lot as a telecommunications facility or tower.

Telecommunications Antenna - Means an antenna designed to transmit or receive communications as authorized by the Federal Communications Commission (“FCC”) including, but not limited to, radio, television, cellular, paging, PCS and microwave communications. Design examples of telecommunications antenna are described as follows: (a) whip; (b) panel; and c) dish. The term “Telecommunications Antenna” shall not include amateur radio operator’s equipment as licensed by the FCC, or private, residential reception equipment.

Town House - See Dwelling, Town House

Use - The specific purpose or activity for which land or buildings are designed, arranged, or intended, or for which land or buildings are occupied or maintained.

Variance - Permission to depart from the literal requirements of this Ordinance.

Variance, Area or Bulk - A departure from the area setback, frontage, coverage, size or other requirements of the applicable zoning district, or a departure from any provision of this Ordinance except use.

Variance, Use - A variance granted for a use or structure that is not permitted in the zoning district.

Warehousing - Storage facilities operated for a specific commercial establishment or group of establishments in a particular industrial or economic field.

Watershed Area - That area in which all of the surface runoff is concentrated into a particular stream.

Wholesaling - Establishments or places of business primarily engaged in selling merchandise to retailers; to industrial, commercial, institutional, or professional business users, or to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

Wildlife Management - Management of natural wildlife and associated habitats with the intent of enhancing such.

Yard - An open space that lies between the principal or accessory building or buildings and the nearest lot line.

Yard, Front - See Setback, Front

Yard, Rear - See Setback, Rear

Yard, Side - See Setback, Side

Zero Lot Line - The location of a building on a lot in such a manner that one or more of the building's sides rest directly on a lot line.

Zoning Board of Appeals - The Town of Middletown Zoning Board of Appeals.

Zoning District - An area within the Town of Middletown for which the regulations and requirements governing land use and structures upon it are uniform.

Section 301 Establishment of Districts

For the purpose of promoting public health, safety, morals, and general welfare of the Town of Middletown, the town is hereby divided into the following districts:

- A) Rural III (R-3)
- B) Rural V (R-5)
- C) Business Commercial (BC)
- D) Hamlet I (H-1)
- E) Hamlet 1/2 (H-1/2)
- F) Industrial (I)
- G) Development Limitations Overlay (DL)
- H) Commercial/Industrial Floating Zone (CIFZ)

Section 302 District Map and Development Limitations Overlays

The boundaries of each of the districts listed in Section 301 are hereby established as shown on the duly adopted Zoning Map which accompanies this Ordinance and which, with all explanatory matter thereon and amendments thereto, is hereby declared a part of this ordinance. The development limitation overlays are also declared to be a part of this Ordinance.

A copy of the district map and overlays, including the latest amendments thereto, shall be kept up to date and filed in the Town Clerk's Office for the use and benefit of the public.

Section 303 Designation of District Boundaries

Where uncertainty exists with respect to the boundaries of any district, as shown on the Zoning Map, the following rules shall apply:

- A) Where district boundaries are indicated as approximately following the center lines of streets, highways, streams or railroads, such center lines shall be construed to be such boundaries.
- B) Where district boundary lines are indicated as following or approximately following plotted lot lines or other property lines as shown on the Town of Middletown Tax Map, such lot lines shall be construed to be such boundaries.

- C) Where district boundary lines are shown separated from and parallel or approximately parallel to any of the features listed in paragraphs A and B above, such boundary lines shall be construed to be parallel to such features and at such distance there from as shown on the map. If no distance is given, such dimension shall be determined by the use of the scale shown on the Zoning Map.
- D) Where a district boundary line divides a lot of record at the effective date of this Ordinance or any subsequent amendments thereto, the regulations for the less restricted part shall extend not more than 50 feet into the more restricted part, provided the lot has frontage on a road in the less restricted district.

Section 304 Determination of District Boundaries

In case of uncertainty as to the true location of a zoning district boundary line in a particular instance, the Code Enforcement Officer shall request the Zoning Board of Appeals to render a determination.

Section 305 Determination of
Development Limitation Overlay Boundaries

Where uncertainty exists with respect to the boundaries or criteria of the Development Limitation Overlays, the Middletown Town Planning Board shall determine, during the subdivision review process, the extent of the development limitation(s) in question.

Section 401 Application of Regulations

Except as hereinafter provided no building, structure or land shall be used or occupied unless for a use expressly permitted by, and in conformity with, the general and supplementary regulations specified in this Ordinance for the district in which it is located.

No building shall be erected, nor existing building be moved, altered, enlarged, or rebuilt, nor shall any open space surrounding any building be encroached upon or reduced in any manner, except in conformity with the yard, lot area and building location regulations herein after designated for the district in which such building or open space is located.

Section 402 Intent

The legislative intent of Article IV is to set forth land uses or activities which are permitted in the Town of Middletown, to specify and designate the districts in which each use or activity will be permitted, with or without special conditions, or after a special permit has been granted, and to establish appropriate density, area, and other bulk regulations which will be applicable within each district.

Section 403 Schedule of Regulations

Regulations for land uses or activities permitted in the various land use districts, or land uses or activities requiring special permits or conditions attached to them are set forth in Schedule I. Regulations for lot size, yards, building height and similar density, area and other bulk requirements are set forth in the following text. Schedule I is hereby adopted and made part of this Ordinance.

Section 404 Rural III District (R-3)

- A) Description - This district includes all lands located within 500 feet of all New York State and Delaware County public high-ways shown on the district map and with direct minimum frontage and direct access to the public road.

- B) Purpose - The purpose of this corridor district is to allow for a variety of mixed uses that, when developed, would be appropriate for the existing traffic type and volume and quality of road surface.

C) Permitted Principal Uses

- 1) One, one-family, or two-family dwelling per lot
- 2) One mobile home per lot
- 3) Agriculture
- 4) Forest Management Practices
- 5) Wildlife Management Practices

D) Permitted Accessory Uses - located on the same lot with the permitted principal use. Some accessory uses (*) are subject to additional conditions as set forth in Article V, Supplementary Regulations.

- 1) Private garage
- 2) Parking (*)
- 3) Farm labor dwelling
- 4) Home occupation, home professional office (*)
- 5) Private swimming pool (*)
- 6) Garden house, tool shed, storage shed
- 7) Nursery/greenhouse, non-commercial
- 8) Roadside stand (*)
- 9) Recreational vehicles and equipment, Storage of (*)
- 10) Signs (*)
- 11) Dish antennas less than 39" in diameter (*)
- 12) Alternative energy systems, private
- 13) Exterior spot lighting (*)
- 14) Private stable, hobby farm, non-commercial agriculture (*)
- 15) Other customary accessory uses and buildings, provided such uses are clearly incidental to the principal use and does not include any activity commonly conducted as a business. The Middletown Planning Board will approve or disapprove of such "other customary accessory uses" in accordance with the Special Permit process.

E) Special Permit Uses - See Schedule I.

Special permit uses require an application for approval to the Middletown Planning Board. Site plan review shall also be required depending upon the nature and complexity of the application.

F) Density, Height, Area and Yard Requirements

- 1) Minimum lot size: 3 acres
- 2) Minimum frontage: 200'
- 3) Maximum height: 40'
- 4) Front setback: 75' from center line of State, County, Town and private roads, and, in every case, shall be at least 25' from the right-of-way.
- 5) Side and rear setback: 20'
- 6) Maximum lot coverage: 25%
- 7) Maximum lot depth to width ratio: 4:1

Section 405 Rural V District (R 5)

- A) Description - This district includes all lands not described as part of any other district and generally includes most of the land in the Town of Middletown.
- B) Purpose - The purpose of this district is to permit only low density, residential development and limited commercial development.
- C) Permitted Principal Uses - See Schedule I.
- D) Permitted Accessory Uses - Same as R-3.

Located on the same lot with the permitted principal use. Some accessory uses (*) are subject to additional conditions as set forth in Article V, Supplementary Regulations.

- E) Special Permit Uses - See Schedule I.

Special permit uses require an application for approval to the Middletown Planning Board. Site plan review shall also be required depending upon the nature and complexity of the application.

- F) Density, Height, Area and Yard Requirements

- 1) Minimum lot size: 5 acres
- 2) Minimum frontage: 250'
- 3) Maximum height: 40'
- 4) Front setback: 75' from center line of roads and rights-of-way
- 5) Side and rear setback: 30'
- 6) Maximum lot coverage: 15%

7) Maximum lot depth to width ratio: 4:1

Section 406 Business Commercial District (BC)

- A) Description - This district consists of a corridor of land along New York State Route 28 from the village of Margaretville boundary line to and including the Delaware and Ulster Railroad recreational complex on the eastern side of the hamlet of Arkville.
- B) Purpose - The purpose of this district is to encourage the location of a wide variety of commercial, retail and business establishments and uses.
- C) Permitted Principal Uses - See Schedule I.
- D) Permitted Accessory Uses - Same as R-3.

Located on the same lot with the permitted principal use. Some accessory uses (*) are subject to additional conditions as set forth in Article V, Supplementary Regulations.

- E) Special Permit Uses - See Schedule I.

Special permit uses require an application for approval to the Middletown Town Planning Board. Site plan review shall also be required depending upon the nature and complexity of the application.

F) Density, Height, Area, and Yard Requirements

- 1) Minimum lot size: 40,000 square feet, or 20,000 square feet with both public water and public sewer
- 2) Minimum lot frontage: 150'
- 3) Maximum Height: 40'
- 4) Front Setback: 75' from center line of State, County, Town and private roads, and, in every case, shall be at least 25' from the right-of-way.
- 5) Side and rear setbacks: 15'
- 6) Maximum lot coverage: 80%
- 7) Maximum lot depth to width ratio: 4:1

Section 407 Hamlet I (H-1)

- A) Description - The unincorporated hamlets of New Kingston, Halcottsville, Dunraven and Clovesville and a portion of Arkville that is not in the B/C, Industrial or Hamlet ½ zones.
- B) Purpose - The purpose of this district is to recognize the existing high density, predominantly residential settlements and to limit the intrusion of non-residential uses.
- C) Permitted Principal Uses - See Schedule I.
- D) Permitted Accessory Uses - Same as R-3.

Located on the same lot with the permitted principal use. Some accessory uses (*) are subject to additional conditions as set forth in Article V, Supplementary Regulations.

- E) Special Permit Uses - See Schedule I.

Special permit uses require an application for approval to the Middletown Town Planning Board. Site plan review may also be required depending upon the nature and complexity of the application.

- F) Density, Height, Area, and Yard Requirements

- 1) Minimum lot size: One Acre
- 2) Minimum frontage: 50'
- 3) Maximum height: 40'
- 4) Front setback: Must be, at a minimum, equal to the average of the front setbacks of the two closest parcels with buildings on the same side of the road and within the H district and must be at a minimum of 10 feet.
- 5) Side and rear setback: Must be, at a minimum, equal to the average side and rear setbacks of the two closest parcels with buildings on the same side of the road and within the H district. Must be a minimum of 10 feet.
- 6) Maximum lot coverage: Shall not be more than the average lot coverage of the two closest parcels with buildings on the same side of the road and within the H district.
- 7) Maximum lot depth to width ratio: None

Section 408 Hamlet 1/2 (H-1/2)

- A) Description - The residential portions of the unincorporated hamlet of Arkville that is not in the Business Commercial District or the Industrial District but is served by both public water and sewer.
- B) Purpose - The purpose of this district is to recognize the area of public water supply, public sewer, the area of existing high density and predominantly residential settlement and to limit and control nonresidential uses.
- C) Permitted Principal Uses - See Schedule I.
- D) Permitted Accessory Uses - Same as R-3.

Located on the same lot with the permitted principal use. Some accessory uses (*) are subject to additional conditions as set forth in Article V, Supplementary Regulations.

- E) Special Permit Uses - See Schedule I.

F) Density, Height, Area, and Yard Requirement

- 1) Minimum Lot Size: 1/2 Acre
- 2) Minimum Frontage: 50'
- 3) Maximum Height: 40'
- 4) Front setback: Must be, at a minimum, equal to the average of the front setbacks of the two closest parcels with buildings on the same side of the road and within the H-1/2 District and must be at a minimum of 10 feet.
- 5) Side and rear setback: Must be, at a minimum, equal to the average side and rear setbacks of the two closest parcels with buildings on the same side of the road and within the H-1/2 District. Must be a minimum of 10 feet.
- 6) Maximum lot coverage: Shall not be more than the average lot coverage of the two closest parcels with buildings on the same side of the road and within the H-1/2 District.
- 7) Maximum lot depth to width ratio: None

Section 409 Industrial District (I)

- A) Description - This district includes the industrial park located along the Arkville cut-off road and several adjacent properties.

B) Purpose - Its purpose is to provide for the establishment of industrial uses essential to the development of a balanced economic base and to regulate this development so it will not be detrimental or hazardous to the surrounding community.

C) Permitted Principal Uses

- 1) Manufacture of machinery, such as: carburetor and small machine parts, cash registers, sewing machines and typewriters, calculators and other office machines.
- 2) Fabrication of metal products, such as: baby carriages, bicycles, metal, foil, tin, aluminum, gold, etc; metal furniture, musical instruments, sheet metal products and toys.
- 3) Fabrication of paper products, such as: bags, book bindings, boxes and packaging materials; office supplies and toys.
- 4) Fabrication of wood products , such as: boats, boxes, cabinets and woodworking, furniture and toys.
- 5) Food and associated industries, such as: bakeries, bottling of food and beverages, food and cereal mixing and milling, food processing, food sundry manufacturing, ice cream manufacturing and manufacturing of spirituous liquor.
- 6) The manufacturing and processing of pharmaceutical and cosmetic products.
- 7) Office buildings for executive, engineering and administrative purposes.
- 8) Scientific or research laboratories devoted to research, design and/or experimentation and processing and fabrication incidental thereto.
- 9) Other uses of a light industrial or agricultural nature which involves only the processing, assembly, fabrication or packaging of previously prepared or refined materials.
- 10) Warehousing

- 11) Wholesaling
- 12) Bulk storage
- 13) Agriculture/forest and wildlife management
- 14) See Schedule I for additional permitted uses.

D) Permitted Accessory Uses - Located on the same lot with the permitted principal use. Some accessory uses (*) are subject to additional conditions as set forth in Article V, Supplementary Regulations.

- 1) Public garage and storage buildings, which are necessary to store any vehicles, equipment, or materials on the premises.
- 2) Signs (*)
- 3) Dish antennas (*)
- 4) Solar equipment
- 5) Exterior spot lighting (*)
- 6) Off-street parking (*)
- 7) Open space and picnic area for employees
- 8) Alternative energy system

E) Special Permit Uses - See Schedule I.

Special permit uses require an application for approval to the Middletown Planning Board. Site plan review may also be required depending upon the nature and complexity of the application.

F) Other Provisions and Requirements

- 1) No use shall result in or cause at any time dust, smoke, smog, observable gas, fumes or odors, or other atmospheric pollution, objectionable noise, glare, or vibration to be discernable beyond the property lines of the industry.
- 2) No use shall result in or cause a hazard of fire or explosion or other physical hazard to any adjacent building or to any plant growth or any land adjacent to the site of the use.
- 3) All industrial processes shall take place within an enclosed building. Industrial storage out of doors is permitted provided that such materials are shielded from view from public roads and adjacent non-residential district by fencing, landscaping or other appropriate measures.

- 4) All uses shall set aside not less than 25% of the lot to be devoted to seeding, planting, retention of the tree cover, or other landscaping. This area shall be used for no other purpose.
- 5) Each use in this district shall provide truck loading and unloading areas in an amount sufficient to permit the transfer of goods and products in other than a public road, off-street parking area or front yard.
- 6) Signs shall be permitted for advertising industrial activities on the premises which shall comply with the requirements of Section 542, Signs.
- 7) Industrial structures shall be located so as to be a minimum of 100' from any non-industrial district. This 100' buffer strip shall be perpetually maintained so as to provide visual screening and separation between the industrial and non-industrial uses.
- 8) Parking areas may be located in any of the required yard areas provided they are not less than 50' from a right-of-way line or 20' from a property line.

G) Density, Height, Area, and Yard Requirements

- 1) Minimum lot size: None
- 2) Minimum frontage: 100'
- 3) Maximum height: 50'
- 4) Maximum lot coverage: 75%
- 5) Front setback: 50'
- 6) Side and rear setback: 50'
- 7) Maximum lot depth to width ratio: None

Section 410 Development Limitations - Overlay (DL)

- A) Description - This is an overlay and includes all lands shown on the Development Limitations Overlay Map(s) on file in the Town Clerk's office and hereby declared to be part of this Ordinance. The development limitations shown on the map(s) include:

- 1) Flood hazard areas, including but not limited to those areas identified by the Federal Insurance Administration on its Flood Hazard Boundary Map No. 01-08/360209B, dated May 15, 1985, and as may be amended.
 - 2) Freshwater wetlands as defined and protected by the New York State Freshwater Wetland Act.
 - 3) Steep slope areas of 15 per cent or more.
 - 4) High elevation areas of 2500' or greater.
 - 5) Watershed areas that have more than 50 per cent of the land in parcels less than 25 acres.
- B) Purpose - The purpose of these overlay zones is to protect the town from over development in and around natural areas and manmade areas important to the people of the town of Middletown.
- C) Determination of Applicability
- 1) The Code Enforcement Officer shall decide during the permit application process whether a particular proposal will be located within the Flood Hazard Area (application shall be referred to Planning Board) or within a New York State Freshwater Wetland area (application will be referred to the New York State Department of Environmental Conservation.)
 - 2) The Planning Board shall, as part of the subdivision review process, determine the applicability of the DL requirements for a particular subdivision proposal. The Planning Board shall apply the DL requirements of minimum lot size and frontage to particular parcels when and only when two or more of the development limitations exist to any degree within the proposed parcel.
- D) Permitted Principal Uses - Same as underlying district.
- E) Permitted Accessory Uses - Same as underlying district.

Located on the same lot with the principal permitted use. Some accessory uses (*) are subject to additional conditions as set forth in Article V, Supplementary Regulations.

F) Special Permit Uses - Same as underlying district.

Special permit uses require an application for approval to the Middletown Planning Board. Site plan review may also be required, depending upon the nature and complexity of the application.

G) Other Provisions and Requirements

- 1) All new building construction may be permitted within the area designated as a Flood Hazard Area by Special Permit only. Parking, open space and other uses not posing any obstructions to water flow shall be permitted. It shall be the duty of the applicant to prove to the Planning Board's satisfaction that all construction complies with Federal Floodproofing requirements.
- 2) Activities proposed within a designated wetland or within 100' of the wetland shall be subject to the guidelines and regulations of the New York State Freshwater Wetlands Act which, together with subsequent amendments, are hereby adopted.

H) Density, Height, Area, and Yard Requirements

- 1) Minimum lot size: two times the minimum required in the underlying district.
- 2) Minimum frontage: 50' more than underlying district
- 3) Maximum height: 40'
- 4) Front setback: Same as underlying district
- 5) Side and rear setback: Same as underlying district
- 6) Maximum lot coverage: same as underlying district
- 7) Maximum lot depth to width ratio: Same as underlying district

Section 411 Commercial And Industrial Uses Floating Zone (CIFZ)

- A) Description - This district is not specifically shown on the Districts Map, but will be applied when applicable, to any and all land within the R-5 District.
- B) Purpose - The purpose of this "floating zone" is to provide for the maximum protection of existing residential properties while, at the same time,

acknowledging that it is nearly impossible to provide adequate locations for new commercial and new industrial uses in rural areas.

C) Permitted Principal Uses - None

D) Permitted Accessory Uses - Same as R-5 and I.

E) Applicability

- 1) Whenever a commercial or industrial use is proposed as a Special Use Permit Use in the R-5 District, the requirements of this Section shall apply.
- 2) The Code Enforcement Officer shall refer the application to the Planning Board which shall review the proposal under the Special Permit and Site Plan Review process with the additional locational limitations listed below being considered first.

F) Locational Limitations

The proposed commercial or industrial use is not permitted unless the following requirements are met:

- 1) A minimum of 500 feet of continuous road frontage
- 2) A minimum of 100 feet for the side and rear setbacks
- 3) All other density, area, height and yard requirements of the R-5 District apply.

Section 412 Equivalent Uses

When a proposed land use activity is not specifically listed in Schedule I for a particular district but the proposed land use activity is similar in nature to a use already listed as permitted, the following procedure shall apply:

- A) The Code Enforcement Officer shall refer the matter to the Town Planning Board for an interpretation as to whether the proposed use is an equivalent use.
- B) The Planning Board shall report its findings to the Town Board and, if these findings are positive, make a recommendation that Schedule I of this Ordinance be amended to permit such equivalent use.

C) In no case shall a building permit be issued for an equivalent use until the Ordinance has been amended to permit such equivalent use in the appropriate zoning districts, with or without conditions.

Section 413 Other Regulations and Exceptions

Additional regulations and appropriate exceptions to the regulations of this Ordinance are set forth in Article V, Supplemental Regulations; Article VI, Special Permits and Site Plan Review; and Article VII, Non-Conforming Uses.

GENERAL

Section 501 Applicability

Land uses and activities in the Town of Middletown which are regulated by this Ordinance shall be subject to additional requirements and to limitations and exceptions as set forth in this Article V.

LOT CHARACTER

Section 502 Required Open Space or Yard

- A) No area necessary under this Ordinance to satisfy area, yard, or other open space requirements in relation to any lot, building, or use shall be counted as part of required open space in relation to any other lot, building or use.
- B) Every part of a required open space or yard shall be open and unobstructed, except for ordinary building projections of sills, chimneys, eaves, and unroofed steps, provided that no such projections extend more than three (3) feet into the required yard. Fences, stonewalls, trees, and shrubbery are also excepted.

Section 503 Vision Clearance at Intersections

No obstructions to vision, such as shrubbery, brush, trees, earth, or structure, shall be permitted at road intersections within the triangle formed by the intersections of road center lines and a line drawn between points along such lines 30 feet distant from their point of intersection.

The Town shall have the authority, after proper notice to the property owner and review by the Planning Board, to open existing intersections to the standards in this Section.

Section 504 Landscaping Requirements

- A) Where any permitted non-residential land use, multiple family development or mobile home park abuts an existing residential parcel or a vacant parcel where residential development could occur, a strip of land at least 20 feet wide shall be maintained as a landscaped area in front, side and/or rear yard which adjoin these uses.

- B) In the Business/Commercial District, each nonresidential use shall have a strip of land at least 15 feet wide in any required rear and side yard, which shall be maintained as a landscaped area.
- C) In a planned unit development, landscaping shall be as required by the Planning Board under its powers of site plan review and approval.
- D) Required landscaping shall be installed and maintained in a healthy growing condition and shall take the form of any or all of the following: shade trees, deciduous shrubs, evergreens, well kept grassed areas or ground cover.

Section 505 Calculation of Lot Coverage

In determining percentage of coverage of a lot or size of yard, all principal buildings, roofed porches, garages, carports, other accessory buildings and paved parking and driveway areas shall be included.

Section 506 Zero Lot Line

When multiple dwelling construction takes the form of townhouse units, where each unit has one or both side walls in common with an adjacent unit, the side yard requirements shall double and shall apply only to the end unit in the row.

Section 507 Corner and Through Lots

Front yard setbacks and minimum road frontages are required on both road fronts. The two remaining yards shall be designated by the applicant as to which will be the rear yard and which will be the side yard.

Section 508 Flag Lots

Flag lots may be permitted by the Planning Board during the subdivision review process, where appropriate, to allow for the economical development of back land areas and only under the following conditions.

- A) The access strip of land shall be a minimum of 50 feet wide and shall not exceed a grade of 10 per cent.
- B) The minimum lot area requirement shall be calculated exclusive of the narrow access strip connecting the lot with the public road.

- C) Minimum front, side and rear setback requirements shall be met, excluding the narrow access strip.
- D) No more than one flag lot shall share an access strip.
- E) Access strips shall be a minimum distance apart of at least the minimum frontage in the particular zone.
- F) Access strip shall not be a right-of-way, but shall be owned in fee title by the owner of the "flag" parcel.
- G) No further subdivision of a flag lot is permitted.

Section 509 Existing Lots

Notwithstanding the limitations imposed by any other provisions of this ordinance, the Code Enforcement Officer shall issue a building permit for the construction of a permitted principal building or structure on a lot, which does not meet the minimum lot size and standard lot was on record in the office of the County Clerk prior to the enactment of this Ordinance.

Section 510 Cul-de-sacs

Frontage requirements on cul-de-sacs may be reduced to no less than 50 feet by the Planning Board during the subdivision review and approval process.

Section 511 Lot Size Averaging On A Single Parcel

Any parcel in the R-3 or R-5 Districts of the Town of Middletown, which is not subject to restrictions or covenants to the contrary, may be divided without a variance under the following conditions, all of which must be met by such division:

- A) The average size of all lots created by such division must be not less than three acres in the R-3 District and five acres in the R-5 District.
- B) No lot shall be created with an area less than two acres; and, in any case, not more than 20 per cent of the total parcels permitted shall be undersized.

- C) Minimum road frontages and building setbacks shall be in accordance with the respective district regulations.
- D) All lots created that are less than the minimum lot area normally required shall be required to prove suitability for on-site sewage disposal and water supply systems in accordance with Section 516 of this Ordinance.
- E) All divisions occurring under this Section shall be classified and reviewed as either a minor or major subdivision under the Town of Middletown Subdivision Regulations.
- F) No further division of any lot created by such division shall be allowable if such further division would result in an average size of less than three acres or five acres, respectively, for all lots created from the original parcel.

USES, GENERAL

Section 512 Height Exceptions

The height limitations of these regulations shall be waived for barns and silos, private home antennae, spires, belfries, cupolas, water tanks, ventilators, chimneys, solar equipment, windmills, transmission towers, flag poles, skylights, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.

Section 513 Structures to Have Access

Every building hereafter erected or moved shall be on a lot adjacent to a public road, or with access to a private road, and all structure shall be so located on lots as to provide safe and convenient access for servicing, fire protection, and required off-street parking.

Section 514 Off-Street Parking Requirements

For every building hereafter erected, altered, or changed in use, there shall be provided off-street parking spaces as set forth in the following:

USE	REQUIRED PARKING SPACES
Dwelling Unit	Two parking spaces per dwelling unit on the

(Single Family)	same lot with the main building.
Dwelling Unit (Multi-family)	One and one-half parking spaces per dwelling unit in the building(s) rounded off to the next highest whole number.
Office Uses Business, General & Governmental Professional Office Buildings but not including Medical Offices	One for each 300 sq. ft. of floor area.
Medical Uses Doctor's/ Dentist's office, clinic and Out-patient.	Two parking spaces, plus one space for every 200 square feet of office area.
Retail and Service Establishment	One parking space for every 100 square feet of floor area devoted to sales plus one space for each two employees.
Eating and Drinking Establishment	One parking space for every three seats plus one space for each two employees.
Industrial, Wholesale, Warehouse Storage, Freight and Trucking Uses	One parking space for every motor vehicle used directly in the business, plus additional parking as required by the Planning Board.
House of Worship, and other places of public assembly	One parking space for every three seats, or one space per 100 square feet of floor area, whichever is greater.
Hotels/Motels	One parking space per room, plus one space for every two employees.
Unspecified Uses	As required by the Planning Board based on for intensity, turnover, customers, employees and vehicles used.

Except for dwellings, all off-street parking spaces are to be arranged so that backing movements take place entirely within the parking area.

A) Dimensional Requirements

Each parking space shall have a minimum width of nine feet and a minimum length of twenty feet and shall be served by suitable aisles to permit access and automobile maneuverability into all parking spaces.

B) Location of Facility

All off-street parking facilities required under this Ordinance shall be constructed on or adjacent to the site of main use or on a lot adjoining the main use or directly across the road.

C) Off-street Loading Requirements

All commercial and industrial structures, erected after the adoption of this Ordinance, shall provide adequate off-street loading facilities. Such facilities shall be sufficient in size to eliminate the projection of vehicles into a street right-of-way.

Section 515 Performance Standards For
Commercial And Industrial Uses

In all districts, commercial and industrial uses as defined in Schedule I that exceed the following standards measured at the property line, are not permitted. The Planning Board under its powers of site plan review and approval shall decide whether uses meet the standards. All existing commercial and industrial uses shall be required to meet the standards of this Section within 180 days of the effective date of this Ordinance. Uses shall meet State air and water pollution standards and shall not:

- A) Emit noise in excess of 70 decibels, dbA scale, of a standard sound level meter.
- B) Emit smoke in excess of Ringlemann Chart No. 2.

- C) Emit noxious gases which endanger health, comfort, safety, or welfare of any person, or have a tendency to cause injury or damage to property, business or vegetation.
- D) Cause, as a result of normal operations, a vibration which creates displacement of 0.003 of one inch at the property line.
- E) Create glare by lighting or signs which could impair a driver's vision.
- F) Cause harmful waste to be discharged into sewer, streams, or bodies of water, or to be stored on said property.

Section 516 Sewer and Water Facilities

All sewer and water facilities installed as part of any construction project or individual dwelling shall meet all applicable State, New York City and local regulations.

Section 517 Permit for Temporary Uses and Structures

The Planning Board may authorize the issuance of a temporary permit by the Code Enforcement Officer for incidental and non-conforming uses as follows:

- A) Temporary uses incidental to a construction project. Such uses and structures may include the storage of building material and equipment,
- B) Temporary real estate sales office for the sale of property on the premises,
- C) Other Similar Temporary Incidental Uses.

Permit shall be conditioned upon agreement by owner to remove use on expiration of permit. Such permit shall be authorized for a period of one year and may be extended for two similar periods when the Code Enforcement Officer finds such work has been diligently pursued.

- D) No temporary permit shall be required for the storage of building materials and equipment involved in the construction of one-family dwellings.

Section 518 Abandonment of Construction and Excavation

- A) Within three months following the completion or abandonment of a construction project or the demolition or abandonment of a building or structure, all construction materials shall be removed from the site and excavation filled to normal grade by owner.
- B) If the owner fails to cover over or fill such excavation after 30 days notice by the Code Enforcement Officer, the Town Board may order said excavation to be covered or filled and shall charge the owner of said property any costs connected therewith.

Section 519 Minimum Habitable Space

- A) This Section Deleted

Section 520 Environmental Quality Review

The State Environmental Quality Review Act requires that local government examine the environmental impact of all actions they permit, fund, or construct. Article 8 and Part 617 of Title 6 of the New York Code of Rules and Regulations, and as may be amended from time to time, are hereby adopted by reference.

Section 521 Uses Not Permitted

Any use not specifically permitted as a principal, accessory or special permit use shall be deemed to be prohibited.

USES, SPECIFIC

Section 522 Accessory Buildings

A permitted accessory building or structure, except for farm purposes, may be located provided:

- A) Such building shall not exceed 20 feet in height.
- B) No building permit is required for any accessory use less than 144 square feet.

C) Such building meets the setbacks provided for in each district.

Section 523 Campgrounds

The following additional standards must be provided for in the site plan before a special permit for a campground can be issued:

- A) Evidence that all State Health Department regulations of campgrounds will be met.
- B) A 25 foot planted or natural landscaped border will be provided for on all perimeters of the campground property.
- C) A minimum of ten acres of land will be used for the campground.

Section 524 Clearcutting

- A) No clearcutting of more than one acre of land shall be allowed in the Town without a special permit.
- B) Any clearcutting that is required for the building of a new road that is under subdivision review shall not require a special permit.

Section 525 Dish Antenna

- A) All dish antennae shall be located in either the side or rear yards, unless the owner can prove his/her only "window of reception" is in the front yard. In the event that no "window of reception" is available on the ground, such antenna may be placed on the roof of the dwelling structure.
- B) The location and design of the dish antenna shall minimize the visual impact on adjacent property.
- C) Antennas less than 39" in diameter are not regulated.

Section 526 Dumps

The operation or maintenance of a dump is hereby prohibited in the town of Middletown except under the following conditions.

- A) A municipality-operated transfer station and/or landfill for which proper approvals and licenses are current may be permitted as a special use permit.
- B) Any person may dispose of noncommercial or nonindustrial rubbish, waste material and garbage on the property upon which such rubbish, waste material and garbage is produced. No permit is required.
- C) Any person may dispose of materials incident to the demolition of structures or land clearing within the Town of Middletown, including rocks, concrete, masonry, bricks, wood, glass, metal, and non-asbestos roofing materials. No permit is required.

No materials, garbage, rubbish, or structures related to dumps, as permitted in this Section 526, shall be closer than 50 feet to any lot line.

Section 527 Exterior Spotlighting

In no case shall any exterior spotlighting be directed toward the highway so as to interfere with the vision or attract the attention of the driver of a motor vehicle, nor shall the light be directed toward any other lot or cause excessive illumination of adjacent lots.

Existing spot lighting shall have 90 days after the effective date of this Ordinance to comply with the standards of this Section.

Section 528 Garage Sales

Garage sales shall be limited to 15 days per calendar year. Any garage sale operating for more than 15 days per calendar year shall be classified as a seasonal business and subject to the requirements of such.

Section 529 Home Occupations

Must meet the following conditions:

- A) The occupation or activity shall be carried on wholly within the principal building or within a building or other structure accessory thereto.

- B) Not more than two persons outside the resident household shall be employed in the occupation or as assistants.
- C) There shall be no exterior display or sign except as permitted under this Ordinance, no exterior storage of materials and no other exterior indication of the home occupation or variation from the residential character of the lot or of the surrounding neighborhood.
- D) No offensive odor, noise, vibration, smoke, dust, heat or glare shall be produced.
- E) The home occupation shall not generate traffic in any greater volume than would normally be expected, and any need for parking generated by the occupation shall be met off the street and in accordance with the regulations of this Ordinance.

Section 530 Household Pets

The keeping of exotic animals or reptiles not defined as a household pet or listed under the animal husbandry definition shall require a special permit. Any property owner keeping animals not considered household pets shall be required to apply to the Planning Board within 90 days of the effective date of this ordinance for a special permit.

Section 531 Junk and Junkyards

The provisions of the State Junkyard Law (General Municipal Law, Section 136) are hereby adopted by reference and shall apply to all junkyards as defined in this Ordinance. Where this ordinance conflicts with the State Junkyard Law, this Town Zoning Ordinance shall take precedence. Junkyards are allowed by special permit only as set forth in Section I.

In addition the following conditions shall apply to any approval:

- 1) junk as defined in this Ordinance shall not be located within:
 - a) one hundred (100) feet of any adjoining property line;
 - b) five hundred (500) feet of any public park, church, educational facility, nursing home, public building or other gathering place;

- c) two hundred-fifty (250) feet of any stream, water course, lake, pond, wetland, or other body of water;
 - d) one hundred (100) feet from any ROW, public road, street, or highway;
- 2) As a condition of approval, it shall be required that the facility be completely enclosed by an eight (8) foot high wood screened fenced area or completely contained within a building.
 - 3) As a condition of approval, a junkyard, upon commencing operations or thereafter during its operation, shall not be in violation of any regulation of the New York State Department of Health (DOH), New York City Department of Environmental Protection (DEP), New York State Department of Environmental Conservation (DEC) or any other regulating agency.

Section 532 Mineral Extraction

In any district, the removal of more than 1000 ton per year of soil, sand, gravel or quarried stone for sale, except when incidental to or connected with construction of a building on the same premises, requires a Department of Environmental Conservation (D.E.C.) permit.

Section 533 Mobile Homes

Individual mobile homes shall be subject to all the regulations pertaining to detached one-family dwellings, in addition to the following standards:

- A) The mobile home shall be provided with anchors and tie-downs, at least at the corners, attached to concrete footings installed below the frost line or embedded in concrete runners or a concrete slab which may be provided as the mobile home stand. Suitable anchors known as corkscrews are acceptable.
- B) The mobile home will be provided with skirts to screen the space between the mobile home and the stand. Such skirts shall be made of concrete block or a permanent material similar to that used in the mobile home and providing a finished exterior appearance, and shall be installed within four months from date of issuance of permit for the mobile home.
- C) Any construction or storage space, additional rooms, or enclosed patios or carports shall have a finished exterior appearance. No exposed building

paper, wallboard or other impermanent and unfinished material will be permitted.

- D) The mobile home bears the seal required by the State of New York or an equivalent acceptable to the State of New York.
- E) No additions shall be made to a mobile home except a canopy and/ or porch open on three sides, or an addition made by the mobile home manufacturer and/or built in conformance with New York State Uniform Fire Prevention and Building Code Regulations.

Section 534 Mobile Home Parks

A) Mobile Home Park Permit

- 1) No person shall construct or operate a mobile home park without first obtaining site plan approval and a permit.
- 2) Application for a Mobile Home Park permit shall be made to the Planning Board, and shall be accompanied by a site plan in accordance with the procedures outlined in this Ordinance.
- 3) The Board may accept, accept with recommended changes, or reject plans.
- 4) Existing mobile home parks shall file a site plan of the existing park with the Code Enforcement Officer. When an expansion is planned, an application for a permit shall be required.

B) Mobile Home Park Standards

- 1) The minimum lot area for a mobile home park shall correspond with the zone the park is in i.e. R-5, R-3, etc. and contain at least 8,000 square feet per mobile home site.
- 2) Sewage disposal and water supply systems shall have the approval of the New York State Department of Health and shall conform to the requirements of any ordinance or local law of the Town governing such systems, whichever is more restrictive.

- 3) The area shall be well drained and shall have such grades and soil as to make it suitable for mobile homes.
- 4) No mobile home shall be less than 30 feet from any other mobile home. This includes porches, carports, decks & additions.
- 5) Each mobile home site shall provide suitable connections to a central sewage disposal system, to an approved water supply system, and an underground electrical service approved by the Board of Fire Underwriters.
- 6) Garbage and refuse shall be collected and removed from the premises at least once a week. All refuse shall be stored in flytight, watertight, rodent-proof containers, which shall be located not more than 15 feet from any mobile home.
- 7) A public telephone shall be provided for each mobile home park, and fire extinguishers, approved by the local fire district officers, shall be furnished so that no mobile home shall be more distant than 15 feet from such extinguisher.
- 8) The outside burning of garbage, trash, or rubbish is prohibited.
- 9) All mobile homes and other structures such as accessory structures shall be set back at least 75 feet from the center of any road or ROW and must be 25 feet from any internal access road edge.
- 10) All access roads within a mobile home park must be at least 50 feet wide and built to standards acceptable to the Town Board of the Town of Middletown as set forth in the Subdivisions Regulation and as may be amended from time to time.
- 11) Off-street parking spaces shall be provided containing at least 180 square feet per space. Three such spaces shall be furnished for every two mobile homes.
- 12) All entrances and exits, internal access streets and public spaces shall be adequately illuminated.

- 13) A sign(s) is permitted according to the procedures set forth in Section 542, Signs.
- 14) A strip of land at least 20 feet wide shall be a buffer zone on the outside line of the property.
- 15) The operator of a mobile home park shall keep a register in which there shall be noted the name and permanent address of every mobile home owner situated in the park, the registration number of same, the date it was admitted, and the date of its removal. Such register shall be signed by the owner of the mobile home or the person bringing the same into the park.
- 16) Upon consideration of the intensity of development and total number of mobile homes proposed, the Planning Board may require the reservation of not more than 10 percent of the gross area of the mobile home park for the exclusive use of the residents therein for recreational purposes. The minimum area for such purposes shall not be less than one acre.
- 17) Sale of mobile homes shall be permitted at any properly licensed mobile home park.
- 18) Each mobile home shall have a sign on the lot identifying the lot number as permitted by Section 542, Signs.
- 19) All mobile homes in mobile home parks shall be installed according to the standards in Section 533, Mobile Homes.
- 20) Two accessory buildings shall be allowed per mobile home site.
- 21) There must be designated parking for two cars per mobile home site.

Section 535 Model Homes

The Planning Board may authorize, pursuant to Section 305 G) of the Town of Middletown Land Subdivision Regulations, the Code Enforcement Officer to issue permits for model homes in proposed subdivisions.

Model homes on display, not intended to be occupied and sold as is and where located, shall be required to meet all setback requirements and shall provide for adequate off-street parking spaces as prescribed by this Ordinance.

Section 536 Hobby Farms, Private Stable

No animals shall be pastured or housed within 100 feet of any neighboring dwelling.

Section 537 Planned Unit Development (PUD) Districts

A) Purpose

It is the intent of this section to permit the establishment of a use classification entitled "Planned Unit Development" (PUD), where the following objectives shall be sought:

- 1) Creation of a more desirable community environment than would be possible through strict application of zoning regulations found elsewhere in this Ordinance.
- 2) Preservation and enhancement of community natural resources such as water bodies, wetlands, forests, significant topographic and geologic features, and other area of scenic and ecological value.
- 3) Efficient use of a site to facilitate adequate and economical construction and maintenance of streets and drainage facilities, and water supply and sewage systems.
- 4) Innovation and variety in the type and design of residential development, providing a wide choice of living environment, occupancy tenure, and housing cost.
- 5) Open space allocation and maintenance by private initiative as an integral part of residential development.

B) Site Area and Location

- 1) The minimum site area for a planned development shall be 30 contiguous acres.

- 2) Not less than 35 percent of the gross area of a PUD shall be devoted to common open space. Such land is to be owned or controlled jointly by all residential property owners within the PUD District and is to be used for recreational purposes or preserved in its natural state. The common open space shall include lands having a significant ecological, aesthetic, and recreational characteristics, with topography, shape, dimension location, access, and improvements suitable for its intended purpose.

C) Permitted Uses

- 1) Residential: may be any type, including cluster subdivision, condominium, townhouse dwellings and related accessory uses as provided elsewhere in this Ordinance.
- 2) Non-residential: may be permitted, or required, where such uses are designed to serve primarily the residents of the PUD District.

D) Intensity of Use

- 1) The maximum number of dwelling units that may be approved in a PUD shall be computed by dividing the total gross acreage of the site by the appropriate number of dwelling units per acre for the district in which such site is located as provided in Article IV. The maximum number of dwelling units shall not be approved if, in the judgement of the Planning Board, the site plan does not indicate adequate design and management of open space areas according to the following criteria:
 - a) provision of recreational facilities
 - b) protection or enhancement of wildlife habitats
 - c) protection of surface water quality
 - d) protection or enhancement of scenic quality

E) Other Zoning Regulations

With the exception of minimum lot areas, building heights, lot and yard requirements, and the limitations imposed by Section 410, Development Limitations overlay for double lot size and increased frontage, the PUD shall comply with all other provisions of this Ordinance.

F) Utilities

All uses situated in a PUD shall be served by central water and sewer systems. All water, sewer, and gas lines, and all other lines providing power and communication service, shall be installed underground in the manner prescribed by the state and local agencies having jurisdiction.

G) Ownership

- 1) The land proposed for a PUD may be owned, leased or controlled either by an individual, corporation, or by a group of individuals or corporations. The applications shall be filed by the owner, or jointly by all owners of the property included in the application. In the case of multiple ownership the approved plan shall be binding on all owners.
- 2) Restrictions and Covenants shall be established and filed of record prior to conveyance of any lots. No buildings or structures may be erected on such common lands except as shown on the approved site plan.

H) Organization

A cluster development shall be organized as one of the following:

- 1) A Homeowners' Association approved by the Federal Housing Administration for mortgage insurance as a Planned Unit Development, and the Town Board.
- 2) A Homeowners' Association approved by the Town Board upon recommendation of the Town Attorney. Whenever a Homeowners' Association is proposed, the Town Board shall retain the right to review and approve the articles of incorporation and charter of said Homeowners' Association, and to insure that the intent and purpose of this section are carried out.
- 3) Any other arrangement approved by the Town Board, upon recommendation of the Town Attorney, as satisfying the intent of this section, including condominiums and special districts.

I) Homeowners' Association

When considering the application, the Planning Board shall on part, require the cluster development to meet the following conditions:

- 1) Be established as an incorporated non-profit organization operating under recorded land agreements through which each lot owner and any succeeding owner is automatically subject to a charge as provided in the charter of the Homeowner's Association.
- 2) Title to all common property, exclusive of land set aside for public schools, shall be placed in the Homeowners' Association, or definite and acceptable assurance shall be given that it automatically will be so placed within a reasonable period of time to be determined by the Planning Board.
- 3) Each lot owner shall have equal voting rights in the Association and shall have the right to the use and enjoyment of the common property.
- 4) Once established, all responsibility for operation and maintenance of the common land and facilities shall lie with the Homeowners' Association.
- 5) Dedication of all common land areas shall be recorded directly in the Subdivision Plat, or shall be referenced on the Plat to a dedication in a separately recorded document. Resubdivision of such areas is prohibited. The dedication shall:
 - a) save the Title to the common property to the Homeowners' Association free of any cloud of implied public dedication,
 - b) commit the developer to convey the areas to the Homeowners' Association at the approved time to be determined by the Planning Board,
 - c) grant easements of enjoyment over the area to the lot owners,
 - d) give the Homeowners' Association the right to borrow for improvements upon security of the common areas,
 - e) give it the right to suspend membership rights for non-payment of assessment or infraction of published rules.

- 6) The Homeowners' Association life shall be perpetual, and it may purchase insurances, is authorized to pay taxes, shall specify in its charter and by-laws an annual homeowner's fee and provision for assessments, and shall establish that all such charges become a lien on each property in favor of said Association. The association shall have the right to proceed in accordance with all necessary legal action for the foreclosure and enforcement of liens, and it also shall have the right to commence action against any member for the collection of any unpaid assessments in any court of competent jurisdiction.
- 7) The developer shall assume all responsibilities as previously outlined for the Homeowners' Association until a majority of the dwelling sites are sold, at which time the Homeowners' Association shall be established automatically.

J) Deeds

Each deed to each lot sold shall include by reference all recorded declarations, such as covenants, dedications, and other restrictions (including assessments and the provisions for liens for nonpayment of such).

K) Site Plan Approval

- 1) Prior to issuance of a building permit for a planned unit development, a site plan shall be submitted to and approved by the Planning Board in accordance with Article VI.
- 2) Nothing contained in this section shall relieve the owner or his agent, or the developer of a proposed planned unit development from receiving Subdivision Plat Approval in accordance with the Town's Land Subdivision Regulations. However, no additional site plan shall be required after the PUD has received Final Plat Approval.
- 3) Prior to Site Plan Approval or Final Subdivision Plat Approval, the developer shall file with the Planning Board a performance bond or other acceptable guarantee, including, but not limited to, a certified check or letters of credit in the full amount of the required improvements, to insure the pro-per installation of all public and lot improvements shown on the Final Subdivision Plat or Site Plan, and a maintenance bond to insure proper maintenance of all common lands until the Homeowners'

Association is established. The amount and period of said bonds or other guarantees shall be determined by the Planning Board, and the form, sufficiency, manner of execution, and surety shall be approved by the Town Attorney and the Planning Board.

L) Approval of Planned Unit Development

A PUD may be approved only by resolution adopted by the Town Board upon recommendation of the Planning Board.

Section 538 Public Utility and Facilities

Public utility substations and similar structures, shall comply with the following:

- A) Facility shall be surrounded by a fence set back from property lines in conformance with district regulations for front, side and rear yards.
- B) Landscaped area at least 15 feet wide shall be maintained in front, side and rear yards.
- C) Utility poles and attendant lines will be allowed, as necessary, in all districts.

Section 539 Parking, Storage or Use of Recreational Equipment

- A) Recreational vehicles or other equipment may be parked or stored on any parcel of land provided it complies with the front, side and rear setback requirements and further that it not be parked closer to the front lot line than the principal building.
- B) No such equipment shall be used for living sleeping, or housekeeping in excess of 14 days in a 60 day period when parked or stored on an individual parcel or in any location, except an approved campground, without a permit.
- C) Existing recreational vehicles shall be brought into compliance with this standard within 180 days of the effective date of this Ordinance.

Section 540 Roadside Stands

The stand shall contain no more than 200 square feet of floor space.

Any stand used for the sale of agricultural products raised by the owner of the stand shall not require any permits.

Any commercial stand shall require a Special Permit as outlined in the Ordinance.

Section 541 Seasonal Business

All seasonal use businesses or establishments must comply with the parking requirements of this Ordinance within one year of the adoption date of the Ordinance.

Section 542 Signs

A) Permit Required

A sign permit is required for the erection or alteration of all signs within the Town of Middletown except for residential and farm identification nameplates, trespass and posted signs and window signs. Just repainting a sign is not considered an alteration.

Signs shall be permitted as an accessory use only according to the standards and conditions listed below.

B) General Provisions

- 1) Signs must be constructed of durable material, maintained in good condition, and must not be allowed to become dilapidated, faded, peeled or blistered.
- 2) Every sign shall be designed and located in such a manner as to: not impair public safety; not restrict motor vehicle clear vision; not be confused with any traffic sign or signal; and not prevent free access to any door, window or fire escape.
- 3) Signs may be illuminated by a steady light provided the lighting does not illuminate nor cause excessive glare upon adjacent properties and public highways.
- 4) Flashing or oscillating lights or signs that move or appear to move are not permitted unless necessary for public safety and welfare.

- 5) Banners, pennants, ribbons, streamers, spinners or similar moving, fluttering or revolving devices are permitted unless banners, pennants, ribbons, etc are a threat to public safety.
- 6) No freestanding sign shall exceed the building it is accessory to or is not to exceed 25 feet in height, including frame, above grade level.
- 7) No sign shall be erected within a public right-of-way. All signs shall be set back at least 10 feet from all property lines and the public road right-of-way line. No sign shall overhang across property lines or above public rights-of-way. Exception is temporary banners for community functions which are permitted in the public right-of-way.
- 8) No sign shall be erected on a public utility pole or traffic control structure.
- 9) None of the standards in this Section shall apply to road name and traffic control signs erected by the New York State Department of Transportation, Delaware County Highway Department, or the local Town of Middletown Highway Department. Other signs necessary for public safety and welfare shall also be exempt.
- 10) No off-premise signs other than directional signs indicated in C) Specific Signs permitted.
- 11) All existing signs, at the time of enactment of this regulation, shall be allowed to remain as long as they are properly maintained and their use remains current.

C) Specific Signs

The following signs are permitted in any district:

- 1) Professional residence-office and home occupation signs not exceeding (8) eight square feet total.
- 2) Directional signs shall be permitted in all districts and shall be no larger than 6 square feet regardless of the number of faces.
- 3) Trespass or Posted Signs

Trespassing or posted signs shall be allowed in all districts when such signs comply with existing laws and regulations for posting property. However, the minimum distance between signs shall be 75 feet.

4) Temporary Signs

- a) No fee is to be charged for the erection of temporary signs.
- b) Signs advertising the sale or lease of property shall not exceed eight (8) square feet in area. No more than one "for sale" or "for rent" sign is allowed per property. Such signs shall be removed upon signing of a contract of sale or a lease.
- c) Other temporary signs shall not exceed 32 square feet in area per face with the maximum of two faces.
- d) Temporary signs listing the architect, engineer or contractor and/or owner on premises where construction, renovation or repair is in progress. Such signs must be removed within seven (7) days of the completion of the work or event.
- e) Grand opening signs may include banners, flags, pennants, ribbons, streamers, spinners, or similar moving fluttering or revolving devices, which shall be subject to a one (1) month limit.

5) Window signs and wall signs not exceeding 50 per cent of the total display window area or total aggregate wall area are permitted. Wall area is defined as width times height.

6) Residential or farm identification name plates not exceeding one per property and four (4) square feet in area are permitted.

7) One sign per entrance identifying a Residential Development or Mobile Home Park is permitted, said sign shall not exceed (8) eight square feet.

8) School, church, or other institutional identification signs are permitted but shall not exceed one per public road frontage and not to exceed 12 square feet in area.

- 9) Business, retail service and industrial identification signs shall be limited to one on-premise sign per public road frontage, not exceeding 32 square feet per face, with a maximum of (2) two faces.
- 10) Where one building contains more than one business or service, the sign may be 16 square feet per face with a limit of two faces and may include additional square footage of (3) three square feet per face with a limit of two faces for each business or service located in the building.
- 11) Awnings, whether fixed or retractable, that contain writing or advertising are considered to be signs, whether in the open position or not. Such awnings requires a permit and the writing or advertising is limited to 50% of the awning area.

Section 543 Swimming Pools

No private swimming pool shall be constructed or installed without first obtaining a Zoning Permit from Town of Middletown. There is no charge for this permit.

A) Accessory to Single-Family Dwellings

Such pool and their equipment shall be no closer than 10 feet to any side or rear property line and will comply with all front setback for the District involved.

B) Accessory to Residential Developments

Swimming pools accessory to residential developments, whether clustered single-family dwellings, seasonal dwellings, bungalow colonies, camps or multi-family dwellings, shall be of permanent construction and shall be located no closer than the existing setbacks within each district.

C) Non-Residential

Swimming pools that are part of non-residential uses, whether commercial or noncommercial, such as hotels, motels, clubs, campgrounds, day-use recreational facilities or institution, shall be of permanent construction and shall be located no closer than the existing setbacks within each district.

D) Drainage

The proposed drainage of such pool shall be adequate and will not interfere with the public water supply system, with existing sewage and drainage facilities, with the property of others or with public highways.

E) Designation

Such a swimming pool shall be deemed a building or structure under all applicable provisions of the Building and Plumbing Codes of the Town of Middletown. No permit shall be granted for the construction of any such swimming pool unless and until the construction plans therefore, together with plumbing plans and location map, in conformity with the above, have been filed with the Town Building Department.

F) Fencing and Screening

There shall be erected and maintained a close-type fence or other type of enclosure, in accordance with State Law, approved by the town, completely enclosing the area in which such swimming pool is situated, such fence or enclosure to be not less than (4) four feet in height above ground level, and any fence portion thereof to be supported by posts at intervals of not more than (10) ten feet. A close-type swimming pool fence is a fence that has openings no larger than (16) sixteen square inches each with the bottom or base of the fence contiguous to the ground or deck of the swimming pool. Such fence or other protective enclosures may include one or more gates or doors, provided such gates or doors are equipped with self-closing devices and self-latching devices at all times when such swimming pool is not in use. In lieu of the aforesaid self-closing and self-latching devices, such gates or doors may be so constructed as to be capable of being closed and locked, provided such gates or doors are closed and locked at all times when swimming pool is not in use.

Section 544 Parking and Storage of Certain Vehicles

No more than one automotive vehicle or trailer of any kind or type without current license plates shall be parked or stored on any lot other than in completely enclosed buildings or so they are visually screened from the road and other properties. Operational farm vehicles shall be exempt. Not more than one

unlicensed vehicle may be offered for sale by the owner, for a period of not longer than (3) three months.

All existing unlicensed vehicles shall be required to comply with the standards in this Section and in Section 531, Junk and Junkyards, within one year of the effective date of this Ordinance.

Section 545 Fences

All fences within the Town of Middletown shall not encroach upon a public right-of-way or interfere with vehicular or pedestrian traffic or interfere with visibility on corner lots, and shall not encroach upon a property line without mutual consent.

Section 546 Adult Uses

- A) Adult uses, due to their nature, have serious objectionable characteristics that can have a significant impact on the neighborhood and community in which they are located, particularly when located in close proximity to residential areas and recreational/commercial areas. The objectionable characteristics of these areas are further heightened by their concentration in any one area thereby having deleterious effects on adjacent areas. The uncontrolled proliferation of such uses would be inconsistent with the Town as a primarily residential and family oriented community as well as a recreational destination. Such uses can contribute to the blighting or downgrading of areas in which they are located as a result of their related potential for an increase in crime and the undermining of the economic and social welfare of the community. The special regulations deemed necessary to control the undesirable secondary effects arising from adult uses are set forth below. The primary purpose of these controls and regulations is to preserve the integrity and character of the residential community. The provisions of this section have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative materials, or to deny access by adults to adult uses.
- B) No adult use shall be established except upon the receipt of a Special Permit approval from the Planning Board in accordance with Section 806 (C) of this

Ordinance and the provisions herein. All adult uses shall be allowed in the district(s) as identified in Schedule I of this Ordinance.

Adult uses shall conform to the following requirements:

- 1) an adult use shall not be located within a five hundred (500) foot radius of any property currently in residential use inside hamlet boundaries. An adult use shall not be located within a one hundred (100) foot radius of any property currently in residential use in the R-5 and R-3 districts.
- 2) no adult use shall be located within a five hundred (500) foot radius of another adult use.
- 3) no adult use shall be located within a five hundred (500) foot radius of any religious institution, educational institution, public park or recreational facility, civic facility or day care center.
- 4) no more than one adult use shall be located on any lot.
- 5) no adult use shall be located in any building that is used in whole or in part for residential uses.
- 6) the required setbacks shall be doubled for each district herein and shall be measured from the property line of the premises. ~~as the same shall be appropriate for such purposes herein.~~
- 7) all building openings, including doors and windows shall be located, covered or screened in such a manner as to prevent a view into the establishment from any public street, sidewalk, or parking area.
- 8) as a condition of approval of any adult use, there shall be a restriction that no person under the age of 18 years shall be permitted into or on the premises.
- 9) any sign for an adult use shall conform to all signage requirements of this Ordinance as per Section 542. All signs should be attached to the building, no free standing shall be allowed.
- 10) no loud speakers or sound equipment shall be used by adult uses that can be heard by the public from outside the establishment

Section 547 Personal Wireless Telecommunications Service Facilities

A) General Provisions

- 1) The placement, construction, and modification of all personal wireless telecommunications facilities within the boundaries of the Town of Middletown, shall be permitted only by a Special Permit, upon Site Plan Approval pursuant to Article VIII herein and the issuance of a building permit, and subject to all the provisions of this chapter and all other applicable Regulations.
- 2) All new telecommunications antennas which are not attached to telecommunication towers shall comply with the provisions of this chapter.
- 3) All telecommunications towers existing on October 1, 2000 shall be allowed to continue their usage as they presently exist. New construction, other than routine maintenance on an existing telecommunications tower, shall comply with the requirements of this chapter.

B) Specific Provisions

- 1) Co-location Preferred. Whenever possible, new telecommunication facilities shall be sited on existing telecommunications facilities or in areas already in use for telecommunications and/or utility distribution lines in order to preserve the aesthetic and scenic value of the town. Except in cases where mechanical, structural or regulatory factors prevent co-location, applicants cannot be denied or denied space on a telecommunications tower provided the applicant pays a reasonable fee to the owner of the telecommunication tower.
- 2) Location. Applicants for telecommunication towers shall locate, erect and site the towers in accordance with the following priorities with one (1) being the highest priority and eight (8) being the lowest priority.
 - a) on existing towers or structures;
 - b) co-location on a site with existing towers or structures;
 - c) on Town of Middletown properties;
 - d) on fire district properties;
 - e) in industrial districts;

- f) in commercial districts;
- g) other developed municipal properties;
 - i) Delaware County properties
 - ii) New York State properties
- h) in residential districts.

Upon filing an application for a permit for a telecommunications tower, the applicant shall submit a report demonstrating the applicant's review of the above locations in order of priority demonstrating technologically the reason for the site selection. If the site selected is not the highest priority, then a detailed explanation as to why sites of higher priority were not selected should be included in the application.

Notwithstanding the above, the Planning Board may approve any site location within an area in the above list of priority areas if the alternative site provides reasonable services and meets the minimum needs of the service provider and the Planning Board, in writing, finds it is in the best interest of the health, safety and welfare of the Town.

- 3) Applicants for a special permit to place, construct or modify personal wireless telecommunication facilities within the Town of Middletown shall submit the following information to the Planning Board for its referral to the professional engineer or consultant for review and recommendation:
 - a) Visual environmental assessment for ("Visual EAF"), landscaping plan and visual assessment report including appropriate modeling and photography assessing the visibility from key viewpoints identified in the Visual EAF, existing tree lines, and proposed elevations.
 - b) Preliminary report prepared by a licensed professional engineer describing:
 - i) feasibility of the co-location on existing structures and telecommunication facilities,
 - ii) applicant's full map and grid coverage in the tow,
 - iii) surrounding topography in relation to the line of sight transmission,
 - iv) available road access, electric power and land-based telephone, required improvements for construction activities, including those within the public's right-of-way or land zoned or controlled by the Town of Middletown,

- v) identity of location, ownership and usage of currently existing telecommunication facilities within the Town,
 - vi) plans for construction of telecommunications accessory equipment building or structure and landscaping plans,
 - vii) proposed mitigation measures for visual impacts,
 - viii) proposed safety measures.
- c) In the case of an application for a telecommunications tower, additional information shall be provided describing: the telecommunications tower's height and design, including a cross-section of the structure; the telecommunication tower's compliance with applicable structural standards; the telecommunications tower's capacity, including the number and type of telecommunications antennas it can accommodate and the basis of the calculation of capacity.
- d) In the case of a telecommunications antenna mounted on an existing structure, additional information shall be provided indicating; the existing structure's suitability to accept the telecommunications antenna; the proposed method of affixing the telecommunications antenna to the structure; and complete details of all fixtures and coupling, and the precise point of attachment shall be indicated.
- e) Demonstration of a need for proposed telecommunications facility showing the impracticality of upgrading or expanding an existing site.
- f) Demonstration that the proposed site is the most appropriate site within the immediate area for the location of the cellular telephone facility.
- g) Inventory of existing telecommunication facilities within the Town outlining opportunities for shared use as an alternative to the proposed use. The applicant must demonstrate that the proposed telecommunications tower or telecommunications antenna cannot be accommodated on an existing approved telecommunications tower or facility.
- h) Description of the applicant's long range plans which project market demand and long range facility expansion needs within the Town.

- i) Proof of certified mail announcements to all other telecommunications providers in the area declaring the applicant's sharing capabilities and/or siting needs.
 - j) A map showing the location of the premises for which the permit is sought and sketch plan showing all features of the facility necessary for providing road access, electrical service, land based telephone line connection and/or microwave link capability within the proper boundaries of the proposed location.
 - k) Certification by a New York State Licensed Professional Engineer (PE) that the facility will comply with Federal Communications Commission ("FCC") regulations for radio frequency ("RF") emissions.
 - l) Such other information as may be required by the Planning Board or its engineer or consultant.
- c) Special Permits Used for Professional Wireless Telecommunication Service Facilities Shall be Subject to the Following General Conditions:
- 1) Separation Distance. Telecommunication facilities shall be separated from all residential dwellings by a distance of no less than 500 feet.
 - 2) All telecommunication facilities shall comply with zoning set back regulations in the affected zone. In any event, a structure shall be set back a distance at least equal to its fall zone as certified by a New York State Licensed Professional Engineer plus an additional 50% of its fall zone. Additional set backs may be required by the Planning Board in order to provide for the public safety, health and welfare.
 - 3) Minimal Visual Impacts. All telecommunications towers and telecommunications antennas shall be sited to have the least possible visual effect on the environment.
 - 4) Lighting. Telecommunications towers shall not be artificially lighted unless otherwise required by the Federal Aviation Administration or other federal, state or local authority.
 - 5) Material and Paint. Telecommunications towers and telecommunication antennas shall be of a galvanized finish or painted gray above the

surrounding tree lines, and gray or green below the tree lines; the mountings of telecommunications antennas should be nonreflective and of the appropriate color to blend with their background.

6) Screening

a) Vegetative Screening

- i) Where a personal wireless telecommunications facility abuts residential or public property, the following vegetative screening shall be provided: Native evergreen shrubs or trees capable of forming a continuous hedge at least five feet in height within two (2) years of planting to effectively screen a telecommunications tower base and accessory facilities;
- ii) Additional screening may be required by the Planning Board to screen portions of the telecommunications tower from nearby residential property or important views.

b) Architectural Screening. Creative design measures to camouflage facilities by integrating them with existing buildings and among other existing uses is preferred.

7) Height. The size of telecommunications sites should be limited to the minimum required to provide the proposed telecommunication services.

8) Access Road. Existing roadways shall be used for access to the site whenever possible.

9) Telecommunications Accessory Structures. Telecommunications support facilities such as vaults and equipment rooms, utilities and other support structures should be screened, placed underground, depressed, earth bermed or sited below the ridge line to the greatest extent feasible particularly in areas of high visibility.

10) Telecommunications Antennas. Due to their high visibility, dish and parabolic telecommunications antennas should be located at as low an elevation as possible without compromising the function of the device, preferably on the sides of buildings or ground mounted on slopes below the ridge line wherever possible, rather than elevated on telecommunications

towers. Microwave and satellite dishes should be of mesh construction wherever possible.

- 11) Utility Service. Electrical and land based telephone and/or microwave utilities extended to serve telecommunication sites shall be underground.
 - 12) Security Provisions. Each site should have a security program including physical features such as fencing, anti-climbing devices or elevating ladders on telecommunications towers and/or monitoring either by staff or electronic devices, to prevent unauthorized access and vandalism.
 - 13) Safe Zone. Telecommunications towers should be designed so that in the event of failure, they will fall within the set back area of the site and/or away from adjacent development.
 - 14) Noise. Noise producing equipment should be sited and/or insulated to minimize noise impacts on adjacent properties.
 - 15) Annual Inspection and Report. Telecommunications towers over 100 feet in height shall be inspected annually by a licensed professional engineer, and a copy of the inspection report submitted to the Town Building Inspector.
 - 16) Removal. All telecommunications facilities, including, but not limited to antennas, towers and accessory structures shall be dismantled and removed from the site when they have been inoperative or abandoned for two years. Applicants shall post a bond or other suitable undertaking as a condition of the special permit in order to guaranty removal of abandoned structures.
 - 17) Post Installation Field Report Identifying the Facilities Coverage Area, telecommunications Towers Maximum Capacity, Committed Capacity and Unused Capacity, if any, and co-located users of the telecommunications tower shall be submitted to the Town.
- D) The Planning Board May Grant the Special Permit, Deny the Special Permit or Grant the Special Permit with Written Stated Conditions.

Denial of the special permit shall be by written decision based upon substantial evidence submitted to the Board.

Section 601 Special Permit

A) Purpose

It is the intent of this section to use special permits to control the impact of certain uses upon areas where they will be incompatible unless conditioned in a manner suitable to a particular location.

B) Administration

The Town Planning Board will administer the review and granting of Special Permits.

C) Procedure

- 1) The Code Enforcement Officer shall refer the completed Special Permit Application to the Planning Board within 10 days after receiving a completed application.
- 2) The application for a Special Permit shall be accompanied by a fee, three sets of preliminary plans, and/or other descriptive matter to clearly portray the intentions of the owner. Such plans shall show location of all buildings, parking, traffic access and circulation drives, open spaces, landscaping, all existing structures and usages within 200 feet of the site boundaries, and other information necessary to determine if the proposed special use meets the requirements of this Ordinance.
- 3) The Planning Board shall hold a public hearing within 62 days after the completed application is submitted. There shall be at least five days notice to the public of the hearing.
- 4) The Planning Board shall render a decision, at a regular or special meeting, either approving, approving with conditions, requiring site plan review, or denying a special permit application within 62 days of the public hearing. A special permits application must be referred to the County Planning Board when required by General Municipal Law 239 m.
- 5) A Special Permit shall be construed to be authorization for only one particular special use and shall expire if the special use shall cease for more than six months for any reason. Special uses inherently of a seasonal

nature, including, but not limited to, nature centers, campgrounds, recreation areas, and roadside stands shall have a period extended to 12 months prior to expiration of special permits.

D) Standards Applicable To All Special Permit Uses

All special uses necessarily require site plan review. Site plan review may be waived if, in the opinion of the Planning Board, the following standards and conditions have been satisfied:

- 1) Location, use and size of structure, nature and intensity of operations involved, size of site in relation to it, and location of site with respect to existing or future streets giving access, are such that it will be in harmony with orderly development of the district.
- 2) Location, nature and height of buildings, walls, fences and signs will not discourage the appropriate development and use of adjacent land and buildings or impair their value.
- 3) Special use shall not conflict with the Comprehensive Plan.
- 4) Operation of any special use shall not be more objectional to nearby properties by reason of noise, fumes, vibration, or flashing lights than would be the operation of any permitted use.
- 5) Necessary provisions have been made to assure that all surface runoff to adjacent properties does not exceed levels in existence prior to construction.
- 6) Solar access of adjacent properties is not obstructed by said use.
- 7) All State Environmental Quality Review requirements have been met.

If said conditions and standards are not met, a Site Plan Review shall be undertaken in accordance with Section 602, Site Plan Review.

No Special Permit shall be issued for a use on a property where there is an existing violation of this Ordinance or other town law or regulation.

Section 602 Site Plan Review

A) Purpose

The intent of this section is to set forth additional general standards applying to certain land uses and activities. The nature of these uses and activities require special consideration of their impacts upon surrounding properties, the environment, community character and the ability of the town to accommodate development consistent with the objectives of this Ordinance and the Comprehensive Plan.

B) Administrative

The Planning Board, at a public meeting, shall, pursuant to Town Law, Section 274-a, review and approve, approve with modifications, or disapprove site plans before a building permit is issued.

C) Procedure

- 1) Preapplication Conference - A preapplication conference shall be held between the Code Enforcement Officer and applicant to review the basic site design concept and generally determine the information to be required on the site plan.
- 2) Submission of Site Plan and Supporting Data - The applicant shall submit a site plan and supporting data to the Code Enforcement Officer a minimum of 14 days prior to the regular monthly meeting. Included, shall be the following information (a-i) presented in drawn form and accompanied by written text. The Code Enforcement Officer, as a result of the pre-application conference, may waive any of the requirements below (a-i) prior to the submission of a formal site plan when, in his or her discretion, such requirements are not material to the project under review. The Planning Board may overrule any waivers so granted and require compliance with these requirements before accepting a site plan submission. Additionally, the Planning Board shall have the power to grant waivers of any of these requirements.
 - a) Survey of property showing existing features, including contours, large trees, buildings, structures, streets, utility easements, rights-of-way, streams, bodies of water, land use, zoning and ownership of property.

- b) Site Plan showing, scale, north arrow, section, lot, and block numbers of all adjoining properties, building location and land use areas.
- c) Traffic circulation, parking and loading spaces and pedestrian walks.
- d) Landscaping plans, including site grading, landscape design, and open spaces.
- e) Preliminary architectural drawings for buildings to be constructed including floor plans, exterior elevations and sections.
- f) Preliminary engineering plans including street improvements, storm drainage, water supply and sanitary sewer facilities.
- g) Engineering feasibility study of any anticipated problem which might arise due to proposed development as required by the Planning Board.
- h) Construction sequence and time schedule for completion of each phase for buildings, parking and landscaped areas.
- i) Description of proposed uses, including hours of operation, and expected number of employees, volumes of business and volumes of traffic generated.

3) Public Hearing

The Planning Board may conduct a public hearing of the site plan. If it is determined that a public hearing is desirable, then such public hearing shall be conducted within 62 days of the receipt of the application and the Board shall mail notice of said hearing to the applicant at least ten days before such hearing and with at least five days public notice in a paper of general circulation in the Town.

4) Site Plan Review

Prior to rendering a decision the Planning Board shall review the site plan, public hearing comments, and supporting data and take into consideration the following:

- a) Harmonious relationship between proposed uses and existing adjacent uses.
- b) Maximum safety of vehicular circulation between the site and the street.
- c) Adequacy of interior circulation, parking and loading facilities with particular attention to pedestrian safety.
- d) Adequacy of landscaping and setbacks to achieve compatibility with, and protection of, adjacent residential uses.
- e) Factors deemed necessary by the Planning Board for the health, safety, and welfare of the public.

The Planning Board may require changes or additions in relation to yards, driveways, and landscaping, to insure safety, to minimize traffic difficulties, and to safeguard adjacent properties. Should changes or additional facilities be required by the Board, final approval of site plan shall be conditional upon satisfactory compliance by owner with the changes or additions.

Any owner wishing to make changes in an approved site plan shall submit a revised site plan to the Planning Board for review and approval.

5) Decision

The Planning Board shall, within 62 days of the public hearing, if one is held, or within 62 days of the date of the meeting at which the site plan and supporting data was submitted, either approve, approve with conditions, or disapprove the site plan. The decision shall be in writing to the applicant. If a public hearing is held the Board shall give the County Planning Board ten days notice of such hearing. If no public hearing is held the site plan must be referred to the County Planning Board.

6) Financial Guarantee as a Condition of Site Plan Review

The Planning Board may require, as a condition of site plan approval, that the owner provide a financial guarantee in an amount it determines to be in the public interest, to ensure that the proposed development will be built in compliance with the accepted plans.

Section 701 General

Lots, structures, uses of land and structures and characteristics of use which lawfully existed at the time of the enactment of these regulations and which would be prohibited or restricted under the terms of these regulations may be continued subject to the following provisions.

Section 702 Intent

It is the intent of this regulations to permit non-conforming uses to continue until they are removed, but not to encourage their survival.

Section 703 Construction Approved Prior to Adoption of Ordinance

Nothing herein contained shall require any change in plans, construction, or designated use of a building for which a building permit has been heretofore issued and the construction of which shall have been diligently prosecuted within three months of the date of such permit.

Section 704 Transference

Non-conforming use rights, subject to the provisions of this Article, remain with the land when title is transferred.

Section 705 Enlargement

No non-conforming uses shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of this Ordinance.

Section 706 Changes

Once changed to a conforming use, no building or land shall be permitted to revert to a non-conforming use. A non-conforming use may not be changed to other than a conforming use.

Section 707 Discontinuance

Whenever a non-conforming use has been discontinued for a period of one year, such use shall not thereafter be re-established, and any future use shall be conforming with the provisions of this Ordinance.

Section 708 Restoration and Repair

A) Damage or Destruction

If a non-conforming building or land use, or part thereof, has been damaged or partially destroyed by any cause, it may be rebuilt or restored as such non-conforming building, structure or land use only if reconstructed or restored with the same or less floor area and cubic content, and with the same or an improved general site layout as that of the original structure or use.

B) Approval of Plans

Approval of the reconstruction or restoration plan by the Planning Board shall be required and the Board may impose conditions on such approval if such conditions would improve an otherwise bad situation and bring the nonconforming use or activity more into compliance with this Ordinance.

Section 709 District Changes

Whenever the boundaries of a district shall be changed so as to transfer an area from one district to another district of a different classification, or whenever the text of this Ordinance shall be changed with respect to uses permitted in a district, the foregoing provisions shall also apply to any non-conforming buildings or uses therein.

Section 710 Unsafe Structures

Any structure or portion thereof declared by the Code Enforcement Officer or other proper authority to be unsafe by reason of fire or any other natural or unnatural occurrence shall, within six months, be removed or restored to a safe condition.

If the owner fails to remove or restore the building or structure, the Code Enforcement Officer shall, by Certified Mail, inform the owner that he/she has 30 days to correct the situation. If no progress is made, the Town Board may order the unsafe structure to be removed and shall charge the owner of the property any costs connected therewith.

Section 711 Alterations

A non-conforming structure may not be reconstructed or structurally altered during its life to an extent exceeding in aggregate cost 50 percent of the full value of said structure, unless the structure shall be changed to a conforming use.

Section 712 Displacement

No non-conforming use shall be extended to displace a conforming use.

Section 713 Moving

Should any structure be moved for any reason for any distance, it shall thereafter conform to the requirements for the district in which it is located after it is moved.

Section 714 Existing Undersized Lots of Record

- A) Any recorded lot held in single and separate ownership prior to adoption of these regulations and which area and/or width and/or depth are less than minimum requirements specified herein for the district, may be considered as complying with these regulations and no variance therefore shall be required, provided that the minimum yard requirements set by these regulations are met.

- B) A lot of non-conforming size may be subdivided if each and every subdivision of such lot is purchased by the owner or owners of the adjoining properties to increase the size of said owner's property.

Section 715 Mobile Homes

Existing mobile homes that, for whatever reason, are to be replaced on the same lot and/or on the same site shall only be replaced with a mobile home meeting the requirements of Section 533 of this Ordinance and the construction standards of the New York State Uniform Fire and Building Code.

Section 801 Enforcement

The duty of administering and enforcing the provisions of this Code is hereby conferred upon the Code Enforcement Officer. He shall be appointed by the Town Board and receive compensation as the Town Board shall determine.

Section 802 Duties and Procedures of the Code Enforcement Officer

A) Administer the Zoning Law

The Code Enforcement Officer shall review all applications for building permits and, if the minimum requirements of this Code are met, he shall issue a permit.

If the applicant's plans do not meet the zoning requirements, he must deny the permit. The Code Enforcement Officer may not use discretionary judgement. He must enforce the "Letter of the Law."

B) Referral to the Zoning Board of Appeals

An applicant, after he has been denied a building permit, may appeal the Code Enforcement Officer's findings to the Zoning Board of Appeals (ZBA) for an interpretation or a variance. Should an appeal be requested, the Code Enforcement Officer shall notify the Secretary of the ZBA of the request and forward all necessary supporting information.

C) Referral to Town Planning Board

Any application for a special permit, change of zoning district or use that requires a Site Plan Review shall be forwarded by the Code Enforcement Officer to the Secretary of the Town Planning Board along with all supporting information.

D) Cite Zoning Violations

For any plans, constructions, building, use of premise found in violation of this Code, the Code Enforcement Officer shall order the responsible party, in writing, to remedy the conditions. He shall have the authority to secure from the Town Justice a stop order to constrain the continuance of violation,

or apply to the Supreme Court or any other court of competent jurisdiction on the Town's behalf, to issue a court order enabling the Town to enter the property and to cure any such violation. Nothing herein shall be construed to cause the Town to refrain from exercising its own police power.

E) Report to Town Board

A monthly report to the Town Board and copy to the Planning Board describing and enumerating actions taken and permits issued shall be given.

F) Public Record

The Code Enforcement Officer shall file all permit actions with the Town Clerk.

G) Appearance Ticket

The Code Enforcement Officer shall be authorized to issue and serve appearance tickets, returnable in local criminal court, in connection with a violation of this Ordinance.

Section 803 Permits Required

No use or structure shall be established, erected nor land developed until a permit has been issued by the Code Enforcement Officer who shall issue such permits in accordance with regulations in this Code.

A) Preapplication Conference with Planning Board

Preapplication conferences with the Town's Planning Board are encouraged for all applicants seeking permits for nonresidential uses or non-farm uses.

B) Application

All applications for permits shall be in writing, signed by the owner, on forms furnished by the Code Enforcement Officer and shall be filed with the officer and briefly state:

- 1) Nature and definite purpose of the building or use sought.

- 2) Description of the property and buildings to be placed thereon.
- 3) Statement of any restrictions by deed or other instrument of record.
- 4) An agreement to comply with this Ordinance and all other laws, ordinances and regulations that may be applicable.
- 5) Such other information as the Town Board, the Planning Board, the Board of Appeals or Code Enforcement Officer may require.
- 6) Sign an application for a Sewage Disposal Inspection from the New York City Department of Environmental Protection, Bureau of Water Supply, that the Code Enforcement Officer shall forward.

C) Action

The Code Enforcement Officer shall act upon all applications for building permits (which includes all supporting documents such as building plans and specifications, etc.) within 20 working days from the day of application. Such official shall issue or refuse to issue such permits.

D) Refusal

Where the proposed construction, alteration or use of the building or lot is in violation of any of the provisions of this Ordinance or when a Special Permit or site plan approval is needed, the permit shall not be issued. Such refusal shall be in writing, a copy of which shall be sent to the applicant. Such refusal will enable the applicant to submit an appeal to the Zoning Board of Appeals, or the Town Board or Planning Board, as specified elsewhere in this Ordinance, for relief from the Code Enforcement Officer's decision.

E) Term

A permit shall become void 12 months from the date of issuance unless substantial progress has been made since that date on the project described therein; provided, however, that the permit shall be renewed by the Code Enforcement Officer for an additional 12 months upon application therefor. Additional extensions shall be subject to approval by the Zoning Board of Appeals.

F) Exceptions

1) Farm Structures

The provisions of this Article VIII shall not apply to any farm building or use as defined in Article II of this Ordinance.

2) Maintenance and Repair

No building permit shall be required for normal maintenance and repair work, for painting, interior decoration, roof repairs or maintenance, landscaping and the construction of a structure, such as a utility shed or animal shelter, where the total floor area is 144 square feet or less.

G) Environmental Assessment

Until authorized by the appropriate lead agency, no building permit shall be issued for any proposed building or land use which requires an environmental assessment in accordance with the State Environmental Quality Review Act of 1975 and any County or Town rules and regulations enacted pursuant thereto. Such application shall be referred to the appropriate lead agency for a determination as to whether an environmental impact assessment will be required.

H) Fees

All fees shall be paid at the office of the Town Clerk upon filing an application. Fees shall be in accordance with the Town of Middletown standard fee schedule, as set by resolution of the Town Board.

Section 804 Certificate of Occupancy

A) Applicability

- 1) No land shall be occupied or used and no building hereafter erected, altered or extended shall be used or changed in use until a Certificate of Occupancy shall have been issued by the Code Enforcement Officer stating that the building, addition or alteration, or proposed use thereof complies with the provisions of this Ordinance.

- 2) No nonconforming use shall be maintained, renewed, changed or extended without a Certificate of Occupancy (certificate of existing use, therefore) having first been issued by the Code Enforcement Officer.
- 3) All Certificates of Occupancy shall be applied for coincident with the Application for a Building Permit. Said Certificate shall be issued within 10 days after the erection or alteration shall have been approved as complying with the provisions of this Ordinance.
- 4) The Code Enforcement Officer shall maintain a record of all certificates and copies shall be furnished upon request to any person having a proprietary or tenancy interest in the building affected.
- 5) No permit for excavation for, or the erection or alteration of, or repair to any building shall be issued until an application has been made for a Certificate of Occupancy.

B) Refusal

If the Code Enforcement Officer, after such final inspection, refuses to issue a Certificate of Occupancy, he shall state such refusal in writing with the cause, and immediately thereupon mail notice of such refusal to the applicant at the address indicated on the application.

C) Temporary Certificate of Occupancy

If use or occupancy of land, a building, or part thereof, is desired prior to completion of all details proposed in the application for which a Building Permit was issued, the Planning Board, upon request, may authorize the Code Enforcement Officer to issue a temporary Certificate of Occupancy. A letter of credit, or equal security, of sufficient amount to complete all unfinished improvements, may be required by the Planning Board before a Temporary Certificate is authorized.

- D) If a building permit is issued for a shell (a partially completed dwelling), alterations, or structural repairs, the Code Enforcement Officer shall issue a Certificate of Conformity. Such Certificate shall state that the work applied for under the permit has been completed according to existing codes, rules, and

regulations. In addition, the form shall indicate that any further work to be done will require a new building permit.

Section 805 Board of Appeals

A) Creation, Appointment and Organization

A Board of Appeals shall consist of five members appointed in accordance with Section 267 of the Town Law. The Town Board shall designate a chairman, and from its membership the Board of Appeals shall appoint a secretary and shall prescribe rules for the conduct of its affairs. No person who is a member of the Town Board shall be eligible for membership on such Board of Appeals.

B) Powers and Duties

The Board of Appeals shall have all the powers and duties prescribed by statute and by this Ordinance, which are more particularly specified as follows:

1) Interpretation

Upon appeal from a decision by an administrative official, to decide any question involving the interpretation of any provision of this Ordinance, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.

2) Appeals for Variances

Upon denial of a building permit by the Code Enforcement Officer, the Zoning Board of Appeals shall hear requests for variances.

3) Area Variance

a) Area variances may be granted where setback, frontage, lot size, density or yard requirements of this Ordinance cannot be reasonably met. The Zoning Board of Appeals, in its findings, must find that "Practical Difficulty" was present.

b) In determining "Practical Difficulty", the Zoning Board of Appeals shall respond in its findings to each of the following questions:

- i) How substantial the variance is in relation to the zoning requirement.
 - ii) Whether a substantial change will be produced in the character of the neighborhood, or whether a substantial detriment to adjoining properties will be created.
 - iii) Whether the difficulty can be eliminated by some method other than a variance which is feasible for the applicant to pursue. In the case of side yard variances in particular, it is frequently feasible, proper and possible for the applicant to alter the plot plan to locate a proposed structure or addition in a new location which does not require a variance.
 - iv) Whether, in view of the manner in which the difficulty arose and in consideration of the above factors, the interests of justice will be served by allowing the variance.
 - v) Proof of severe economic hardship, or ability to improve access to solar radiation for energy uses, may be grounds for granting an area variance. In granting any area variance the Board of Appeals shall prescribe any conditions that it deems necessary or desirable.
- c) The following shall not be considered in determining "Practical Difficulty."
- i) The owner is merely inconvenienced.
 - ii) The owner is prevented from building a second or subsequent structure.
 - iii) The owner is prevented from building a structure as large as he/she would like, provided he/she can build one of reasonable size.
 - iv) A larger building will merely improve the efficiency of a business or yield more profit.

4) Use Variance

- a) A use variance may be granted by the Zoning Board of Appeals only after the findings of the Zoning Board of Appeals establish that "Unnecessary Hardship" exist.
- b) In determining whether "Unnecessary Hardship" exists, the Zoning Board of Appeal's findings must establish each of the following criteria:
 - i) The land in question cannot yield a reasonable return if used only for a purpose allowed in that zone. A promise of greater yield by allowing a prohibited use is not to be considered.
 - ii) The use to be authorized by the variance will not alter the essential character of the neighborhood and is compatible with the area.
 - iii) The use to be authorized by the variance will not be contradictory or detrimental to the spirit or intent of the Zoning District or Zoning Law itself.
 - iv) That the hardship claimed is not self-created.

C) Procedure

- 1) All applications for variances shall be in writing on forms established by the Zoning Board of Appeals. They are available from the Code Enforcement Officer. The effective date of all applications to come before the ZBA will be the date of the next regularly scheduled meeting.
- 2) Every application shall refer to the specific provisions of the law involved and establish the details of why the variance should be granted.
- 3) Upon receipt of the completed application the Zoning Board of Appeals shall:
 - a) Schedule a public hearing within 45 days.
 - b) Arrange publication of notice of public hearing in the Town's official newspaper.
 - c) The applicant shall notify all landowners within 500 feet of the applicant's parcel by certified mail.

- d) All use variances submitted to the Board of Appeals shall be referred to the Planning Board for review as to the conformance with the objectives of the Comprehensive Plan. No decision shall be made by the Board of Appeals until such Planning Board review has been completed and a report issued. If the Planning Board fails to issue its report within 30 days, the Board of Appeals shall assume that a favorable report has been issued.
 - e) Refer application to the County Planning Board as required by General Municipal Law Section 239, if required.
 - f) Comply as required by State Environmental Quality Review Law.
- 4) Within 30 days of the public hearing, or 62 days where cases are referred to the County Planning Board, the Zoning Board of Appeals shall render a decision. If matter was referred to the County Planning Board, a copy of the Zoning Board of Appeals' findings and decision must be sent to the County Planning Board.

Section 806 Planning Board

A) General

In all cases where this Ordinance requires authorization and approval of plans by the Planning Board, no building permit shall be issued by the Code Enforcement Officer except upon authorization of and in conformity with the plans approved by the Planning Board.

B) Site Plan

The Town hereby authorizes the Planning Board to review and approve, to approve with modification, or to disapprove site plans.

C) Special Permits

The Planning Board is further authorized to issue special permits upon determination that the public health, safety and welfare shall be served and neighboring properties will not be injured.

The effective date of the special permit application will be the date of the next regularly scheduled meeting.

D) Referrals and Reports

The Town Planning Board will receive referrals from the Zoning Board of Appeals on certain actions and will prepare and submit reports to the Zoning Board of Appeals.

Section 807 County Planning Board

The Zoning Enabling Laws require that any of the following local zoning actions be referred to the County Planning Board prior to action by the local board. Any proposal for a special permit, variance, site plan approval, change in the zoning law text or map (rezoning, amending the zoning law) which would affect the real property lying within a distance of 500 feet from the boundary of:

- A) Any county,
- B) Any town,
- C) Any village,
- D) Any existing or proposed county or state park,
- E) Any right-of-way of any county or state road or parkway,
- F) Any stream or canal owned by the county,
- G) Any existing or proposed county or state owned land on which a public building or institution is situated

must be referred to the County Planning Board who shall have 30 days from date of County receipt to take action on the matter.

Section 808 Violations

A) Complaint of Violations

Whenever a violation of this Ordinance occurs, any person may file a complaint in regard thereto. All such complaints must be in writing, signed, and shall be filed with the Code Enforcement Officer who shall properly record such complaint and immediately investigate and report thereon to the Town Board.

B) Notice of Violation

Whenever, in the opinion of the Code Enforcement Officer, after examination and inspection, there appears to exist a violation of any provision of this Ordinance, or of any rule or regulation adopted pursuant thereto, he/she shall serve a written notice of violation. Such notice of violation shall inform the recipient of:

- 1) The nature and details of such violation,
- 2) Recommended remedial action which, if taken, will effect compliance with the provisions of this Ordinance and with rules and regulations adopted pursuant thereto,
- 3) The date of compliance by which the violation must be remedied or removed.

C) Stop Work Order

In case of noncompliance with this order within allotted time, the Code Enforcement Officer, by reason of the defective or illegal work in violation of the provision or requirement of this Ordinance the continuance of a building operation is contrary to public welfare, shall order in written form all further work to be stopped, and may require suspension of work until the conditions in violation have been remedied.

D) Abatement of Violation

Appropriate action proceedings may be taken at law, or in equity to prevent unlawful construction or to restrain, correct or abate the violation, or to prevent the illegal occupancy of a building, structure or premises; or to prevent illegal act, conduct a business in or about any premises, shall be written in addition to penalties otherwise prescribed by law.

E) Penalties

Violators of this Ordinance will be notified by the Code Enforcement Officer via Certified Mail. If the violations have not been removed within 20 days of the date of receipt of letter, a summons will be issued subjecting the violator to

finest of not more than \$100.00 per day, commencing at the termination on the ten-day grace period.

Section 809 Amendments

A) Procedure for Amendments

- 1) Official notice must be given and a public hearing held by the Town Board as required by law prior to approval of amendments or other such modifications as mentioned herein.
- 2) Each petition requesting a change of zoning regulations or district boundaries shall be typewritten, signed by the owner, filed in triplicate, and accompanied by the required fee.
- 3) Every such proposed amendment shall be referred to the County Planning Board, when applicable, and to the Planning Board for a report to the public hearing. The Planning Board may require a plan of proposed development for which a zoning district change is sought to assist said board in the understanding of the case.
- 4) If a protest against such change, signed by the owners' of 20 percent or more of the area of land included in such proposed change, or of that immediately adjacent extending 100 feet therefrom, or of that directly opposite thereto and extending 100 feet from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of at least four members of the Town Board as set forth by Section 265 of the Town Law of the State of New York.
- 5) Before adopting any proposed amendment to this Ordinance, the Town Board shall assess the environmental impact of such amendment in accordance with the State Environmental Quality Review Act and may determine that an environmental impact statement on such amendment shall be prepared.
- 6) In approving subdivision plats which involve modifications of the zoning regulations, the Planning Board may make such zoning changes only after these have been disclosed at the public hearing required by the Land Subdivision Rules and Regulations for the Town. Changes made pursuant to this section are at the discretion of the Planning Board and

must be made in accordance with the provisions of Section 281 of Article 16 of Town Law of the State of New York and Section 107 B) of the Town of Middletown Subdivision Regulations.