

**ORDINANCE NUMBER \_\_\_\_\_  
FOR THE YEAR 2013**

**AN ORDINANCE AMENDING CHAPTER 260 OF THE BOROUGH CODE  
DEALING WITH ZONING BY REPEALING THE EXISTING ZONING  
ORDINANCE AND ENACTING A NEW ZONING ORDINANCE**

**NOW, THEREFORE, BE IT ORDAINED AND ENACTED** by the Council of the Borough of Middletown that Section 260 of the Middletown Code of Ordinances be amended and replaced in its entirety to read as follows:

**ARTICLE 1**

**AUTHORITY, TITLE, PURPOSE, INTERPRETATION**

**§ 260-100. Authority.**

This Ordinance is enacted and ordained under the grant of powers contained in the Pennsylvania Municipalities Planning Code, 53 P.S. § 10101 et seq. (the "MPC").

**§ 260-101. Title.**

This Ordinance shall be known as and may be cited as "The Zoning Ordinance of the Borough of Middletown."

**§ 260-102. Purpose of Enactment.**

This Zoning Ordinance is enacted for the following purposes:

- A. To promote, protect and facilitate one or more of the following: the public health, safety, morals, general welfare, the provision of adequate light and air, and other public requirements.
- B. To prevent one or more of the following: overcrowding, blight, loss of health, life or property from fire, flood or other dangers.
- C. To adopt a Zoning Map dividing the Borough of Middletown into zoning districts with varying regulations.
- D. To permit, prohibit, regulate and determine the uses of land, watercourses and other bodies of water, the size, height, bulk, location, erection, construction, repair, expansion, razing, removal and use of buildings and structures, as well as yards and other open areas to be left unoccupied.
- E. To establish the maximum density and intensity of uses.
- F. To provide for the protection of natural and historic features and resources.
- G. To protect the integrity of existing residential neighborhoods.

- H. To adequately regulate existing industry in the Borough so that it may remain and its noise, odors, or other unwanted features can be minimized.
- I. To provide diverse housing opportunities, including housing that is affordable.
- J. To encourage adaptive reuse and infill development.
- K. To maintain a high standard of air and water quality and the protection of natural resources, including stream valleys, floodplains, and riverbanks, and to improve the appearance of the Borough through appropriate sign regulation, landscaping, and design controls.
- L. To act as an overall plan for the orderly growth and development of the Borough of Middletown and as such seek to implement the Middletown Borough Comprehensive Plan.

**§ 260-103. Interpretation.**

In interpreting and applying this Ordinance, its provisions shall be held to be the minimum requirements for promotion of health, safety, morals and general welfare of the Borough of Middletown. Any use permitted subject to the regulations prescribed by the provisions of this Ordinance shall conform with all the regulations of the zoning district in which it is located and with all other pertinent regulations of this and other related ordinances. This Ordinance is not intended to interfere with, abrogate, annul, supersede, or cancel any easements, covenants, restrictions or reservations contained in deeds or other agreements, but if this Ordinance imposes more stringent restrictions upon the use of buildings, structures and land than are elsewhere established, the provisions of this Ordinance shall prevail. Wherever and whenever the requirements of this Ordinance are at variance with the requirements of any other lawfully adopted laws, rules, regulations or ordinances, the most restrictive or that imposing the higher standards shall govern. In interpreting the language of this Ordinance to determine the extent of the restriction upon the use of property, the language shall be interpreted, where doubt exists as to the intended meaning of the adopted language, in favor of the property owner and against any implied extension of the restriction.

**§ 260-104. Applicability.**

- A. Any of the following activities or any other activity regulated by this Chapter shall only be carried out in conformity with this Ordinance:
  - 1. Use, occupation, erection, construction, reconstruction, movement, alteration, razing, demolition, removal, placement of extension (vertical or horizontal) of a structure, building or sign, unless relief is granted by the Zoning Hearing Board.
  - 2. Change of the type of use or expansion of the use of a structure, building or area of land.
  - 3. Creation of a lot or alteration of lot lines.
  - 4. Creation of a new use.

- B. This chapter shall not require any change to any building, structure or use legally existing at the effective date of this chapter nor to any building, structure or use planned and construction started in compliance with existing laws prior to the effective date of this chapter and completed within one (1) year after the effective date of this chapter.
  
- C. This Ordinance shall not apply to an existing or proposed building or extension thereof, used or to be used by a public utility corporation, if upon petition of the corporation, the Pennsylvania Public Utility Commission shall, after a public hearing, decide that the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public. It shall be the responsibility of the Pennsylvania Public Utility Commission to ensure that both the corporation and the Borough of Middletown have notice of the hearing and are granted as opportunity to appear, present witnesses, cross-examine witnesses presented by other parties, and otherwise exercise the rights of a party to the proceedings.

**§ 260-105. Municipality Liability.**

The granting of a Zoning Permit for the erection and/or use of a structure, building or lot shall not constitute a representation, guarantee or warranty of any kind or nature by the Borough of Middletown, or an official or employee, thereof, of the safety of any structure, building, use or other proposed plan from cause whatsoever, and shall create no liability upon or a course of action against such public official or employee for any damage that may be pursuant thereto.

**§ 260-106. Disclaimer.**

It is recognized that: the Act of June 22, 1937 (P.L. 1987, NO. 394) known as "The Clean Streams Law"; the Act of May 31, 1945 (P.L. 1198, No 418) known as the "Surface Mining Conservation and Reclamation Act"; the Act of April 27, 1966 (1<sup>st</sup> Special Session, P.L. 31, No. 1) known as "The Bituminous Mine Subsidence and Land Conservation Act"; the Act of September 24, 1968 (P.L. 1040, No. 318) known as the "Coal Refuse Disposal Control Act"; the Act of December 19, 1984 (P.L. 1140, No. 223) known as the "Noncoal Surface Mining Conservation and Reclamation Act"; the Act of June 30, 1981 (P.L. 128, No. 43) known as the "Agricultural Area Security Law"; the Act of June 10, 1982 (P.L. 454, No. 133) entitled "An act protecting agricultural operations from nuisance suits and ordinances under certain circumstances": and the Act of May 20, 1993 (P.L. 12, No 6) known as the "Nutrient Management Act" preempt zoning ordinances. Therefore, suggestions, recommendations, options or directives contained herein are intended to be implemented only to the extent that they are consistent with and do not exceed the requirements of those Acts. Nothing contrary to those Acts shall be mandated by this Zoning Ordinance.

**§ 260-107. Severability.**

It is hereby declared to be the legislative intent that if a court of competent jurisdiction declares any provisions of this Ordinance to be invalid or ineffective in whole or in part, the effect of such decision shall be limited to those provisions which are expressly stated in the decision to be invalid or ineffective, and all other provisions of this Ordinance shall continue to be separately and fully effective.

**§ 260-108. Repealer.**

The pre-existing Borough of Middletown Zoning Ordinance, as amended, is hereby expressly repealed; provided, further that nothing in this Ordinance shall be construed to affect any suit or proceeding pending in any court, or any rights acquired or liability incurred, or any permit issued or approval granted or any cause or causes of action arising prior to the enactment of this Ordinance. All ordinances or parts of ordinances and all resolutions or parts of resolutions which are inconsistent herewith by virtue of references or incorporation of requirements contained in the pre-existing Zoning Ordinance as amended shall, as nearly as possible, be construed to reference this Ordinance.

**§ 260-109. Effective Date.**

This Ordinance shall take effect in accordance with the provisions of the Pennsylvania Borough Code, 53 P.S. §§ 45101, *et seq.*

## ARTICLE 2

### DEFINITIONS

#### § 260-200. Interpretation.

The following words are defined in order to facilitate the interpretation of the Ordinance for administrative purposes and in the carrying out of duties by appropriate officers and by the Zoning Hearing Board. Unless otherwise expressly stated, the following words shall, for the purpose of this Ordinance, have the meaning herein indicated.

- A. Words used in the present tense include the future tense.
- B. The singular includes the plural.
- C. The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.
- D. The terms "shall and will", "will" and "must" are always mandatory.
- E. The words "should" or "may" are permissive.
- F. The word "used" or "occupied" as applied to any land or building shall be construed to include the words, "intended, arranged or designed to be used or occupied."
- G. The word "erected" shall be inclusive of the words "constructed, altered or moved."
- H. The masculine includes the feminine.
- I. The words "include" or "including" shall not limit the term to the specified examples, but are intended to extend the meaning to all other instances of like kind or character.
- J. Words and terms used in this Chapter shall have the meanings given in this Article. Unless expressly stated otherwise, any pertinent word or term not a part of this listing, or any of the definitions found in the various chapters of the codified ordinances of the Borough of Middletown, but vital to the interpretation of this Chapter, shall be construed to have its legal definition, or in absence of a legal definition, its meaning as defined in the most recent edition of Webster's Unabridged Dictionary shall apply.

**Section 260-201. Definition of terms.**

The following words and phrases when used in this Chapter shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

**ABANDONMENT** — The cessation of a nonconforming use of a building or premises for a period of one year or more. Subsequent use of such building or premises shall be in conformity with the provisions of this Chapter.

**ACT** — The Pennsylvania Municipalities Planning Code, 53 P.S. § 10101 *et seq.*

**ACCESSORY BUILDING OR STRUCTURE:**

- (1) **PERMANENT-** A building or structure intended to be used permanently having footers or pressure treated wood base and an approved anchoring system detached from the principal building or use, located on the same lot, for purposes customarily incidental and subordinate to the principal building or use.
- (2) **TEMPORARY -** A structure intended for use during a short period of time not to exceed six (6) months without footers but having an approved anchoring system detached from the principal building or use, located on the same lot, for purposes customarily incidental and subordinate to the principal building or use. Fully enclosed structure must be made permanent.

**ACCESSORY USE** — A use customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building.

**ACCESS ROADWAY** — An improved passageway, other than a public street, as proposed and approved in a land development plan for residential, commercial, industrial or mobile home park development in which a common ownership entity is accorded legal rights and responsibilities for the provision and maintenance of such passageways and other facilities serving the development in common, which provides the primary access to one or more groups of dwelling units or one or more multi-occupant buildings.

- (1) "Access roadways" shall have cartways not less than 24 feet in width, constructed in accordance with Borough specifications for minor streets, including necessary and adequate drainage facilities.
- (2) "Access roadways" may also include circulation walkways.

**ADULT-ORIENTED BUSINESS** — A business or club which engages in one or more of the following areas of sales, services or entertainment:

- (1) **ADULT BOOKSTORE** — Any establishment or place:
  - (a) In which 20% or more of its stock in trade, occupied sale and display area or gross sales amount consist of the following:
    - [1] Books, magazines or other periodicals, films or other forms of

- audio or visual representation which are distinguished or characterized by an emphasis on depiction, description or display of sexual activities or conduct or uncovered male or female genital areas; or
- [2] Instruments, devices or paraphernalia which are designated primarily for use in connection with sexual activities or conduct; or
- (b) To which the public is permitted or invited wherein coin- or slug-operated or electronically or mechanically controlled still or motion-picture machines, projectors or other image producing devices are maintained to show images, with or without sound, where the images so displayed are distinguished or characterized by an emphasis on depiction, description or display of sexual activities or conduct or uncovered male or female genital areas.
- (2) ADULT THEATER/CABARET — Any theater, auditorium, concert hall or other place of assembly:
- (a) Presenting any form of audio and/or visual material in which a substantial portion of the total presentation time measured over any consecutive thirty-day period is or will be devoted to the showing of material which is distinguished or characterized by emphasis on depiction, description or display of sexual activities or uncovered male or female torsos or genital areas; or
- (b) Featuring live performances on a regular basis which are distinguished or characterized by emphasis on depiction, description or display of sexual activities or by exposure of uncovered male or female torsos or genital areas for observation by patrons.
- (3) ADULT MASSAGE PARLOR/ADULT MASSAGE STUDIO — Any establishment or business in which any person or association engages in, carries on or permits to be engaged in or carried on the practice of massage. Massage refers to any method of pressure on or friction against or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating of the external soft parts of the body with hands or with the aid of mechanical or electrical apparatus, with or without such supplementing aids as rubbing alcohol, liniments or other similar preparations commonly used in this practice. Excluded from the definition of an adult massage parlor/studio is the practice of massage by licensed hospitals, licensed nursing homes, medical clinics and the offices and quarters of licensed health profession practitioners or a certified massage practitioner. Other excluded facilities include an athletic club, health club, school, gym or similar establishment where massage is offered as an incidental and accessory medical or therapeutic massage practitioner service.
- (4) OTHER ADULT-ORIENTED RETAIL, COMMERCIAL SERVICES OR ENTERTAINMENT ESTABLISHMENT — Any other business or club which primarily offers its patrons or members retail goods, commercial services or entertainment which is characterized by an emphasis on matter or activities relating to depicting, describing or displaying sexual activity or conduct or

uncovered male or female torsos or genital areas. For the purpose of this Section, businesses whose employees entertain or serve the general public, e.g., dancers, waiters and waitresses, with uncovered torsos shall be considered as adult-oriented businesses.

**AGRICULTURAL OPERATIONS** — shall be deemed to include those agricultural activities involving the use of land and buildings for nurseries, greenhouses or tilling of the soil.

**ALLEY** — A minor right-of-way, publicly or privately owned, primarily for service access to the back or side of properties and not intended for general traffic circulation.

**ALTERATION** — As applied to a building, structure or sign, any change, renovation or rearrangement in the total floor area, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

**ALTERATION, STRUCTURAL** — See "structural alteration."

#### **AMUSEMENT ARCADE**

A commercial establishment which provides, as a principal use, amusement devices and/or games of skill or chance (e.g., pinball machines, video games, skeetball, electronic or water firing ranges and other similar devices). This definition does not include the use of two or less such devices as an accessory use.

#### **ANIMAL HOSPITALS**

Any establishment offering veterinary services. Animal hospitals can treat all types of animals and can include outdoor and overnight boarding of animals.

**APARTMENT** — A dwelling in an apartment house or student housing building.

**APARTMENT, CONVERSION** — See "conversion apartment."

**APARTMENT HOUSE** — A residential building containing three (3) or more dwelling units, with a common access or independent outside access.

**AREA, BUILDING** — See "building area."

**AREA, LOT** — See "lot area."

**ATTIC** — That part of a building which is immediately below and wholly or partly within the roof framing. Within a dwelling unit, an attic shall not be counted as floor area unless it is constructed as or modified into a habitable room by the inclusion of dormer windows, an average ceiling height of five feet or more, and a permanent stationary interior access stairway to a lower building story.

**AUTOMOBILE SERVICE STATION** — Any area of land, including structures thereon, that is used for the sale of gasoline or any other motor vehicle fuel and oil and other lubricating substances, including any retail sales of motor vehicle accessories, which may not include major repairing, body and fender work, painting, vehicular sales, nor rental or automatic car washes.

**AUTOMOBILE SALES** — Any building or land devoted to the retail sales of passenger vehicles, including accessory service and repair facilities if conducted within a wholly enclosed building.

**AUTOMOBILE SERVICE GARAGE** — The retail repair, servicing, maintenance and reconstruction of passenger vehicles, but not including car washes per se.

**BASEMENT** — A story partly underground but having 1/2 or more of its height above the average level of the adjoining ground.

**BED-AND-BREAKFAST ACCOMMODATION, COMMERCIAL** — The provision of overnight sleeping accommodations and a next-morning meal for transient persons, when more than three bedrooms for such purposes are provided, in return for direct or indirect compensation for the services rendered, whether or not the premises also contain the regular dwelling of the owner. Bedrooms are deemed to have the capacity of accommodating no more than two (2) persons. Premises operated as herein described shall be regulated as a hotel or motel.

**BED-AND-BREAKFAST ACCOMMODATION, RESIDENTIAL** — The provision of overnight sleeping accommodations and a next-morning meal for transient persons, where not more than three bedrooms for such purposes are provided in a private, owner-occupied dwelling, whether compensation for services rendered is direct or indirect. Bedrooms are deemed to have the capacity of accommodating no more than two persons. Premises operated as herein described shall be deemed to be, and shall be regulated as residential tourist homes.

**BILLBOARD** — A sign upon which advertising matter of any character is printed, posted, or lettered, whether freestanding or attached to a surface of a building or other structure. A billboard is used to advertise products, services or businesses at a location other than the premises on which the sign is placed.

**BOARD** — The Zoning Hearing Board of the Borough of Middletown.

**BOARDING-, LODGING OR ROOMING HOUSE** — An owner-occupied private dwelling in which rooms are offered for rent to at least three but no more than 10 persons, whether or not table board is furnished to lodgers, and in which no transients are accommodated and no public restaurant is maintained.

**BUILDING** — Any structure having a roof supported by columns or walls and intended or usable for the shelter of persons, animals or property.

**BUILDING AREA** — The total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings, exclusive of uncovered porches, awnings, terraces, and steps

- (1) **PRINCIPAL BUILDING AREA** — The building area, as defined above, which is occupied by a principal building or buildings.
- (2) **ACCESSORY BUILDING AREA** — The building area, as defined above, which is occupied by accessory building or structures.

**BUILDING HEIGHT** — A building's vertical measurement from the mean level of the ground abutting the building to the highest point of a flat or multi-level roof or for a gable, gambrel or hip roof, to the mean height between the eaves and the ridge. Floodplain Overlay, Floodplain Management and Airport Overlay Regulations shall govern where applicable.

**BUILDING LENGTH** — The horizontal measurement of any building wall.

**BUILDING LINE** — A line parallel to the front, side or rear lot line set so as to provide the required yard.

**CANOPY** — Stand alone – a temporary accessory structure having a metal frame with canvass, cloth metal or plastic covering designed to store vehicles, non-motorized equipment or materials. Fully enclosed canopy shall be a permanent accessory structure.

**CARPORT** — A roofed structure, open on at least three (3) sides, for the temporary storage of one (1) or more vehicles and attached to a main or accessory building.

**CARTWAY** — The portion of a street right-of-way, usually paved, that is intended for vehicular traffic.

**CELLAR**— A space with less than 1/2 of its floor-to-ceiling height above the average finished grade of the adjoining ground or with a floor-to-ceiling height of less than 6 1/2 feet. Within a dwelling unit, a cellar shall not be counted as floor area, nor shall it be considered in determining the number of stories of a building.

**CEMETERY**— Land used or intended to be used for the burial of the deceased, including columbarium, crematoria, mausoleums, and mortuaries when operated in conjunction with the cemetery and within the boundaries thereof.

**CENTER LINE** — The center of the surveyed street, road, land, alley or alley right-of-way or, where not surveyed, the center of the traveled cartway.

**CERTIFICATE OF OCCUPANCY**— A statement signed by a duly authorized Borough officer setting forth that a building, structure or use legally complies with the Zoning, and other applicable codes and regulations and that the same may be used for the purposes stated therein.

**CHANGE OF USE** — An alteration of a building, structure or land by change of use, theretofore existing, to a new group which imposes other special provisions of law governing building construction, exits or zoning regulations.

**CHURCH, PLACES OF WORSHIP AND RELATED USES** — A building, structure, or group of buildings or structures, including accessory uses, designed or intended for public worship. This definition shall include rectories, convents, and church-related educational and/or day-care facilities.

**COMMERCIAL RECREATION FACILITY**— An activity operated as a business, open to the public, for the purpose of public recreation or entertainment, including but not limited to

bowling alleys, swimming pools, health clubs, miniature golf courses, museums, etc. This does not include adult-related uses or amusement arcades, as defined herein.

**COMMERCIAL SCHOOLS** — An educational facility not operated by a public agency. The range of curriculums can include all levels of academic instruction, business and technical programs and artistic, dance, baton-twirling, and musical training. Private educational institutions are principal uses that are neither home occupations nor day-care operations. These uses shall not include vocational and/or mechanical trade schools as defined in this chapter. Nursery schools shall be considered private educational institutions if they are operated as a business.

**CONDITIONAL USE** — A use which may not be appropriate to a particular zoning district as a whole but which may be suitable in certain localities within the district only when specific conditions and criteria prescribed for such uses have been complied with. Conditional uses are reviewed by the Borough Council after recommendations by the Planning Committee, in accordance with Section 2017 of this chapter.

**CONDOMINIUM**— A form of property ownership providing for individual ownership of a specific dwelling unit, or other space not necessarily on ground level, together with an undivided interest in the land or other parts of the structure in common with other owners.

**CONVENIENCE STORE** — A retail sales business which specializes in providing household products and foods.

1. Convenience stores may also provide for any or all of the following as an accessory use:
  - (a) The rental of videotapes, DVDs and Blue-ray discs, provided that an adult bookstore is specifically prohibited;
  - (b) The preparation and sales of delicatessen sandwiches and foods, provided that no patron seating is provided; and
  - (c) The use of no more than two amusement devices (e.g., pinball machines, video games, and other similar devices).
2. Convenience stores shall not include the dispensing of gasoline or other vehicle fuels, unless the appropriate approvals for an automobile filling station, as defined herein, have been obtained.

**CONVERSION APARTMENT** — An existing single-family detached, single-family semidetached, two-family detached or two-family semidetached dwelling used as or converted into no more than four (4) dwelling units each containing no more than one (1) family living independent of each other.

**CORNER LOT** — See "lot, corner."

**COURT** — An unoccupied open space, other than a yard, on the same lot with a building,

which is bounded on two (2) or more sides by the walls of such building.

1. Inner Court — A court that does not extend to a street, alley, yard or outer court.
2. Outer court — A court which extends to a street, alley, yard or other court.

#### COVERAGE AREA, RATIO AND REGULATIONS —

1. COVERAGE — The land area occupied by impervious surfaces expressed in sq. ft.
  - (a) BUILDING COVERAGE — The total land area occupied by buildings or structures, principal and accessory.
  - (b) PRINCIPAL COVERAGE — The land area occupied by principal buildings or structures.
  - (c) ACCESSORY COVERAGE — The land area occupied by accessory buildings or structures.
  - (d) AUXILIARY COVERAGE — The land area occupied by impervious surfaces other than buildings or structures.
  - (e) TOTAL COVERAGE — The total land area occupied by buildings, structures and auxiliary facilities.
2. COVERAGE RATIO – The ratio of coverage on a lot, obtained by dividing the coverage by the lot area, usually expressed in percent.
  - (a) BUILDING COVERAGE RATIO — The ratio of total building coverage on a lot, including all principal and accessory buildings or structures.
  - (b) PRINCIPAL COVERAGE RATIO — The ratio of principal building/structure coverage on a lot.
  - (c) ACCESSORY COVERAGE RATIO — The ratio of accessory building/structure coverage on a lot.
  - (d) AUXILIARY COVERAGE RATIO — The ratio of auxiliary coverage on a lot. Porous pavement shall be governed by Chapter 238.
  - (e) TOTAL COVERAGE RATIO — The ratio of total coverage on a lot.
3. COVERAGE REGULATIONS — The maximum ratios of coverage permitted, as specified in the respective zoning district regulations.

DAY CARE — The offering of care or supervision over minors or special needs adults in lieu of care or supervision by family members in accordance with Article 18. This definition does not include the offering of overnight accommodations.

DENSITY — A term used to express the allowable number of dwelling units per acre of land.

- (1) DENSITY, NET — The number of dwelling units in relation to the land area actually in use or proposed to be used for residential purposes, exclusive of public rights-of-way for utilities and streets, floodplains, steep slopes etc.
- (2) DENSITY, GROSS — The number of dwelling units in relation to the area of land of a parcel in use or proposed to be used for residential purposes, exclusive of exterior public rights-of-way.

DEVELOPMENT — Any man-made change in improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

DISTRICT or ZONE — A portion of the territory of the Borough within which certain uniform regulations and requirements or various combinations thereof apply under the provisions of this chapter.

DOMESTIC PETS— The noncommercial keeping of no more than four adult nonfarm animals, that are locally available for purchase as pets, as an accessory use to a primary residential use.

DRIVEWAY AND APRON — A paved cartway designed and constructed to provide vehicular movement between a public road and a tract of land serving as a vehicle entrance or egress to dwelling units or open land. Apron portion is measured between the curb and sidewalk.

DUMP — A lot or land or part thereof used primarily for the disposal by abandonment, dumping, burial, burning or any other means and for whatever purposes of garbage, sewage, trash, refuse, junk, discarded machinery, vehicles or parts thereof or waste material of any kind.

DWELLING — Any building or portion thereof designed and used exclusively for residential occupancy, including those listed below, but not including hospitals, hotels, institutional houses, tourist courts, and the like, offering overnight accommodations for guests or patients. All dwellings must be permanently affixed to a completely enclosed foundation constructed of currently accepted materials that shall be an entire perimeter wall and extend from below the frost line to the first floor of the building. Such foundation shall be constructed to provide sufficient structural integrity to prevent the building from heaving, shifting, or settling unevenly, due to frost action. In addition, all dwellings shall be properly connected to approved and permanently designed sewer, water, electrical and other utility systems.

1. DWELLING, SINGLE-FAMILY DETACHED — A building having only one (1) dwelling unit from ground to roof, independent outside access and open space or yards on all sides.
2. DWELLING, SINGLE-FAMILY SEMIDETACHED — A dwelling having only one (1) dwelling unit from ground to roof, independent outside access, one (1) side yard and not more than one (1) party wall in common with an adjoining dwelling.
3. DWELLING, SINGLE FAMILY ATTACHED (TOWNHOUSES)—A building containing 3

to 8 dwelling units, having not more than two party walls in common with adjoining units, and having individual outside access.

4. DWELLING, TWO-FAMILY DETACHED — A dwelling with one dwelling unit arranged over the other, and having two (2) side yards each having an independent outside access
5. DWELLING, TWO-FAMILY SEMIDETACHED — A dwelling with one dwelling unit arranged over the other, having one (1) side yard and one (1) party wall in common with an adjoining dwelling each having independent outside access

DWELLING UNIT — A portion of a building comprised of one (1) or more rooms used for living and sleeping purposes and having a kitchen with fixed cooking facilities, which is arranged for occupancy by one (1) family when in a dwelling or apartment house and is arranged for occupancy by up to four (4) unrelated people when in a student housing building meeting the definition of student housing as described in this Section. As defined above, a dwelling unit may comprise either the entirety or a portion of a dwelling.

EASEMENT — The authorization of a property owner of a right-of-way granted, but not dedicated, for limited use of private land, and within which the owner of the property shall not erect any permanent structure but shall have the right to make any other use of the land which is not inconsistent with the rights of the grantee.

ELECTRIC TRANSMISSION AND DISTRIBUTION FACILITIES — Electric public utility transmission distribution facilities, including substations.

FAMILY — One (1) or more persons occupying one (1) dwelling unit and maintaining one (1) common household, provided that no more than two (2) persons are unrelated by blood, marriage or adoption. Foster children shall be considered as adopted for the purpose of this definition.

FENCE — Any structure erected for the purpose of screening or enclosing one property from another, either to assure privacy or to protect the property enclosed.

FINANCIAL INSTITUTION— A bank, savings-and-loan association, credit union, finance or loan company, etc.

FLOOD — A temporary inundation of normally dry land areas.

FLOOD FRINGE — That portion of the floodplain adjacent to but outside the floodway.

FLOODPLAIN — A relatively flat or low land area adjoining a river, stream or watercourse, which is subject to partial or complete inundation. For the purpose of this chapter, a "floodplain" shall be capable of accommodating a flood of the one-hundred year magnitude.

FLOODWAY — The area of a floodplain required to carry and discharge floodwaters; an area subject to the unusual and rapid accumulation of surface waters from any source.

FLOOR AREA, GROSS — The sum of the floor areas of a building as measured to the surfaces of interior walls.

**FLOOR AREA, HABITABLE** — The sum of the horizontal areas of all rooms used for habitation, such as living rooms, dining rooms, kitchens or bedrooms, but not including hallways, stairways, cellars, attics, attached garages, service rooms or closets, nor unheated areas such as enclosed porches, nor rooms without at least one (1) window or skylight opening onto an outside yard or court.

**FLOOR AREA OF BUILDING** — The sum of the gross horizontal areas of the several floors of a building and its accessory buildings on the same lot, excluding cellar and basement floor areas not devoted to residential use, but including the areas of roofed porches and roofed terraces. All dimensions shall be measured between exterior faces of walls.

**FLOOR AREA RATIO** — The ratio of floor area of a building to its lot area. When a floor area ratio of four-tenths (0.4) is specified, the floor area of a building constructed on a lot of ten thousand (10,000) square feet is limited to a maximum of four thousand (4,000) square feet, the number of stories being optional; the building area may be four thousand (4,000) square feet for one (1) story, two thousand (2,000) square feet for two (2) stories, and so forth.

**FRATERNAL CLUBS AND LODGES** — An organization catering exclusively to members and their guests, or premises or buildings for social, recreational and administrative purposes which are not conducted for profit, provided that there are not conducted any vending stands, merchandising or commercial activities except as required for the membership of such club. Clubs shall include but not be limited to service and political organizations, labor unions, as well as social and athletic clubs.

**GARAGE, PRIVATE** — An accessory building or part of a principal building used for the storage of not more than three (3) automobiles owned and used by the owners or tenants of the premises. Not more than one (1) commercial vehicle or truck may be stored in a private garage.

**GARAGE, PUBLIC** — Any enclosed or covered space, other than a private garage, which is used for storage, repair, rental, servicing or supplying of gasoline or oil to motor vehicles.

**GARDEN APARTMENTS** — A type of apartment house, not exceeding three stories in height, containing three or more separate dwelling units, which have common hallways and entrances on a lot which is held in single and separate ownership having yards in common, but which may also have other joint facilities and services. The term “garden apartment” shall not be construed to include townhouses.

**GRADE, FINISHED** — The completed surfaces of lawns, walks and roads brought to grades as shown on official plans or designs relating thereto.

**GROUP HOME** — A dwelling operated by a reasonably responsible individual, family, or organization with a program to provide a supportive living arrangement for individuals where special care is needed by the individual served due to age, emotional, mental, or physical handicap. This definition shall expressly include facilities for the supervised care of developmentally disabled persons subject to protection under the Federal Fair Housing Act as amended. Group homes must be licensed where required by any appropriate government agencies, and a copy of any such licenses must be delivered to the Borough prior to beginning the use. A Group Home typically involves an individual residing on the premises for more than 30 days at a time.

**HAZARDOUS MATERIALS** — Any garbage, refuse, sludge from an industrial or other wastewater treatment plant, sludge from a water supply treatment plant, or air pollution facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from municipal, commercial, industrial, institutional, mining, for agricultural operations, and from community activities, or any combination of the above, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

(1) Cause or significantly contribute to an increase in mortality or an increase in morbidity in either an individual or the total population; or

(2) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, exposed of, or otherwise managed.

**HAZARDOUS SUBSTANCES** — Those substances or chemicals that are physical hazards as defined by the International Fire Code, whether the materials are in usable or waste condition.

**HEALTH AND RECREATION CLUB** — A commercial business that offers active recreational and/or fitness activities. Such activities are provided only to club members and their guests. Such facilities do not include golf courses.

**HEIGHT OF BUILDING** — See "building height."

**HEIGHT, STRUCTURE** — A structure's vertical measurement from the mean level of the ground abutting the structure to the highest point of the structure.

**HOME IMPROVEMENT STORE** — A facility for the retail sale of a combination of products used in the construction, repair, and improvement of homes, including but not limited to lumber, masonry products, exterior siding, roofing, plumbing fixtures, pipes, electrical supplies, floor coverings, paints and wall coverings, windows and glass, landscaping materials, hardware, tools, and other accessories. Home improvement stores shall always involve outdoor storage of materials; any facilities that sell the above-described products that do not have outdoor storage can be considered the general retail sale of goods.

**HOME OCCUPATION** — A use customarily conducted within a dwelling and carried on by the residents therein, provided that the use is clearly incidental and secondary to the use of the dwelling for dwelling purposes, the exterior appearance of the structure or premises is constructed and maintained as a residential dwelling and no goods are publicly displayed on the premises other than signs as provided herein. Home occupation shall include no-impact home based business. Extension of work related activities through telework are exempt.

**HOSPITAL** — A place for the diagnosis, treatment, or other care of humans and having facilities for inpatient care.

**HOTEL** — A building used as the more or less temporary abiding place of ten (10) or more individuals who are, for compensation, lodged, with or without meals, and in which no provision is made for cooking in any individual room or suite. A "hotel" may include restaurants, newsstands and other accessory services primarily for serving its occupants and only incidentally the public.

**HOUSING FOR THE ELDERLY** — those housing units designed for and intended for occupancy exclusively by the elderly. Such units shall include those projects developed under applicable federal and/or state housing assistance programs. Such housing units shall contain appropriate safety features pertinent to the needs of their residents and ancillary recreational and other community facilities as an integral part of their development concept. The developer of such housing units in the Borough of Middletown must guarantee that said units would be occupied solely by elderly residents. Furthermore, elderly housing shall be defined as consisting of the following living arrangement types.

- A. **MULTIFAMILY INDEPENDENT ELDERLY HOUSING** — a multiple-family dwelling designed exclusively for elderly residents living in separate dwelling units. Such residents, typically, do not require regular assistance or supervision in performing daily tasks.
- B. **PERSONAL CARE HOME** — any premises in which food, shelter, and personal assistance or supervision are provided for a period exceeding 24 hours for four or more adults who are not relatives of the operator, who do not require the services in or of a licensed long-term care facility but who do require assistance or supervision in such matters as dressing, bathing, diet, financial management, evacuation of a residence in the event of an emergency or medication prescribed for self administration. Sometimes known as “assisted living.”
- C. **NURSING HOME** - A licensed long-term care establishment providing professional nursing, healthcare, dietary and other similar personal services to convalescents, non-ambulatory and semi-ambulatory or aged persons, requiring constant care on a long-term basis.

**IMPERVIOUS SURFACE** — The horizontal area of buildings, driveways, parking spaces, patios, sidewalks, streets, structures, swimming pools, walkways and all man-made constructions which water will not readily penetrate, and which thereby prevent absorption of rain or snow-melt, increasing drainage runoff and leading to soil erosion, stream sedimentation and flooding. Other surfaces may be designated by the Borough Planning Committee, upon recommendation by the Borough Engineer, as impervious within the meaning of this definition

**IMPROVEMENT** — Any type of structure, excavation or pavement.

**JUNK** — Includes scrap metals and their alloys and bones, rags, paper, used cloth, used rubber, used rope, used tinfoil, used bottles, old or used machinery, used lumber, used boxes or crates, used pipe or pipe fittings, used tires and any vehicle currently unlicensed or uninspected or obsolete as to make it unusable in its existing condition, but subject to being dismantled.

**JUNKYARD**—An area of land, with or without buildings, used for the storage outside a completely enclosed building, of used and discarded materials, including but not limited to wastepaper, rags, metal, building materials, house furnishings, machinery, vehicles, or parts thereof, with or without the dismantling, processing, salvage, sale, or other use or disposition of the same. The deposit or storage on a lot of one or more unlicensed, wrecked, or disabled vehicles, or the major part thereof, shall be deemed to constitute a "junkyard." (A "disabled vehicle" is a vehicle intended to be self-propelled that shall not be operable under its own

power for any reason or a vehicle that does not have a valid current registration plate or that has a certificate of inspection which is more than 60 days beyond the expiration date.)

**KENNEL** — Any lot on which three or more animals (except relating to a farm) are kept, boarded, raised, bred, treated, or trained for a fee, including but not limited to dog or cat kennels.

**LANDOWNER** — The legal or beneficial owner or owners of land, including the holder of an option or contract to purchase (whether or not such option or contract is subject to any condition), a lessee if he is authorized under the lease to exercise the rights of the landowner, or other person having a proprietary interest in land, shall be deemed to be a landowner for the purposes of this chapter.

**LANDSCAPING** — The planting or arranging of natural scenery, including but not limited to grass and other plantings such as trees and shrubs, to provide a visual barrier and reduce the flow of dirt, fumes and noise.

**LAUNDERETTE** — A business premises equipped with individual clothes washing and/or drying machines for the use of retail customers, exclusive of laundry facilities provided as an accessory use in an apartment house.

**LODGING HOUSE** — See "boarding-, lodging or rooming house."

**LOT**— A parcel of land separately described by a metes and bounds description which is recorded in the Office of the Recorder of Deeds of Dauphin County by deed description or is described by an approved subdivision plan recorded in the Office of the Recorder of Deeds of Dauphin County.

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|-------------------|---|
| (1) LOT AREA      | The total area within the lot lines.  |
| (2) LOT, CORNER   | A lot at the point of intersection of and abutting two or more intersecting streets and which has an interior angle of less than 135° at the intersection of the two street lines. Corner lots shall have two front yards, one side yard and one rear yard. |
| (3) LOT, INTERIOR | A lot, other than a corner lot, the sides of which do not abut a street.  |
| (4) LOT LINE      | The lines bounding a lot as defined herein.   |
| (5) LOT, THROUGH  | An interior lot having frontage on two parallel or approximately parallel streets.  |
| (6) LOT WIDTH     | The horizontal distance measured between side property lines. On corner lots, lot width shall be measured between the right-of-way line for the non-address street and the directly opposite property line.   |

**MAXIMUM LOT COVER** — See "building coverage."

**MEDICAL OR DENTAL CLINIC**— Any building or group of buildings occupied by three or more medical practitioners and related services for the purpose of providing health services to people on an outpatient basis.

**MINI WAREHOUSE**— A building and/or series of buildings divided into separate storage units for personal property and/or property associated with some business or other organization. These units shall be used solely for dead storage, and no processing, manufacturing, sales, research and development testing, service and repair, or other non-storage activities shall be permitted.

**MANUFACTURE**— A function involving either the processing or production of materials, goods or products.

**MANUFACTURED (MOBILE) HOME** —Any structure intended for or capable of permanent human habitation, with or without wheels, and capable of being transported or towed from one place to the next, in one or more pieces, by whatsoever name or title it is colloquially or commercially known, but excluding transport trucks or vans equipped with sleeping space for a driver or drivers, and travel trailers. Mobile homes placed in parks shall meet the requirements for mobile home parks listed in § 124-64 of this chapter. Mobile homes placed on individual lots shall be considered "dwellings" and be bound by the requirements there imposed. For the purposes of § 124-19 of this chapter, any travel trailer, as defined herein, that is contained on the same parcel for more than 180 days in any calendar year shall be considered a mobile home.

**MANUFACTURED (MOBILE) HOME** — A transportable, single-family dwelling intended for permanent occupancy, office or place of assembly contained in one unit or in two units designed to be joined into one integral unit capable of again being separated for repeated towing, which arrives at a site complete and ready for occupancy, except for minor and incidental unpacking and assembly operations, and constructed so that it may be without a permanent foundation.

**MANUFACTURED (MOBILE) HOME LOT** — A parcel of land in a mobile home park, improved with the necessary utility connections and other appurtenances necessary for the erection thereon of a single mobile home, which is leased by the park owner to the occupants of the mobile home erected on the lot.

**MANUFACTURED (MOBILE) HOME PARK** — A parcel of land under single ownership which has been planned and improved for the placement of mobile homes for non-transient use, consisting of two or more mobile home lots.

**MOTEL** — A building or group of buildings, whether detached or in connected units, used as separate sleeping quarters primarily for transient automobile travelers and providing for accessory off-street parking facilities. The term "motel" includes buildings designated as "tourist courts," "tourist cabins, motor lodges" and similar terms.

**NONCONFORMING** — A building, lot, structure or use of land which does not conform to the regulations of the zone in which it is located and which was lawfully existing prior to the enactment of this chapter or the prior Zoning Ordinance.

**NO-IMPACT BASED BUSINESS** — See Home Occupation

**NONCONFORMING STRUCTURE** — A structure or part of a structure manifestly not designed to comply with the applicable use or extent of use provisions in Chapter 260, Zoning, or amendment heretofore or hereafter enacted, where such structure lawfully existed prior to the enactment of such ordinance or amendment to its location by reason of annexation. Such nonconforming structures include, but are not limited to, nonconforming signs.

**NONCONFORMING LOT** — A lot the area or dimension of which was lawful prior to the adoption or amendment of a zoning ordinance but which fails to conform to the requirements of the zone in which it is located by reasons of such adoption or amendment.

**NONCONFORMING USE** — A use, whether of land or of structure, which does not comply with the applicable use provisions in Chapter 260, Zoning, or amendment heretofore or hereafter enacted, where such use was lawfully in existence prior to the enactment of such ordinance or amendment or prior to the application of such ordinance or amendment to its location by reason of annexation.

**NURSING, REST OR RETIREMENT HOMES** — Facilities designed for the housing, boarding, and dining associated with some level of nursing care.

**OFFICE** — A place where the primary use is conducting the affairs of a business, profession, service, or government, including administration, recordkeeping, clerical work, and similar business functions. An office shall not involve manufacturing, fabrication, production, processing, assembling, cleaning, testing, repair, or storage of materials, goods or products or the sale or delivery of any materials, goods, or products which are physically located on the premises. Office supplies used in the office may be stored as an incidental use

**ONE-HUNDRED-YEAR FLOOD** — A flood that, on the average, is likely to occur once every 100 years (i.e., that has a one-percent chance of occurring each year, although the flood may occur in any year); for the purposes of this chapter, the regulatory flood.

**OPEN SPACE** — The unoccupied space open to the sky on the same lot with the building.

**PARKING COMPOUND** — primary businesses where passenger vehicles may be stored for short-term, daily, or overnight off-street parking, and connected to a street by an access drive.

**PARKING LOT** — An accessory use in which required and, possibly, additional parking spaces are provided subject to the requirements listed in Article 16 of this chapter.

**PARKING SPACE** — The space within a building or on a lot or parking lot for the parking or storage of one licensed vehicle having access to a driveway, alley or street.

**PARKS, PUBLIC AND/OR NONPROFIT** — Those facilities designed and used for recreation purposes by the general public that are 1) owned and operated by a government or governmental agency/authority or 2) are operated on a nonprofit basis. This definition is meant to include the widest range of recreational activities, excluding adult entertainment uses, and amusement arcades.

**PARTY WALL** — A wall used or adapted for joint services between two buildings or dwelling units.

**PLANNED RESIDENTIAL DEVELOPMENT** — An area of land controlled by a landowner to be developed as a single entity for a number of dwelling units, the development plan for which does not correspond in lot size, bulk or type of dwelling, density, lot coverage and required open space to the regulations established in any one residential district created, from time to time, under the provisions of this chapter.

**PLANNING COMMITTEE**-- The Planning Committee of the Borough of Middletown.

**PLAT** — A map, plan or layout showing the subdivision of land and indicating the location and boundaries of individual properties.

**PORCH** — A roofed or unroofed structure projecting from a building, separated from the building by the walls of the building and having no enclosing features except roof supports, railings and screen wire.

**PREMISES** — Any lot, parcel or tract of land and any building constructed thereon.

**PRINCIPAL BUILDING OR PRINCIPAL USE** — The basic purpose for which a building or land area is occupied, such as a dwelling or the conduct of commercial, manufacturing, institutional or governmental activities, as distinguished from accessory or incidental uses, such as a detached private garage or storage building, or other facilities which may be necessary but are incidental to the basic or primary occupancy or use.

**PRIVATE ROAD** — A legally established right-of-way, other than a street or alley, which provides access to a lot or lots.

**PROFESSIONAL OCCUPATION** — The providing of services to clients by a person having special training and qualifications, licensed or registered to practice by the Commonwealth of Pennsylvania as applicable, such as an architect, attorney, dentist, physician, engineer, realtor, accountant or the like. For the purposes of this chapter, "professional occupation" shall not include activities of a commercial, mechanical or agricultural nature, whether or not licensing or registration by the Commonwealth of Pennsylvania is involved, such as barbershops, beauty shops, contractors' offices, greenhouses or plant nurseries, hospital or nursing facilities, or the like.

**PUBLIC** — Owned, operated, or controlled by a governmental agency (federal, state, or local, including a corporation created by law for the performance of certain specialized governmental functions, and the Board of Education).

**PUBLIC HEARING** — A formal meeting held pursuant to public notice by the governing body or planning agency, intended to inform and obtain public comment, prior to taking action on zoning-related matters.

**PUBLIC MEETING** — A forum held pursuant to notice under the act of July 3, 1986 (P.L. 388, No. 84), known as the Sunshine Act, 65 Pa.C.S.A. § 701 et seq.

**PUBLIC NOTICE** — Notice published once each week for two successive weeks in a newspaper of general circulation in the Borough of Middletown. Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing. The first publication shall not be more than 30 days, and the second publication shall

not be less than seven days, from the date of the hearing. Public notice for rezoning, special exception, conditional use and/or variance requests shall also include the posting of a sign at conspicuous locations along the perimeter of the subject property; these sign(s) shall be posted at least one week prior to the hearing and will exhibit the nature, date, time and location of the hearing.

**PUBLIC SEWER** — A municipal sanitary sewer or a comparable common or package sanitary facility approved and permitted by the Pennsylvania Department of Environmental Protection. Such systems are capable of serving multiple users.

**PUBLIC USES** — Includes public and semipublic uses of a welfare and educational nature, such as schools, parks, fire stations, municipal buildings and garages, etc.

**PUBLIC WATER** — A municipal water supply system or a comparable common water facility approved and permitted by the Pennsylvania Department of Environmental Protection. Such systems are capable of serving multiple users.

**REGULATORY FLOOD** — The flood which has been selected to serve as the basis upon which the floodplain management provisions of this and other chapters and ordinances have been prepared; for the purposes of this chapter, the one-hundred-year flood.

**REGULATORY FLOOD ELEVATION** — The one-hundred-year flood elevation.

**RESIDENTIAL CONVERSION** — SEE CONVERSION APARTMENTS

**RESTAURANT** — An establishment that serves prepared food, beverages or desserts, primarily on non-disposable tableware, where the customer is normally served by a restaurant employee at their table, booth or counter, at which said items are consumed., but can provide for incidental carry-out service so long as the area used for carry-out service does not exceed 5% of the total patron seating area nor 80 square feet, whichever is less. Caterers shall be included in this definition.

**RESTAURANT, DRIVE-THROUGH** — An establishment that serves prepared food generally packaged in paper wrappers and/or disposable plates and containers and in which the food or beverages are not typically delivered to the customers table by an employee of the restaurant. Such restaurant shall also include the ordering from and delivery of food directly from the restaurant to the customer in his or her car.

**RETAIL STORE/SALES** — Retail stores are those businesses whose primary activities involve the display and retail sales of goods and products. This term shall not include adult-related facilities as defined herein.

**RIGHT-OF-WAY** — A corridor of publicly owned land for purposes of maintaining primary vehicular and pedestrian access to abutting properties, including but not limited to, roads, streets, highways and sidewalks. Abutting property owners are prohibited from encroaching across the right-of-way line. (See also "street line.")

**RIVERINE** — Relating to, formed by or resembling a river (including tributaries), a stream, brook, etc.

ROOMING HOUSE — See "boarding-, lodging or rooming house."

SATELLITE DISH ANTENNA — A device incorporating a reflective surface which is solid, open mesh or bar-configured and is in the shape of a shallow dish, cone, horn, or cornucopia. Such device shall be used to transmit and/or receive radio or electromagnetic waves between terrestrially and/or orbitally based uses. This definition is meant to include but not be limited to what are commonly referred to as "satellite earth stations," "TVROs," and "satellite microwave antennas."

SHOPPING CENTER — A group of commercial uses planned and designed for the site on which it is built, functioning as a unit, with shared off-street parking provided on the property as an integral part of the unit.

SIGN — A device for visual communication that is used to bring the subject to the attention of the public, but not including lettering or symbols that are an integral part of another structure, or flags or other insignia of any government, fraternal, or similar organization. See Section 1700 for additional Sign Type definitions.

SOLID WASTE— Garbage, refuse and other discarded materials, including, but not limited to, solid and liquid waste materials resulting from municipal, industrial, commercial, agricultural and residential activities. Such wastes shall not include biological excrement nor hazardous waste materials as defined in the Code of Federal Regulations, Title 40, Chapter 1, Part 261, dated January 4, 1985, or as amended.

SPECIAL EXCEPTION — A use that is generally compatible with a particular zone once specified criteria have been met. Special exception uses are listed by zone and approved by the Zoning Hearing Board in accordance with Section 2016 of this Chapter.

STORY — That portion of a building included between the surface of any floor and the surface of the floor next to it or, if there is no floor above it, then the space between any floor and the ceiling next above it.

STREET — Includes street, avenue, boulevard, road, highway, freeway, lane, viaduct and any other dedicated and adopted public right-of-way used or intended to be used by vehicular traffic and/or pedestrians.

STREET LINE — The dividing line between a lot and the outside boundary of a public street, alley or street right-of-way or between a lot and a private road.

STRUCTURE —

- (1) Any man-made object, including buildings, having an ascertainable stationary location on or in land or water, whether or not affixed to the land.
  - (a) STRUCTURE, ACCESSORY — A structure associated with an accessory use (e.g.,swimming pools, patios, antennas, tennis courts, garages, utility shed, etc.)
  - (b) STRUCTURE, PRINCIPAL — A structure associated with a primary use.

- (2) Structures shall not include such things as fences, sandboxes, decorative fountains, swing sets, birdhouses, birdfeeders, mailboxes, and any other similar nonpermanent improvements.

**STUDENT HOUSING** – A building containing three (3) or more apartments each containing up to four (4) persons (who may be unrelated) and who are attending undergraduate or graduate programs offered by colleges or universities or are on semester break or summer break from studies at colleges or universities, or any combination of such persons. The residents of a student home share living expenses and may live and cook as a single housekeeping unit. This definition does not include group homes or boarding-, lodging or rooming houses. This definition shall include, but not be limited to, institutionally-owned dormitories for students enrolled in an institution of higher education, with common access or independent outside access.

**SUBSTANTIAL IMPROVEMENT** — Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the fair market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the structure commences, whether or not that alteration affects the external dimensions of the structure.

**STRUCTURAL ALTERATION** — Any change to a structure or an addition to any structure, but not including normal maintenance or minor repairs or improvements.

**STRUCTURE** — Any construction of materials, having a vertical height from the surrounding land or water surface in excess of one (1) foot, including but not limited to buildings, flagpole, light standard, platform, sign or signpost, stadium, storage bin and tower.

**SUBDIVISION** — The division or re-division of a lot, tract or parcel of land by any means into two (2) or more lots, tracts, parcels or other divisions of land, including changes in existing lot lines for the purpose, whether immediate or future, of lease, transfer or ownership or building or lot development.

**SWIMMING POOL** — Any pool, not located within a completely enclosed building, and containing, or normally capable of containing, water to a depth at any point greater than 24 inches. Farm ponds and/or lakes are not included, provided that swimming was not the primary purpose for their construction.

**TAVERN** — An establishment which serves primarily alcoholic beverages for mostly on-premises consumption and which is licensed by the Pennsylvania Liquor Control Board. Taverns may also serve food.

**TELECOMMUTING or TELEWORK** — A work arrangement in which employees enjoy flexibility in working location and hours. In other words, daily commute to a central place of work is replaced by telecommunication links. Many work from home, while others, occasionally also referred to as nomad workers or web commuters utilize mobile telecommunications technology to work from coffee shops or other locations. Telework is a broader term, referring to substituting telecommunications for any form of work-related travel, thereby eliminating the distance restrictions of telecommuting.

TELEPHONE CENTRAL OFFICE — A building and its equipment erected and used for the purpose of facilitating transmission and exchange of telephone and radio messages between subscribers and other business of the telephone company, provided that, in a residential district, a "telephone central office" shall not include public business facilities, storage of materials, trucks or repair facilities or housing of repair crews.

THEATER — A building or part of a building devoted to the showing of moving pictures or theatrical productions on a commercial basis.

TOURIST HOME, COMMERCIAL — A dwelling in which more than three (3) bedrooms are provided for overnight accommodation of transient persons in return for compensation, whether or not the premises are owner-occupied. Premises operated as herein described shall be deemed to be, and shall be regulated as, hotels and motels.

TOURIST HOME, RESIDENTIAL — An owner-occupied dwelling in which no more than three (3) bedrooms are provided for overnight accommodation of transient persons in return for compensation.

TOWNHOUSE — See "dwelling, single-family attached."

TRAILER COACH — See "mobile home."

TRAVEL TRAILER — A portable structure, primarily designed to provide temporary living quarters for recreation, camping or travel purposes. In addition to the above, any of the following attributes are characteristic of a travel trailer:

- (1) The unit is of such size or weight as not to require a special highway movement permit from the Pennsylvania Department of Transportation when self-propelled or when hauled by a standard motor vehicle on a highway;
- (2) The unit is mounted or designed to be mounted on wheels;
- (3) The unit is designed to be loaded onto, or affixed to, the bed and/or chassis of a truck;
- (4) The unit contains, or was designed to contain, temporary storage of water and sewage; and
- (5) The unit contains some identification by the manufacturer as a travel trailer.

USABLE OPEN SPACE — An unenclosed portion of the ground of a lot which is not devoted to driveways or parking spaces and which is available and accessible to all occupants of the building or buildings on said lot for purposes of active or passive outdoor recreation.

USE — The specific purpose for which land or a building is designed, arranged, intended or for which it is or may be occupied or maintained. The term "permitted use" or its equivalent shall not be deemed to include any nonconforming use.

VARIANCE — A modification of any provision of this Chapter granted by the Zoning Hearing Board subject to findings specified by the Act.

VEHICLE — An assembly of parts having a wheel or wheels, or revolving track or tracks, which enable the assembly to be more readily moved over the land or other surfaces, used or intended for use in transporting persons, other living things, materials of any kind or other assemblies.

- (1) CABIN TRAILER — A roadable trailer having a fixed cabin, containing sleeping or toilet or cooking facilities or any combination thereof.
- (2) CARGO TRAILER — A roadable trailer, whether or not provided with sides or roof, used to transport materials of any kind.
- (3) CONSTRUCTION VEHICLE — A vehicle designed for earthmoving or specially fitted for the transport of liquid, solid or semisolid construction materials or having accessory machinery used in construction, such as air compressors, electric generators, materials for heating or cooling or lift equipment for persons for materials.
- (4) EQUIPMENT TRAILER — A roadable trailer designed for the transport of a particular kind or kinds of equipment, such as boats, construction or excavating machines or industrial machines.
- (5) FARM TRAILER — A trailer used on a farm property, whereon salable crops, livestock or dairy items are produced.
- (6) FARM VEHICLE — A powered vehicle used on a farm property, whereon salable crops, livestock or dairy items are produced.
- (7) GROUNDS VEHICLE — A vehicle designed or used for lawn care, gardening or other grounds keeping on residential, institutional, commercial or industrial properties.
- (8) HEAVY COMMERCIAL VEHICLE — A motor vehicle having any business identification or advertising or any passenger vehicle seating more than six (6) persons or any cargo vehicle having a deadweight capacity exceeding one (1) ton.
- (9) INDUSTRIAL VEHICLE — A vehicle designed for use in an industrial plant or grounds, for materials conveyance or having accessory machinery such as air compressors, electric generators, materials for heating or cooling of lift equipment for persons or materials.
- (10) INSPECTED MOTOR VEHICLE — A licensed motor vehicle which has a currently valid state inspection status, indicating that it has been found in a state of repair rendering it safe for operation on the public streets, under the motor vehicle laws of Pennsylvania or another state.
- (11) LICENSED TRAILER — A roadable trailer which has a currently valid license for use on the public streets, under the motor vehicle laws of Pennsylvania or another state.

- (12) LIGHT COMMERCIAL VEHICLE — A motor vehicle on which is displayed any business identification or any advertising and which would otherwise be classifiable as a personal auto or personal truck.
- (13) MOTOR BIKE or MOTORCYCLE — A motor vehicle having two (2) or three (3) wheels.
- (14) MOTOR BUS — An inspected motor vehicle designed or fitted for carrying passengers, having a total seating capacity of more than six (6) persons.
- (15) MOTOR HOME — A motor vehicle which contains sleeping, toilet and cooking facilities.
- (16) MOTOR TRUCK — An inspected motor vehicle designed for carrying cargo in an open or enclosed body, usually with seating capacity for two (2) persons, and having a deadweight cargo capacity of one (1) ton or more.
- (17) MOTOR VEHICLE — A powered vehicle, or one designed to be powered, which may be title-registered under the motor vehicle laws of Pennsylvania or another state.
- (18) PERSONAL AUTO — An inspected motor vehicle designed for carrying passengers, including passenger automobiles, passenger vans, station wagons and vans, having a capacity not exceeding twelve (12) persons, nor one and fourth (1 1/4) tons.
- (19) PERSONAL TRUCK — An inspected motor vehicle designed for carrying cargo in an open or closed body, usually with seating capacity for two (2) persons, and having a deadweight cargo capacity not exceeding one (1) ton.
- (20) POWERED VEHICLE — A vehicle having an engine or motor which is coupled to the wheels or tracks so as to propel the vehicle.
- (21) RECREATION VEHICLE — A powered vehicle designed or used for recreation purposes, generally not classified as a motor vehicle, such as terrain vehicles or snowmobiles.
- (22) RESTORATION VEHICLE — A titled motor vehicle, usually not currently licensed, usually in or having been in a deteriorated condition, which is being, or is intended to be, reconditioned inside and out, in appearance and mechanically, to good operating condition.
- (23) RESTORED VEHICLE — A restoration vehicle on which the reconditioning has been largely completed, which is now a titled motor vehicle, and which is in a condition to be a licensed and inspected motor vehicle.
- (24) ROADABLE TRAILER — A trailer which may be licensed for use on the public streets, under the motor vehicle laws of Pennsylvania or another state.
- (25) TENT TRAILER — A roadable trailer containing sleeping, toilet or cooking

facilities, or any combination thereof, and a collapsible tent-like enclosure.

- (26) TITLED MOTOR VEHICLE — A motor vehicle for which an ownership title is filed under the motor vehicle laws of Pennsylvania or another state.
- (27) TRAILER — A vehicle designed and arranged to be pulled or towed by a powered vehicle.
- (28) UNPOWERED VEHICLE — A vehicle having no engine or motor for propulsion, which is propelled by pushing or towing.
- (29) UTILITY TRAILER — A trailer, other than a roadable trailer, which is designed or intended for use only on private property.
- (30) VEHICLE PARKING — The short-term storage of an inspected motor vehicle or licensed trailer, during periods when not in use, said periods usually measurable in minutes, hours or days.
- (31) VEHICLE STORAGE — The long-term storage of any vehicle not in regular use, with periods usually measurable in weeks, months or years.

VETERINARIAN'S OFFICE — A building used primarily for the treatment, by a veterinarian, of small domestic animals such as dogs, cats, rabbits and birds or fowl. No outdoor boarding of animals is permitted.

VOCATIONAL-MECHANICAL TRADE SCHOOL — An educational use that offers training of the following occupations:

- (1) Truck driving;
- (2) Engine repairs;
- (3) Building construction and general contracting;
- (4) Woodworking;
- (5) Masonry;
- (6) Plumbing;
- (7) Electrical contracting; and
- (8) Other similar trades.

WATERCOURSE — A permanent or intermittent stream, river, brook, run, creek, channel, swale, pond, lake or other body of surface water carrying or holding surface water, whether natural or artificial.

WIND ENERGY CONVERSION SYSTEM (WECS) — Any device which converts wind energy to mechanical or electrical energy.

WECS UNIT — Shall include blades, hubs to which blades are attached, and any device, such as a tower, used to support the hub and/or rotary blades, etc.

WHOLESALE — Any distribution procedure involving persons who, in the normal course of business, do not engage in sales to the general public.

WINDOW — An opening to the outside, other than a door, which provides all or part of the required natural light or natural ventilation, or both, to an interior space.

YARD — An area between the permitted structures and the property lines.

- (1) YARD, FRONT — A yard between a structure and a street line and extending the entire length of the street line. In the case of a corner lot, the yards extending along all streets are "front yards" one of which is primary and the other secondary. In the case of a lot other than a corner lot that fronts on more than one (1) street, the yards extending along all streets are "front yards."
- (2) YARD, REAR — The area contained between the rear property line and the principal structure. On reverse frontage lots, the rear yard shall be considered that area between the principal structure and the property line directly opposite the street of address.
- (3) YARD, SIDE — The area(s) between a principal structure and any side lot line(s). On corner lots, the side yard shall be considered those areas between the principal structure and the property lines directly opposite the streets.

ZONING — The designation of specified districts within the Borough, reserving them for certain uses, together with limitations on lot size, heights of structures and other stipulated requirements.

ZONING OFFICER — The duly constituted municipal official designated to administer and enforce this chapter in accordance with its literal terms.

**ARTICLE 3**  
**ZONING DISTRICTS**

**§ 260-300. Classes of districts.**

For the purpose of this chapter, the Borough of Middletown is hereby divided into the following zoning districts:

- R-1 Residential District, Single-Family, Low Density
- R-1A Residential District, Single-Family, Medium Density
- R-C Residential District, Cluster Overlay
- R-2 Residential District, Multifamily
- R-3 Residential District, Planned Development
- C-1 Commercial District, Shopping
- C-2 Commercial District, General
- M-1 Manufacturing District, Limited
- C- D Conservation District
- F-P Flood Damage Prevention Overlay District
- A-Z Airport Zoning Overlay District

**§ 260-301. Zoning Map.**

The location and boundaries of the districts are established as shown on the attached Zoning Map of the Borough of Middletown, dated August 25, 2011, and as subsequently revised. The Zoning Map and all notations, references and other data shown thereon are hereby incorporated by reference into this Ordinance as if all were fully described herein.

**§ 260-302. Interpretation of district boundaries.**

Where any question or uncertainty exists or may develop with respect to the boundaries of any district as indicated on the Zoning Map, the following rules shall apply:

- A. Where district boundaries are indicated as approximately coinciding with the center lines of streets, highways, railroad lines or streams, such center lines shall be construed to be such boundaries.
- B. Where district boundaries are so indicated that they approximately coincide with lot lines, such lot lines shall be construed to be said boundaries.

- C. Where district boundaries are so indicated that they are approximately parallel to center lines of streets or highways, such district boundaries shall be construed as being parallel thereto and, if indicated, at such distances there from on the Zoning Map.
- D. Where district boundaries divide a lot, the location of such boundaries are deemed to be lines which connect two (2) identification points.
- E. For unsubdivided land or where a Zoning District boundary divides a lot, the location of the Zoning district boundary, unless dimensions are indicated, shall be determined by the use of the scale appearing on the Zoning Map.

**§ 260-303. Determination of boundaries.**

In the case of any uncertainty as to Zoning District boundaries on the Zoning Map, the Zoning Officer shall determine the Zoning District Boundaries; however, the Zoning Officer's determination may be appealed to the Zoning Hearing Board.

**§ 260-304. Boundary descriptions.**

The legal descriptions of the various districts contained in this Zoning Ordinance are hereby made a part of this chapter. Editor's Note: The legal descriptions and amendments thereto are on file in the office of the Borough Secretary.

**§ 260-305. Application of Regulations**

Except as provided herein, no building or land shall hereafter be used or occupied and no building or part thereof shall be erected, moved or altered unless in conformance with the regulations specified for the Zoning District in which it is located; with the exception of existing nonconformities as of the effective date of this Ordinance, which may be altered in compliance with Article 19 of this Ordinance.

## ARTICLE 4

### R-1 RESIDENTIAL DISTRICT, SINGLE-FAMILY, LOW DENSITY

#### **§ 260-400. Purpose.**

The purpose of this Article is to provide for the basic regulations governing the use of land and the size of lots, yards and buildings within the district. For certain specific uses or exceptional situations, these basic regulations are supplemented by Article 15 and by other provisions of this chapter.

#### **§ 260-401. Permitted uses.**

In the R-1 District, the following uses shall be permitted by right:

- A. Single-family detached dwellings.
- B. Public parks, playgrounds and municipal recreation areas.
- C. Accessory buildings and uses customarily incidental to the above uses in accordance with Article 15 and Article 18.
- D. Home occupations in accordance with Section 1813.A.
- E. Cemeteries.

#### **§ 260-402. Special exception uses.**

In the R-1 District, the following uses are permitted by special exception:

- A. Churches or similar places of worship, parish houses and convents.
- B. Public and private schools, including colleges and institutions of higher education.
- C. Municipal buildings, public libraries and museums in accordance with Section 1508.
- D. Electric and telephone public utility transmission and distribution facilities, including substations, water pumping stations and reservoirs.
- E. Residential cluster development limited to single-family detached dwellings only as per Section 602.A.

#### **§ 260-403. Height restrictions.**

- A. The height of a principal building shall be not greater than thirty-five (35) feet. The height of a dwelling shall be not less than one (1) story.
- B. As a special exception, the height of spires, belfries, cupolas, or domes not

used for human occupancy, chimneys, ventilators, skylights, water tanks, bulkheads, utility poles or towers, silos and ornamental or necessary mechanical appurtenances may be greater than thirty-five (35) feet.

**§ 260-404. Area regulations.**

The lot area per dwelling unit shall be not less than seven thousand five hundred (7,500) square feet.

**§ 260-405. Yards.**

Each lot shall have front, side and rear yards of not less than the depth or width herein specified:

- A. Front yard depth: thirty (30) feet.
- B. Side yard, interior lot, width: twelve (12) feet each.
- C. Side yard, corner lot, width: thirty (30) feet for the yard abutting the street.
- D. Rear yard depth: thirty (30) feet.

**§ 260-406. Lot width.**

The lot width shall be not less than seventy-five (75) feet on an interior lot and ninety (90) feet on a corner lot.

**§ 260-407. Lot coverage.**

- A. The building coverage ratio shall not exceed forty percent (40%).
- B. The total coverage ratio shall not exceed fifty percent (50%).

**§ 260-408. Off-street parking.**

Off-street parking shall be in accordance with the provisions of Article 16 herein.

## ARTICLE 5

### R-1A, RESIDENTIAL DISTRICT, SINGLE-FAMILY, MEDIUM DENSITY

#### § 260-500. Purpose.

The purpose of this Article is to provide for the basic regulations governing the use of land and the size of lots, yards and buildings within the district. For certain specific uses or exceptional situations, these basic regulations are supplemented by Article 12 and by other provisions of this chapter.

#### § 260-501. Permitted uses

In the R-1A District, the following uses shall be permitted by right:

- A. Single-family detached dwellings.
- B. Single-family semidetached dwellings.
- C. Single-family attached (Townhouses).
- D. Two-family detached dwellings.
- E. Public parks, playgrounds and municipal recreation areas.
- F. Home occupations in accordance with Section 1813.A.
- G. Cemeteries
- H. Accessory buildings and uses customarily incidental to the above uses in accordance with Article 15 and Article 18.

#### § 260-502. Special exception uses.

In the R-1A District, the following uses are permitted by special exception:

- A. Churches or similar places of worship, parish houses and convents.
- B. Public and private schools, including colleges and institutions of higher education.
- C. Municipal buildings, public libraries and museums in accordance with **Section 1508**.
- D. Electric and telephone public utility transmission and distribution facilities, including substations, water pumping stations and reservoirs.

#### § 260-503. Height restrictions.

- A. The height of a principal building shall be not greater than thirty-five (35) feet. The height of a dwelling shall be not less than one (1) story.

- B. As a special exception, the height of spires, belfries, cupolas, or domes not used for human occupancy, chimneys, ventilators, skylights, water tanks, bulkheads, utility poles or towers, silos and ornamental or necessary mechanical appurtenances may be greater than thirty-five (35) feet.

**§ 260-504. Area regulations.**

For each type of dwelling, the lot area per dwelling unit shall be not less than indicated below:

- A. Single-family detached dwelling: six thousand (6,000) square feet.
- B. Single-family semidetached dwelling: four thousand (4,000) square feet.
- C. Single-family attached dwelling (Townhouse): on an interior lot, one thousand eight hundred (1,800) square feet; on any exterior lot, two thousand eight hundred (2,800) square feet.
- D. Two-family detached dwelling: three thousand (3,000) square feet.

**§ 260-505. Lot width.**

For each type of dwelling, the lot width shall be not less than indicated below:

- A. Single-family detached dwelling: sixty (60) feet on an interior lot and eighty (80) feet on a corner lot.
- B. Single-family semidetached dwelling: forty (40) feet on an interior lot and sixty (60) feet on a corner lot.
- C. Single-family attached dwelling: eighteen (18) feet on an interior lot, twenty-eight (28) feet on an exterior lot and thirty-eight (38) feet on a corner lot.
- D. Two-family detached dwelling; sixty (60) feet on an interior lot and eighty (80) feet on a corner lot.
- E. Two-family semidetached dwelling: forty (40) feet on an interior lot and sixty (60) feet on a corner lot.

**§ 260-506. Yards.**

Each lot shall have front, side and rear yards of not less than the depth or width herein specified:

- A. Front yard depth — twenty (20) feet, to be measured from the property line; except where 50 percent or more of the improved lots on such block frontage on one side of a street currently have front yards of less depth than is currently required for that district, and where the clear majority of such lots are already developed, then the building line of the majority of the buildings on that side of the block may be used provided that the setback to the primary structure or garage, where the off-street parking is provided on the

driveway, is a minimum of 25 feet.

- B. Side yard, interior lot, width: ten (10) feet each.
- C. Side yard, corner lot, width: twenty (20) feet.
- D. Rear yard depth: thirty (30) feet.

**§ 260-507. Lot coverage.**

- A. The building coverage ratio shall not exceed forty percent (40%).
- B. The total coverage ratio shall not exceed fifty percent (50%).

**§ 260-508. Off-street parking.**

Off-street parking shall be in accordance with the provisions of Article 16 herein.

## ARTICLE 6

### R-C RESIDENTIAL DISTRICT, CLUSTER

#### § 260-600. Purpose.

- A. The purpose of this Article is to provide for an optional form of residential development allowing greater flexibility and variety of dwelling types and locations while maintaining a maximum dwelling-unit density not exceeding that which would otherwise be permitted.
- B. It is intended that R-C Cluster Developments:
  - 1. Improve living environments.
  - 2. Reduce residential development, maintenance and service costs.
  - 3. Encourage attractive, compatible originality and variety in dwelling structures, placement and individual and overall site design.
  - 4. Provide open spaces developable for appropriate active and passive recreation and leisure uses.
  - 5. Conserve and preserve in natural conditions the largest practicable proportion of lands heavily wooded or sloped, functioning as drainage ways or waterways and retaining, for the benefit of development residents and the general populace, aesthetic and scenic vistas.

#### § 260-601. Designation of district.

R-C Residential District, Cluster, zones are not pre-established or designated. In accordance with the provisions of this Article and other applicable requirements, an R-C Zone may be proposed and approved to replace existing R-1 Residential District, Single-Family, or R-1A Residential District, Multifamily, zones.

#### § 260-602. Permitted uses.

In the R-C District, the following uses are permitted by right:

- A. Single-family detached dwellings.
- B. Single-family semidetached dwellings.
- C. Two-family detached dwellings.
- D. Two-family semidetached dwellings.
- E. Single-family attached dwellings.
- F. Accessory buildings and uses customarily incidental to the above dwelling uses in accordance with Article 15 and Article 18.

- G. Home occupations, in accordance with the provisions of Section 1813 A.
- H. Signs erected and maintained in accordance with the provisions of Article 17 for residential districts.
- I. Electric, telephone, sanitary sewer, storm water management and water supply facilities, as required to serve the development.
- J. Development community civic center facilities.
- K. Development active and passive recreation and leisure facilities.
- L. Natural open space.

**§ 260-603. Permitted dwelling density.**

- A. For land zoned R-C in place of R-1, the maximum dwelling-unit density shall be four (4) units per gross acre.
- B. For land zoned R-C in place of R-1A, the maximum dwelling-unit density shall be eight (8) units per gross acre.
- C. "Gross acreage" includes the total land area of a tract proposed for R-C zoning prior to development.

**§ 260-604. Dwelling types.**

The following types of dwellings, and no other, shall be permitted in cluster developments:

- A. The following types, as defined in Article 2, under "dwelling."
  - 1. Single-family detached, individual.
  - 2. Single-family semidetached.
  - 3. Single-family attached.
  - 4. Two-family detached.
  - 5. Two-family semidetached.
- B. The following types, as variations of the basic types indicated above, and as herein further described:
  - 1. Lot line house: a single-family detached dwelling with one (1) side located on the side lot line of the private lot. Windows are prohibited on the lot line side of the dwelling. The lot adjoining the lot line side must provide an easement for maintenance of the dwelling.

2. Multiplex dwelling: a single-family attached dwelling with variations permitted in the individual and grouped structures. Units may be one (1) or two (2) stories or combinations thereof. Attachment of units may be horizontal or vertical: common walls may be side to side, rear to rear or side to rear and may include all or only part of the wall of either attached structure; attachment may be by ceiling-floor structure. Each dwelling unit shall have independent outside access.

**§ 260-605. Mix of dwelling types.**

- A. Each cluster development shall contain at least three (3) types of dwellings.
  1. At least twenty percent (20%) of the dwellings shall be single-family detached.
  2. No other type (single-family semidetached; single-family attached; or two-family) shall exceed forty percent (40%) of the total units.
- B. For cluster developments for which final plans are to be submitted for approval of portions or sections of the development, the overall preliminary plan submission shall include a final section and phasing plan.
  1. The phasing plan shall be subject to specific recommendation by the Borough Planning Committee and specific approval by the Borough Council.
  2. The phasing plan shall clearly delineate, by metes and bounds, the proposed final sections.
  3. The phasing plan, in addition to being superimposed on the diagrammatic layout of the development, shall include a tabular presentation of the following data for each section and for the section-by-section cumulative totals:
    - (a) Numbers and types of dwellings.
    - (b) Percent of each dwelling type of total dwellings.
    - (c) Gross land area in acres.
    - (d) Dwelling units per gross acre.
    - (e) Land area in public streets.
    - (f) Land area in access roadways.
    - (g) Land area in common lands.
    - (h) Land area in individual lots.
    - (i) Land area in cluster group or condominium section lots.

(j) Impervious coverage, in area and percent, computed in accordance with Section 615.

(k) Time schedule for development

4. Final section plans shall be in accordance with the approved phasing plan. No change shall be permitted unless a complete, revised phasing plan is proposed and approved in accordance with Subsection B.1 above.

**§ 260-606. Height and story regulations.**

- A. The height of a building shall be measured in accordance with the definition of "building height" in Article 2.
- B. No dwelling shall be less than one (1) story in height.
- C. No dwelling structure shall contain more than two (2) stories of dwelling or living space.
- D. No dwelling structure shall exceed thirty-five (35) feet in height.
- E. No accessory structure shall exceed sixteen (16) feet in height.

**§ 260-607. Condominium cluster groups and sections.**

- A. Dwellings of any type (detached, semidetached or attached) may be grouped together either as contiguous, attached structures or detached with minimal spacing between structures, in any combination.
- B. No more than twelve (12) units may be included in any one (1) clustered group of dwellings.
- C. No cluster group shall have more than six (6) units which are attached or closely adjacent having the same frontal orientation. Adjacent frontal orientations shall have an included angle of not more than one hundred fifty degrees (150°).
- D. No more than two (2) contiguous units shall have the same frontal alignment. Offsets of frontal alignments shall be at least three (3) feet.
- E. No more than four (4) cluster groups may be included in one (1) condominium section. Spacing between cluster groups in a condominium section shall be in accordance with Section 610.

**§ 260-608. Dwelling lots.**

Every dwelling structure shall be located on a land area delineated on the development plans by metes and bounds to provide that such area can be made private to the dwelling or dwellings thereon.

- A. Lots for individual structures shall have an area not less than that indicated in Section 609. The frontal orientation of each lot shall be indicated on the development plans.
- B. Lots for condominium dwellings may be delineated for each cluster group or for each condominium section.
  - 1. However delineated, the total lot area shall be not less than the sum of the areas indicated in Section 609 for all the dwellings included thereon.
  - 2. The front of each dwelling unit shall be indicated on the development plans.

**§ 260-609. Minimum lot areas.**

Dwelling lots required by Section 609 shall contain minimum land areas as follows, in square feet per dwelling unit:

<b>Dwelling Type</b>	<b>Individual</b>	<b>Condominium</b>
Single-Family Detached	5,000	3,000
Single Family Semi-Detached	4,000	2,500
Two-Family Detached	2,500	1,500
Two-Family Semi-Detached	2,500	1,500
Single-Family Attached:		
Any 1 Unit	2,000	1,500
Average for Attached Group	2,500	2,000

**§ 260-610. Building spacing and yards.**

The actual yard dimensions of open areas between buildings and the defined dwelling lot lines shall be as proposed in the development plan and as approved by the Borough Council. The following spacing of buildings shall be provided, evidenced by appropriate dimensional information in the development plan:

- A. No dwelling structure shall be less than thirty (30) feet from any property line of the overall development tract.
- B. No dwelling structure shall be less than thirty (30) feet from the right-of-way of any public street.
- C. No dwelling structure shall be less than thirty (30) feet from a defined access roadway. This spacing may be reduced to twenty (20) feet where the structure wall is that of an attached garage or one having no door or window openings.
- D. No dwelling structure shall be less than ten (10) feet from the perimeter of any multiple-space parking compound. For parking compounds having walkways along the parking spaces, the compound perimeter shall be at the dwelling side of the walkway.

- E. Where dwelling structures on individual lots or dwelling clusters on condominium lots are not separated from other dwellings or dwelling clusters by public streets, access roadways or parking compounds, the following minimum spacing shall be provided:

<b>Arrangement of Structures</b>	<b>Distance (Feet)</b>
Front to Front	60
Front to Rear	60
Front to Side	40
Rear to Rear	60
Side to Side	30

**§ 260-611. Accessory buildings, structures and uses.**

Accessory buildings, structures and uses shall be permitted in accordance with the provisions of this Section.

- A. Accessory buildings or structures shall not exceed sixteen (16) feet in height.
- B. Accessory buildings or structures, including detached private garages, shall not be located in front of any dwelling.
- C. An accessory building or structure shall be not less than ten (10) feet from any other building or structure.
- D. An accessory building, structure or use shall be not less than twenty (20) feet from any street, access roadway, multiple-space parking compound or property line of the overall development tract.
- E. An accessory building or structure shall be not less than five (5) feet from an individual or condominium lot line.
- F. Accessory buildings may contain home workshop areas, workshop areas associated with maintenance activities for the development and sanitary facilities incidental to the workshop uses. Any other dwelling or habitable spaces or facilities are prohibited.

**§ 260-612. Off-street parking.**

A cluster development shall be provided with off-street parking facilities in accordance with these provisions. These facilities shall be clearly shown on all development plans, with driveways, turning areas and parking spaces fully dimensioned.

- A. Parking spaces and driveways shall be in accordance with Article 16.
- B. Number of spaces.
  - 1. Not less than two (2) spaces shall be provided for use by the resident occupants of each dwelling unit.

2. Not less than one (1) space for every four (4) dwelling units shall be provided for use by visitors.
  3. Additional spaces shall be provided as required to accommodate development management and maintenance personnel and vehicles.
- C. Location of spaces.
1. No parking space shall access directly to any public street nor to the cartway of any access roadway.
  2. Parking facilities may be included on individual lots.
  3. Parking facilities may be provided in multiple-space parking compounds.
  4. Parking spaces intended for use by resident occupants of a dwelling unit shall be not more than one hundred fifty (150) feet from the dwelling.
  5. Visitor parking spaces shall be provided among those intended for use by resident occupants.
- D. Turnaround areas. All parking facilities shall include sufficient turnaround areas to permit vehicles entering a public street or private access roadway by forward movement.
- E. Walkways shall be provided in accordance with Section 613.

**§ 260-613. Walkway system.**

- A. Standard sidewalks shall be provided along both sides of all public streets.
- B. Individual or cluster lots located along access roadways shall be interconnected by a system of circulation walkways, which shall also connect to the public street sidewalks. These circulation walkways may be independent of or may be parallel to and included in the access roadways.
- C. Entrance walkways shall connect building entrances to a public street sidewalk, a circulation walkway or to an off-street parking facility.
- D. Multiple-space parking compounds shall include circulation walkways generally and appropriately along their perimeters. The circulation walkways shall extend to the entrance walkways of the dwellings served by the parking compound.

**§ 260-614. Utility services.**

Cluster development proposals and development plans shall include detailed information on utility services in compliance with Borough standards and specifications, as herein required:

- A. Development plans shall show the locations and easements for distribution systems for cable communications, electric power, and gas and telephone services.
- B. Development plans shall describe the proposed solid waste collection arrangements and shall describe and show the location of all solid waste storage facilities in the development. A storage facility shall be provided on each lot. For lots containing more than one (1) dwelling, a common facility may be provided.
- C. A cluster development shall not be approved unless the sanitary sewer system is to be connected to the public sewer system. The development plan shall show the locations of the sewer collection lines and manholes, connection thereof to the public system, all related easements and pipe sizes and shall include the collection system profiles.
- D. A cluster development shall not be approved unless the water supply distribution system is supplied from the public water system or from an equivalent system.
  - 1. The water supply system shall provide minimum water flows and fire hydrant locations acceptable to the Middletown Fire Department.
  - 2. The locations of the water mains and fire hydrants and connection to the public system shall be shown on the development plan, including related easements and pipe sizes.
  - 3. If an alternative, equivalent supply system is proposed, the development plan shall include detailed information on water sources, locations, water flow rates, storage and pressure capacities and related information on construction and maintenance of the system.

**§ 260-615. Impervious coverage limitation.**

The total impervious coverage in a cluster development shall not exceed thirty percent (30%) of the land area, as herein provided:

- A. The maximum area permitted to be covered shall be computed as follows:
  - 1. The total land area of the cluster development tract shall be reduced:
    - (a) By the land area to be included within public street rights-of-way.
    - (b) By the land area to be utilized for access roadways.
    - (c) By the land area to be utilized for circulation walkways associated with access roadways.
  - 2. Impervious coverage shall not exceed thirty percent (30%) of the result of the above subtractions.

- B. The limitation described above shall be observed for the cluster development as a whole, not for individual or condominium lot areas, and shall also be observed for any portion or section of a cluster development proposed for final approval.
- C. The site data summation on all preliminary and final development plans shall include the land areas and percentages for: total land area; land area of public streets; land area for access roadways; land area for circulation walkways; net land area; land area for dwelling structures, including patios or other covered areas; land area for accessory buildings and structures; land area for off-street parking; land area for entrance walkways; land areas covered for recreation, community center or maintenance facilities; and any other covered areas.

**§ 260-616. Buffer areas.**

Cluster developments shall be provided with buffer areas along all tract property lines. To the extent feasible, all existing natural buffer areas shall be retained. Along all other property lines, a buffer area shall be constructed. The cluster development plan shall include a buffer area plan.

- A. The buffer area plan shall designate and describe all natural areas to be retained.
- B. The buffer area plan shall designate all constructed buffer areas and shall include a construction and planting scheme.
  - 1. Constructed buffers shall, as a minimum, be provided with at least two (2) staggered rows of evergreen trees at least six (6) feet in height, spaced not more than ten (10) feet apart. Additional plant materials and earthen mounding are encouraged to soften the linear appearance of the tree rows.
  - 2. The buffer area plan shall show the locations, sizes and species of plantings and the elevational treatment.

**§ 260-617. Common lands and open space.**

All land areas in a cluster development which are not included in individual or condominium lots or in public streets or access roadways shall be included in designated common land areas.

- A. The development plan shall describe each common land area by metes and bounds and show its size.
- B. The site data summation on all preliminary and final plans shall show the total area of all included common lands and percentage thereof of the total land area.
- C. Common land areas may contain community center facilities, development maintenance facilities, active and passive recreation areas and storm

drainage facilities.

- D. All common land areas shall have direct access on a public street or access roadway.
- E. Larger common land areas should have multiple access points related to size, location and usability.
- F. The provision of nature trails in land areas so suited is encouraged.
- G. The cluster development maintenance program shall include specific provisions for the care and maintenance of all common land areas and all facilities developed thereon.
- H. Land covenant or deed restriction provisions, to establish the common land areas and limitations of use thereof in perpetuity, shall be submitted for review and approval by the Borough. These provisions shall describe the rights and responsibilities of all dwelling unit occupancies, both on individual and condominium lots.

**§ 260-618. Signs.**

The types, sizes and placement of signs in a cluster development shall be in accordance with the provisions of Article 17 of this chapter as applicable to residential districts.

**§ 260-619. Fences and walls.**

Except as otherwise specified for particular dwelling types in the sections above, fences or walls in a cluster development shall be in accordance with the provisions of Section 1505.

**§ 260-620. Procedures for designation of district.**

Proposals to replace an existing R-1 or R-1A Residential District designation with an R-C designation shall be made and considered for approval in accordance with the provisions herein, in accordance with other applicable provisions of this chapter and pursuant to the provisions for a change or amendment of zoning regulations of the Pennsylvania Municipalities Planning Code, as amended.

- A. Consideration of changing the designation of a land area may be initiated by the Middletown Borough Planning Committee or by the Middletown Borough Council.
  - 1. Prior to proceeding in accordance with Section 2015 of this Chapter, a clear description of the land area to be considered shall be prepared.
    - (a) For the purposes of public notice display, the area shall be clearly delineated on a copy of the Borough Zoning Map.

- (b) For the purposes of public notice publication, a description utilizing commonly identifiable boundaries, such as streets and alleys, to the extent practical, shall be prepared.
- 2. For the purposes of public notice publications, a statement of the reasons for considering the application of the R-C District to the land area shall be prepared.
  - (a) The statement shall indicate how the permission for cluster development is in harmony with the general purposes, goals, objectives and standards of the Borough Comprehensive Plan.
  - (b) The statement shall describe the particular reasons for permitting cluster development, such as special housing objectives or physical features of the land area particularly appropriate for such development.
  - (c) The amount of development to be expected under the cluster permission shall be compared with the amount which could be expected under standard development regulations.
  - (d) The availability of adequate public sanitary sewer and water supply shall be described, and the effect of development traffic on the streets providing access shall be indicated.
- B. Consideration of changing the designation of a land area may be requested by a landowner or by a developer having the permission of the landowner. Such requests shall be submitted and processed by the Borough, as provided herein.
  - 1. The procedural steps shall be those described in Article 20 of this Chapter.
  - 2. Submission of the request shall include the payment to the Borough in accordance with the Schedule of Fees and a written agreement to pay any excess of costs exceeding that amount.
    - (a) The costs involved shall be those directly associated with processing the request, such as public notice advertising, reproduction, mailing and stenographic services.
    - (b) Any excess fees paid over actual costs incurred shall be refunded to the applicant.
  - 3. The submission shall include a concept plan for the development, which provides the following information:
    - (a) A location plan showing the land area and surrounding areas of the Borough, including identification of all streets and alleys, and the existing zoning districts.

- (b) A property plan plotting the tract boundaries by metes and bounds, showing all included, adjacent or associated streets or alleys, locating and describing all other easements, providing topographic contour information and all other salient physical features, indicating the existing uses of all adjacent lands and showing the location of the existing sanitary sewer and water supply systems to which the development would be connected.
- (c) A development concept plan which provides the following information:
  - [1] Proposed types and mix of dwellings;
  - [2] Expected locations of all residential structures;
  - [3] Proposed non-dwelling buildings and facilities, locations and uses;
  - [4] Public streets to be constructed;
  - [5] Access roadways to be provided;
  - [6] Off-street parking facilities;
  - [7] [Storm water drainage facilities;
  - [8] Walkway system;
  - [9] Buffer areas, natural and constructed;
  - [10] Total tract area, total dwelling units and density; and
  - [11] Expected coverage, related to Section 615.
- (d) A report addressing the following:
  - [1] The capacity of the sanitary sewer system to handle the flow from the development at the point at which it would be connected;
  - [2] The capacity of the public water supply system to supply the necessary domestic and fire-fighting water flow at the point at which it would be connected and any additional facility which would be required; or a description of an alternative system to be constructed, having adequate capacities; and
  - [3] The effect of development traffic on the public streets which provide access to the development tract.

**§ 260-621. Development plan requirements.**

Applications for approval of development of land zoned R-C Residential District Cluster, shall be submitted and processed as provided herein:

- A. Where the R-C District was established by Borough initiative, a concept plan in accordance with **Section 620** shall be submitted for review and approval by the Borough Planning Committee and the Borough Council.
- B. Following approval of a concept plan as required in Subsection A immediately above or approval of an R-C District upon a landowner/developer request submitted and processed in accordance with Section 620.B, a preliminary and final plat(s), supporting plans and documents shall be submitted for approval in accordance with Chapter 238, Subdivision of Land.
  - 1. In addition to the requirements of Chapter 238, Subdivision of Land, the preliminary plat shall fully detail compliance with all standards and provisions in this Article.

**§ 260-622. Walkway specifications.**

- A. A circulation walkway is an improved pedestrian passageway proposed and approved in a land development plan to provide for general pedestrian circulation in a development where access roadways are approved or as may otherwise be required for approval of the development. Circulation walkways shall have a minimum width of four (4) feet and shall be either concrete or bituminous construction as follows:
  - 1. Concrete construction.
    - (a) Provide concrete with a minimum twenty-eight-day strength ( $f'_c$ ) of three thousand (3,000) pounds per square inch and with air-entraining admixture. Provide three and five-tenths percent (3.5%) minimum to seven and five-tenths percent (7.5%) maximum of entrained air.
    - (b) Form the foundation at a depth of four (4) inches below the finished grade of the walkway. Thoroughly compact the foundation to a firm even surface.
    - (c) Place concrete four (4) inches deep. Provide a broom finish, finished transversely for the full width of the walkway. Form outside edges and joints with a one-fourth-inch-radius edging tool. Form transverse dummy joints at five-foot intervals approximately one-eighth ( $1/8$ ) inch wide and at least one (1) inch deep.
    - (d) Place one-half-inch pre-molded expansion joint material for the full depth of the walkway at thirty-foot maximum intervals.

- (e) Cure the concrete by either wet curing for seven (7) days or through the use of a liquid chemical curing compound.
2. Bituminous construction.
- (a) Install a base course of four (4) inches minimum compacted depth on a compacted subgrade. Provide No. 2A coarse aggregate in accordance with PENNDOT Specification Pub. 408, Section 703, as last amended.
  - (b) Provide a bituminous binder course of two (2) inches minimum compacted depth in accordance with PENNDOT Specification Pub. 408, Section 408, as latest amended.
  - (c) Provide a bituminous wearing course of one (1) inch minimum compacted depth in accordance with PENNDOT Specification Pub. 408, Section 420, as latest amended.
  - (d) Construct the bituminous course in accordance with PENNDOT Specification Pub. 408, Section 401.3, as latest amended.
- B. An entrance walkway is an improved pedestrian passageway connecting a building entrance to a public street sidewalk, to a circulation walkway or to other areas.

## ARTICLE 7

### R-2 RESIDENTIAL DISTRICT, MULTIFAMILY

#### **§ 260-700. Purpose.**

The purpose of this Article is to provide for the basic regulations governing the use of land and the size of lots, yards and buildings within the district, to allow for the orderly development and/or redevelopment of a variety of housing types, municipal and other uses. For certain specific uses or exceptional situations, these basic regulations are supplemented by other provisions of this chapter.

#### **§ 260-701. Permitted uses.**

In the R-2 District, the following uses are permitted by right:

- A. Single-family detached dwellings.
- B. Single-family semidetached dwellings.
- C. Single family attached (Townhouse).
- D. Two-family detached dwellings.
- E. Two-family semidetached dwellings.
- F. Student Housing, in accordance with Section 1819.
- G. Churches or similar places of worship, parish houses and convents.
- H. Home occupation, in accordance with Section 1813 (A).
- I. Municipal buildings, public libraries and museums, in accordance with Section 1508.
- J. Professional offices.
- K. Public parks, playgrounds and municipal recreation areas.
- L. Accessory buildings and uses customarily incidental to the above uses in accordance with Article 15 and Article 18.

#### **§ 260-702. Special Exception Uses**

The following uses are permitted as a Special Exception when authorized by the Zoning Hearing Board:

- A. Apartment houses, in accordance with Section 1803.A.
- B. Boarding, lodging and rooming houses, in accordance with Section 1807.

- C. Residential bed-and-breakfast accommodations and residential tourist homes, in accordance with Section 1806.
- D. Public and private schools, including colleges and institutions of higher education.
- E. Electric and telephone public utility transmission and distribution facilities, including substations, water pumping stations and reservoirs.
- F. Funeral homes.
- G. Fraternal clubs and lodges.
- H. Group homes (see definition).
- I. Manufactured Home Parks, per Section 1815.
- J. ECHO Housing per the criteria in Section 1811.

**§ 260-703. Height restrictions.**

The height of a principal building shall be not greater than thirty-five (35) feet. The height of a dwelling shall be not less than one (1) story. The height of the professional office building shall be not less than one (1) story.

**§ 260-704 Area regulations.**

- A. For each type of dwelling, the lot area per dwelling unit shall be not less than indicated below:
  - 1. Single-family detached dwelling: six thousand (6,000) square feet.
  - 2. Single-family semidetached dwelling: four thousand (4,000) square feet.
  - 3. Single-family attached dwelling: on an interior lot, one thousand eight hundred (1,800) square feet; on any exterior lot, two thousand eight hundred (2,800) square feet.
  - 4. Two-family detached dwelling: three thousand (3,000) square feet.
  - 5. Two-family semidetached dwelling: two thousand (2,000) square feet.
  - 6. Apartment dwelling: see Section 1803.
  - 7. Student housing: two thousand (2,000) square feet per dwelling unit
- B. The lot area for all professional office buildings shall be not less than six thousand (6,000) square feet.

- C. The lot area for all other uses shall be not more than six thousand (6,000) square feet.

**§ 260-705. Lot width.**

For each type of dwelling, the lot width shall be not less than indicated below:

- A. Single-family detached dwelling: sixty (60) feet
- B. Single-family semidetached dwelling: forty (40) feet.
- C. Single-family attached dwelling: eighteen (18) feet on an interior lot, twenty-eight (28) feet on an exterior lot.
- D. Two-family detached dwelling: sixty (60) feet.
- E. Two-family semidetached dwelling: forty (40) feet. Required 40 ft. min. lot width must apply to the two units that are stacked on one side of the party wall. The other two units in the building will require an additional 40 feet of lot width.
- F. Apartment dwelling: see Section 1803.
- G. Student housing: one hundred (100) feet.
- H. All other purposes: eighty (80) feet.

**§ 260-706. Yards.**

Each lot shall have front, side and rear yards of not less than the depth or width herein specified:

- A. Front yard depth: ten (10) feet, to be measured from the property line; except where 50 percent or more of the improved lots on such block frontage on one side of a street currently have front yards of less depth than is currently required for that district, and where the clear majority of such lots are already developed, then the building line of the majority of the buildings on that side of the block may be used.
- B. Side yard interior lot, width: ten 10 feet each.
- C. Side yard, corner lot abutting the street shall have a minimum width equal to the minimum front yard depth. provided that the setback to the primary structure or garage, where off-street parking is provided on the driveway is a minimum of 25 feet for the yard abutting the street.
- D. Rear yard depth: thirty (30) feet.

**§ 260-707. Lot coverage.**

- A. The building coverage ratio shall not exceed forty percent (40%).
- B. The total coverage ratio shall not exceed fifty percent (50%).

**§ 260-708. Off-street parking.**

Off-street parking shall be in accordance with Article 16 herein.

**§ 260-709. Coverage increase by special exception.**

As a special exception, the Zoning Hearing Board may grant an increase in the coverage ratios in accordance with the provisions herein.

- A. The building coverage ratio may be increased, not to exceed a total of forty-five percent (45%).
- B. The total coverage ratio may be increased, not to exceed a total of sixty percent (60%).
- C. Copies of an application for special exception and all required additional information shall be submitted to the Borough Planning Committee for review and recommendation prior to the hearing by the Zoning Hearing Board, per Article 20.
  - 1. Submission to the Planning Committee shall be not less than fourteen (14) days prior to its regular meeting.
  - 2. The Planning Committee shall refer the application plan to the Borough Engineer for general review, and comprehensive review of the drainage plan.
- D. An application shall be filed per Article 20.
- E. The added coverage shall not adversely impact the reasonable use and enjoyment of adjacent properties.
- F. The appearance, bulk and use of the added coverage shall be comparable with the permitted uses and practices in the area in which located.
- G. The lot shall have not less than the minimum frontage required for each principal use located on a minor or larger street.
- H. All principal buildings shall be served by public sewer and water supply.

## ARTICLE 8

### R-3 Residential District, Planned Development

#### § 260-800. Purpose.

This Article is intended to encourage, in districts where permitted, the design of well-planned large-scale primarily residential developments which may contain a variety of types and designs of residential structures, resulting in a neighborhood pattern that will create a community relationship between residents, providing within the neighborhood the accommodations for a variety of social, recreational and community activities and necessities for their everyday needs.

#### § 260-801. Permitted uses.

In the R-3 District, the following uses are permitted:

- A. Permitted residential uses.
  - 1. Single-family, detached dwellings.
  - 2. Single-family, semidetached dwellings.
  - 3. Single-family attached dwellings (townhouses).
  - 4. Two-family, detached dwellings.
  - 5. Two-family, semidetached dwellings.
  - 6. Apartment houses, Section 1803.
  - 7. A retirement village, which will include a nursing home and a variety of residential living units for the elderly.
  - 8. Home occupations, Section 1813.
  - 9. Boarding-, lodging or rooming houses, Section 1807.
  - 10. Student housing, Section 1819.
- B. Permitted commercial uses: All those uses set forth in Section 802.J.

#### § 260-802. Planned development area requirements.

- A. The plans must be reviewed and recommendations made by the Planning Committee.
- B. Minimum plot. The minimum plot for planned development shall be not less than twenty-five (25) acres.

- C. Plans. The developer shall submit for review by the Planning Committee a plan showing the size, location, height and use of all structures, the location and width of all streets and parking areas and areas to be set aside for parks and recreation, the location, size and type of planting for buffer yards and the location and type of utilities to be provided.
- D. Density.
1. Maximum density for single-family detached structures shall not exceed six (6) dwelling units per net residential acre. Net residential acreage shall not include areas for recreation, circulation, service and slope and stream protection.
  2. Maximum density for structures designed for two (2) families shall not exceed eight (8) dwelling units per net residential acre.
  3. Maximum density for multiple-dwelling structures not exceeding three (3) stories shall not exceed twenty-five (25) families per net residential acre.
  4. Maximum dwelling units per townhouse structure shall not exceed six (6).
  5. Maximum dwelling units per garden apartment structure two (2) stories in height shall not exceed twenty-four (24).
  6. Maximum dwelling units per garden apartment structure three (3) stories in height shall not exceed thirty-six (36).
  7. In the case of high-rise elevator apartments, the maximum density shall not exceed seventy-five (75) families per net residential acre. Structures shall not exceed twelve (12) stories.
  8. The maximum length of a single structure shall not exceed three hundred forty (340) feet.
- E. Overall maximum density. The maximum gross density for the total acreage within the planned development program of a specific developer shall not exceed twenty (20) dwelling units per gross acre.
- F. Setbacks. All dwelling units shall be set back from public right-of-way lines not less than thirty (30) feet and from all adjacent property lines not less than fifty (50) feet.
- G. Interior yards. Interior yards and/or structural spacing shall be provided in accordance with the following schedule:

<b>REQUIRED INTERIOR YARDS AND SPACING (FEET)</b>					
<b>Arrangement of Structures</b>	<b>Number of Dwelling Units Per Structure</b>				
	<b>1</b>	<b>2</b>	<b>12</b>	<b>18</b>	<b>Over 18*</b>
Front to Front	110	110	110	110	110
Front to Side	50	50	50	50	50
Front to Rear	100	100	100	100	100
Side to Rear	30	30	30	35	40
Side to Side	15	30	30	35	40
Rear to Rear	100	100	100	100	100

\*Add four (4) feet for each story by which the structure exceeds five (5) stories.

- H. Lawns and planting. The exterior yard shall be maintained with lawns and planting.
- I. Recreation areas. Areas for recreation shall be provided at accessible and strategic locations throughout the development area. The open space and recreation areas shall be provided in accordance with the following schedule:

<b>Population</b>	<b>Size (Acres)</b>
2,000	3.25
3,000	4.00
4,000	5.00
5,000	6.00

- J. Development commercial center.
  - 1. The purpose and intent of the development commercial center is to provide and require a unified and organized arrangement of buildings, service and parking areas, together with adequate circulation and open space, all planned and designed, as an integrated unit, in a manner so as to provide and constitute an efficient, safe, convenient and attractive shopping area to serve the planned development requirements and needs as well as those of adjacent areas. In the development commercial center, no land shall be used and no building erected or altered which is arranged, intended or designed for other than one (1) or more of the following uses:
    - (a) Retail stores and shops.
    - (b) Restaurants, delicatessens and cocktail lounges.
    - (c) Pharmacies or drugstores; stationery, book, tobacco and news media surveyors.
    - (d) Self-service laundry and dry-cleaning and pickup stations.

- (e) Barbershops and beauty shops.
- (f) Automotive service stations.
- (g) Business and professional offices.
- (h) Banks and financial institutions.
- (i) Garden centers and flower shops.
- (j) Hotels and motels

2. No commercial enterprises shall be permitted to operate except in the area designated for commercial uses.

K. Conditions and restrictions on commercial centers.

- 1. The permitted uses designed to serve the neighborhood or development may be constructed, provided that:
  - (a) They shall be so located as to minimize traffic problems and be served by main access roads and not primarily residential streets.
  - (b) There shall be no outside storage or display of material, equipment or merchandise.
- 2. The area for commercial use shall not exceed the following:

<b>Number of Acres</b>	<b>Percentage of Tract</b>
25 to 75	10%
75 to 150	8%
150 to 250	7%
250 or more	6%

- 3. The permitted commercial structures or uses shall not be constructed in advance of the residential structures and shall at no time be in excess of the percentage requirements as set forth above.
- 4. The permissible lot coverage of commercial buildings in the development commercial center areas shall not exceed twenty-five percent (25%).
- 5. The required parking spaces shall be situated on the same lot within not more than two hundred (200) feet.
- 6. Buffer yards. Where a commercial area adjoins a residential area, in adjacent land around the perimeter of the development a buffer yard shall be required in addition to the above yard requirements. The buffer yard shall be of a dimension not less than the minimum side

yard required for the residential use and shall be covered with ground cover and plantings as outlined in the general regulations.

7. Screen plantings. Screen plantings shall be required where a commercial use adjoins a residential use in the planned development or in land areas adjacent to the development.
  8. Signs. Signs may be erected and maintained only when in compliance with the provisions of Article 17.
- L. General regulations. Any development plan shall comply with the parking, loading and unloading, highway access and any other applicable general regulations of the Borough.
  - M. Utilities. A development shall be served by a public sewage system and treatment facility and a public water supply. All plans shall be subject to review and approval by the Borough and the Pennsylvania Department of Health.
  - N. Special exceptions. The requirements concerning density, setbacks, interior yards and recreation areas set forth in Section 802 shall be subject to special exceptions in a nonprofit retirement village providing housing and a nursing home for the elderly.
  - O. Medical and dental clinics. The uses permitted in residential planned development districts shall also include medical clinics and dental clinics.

## ARTICLE 9

### C-1 COMMERCIAL DISTRICT, SHOPPING

#### § 260-900. Purpose.

The purpose of this Article is to provide for the retail sales of goods, services and food to meet the needs of the surrounding neighborhood in accordance with the Comprehensive Plan for the Borough of Middletown. A related objective is to permit a wide range of business types that normally require highway frontage while also protecting the safe usage of streets and roads as thoroughfares.

#### § 260-901. Permitted uses.

In the C-1 District, the following uses shall be permitted by right:

- A. All residential uses permitted in any residential district with the exception of conversion apartments, provided that the residential use shall be permitted only when accessory and is located above one (1) or more of the following permitted uses:
- B. Amusement enterprises, including theaters, billiard or pool parlors, bowling alleys or similar uses or places of assembly.
- C. Animal Hospital, Veterinary Office or kennel, dog day care or similar in accordance with Section 1802.
- D. Automobile service stations in accordance with Section 1805.
- E. Automobile sales, provided they are located on Main Street.
- F. Automobile service garage in accordance with Section 1804
- G. Banks and business, fiduciary and professional offices.
- H. Barbershops and beauty parlors.
- I. Business identification signs, when erected and maintained in accordance with the provisions of Article 17 appearing herein entitled "Signs."
- J. Church, places of worship and related uses.
- K. Clubs and lodges.
- L. Commercial child daycare facilities in accordance with Section 1809.
- M. Commercial recreation facility, including health and recreation clubs.
- N. Conference Center.
- O. Crafts or artisan's studio.

- P. Department stores.
- Q. Home improvement store in accordance with Section 1812.
- R. Hotels, motels, and commercial tourist homes.
- S. Housing for the elderly in accordance with Section 1814.
- T. Launderettes and dry-cleaning establishments.
- U. Medical and dental clinics and laboratories including hospitals, emergency medical treatment centers or similar.
- V. Mini-warehouse.
- W. Municipal buildings and uses, Section 1507.
- X. Parking structures.
- Y. Personal service shops.
- Z. Private schools conducted for gain or profit, including instructional studios, trade schools.
- AA. Public utility transmission and distribution facilities, including substations, water pumping stations and reservoirs.
- BB. Railway or bus passenger stations, telegraph offices and express offices.
- CC. Restaurants, tearooms, cafes, taverns and other places serving food or beverages.
- DD. Stores for the retailing of food, drugs, confectionery, hardware, bakery products, clothing, household appliances, flowers or houseplants, including convenience stores, garden centers, shopping centers.
- EE. Accessory buildings and uses customarily incidental to the above uses.

**§ 260-902. Special exception uses.**

- A. Communication antennas, towers, equipment, transmitting and receiving facilities, Section 1810.

**§ 260-903. Height restrictions.**

The height of a principal building shall be not greater than thirty-five (35) feet, except that the height of a hotel shall be not exceed fifty feet (50).

**§ 260-904. Area Regulations.**

The following minimum lot areas shall apply to uses in the C-1 District:

- A. Individual Retail Uses: 10,000 square feet.
- B. Shopping centers: 2 acres.
- C. Housing for the Elderly: 2 acres
- D. Hotels and Motels: 2 acres
- E. All other permitted uses: 2 acres

**§ 260-905 Yards.**

- A. Each lot shall have front, side and rear yards of not less than the depth or width indicated below:
  - 1. Front yard: ten (10) feet.
  - 2. Two (2) side yards, ten (10) feet in width, each side of a principal building, provided that any lot adjoining a residential district shall have a side yard of a width not less than the minimum width required in the adjoining residential district. In the case of a series of abutting structures abutting and paralleling a public right-of-way, an open and unobstructed passage for vehicles and pedestrians of at least twenty (20) feet in width shall be provided at grade level at intervals of not more than four hundred (400) feet.
  - 3. Rear yard depth: thirty (30) feet.
- B. As a special exception, front, side and rear yards may be modified.

**§ 260-906 Lot coverage.**

- A. The building coverage ratio shall not exceed sixty percent (60%), unless otherwise regulated under Article 18.
- B. The total coverage ratio shall not exceed eighty percent (80%), unless otherwise regulated under Article 18.
- C. All areas of the lot, not covered by buildings or other impervious surfaces, shall be prepared and maintained as green space, containing grass or other ground cover and appropriate shrubbery or similar plantings. This requirement shall be met for all new development and at the time of any substantial improvement or redevelopment.

**§ 260-907 Additional regulations**

- A. Where a development on a single lot contains multiple buildings, the building to building separation shall be a minimum of 20 feet.
- B. Landscaping of commercial parking lots per Article 16.
- C. Applications shall be accordance with Section 1822.

**§ 260-908. Off-street parking.**

Parking shall be provided in accordance with the provisions of Article 16.

## ARTICLE 10

### C-2 COMMERCIAL DISTRICT, GENERAL

#### § 260-1000. Purpose.

The purpose of this Article is to provide for the retail sales of goods, services and food to meet the needs of the surrounding neighborhood in accordance with the Comprehensive Plan for the Borough of Middletown. A related objective is to permit a wide range of business types and residential uses that are compatible with the urban character.

#### § 260-1001. Permitted uses.

In the C-2 District, the following uses shall be permitted by right:

- A. Amusement enterprises, including theaters, billiard or pool parlors, bowling alleys or similar uses or places of assembly.
- B. Automobile sales, provided they are located on Main Street.
- C. Banks and business, fiduciary and professional offices.
- D. Barbershops and beauty parlors.
- E. Bed and Breakfast Accommodations in accordance with Section 1806.
- F. Churches, Places of Worship and related uses.
- G. Clubs and lodges.
- H. Commercial child daycare facilities in accordance with Section 1809.
- I. Crafts or artisan's studio.
- J. Department stores.
- K. Emergency Medical Treatment Centers or similar.
- L. Health and Recreation Club.
- M. Launderettes and dry-cleaning establishments.
- N. Medical and dental clinics and laboratories.
- O. Mortuary and undertaking establishments.
- P. Municipal buildings and uses.
- Q. Office.
- R. Parking Structure.

- S. Personal service shops.
- T. Private schools conducted for gain or profit, including, instructional studios, trade schools or similar.
- U. Railway or bus passenger stations, telegraph offices and express offices.
- V. Restaurants, tearooms, cafes, taverns and other places serving food or beverages, excluding drive-throughs.
- W. Stores for the retailing of food, drugs, confectionery, hardware, bakery products, clothing, household appliances, flowers or houseplants, including convenience stores.
- X. Veterinary Office.
- Y. Accessory buildings and uses customarily incidental to the above uses.
- Z. Hotels.

**§ 260-1002. Special Exception Use**

The following uses are permitted when as a Special Exception Use:

- A. Communication antennas, towers, equipment, transmitting and receiving facilities in accordance with **Section 1810**.
- B. Residential Hotels.
- C. Motels.
- D. Commercial Tourist Homes.

**§ 260-1003. Height restrictions.**

The height of a principal building shall be not greater than thirty-five (35) feet, except that the height of apartment housing for the elderly shall not exceed ninety (90) feet and the height of a hotel shall be not exceed fifty feet (50).

**§ 260-1004. Area Regulations.**

The minimum lot area for all uses in the C-2 District is 2,000 square feet.

**§ 260-1005. Yards.**

Each lot shall have front, side and rear yards of not less than the depth or width indicated below:

- A. Front yard: not required.
- B. Two (2) side yards, ten (10) feet in width, each side of a principal building,

provided that any lot adjoining a residential district shall have a side yard of a width not less than the minimum width required in the adjoining residential district. No side yards shall be required where two (2) commercial uses abut side to side and a written agreement between the adjoining property owners is provided. However, in no case shall party walls be permitted between properties of separate ownership. In the case of a series of abutting structures abutting and paralleling a public right-of-way, an open and unobstructed passage for vehicles and pedestrians of at least twenty (20) feet in width shall be provided at grade level at intervals of not more than four hundred (400) feet.

- C. Rear yard depth: thirty (30) feet.

**§ 260-1006. Lot coverage.**

- A. The building coverage ratio shall not exceed sixty percent (60%).
- B. The total coverage ratio shall not exceed ninety percent (90%).
- C. A minimum of ten percent (10%) of the lot shall be prepared and maintained as green space, containing grass or other ground cover and appropriate shrubbery or similar plantings. This requirement shall be met for all new development and at the time of any substantial improvement or redevelopment.

**§ 260-1008 Additional regulations**

- A. Where a development on a single lot contains multiple buildings, the building to building separation shall be a minimum of 20 feet.
- B. No parking shall be allowed between the building and the street line. Parking shall be placed to the rear of buildings and accessed off an alley, existing curb cut or a side street.
- C. Off-street parking facilities may be provided within 600 ft of the periphery of the designated commercial district.
- D. Off-street parking facilities are subject to the following provisions:
  - 1. Off-street parking spaces may be grouped in facilities serving more than one lot or establishment.
  - 2. Parking garages may be above or below ground. Above ground garages shall be in the rear yard and architecturally compatible with other improvements developed on the site and immediate area.
- E. Applications shall comply with Section 1822.

**§ 260-1009. Off-street parking.**

Parking shall be provided in accordance with the provisions of Article 16, except that for

apartment housing for the elderly the total number of parking spaces shall be not less than one-fifth (1/5) times the number of apartments in the building, plus one (1) space for each person employed therein.

## ARTICLE 11

### M-1 MANUFACTURING DISTRICT, LIMITED

#### § 260-1100. Purpose.

The purpose of this Article is to establish and preserve areas for limited manufacturing and related uses of such a nature that do not create serious problems of compatibility with other land uses and to make provisions for certain kinds of manufacturing uses which are most appropriate located as neighbors of manufacturing uses or which are necessary to serve the immediate needs of people in these areas.

#### § 260-1101. Permitted uses.

In the M-1 District, the following uses are permitted by right:

- A. Airports and airport-related services.
- B. Automobile service stations, automobile sales, trailer coach sales, service garages, auto sales lots, automobile assembling, auto body shops, painting, upholstery reconditioning, vehicle repair or overhauling, tire retreading or recapping, welding shops and the like.
- C. Blacksmith and machine shops.
- D. Bottling works and bookbinding.
- E. Building materials storage, lumberyards and lumber mills.
- F. Business identification signs, when erected and maintained in accordance with the provisions of Article 17 appearing herein entitled "Signs."
- G. Carpenter, cabinetmaking, furniture repair and upholstery, electrician, metalworking, tinsmith, plumbing, gas, steam or hot-water fitting shops.
- H. Contractors' equipment, sales, service and storage.
- I. Distribution plants, parcel delivery and service industries.
- J. Electrical, optical and textile manufacturing.
- K. Freight and trucking terminals.
- L. Hospitals
- M. Kennels
- N. Laboratories and lithographing.
- O. Laundries, cleaning, dyeing and carpet and rug cleaning.

- P. Manufacturing, compounding, processing or treatment of such products as bakery goods, candy, cosmetics, dairy products, drugs, pharmaceuticals and food products, except fish and meat products, sauerkraut, vinegar, yeast and the rendering or refining of fat and oils.
- Q. Manufacture, compounding, assembling or treatment of articles or merchandise from the following previously prepared materials: bone, cellophane, canvas, cloth, cork, feathers, felt, film, fur, glass, hair, leather, paper, plastics, precious or semiprecious metals or stones, shell, textiles, tobacco, wood, yarns and paint not employing a boiling process.
- R. Manufacturing of pottery and figurines or other similar ceramic products using only clay and kilns fired only by electricity or gas.
- S. Mini-warehouse
- T. Municipal buildings, municipal uses and state and federal government uses.
- U. Office
- V. Parking structures
- W. Printing and newspaper publishing.
- X. Public and private recreational uses and activities, such as parks, day camps, picnic grounds, golf courses, boat launching and swimming areas, hiking and horseback-riding trails, wildlife and nature preserves, game farms, fish hatcheries and fishing areas.
- Y. Public utility transmission and distribution facilities, including substations, water pumping stations and reservoirs.
- Z. Railway or bus passenger stations and telegraph or express offices.
- AA. Wholesale businesses, warehouses and cold storage plants, however, no warehouse and no wholesale business shall be permitted to store, handle or receive any hazardous materials or hazardous chemicals, including but not limited to corrosive liquids, flammable solids, oxidizing materials, poisonous gas and radioactive material [except manufactured articles such as instruments or electronic apparatus whose gamma radiation is less than 10 milliroentgen in 24 hours, highly toxic material or unstable (reactive) chemicals], and any existing business constituting a nonconforming use shall be permitted to expand in area no more than 25% at such location as it is found to be lawfully in existence.
- BB. All uses similar to the above and not otherwise prohibited by law.

**§ 260-1102. Special exception uses.**

- A. In the M-1 District, the following uses are permitted by special exception:

1. Adult-oriented business, as defined in Article 2 herein in accordance with Section 1102.B.
  2. Other uses which, in the opinion of the Zoning Hearing Board, are of the same general character as uses set forth in Article 11 Section 1101 and which will not be detrimental to the intended purpose of this chapter.
  3. Wind Energy Facility in accordance with Section 1819.
  4. Communication antennas, towers etc. in accordance with Section 1810.
- B. A special exception shall be approved for an adult-oriented business only if the following conditions are met:
1. The property shall not be located within 300 feet, of a residential district, as measured from lot line to residential district boundary, or within 100 feet of any property containing a dwelling, as measured from lot line to lot line.
  2. The property shall not be located within 300 feet of the lot or property line of any religious structure, school, day-care facility, library or public park, as measured from lot line to lot line.
  3. The property shall not be located within 1,000 feet of another adult-oriented business, as measured from lot line to lot line.
  4. There shall be no display of adult-oriented materials that can be seen from the exterior of the building.
  5. The Zoning Hearing Board shall review and approve all exterior signs for compatibility with adjacent uses.
  6. No adult-oriented business or activity may change to another type of adult-oriented business or activity except upon application to and approval by the Zoning Hearing Board of such change as a special exception.
  7. No unlawful sexual activity or conduct shall be performed or permitted.
  8. No person under 18 years of age will be permitted to enter the business.

**§ 260-1103. Use limitations.**

The uses permitted in Sections 1101 and 1102 are permitted only on the condition that they are not obnoxious or offensive by reason of the emission of odor, dust, smoke, noise, gas, vibration, illumination, refuse matter or water-carried waste.

**§ 260-1104. Height restrictions.**

The height of a principal building shall be not greater than 35 feet.

**§ 260-1105. Yards.**

- A. Each lot shall have front, side and rear yards of not less than the depth or width indicated below:
  - 1. Front yard depth: thirty (30) feet.
  - 2. Two (2) side yards, ten (10) feet in width, each side of a principal building, provided that any lot adjoining a residential district shall have a side yard of a width not less than the minimum width required in the adjoining residential district. No side yard shall be required where two (2) or more manufacturing uses abut side to side and a written agreement between the adjoining property owners is provided. However, in no case shall party walls be permitted between properties of separate ownership.
  - 3. Rear yard depth: thirty (30) feet.
- B. As a special exception, front, side and rear yards may be modified by appeal to the Zoning Hearing Board.

**§ 260-1106. Lot coverage.**

- A. The building coverage ratio shall not exceed sixty percent (60%).
- B. The total coverage ratio shall not exceed ninety percent (90%).
- C. A minimum of ten percent (10%) of the lot shall be prepared and maintained as green space, containing grass or other ground cover and appropriate shrubbery or similar plantings. This requirement shall be met for all new development and at the time of any substantial improvement or redevelopment.

**§ 260-1107. Off-street parking.**

Parking shall be provided in accordance with the provisions of Article 16.

## ARTICLE 12

### C-D Conservation District

#### **§ 260-1200. Purpose.**

The purpose of this Article is to control activities, development and uses in conservation district areas subject to flooding in order to prevent the loss of property and life, the creation of health and safety hazards and the disruption of commerce and governmental services by:

- A. Regulating uses, activities and development which, acting alone or in combination with other existing or future uses, activities and development, will cause unacceptable increases in flood heights, velocities and frequencies. Editor's Note: See also Ch. 158, Flood Damage Prevention.
- B. Restricting or prohibiting certain uses, activities and development from locating within areas subject to flooding.
- C. Protecting individuals from buying lands and structures which are unsuited for intended purposes because of flood hazards.

#### **§ 260-1201. New construction, permitted uses and special exception uses.**

- A. In the Conservation District, no new construction shall be permitted, including fences, with the exception of two-wire fences, except where the effect of such construction on flood heights is fully offset by accompanying stream improvements which have been approved by all appropriate local and/or state authorities.
- B. Permitted uses. In the Conservation District, the following uses and activities are permitted, provided that they do not require structures, fill or storage of materials and equipment:
  - 1. Agricultural uses, such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming and wild crop harvesting.
  - 2. Public and private recreational uses and activities, such as parks, day camps, picnic grounds, golf courses, boat launching and swimming areas, hiking and horseback-riding trails, wildlife and nature preserves, game farms, fish hatcheries and fishing areas.
  - 3. Accessory residential uses, such as yard areas, gardens, play areas and pervious parking areas.
  - 4. Accessory industrial and commercial uses, such as yard areas, impervious parking and loading areas, airport landing strips, etc.
- C. Uses permitted by special exception. The following uses and activities are permitted by special exception, provided that they are in compliance with the

provisions of the Conservation District and are not prohibited by any other ordinance.

1. Structures accessory to the uses and activities in Subsection B above.
2. Extraction of sand, gravel and other materials.
3. Utilities and public facilities and improvements, such as railroads, streets, bridges, transmission lines, pipelines, water and sewage treatment plants and other similar or related uses.
4. Water-related uses and activities, such as marinas, docks, wharves, piers, etc.
5. Temporary uses, such as circuses, carnivals and similar activities.
6. Storage of materials and equipment, provided that they are not buoyant, flammable or explosive and are not subject to major damage by flooding, and provided that such materials and equipment are firmly anchored to prevent flotation or movement and/or can be readily removed from the area within the time available after flood warning.
7. Other similar uses and activities.

**§ 260-1202. Restrictions.**

Under no circumstances shall any use, activity and/or development adversely affect the capacity of the channels of flood ways of any watercourse, drainage ditch or any other drainage facility or system. In a case where the watercourse of a riverine environment is altered or relocated, adjacent communities, the State Flood Coordinator and the Federal Insurance Administrator shall be notified.

**ARTICLE 13  
FLOOD DAMAGE PREVENTION**

**§ 260-1300. Intent.**

The intent of this Article is to:

- A. Promote the general health, welfare, and safety of the community.
- B. Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future.
- C. Minimize danger to public health by protecting water supply and natural drainage.
- D. Reduce financial burdens imposed on the community, its governmental units, and its residents, by preventing excessive development in areas subject to flooding.
- E. Comply with federal and state floodplain management requirements.

**§ 260-1301. Applicability.**

- A. It shall be unlawful for any person, partnership, business or corporation to undertake, or cause to be undertaken, any construction or development anywhere within the Borough of Middletown unless a Permit has been obtained from the Floodplain Administrator.
- B. A Permit shall not be required for minor repairs to existing buildings or structures.

**§ 260-1302. Abrogation and Greater Restrictions.**

This ordinance supersedes any other conflicting provisions which may be in effect in identified floodplain areas. However, any other ordinance provisions shall remain in full force and effect to the extent that those provisions are more restrictive. If there is any conflict between any of the provisions of this Ordinance, the more restrictive shall apply.

**§ 260-1303. Severability.**

If any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance shall be declared invalid for any reason whatsoever, such a decision shall not affect the remaining portions of the Ordinance, which shall remain in full force and effect, and for this purpose the provisions of this Ordinance are hereby declared to be severable.

**§ 260-1304. Warning and Disclaimer of Liability.**

The degree of flood protection sought by the provisions of this Ordinance is considered reasonable for regulatory purposes and is based on acceptable engineering methods of

study. Larger floods may occur or flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This Ordinance does not imply that areas outside any identified floodplain areas, or that land uses permitted within such areas will be free from flooding or flood damages.'

This Ordinance shall not create liability on the part of the Borough of Middletown or any officer or employee thereof for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made there under.

**§ 260-1305. Designation of the Zoning Officer.**

The Zoning Officer within the Department of Building & Zoning is hereby appointed to administer and enforce this ordinance and is referred to herein as the Flood Plain Ordinance Administrator.

**§ 260-1306. Permits Required**

A Permit shall be required before any construction or development is undertaken within any area of the Borough of Middletown.

**§ 260-1307. Duties and Responsibilities of the Zoning Officer**

- A. The Floodplain Administrator shall issue a Permit only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of this and all other applicable codes and ordinances.
- B. Prior to the issuance of any permit, the Floodplain Administrator shall review the application for the permit to determine if all other necessary government permits required by state and federal laws have been obtained, such as those required by the Pennsylvania Sewage Facilities Act (Act 1966-5317, as amended); the Pennsylvania Dam Safety and Encroachments Act (Act 1978-325, as amended); the Pennsylvania Clean Streams Act (Act 1937-394, as amended); and the U.S. Clean Water Act, Section 404, 33, U.S.C. 1344. No permit shall be issued until this determination has been made.
- C. In the case of existing structures, prior to the issuance of any Development/Permit, the Floodplain Administrator shall review the history of repairs to the subject building, so that any repetitive loss issues can be addressed before the permit is issued.
- D. During the construction period, the Floodplain Administrator or other authorized official shall inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable municipal laws and ordinances. He/she shall make as many inspections during and upon completion of the work as are necessary.
- E. In the discharge of his/her duties, the Zoning Officer shall have the authority to enter any building, structure, premises or development in the identified

floodplain area, upon presentation of proper credentials, at any reasonable hour to enforce the provisions of this ordinance.

- F. In the event the Floodplain Administrator discovers that the work does not comply with the permit application or any applicable laws and ordinances, or that there has been a false statement or misrepresentation by any applicant, the Floodplain Administrator shall revoke the Permit and report such fact to the Borough Council for whatever action it considers necessary.
- G. The Floodplain Administrator shall maintain all records associated with the requirements of this ordinance including, but not limited to, permitting, inspection and enforcement.
- H. The Floodplain Administrator shall consider the requirements of the 34 P A Code and the 2009 IBC and the 2009 IRC or latest revisions thereof.

**§ 260-1308. Application Procedures and Requirements.**

- A. Application for such a Permit shall be made, in writing, to the Floodplain Administrator on forms supplied by the Borough of Middletown. Such application shall contain the following:
  - 1. Name and address of applicant.
  - 2. Name and address of owner of land on which proposed construction is to occur.
  - 3. Name and address of contractor.
  - 4. Site location including address.
  - 5. Listing of other permits required.
  - 6. Brief description of proposed work and estimated cost, including a breakout of flood-related cost and the market value of the building before the flood damage occurred where appropriate.
  - 7. A plan of the site showing the exact size and location of the proposed construction as well as any existing buildings or structures.
- B. If any proposed construction or development is located entirely or partially within any identified floodplain area, applicants for Permits shall provide all the necessary information in sufficient detail and clarity to enable the Floodplain Administrator to determine that:
  - 1. All such proposals are consistent with the need to minimize flood damage and conform with the requirements of this and all other applicable codes and ordinances;

2. All utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damage; and
  3. Adequate drainage is provided so as to reduce exposure to flood hazards.
  4. Structures will be anchored to prevent floatation, collapse, or lateral movement.
  5. Building materials are flood-resistant.
  6. Appropriate practices that minimize flood damage have been used.
  7. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities have been designed and/or located to prevent water entry or accumulation.
- C. Applicants shall file the following minimum information plus any other pertinent information as may be required by the Floodplain Administrator to make the above determination:
1. A completed Permit Application Form.
  2. A plan of the entire site, clearly and legibly drawn at a scale of .one (1) inch being equal to one hundred (1 00) feet or less, showing the following:
    - (a) north arrow, scale, and date;
    - (b) topographic contour lines, if available;
    - (c) the location of all existing and proposed buildings, structures, and other improvements, including the location of any existing or proposed subdivision and development;
    - (d) the location of all existing streets, drives, and other access ways; and
    - (e) the location of any existing bodies of water or watercourses, identified floodplain areas, and, if available, information pertaining to the floodway, and the flow of water including direction and velocities.
  3. Plans of all proposed buildings, structures and other improvements, drawn at suitable scale showing the following:
    - (a) the proposed lowest floor elevation of any proposed building based upon North American Vertical Datum of 1988;

- (b) the elevation of the base flood;
- (c) supplemental information as may be necessary under 34 P A Code, the 2009 IBC or the 2009 IRC.

4. The following data and documentation:

- (a) if available, information concerning flood depths, pressures, velocities, impact and uplift forces and other factors associated with a base flood elevation; and
- (b) detailed information concerning any proposed floodproofing measures and corresponding elevations.
- (c) documentation, certified by a registered professional engineer or architect, to show that the cumulative effect of any proposed development within an Special Floodplain Area (See section 158.18.8) when combined with all other existing and anticipated development, will not increase the base flood elevation more than one (1) foot at any point.
- (d) a document, certified by a registered professional engineer or architect, which states that the proposed construction or development has been adequately designed to withstand the pressures, velocities, impact and uplift forces associated with the base flood. Such statement shall include a description of the type and extent of floodproofing measures which have been incorporated into the design of the structure and/or the development.
- (e) detailed information needed to determine compliance with Section 158-24.F., Storage, and Section 158-25, Development Which May Endanger Human Life, including:
  - [1] the amount, location and purpose of any materials or substances referred to in Sections 158-24 F. and 158-25 which are intended to be used, reduced, stored or otherwise maintained on site.
  - [2] a description of the safeguards incorporated into the design of the propose structure to prevent leaks or spills of the dangerous materials or substances listed in Section 158-25 during a base flood.
- (f) The appropriate component of the Department of Environmental Protection's "Planning Module for Land Development."

(g) where any excavation or grading is proposed, a plan meeting the requirements of the Department of Environmental Protection, to implement and maintain erosion and sedimentation control.

5. Applications for Permits shall be accompanied by a fee, payable to the municipality based upon the estimated cost of the proposed construction as determined by the Floodplain Administrator and the Borough's fee schedule.

#### **§ 260-1309. Review by County Conservation District.**

A copy of all applications and plans for any proposed construction or development in any identified floodplain area to be considered for approval shall be submitted by the Floodplain Administrator to the Dauphin County Conservation District for review and comment prior to the issuance of a Permit. The recommendations of the Conservation District shall be considered by the Floodplain Administrator for possible incorporation into the proposed plan.

#### **§ 260-1310. Review of Application by Others.**

A copy of all plans and applications for any proposed construction or development in any identified floodplain area to be considered for approval shall be submitted by the Floodplain Administrator to any other appropriate agencies and/or individuals (e.g. planning commission, municipal engineer, etc.) for review and comment.

#### **§ 260-1311. Changes.**

After the issuance of a Permit by the Floodplain Administrator, no changes of any kind shall be made to the application, permit or any of the plans, specifications or other documents submitted with the application without the written consent or approval of the Floodplain Administrator. Requests for any such change shall be in writing, and shall be submitted by the applicant to Floodplain Administrator for consideration.

#### **§ 260-1312. Placards.**

In addition to the Permit, the Floodplain Administrator shall issue a placard which shall be displayed on the premises during the time construction is in progress. This placard shall show the number of the Permit the date of its issuance and be signed by the Floodplain Administrator.

#### **§ 260-1313. Start of Construction.**

Work on the proposed construction or development shall begin within 180 days after the date of issuance and shall be completed within twelve (12) months after the date of issuance of the Permit or the permit shall expire unless a time extension is granted, in writing, by the Floodplain Administrator. The actual start of construction means either the first placement of permanent construction of a structure. on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond

the stage of excavation; or the placement of a manufacture home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first, alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building. Time extensions shall be granted only if a written request is submitted by the applicant, which sets forth sufficient and reasonable cause for the Floodplain Administrator to approve such a request.

#### **§ 260-1314. Enforcement.**

##### **A. Notices.**

1. Whenever the Floodplain Administrator or other authorized municipal representative determines that there are reasonable grounds to believe that there has been a violation of any provisions of this Ordinance, or of any regulations adopted pursuant thereto, the Floodplain Administrator shall give notice of such alleged violation as hereinafter provided. Such notice shall:
  - (a) Be in writing;
  - (b) Include a statement of the reasons for its issuance;
  - (c) Allow a reasonable time not to exceed a period of thirty (30) days for the performance of any act it requires;
  - (d) Be served upon the property owner or his agent as the case may require; provided, however, that such notice or order shall be deemed to have been properly served upon such owner or agent when a copy thereof has been served with such notice by any other method authorized or required by the laws of this state;
  - (e) Contain an outline of remedial action which, if taken, will effect compliance with the provisions of this ordinance.

##### **B. Penalties.**

1. Any person who fails to comply with any or all of the requirements or provisions of this Ordinance or who fails or refuses to comply with any notice, order or direction of the Floodplain Administrator or any other authorized employee of the municipality shall be guilty of an misdemeanor and upon conviction shall pay a fine to Borough of Middletown, of not less than Twenty-five Dollars (\$25.00) nor more than Six Hundred Dollars (\$600.00) plus costs of prosecution. In

addition to the above penalties all other actions are hereby reserved including an action in equity for the proper enforcement of this Ordinance. The imposition of a fine or penalty for any violation of, or noncompliance with, this Ordinance shall not excuse the violation or noncompliance or permit it to continue and all such persons shall be required to correct or remedy such violations and noncompliance within a reasonable time. Any development initiated or any structure or building constructed, reconstructed, enlarged, altered, or relocated, in noncompliance with this Ordinance may be declared by the Borough Council to be a public nuisance and abatable as such.

**§ 260-1315. Appeals.**

- A. Any person aggrieved by any action or decision of the Floodplain Administrator concerning the administration of the provisions of this Ordinance, may appeal to the Zoning Hearing Board. Such appeal must be filed, in writing, within thirty (30) days after the decision, determination or action of the Floodplain Administrator.
- B. Upon receipt of such appeal the Zoning Hearing Board shall set a time and place, within not less than ten (10) or not more than thirty (30) days, for the purpose of considering the appeal. Notice of the time and place at which the appeal will be considered shall be given to all parties.
- C. Any person aggrieved by any decision of the Zoning Hearing Board may seek relief there from by appeal to court, as provided by the laws of this State including the Pennsylvania Flood Plain Management Act.

**§ 260-1316. Identification of Floodplain Areas.**

- A. The identified floodplain area is an' overlay zoning district and shall be any areas of Borough of Middletown, classified as special flood hazard areas (SFHAs) in the Flood Insurance Study (FIS) and the accompanying Flood Insurance Rate Maps (FIRMs) dated August 2, 2012 and issued by the Federal Emergency Management Agency (FEMA) or the most recent revision thereof, including all digital data developed as part of the Flood Insurance Study.
- B. The above referenced FIS and FIRMs, and any subsequent revisions and amendments are hereby adopted by Borough of Middletown and declared to be a part of this ordinance.
- C. Supplemental floodplain areas which are areas not identified in the FIS but where Borough of Middletown has determined the area to merit additional regulation under this Article. These areas are identified on the Borough of Middletown supplemental floodplain identification map.

**§ 260-1317. Description and Special Requirements of Identified Floodplain Areas**

The identified floodplain area shall consist *or* the following specific areas:

A. Floodway Area.

1. Description - the area identified as Floodway in the FIS which represents the channel of a watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation by more than one (1) foot at any point. This term shall also include floodway areas which have been identified in other available studies or sources of information for those special floodplain areas where no floodway has been identified in the FIS.
2. Special Requirements:
  - (a) Any encroachment that would cause any increase in flood heights shall be prohibited.
  - (b) No new construction or development shall be allowed, unless a permit is obtained from the Department of Environmental Protection Regional Office.

B. Special Floodplain Area

1. Description - the areas identified as Zones AE and A1-30 in the FIS which are subject to inundation by the ~percent-annual chance flood event determined by detailed methods and have base flood elevations (BFEs) shown.
2. Special Requirements:
  - (a) No new construction! or development shall be located within the area measured fifty (50) feet landward from the top-of-bank of any watercourse.
  - (b) In Special Floodplain Areas without a designated floodway, no new development shall be permitted unless it can be demonstrated that the cumulative effect of all past and projected development will not increase the BFE by more than one (1) foot.

C. Approximate Floodplain Area

1. Description - the areas identified as Zone A in the FIS which are subject to inundation by the 1-percent-annual-chance flood event determined using approximate methodologies. Because detailed hydraulic analyses have not been performed, no BFEs or flood depths are shown.
2. Special Requirements:

- (a) No new construction or development shall be located within the area measured fifty (50) feet landward from the top-of-bank of any watercourse.
- (b) When available, information from other Federal, State, and other acceptable sources shall be used to determine the BFE, as well as a floodway area, if possible. When no other information is available, the BFE shall be determined by using a point on the boundary of the identified floodplain area which is nearest the construction site in question. In lieu of the above the municipality may require the applicant to determine the elevation with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the Borough of Middletown.

D. Supplemental Floodplain Area (SA)

- 1. Description - Areas not identified in the FIS but where Borough of Middletown has determined the area to merit additional regulation under this ordinance.
- 2. Special Requirements - No new construction or development shall be located within the area measured fifty (50) feet landward from the top-of-bank of any watercourse.

**§ 260-1318. Changes in Identification of Area.**

- A. The identified floodplain area may be revised or modified by the Borough Council, with recommendations by the Planning Commission and Borough Engineer, where studies or information provided by a qualified agency or person documents the need for such revision. However, prior to any such change, approval must be obtained from the FEMA. Additionally, as soon as practicable, but not later than six (6) months after the date such information becomes available, a community shall notify the FEMA of the changes by submitting technical or scientific data.

**§ 260-1319. Boundary Disputes.**

- A. Should a dispute concerning any identified floodplain boundary arise, an initial determination shall be made by the Floodplain Administrator and any party aggrieved by this decision or determination may appeal to the Zoning Hearing Board. The burden of proof shall be on the appellant.

**§ 260-1320. General Technical Provisions.**

- A. Alteration or Relocation of Watercourse.
  - 1. No encroachment, alteration, or improvement of any kind shall be made to any watercourse until all adjacent municipalities which may be affected by such action have been notified by the municipality, and until all required permits or approvals have been first obtained from the Department of Environmental Protection Regional Office.
  - 2. No encroachment, alteration, or improvement of any kind shall be made to any watercourse unless it can be shown that the activity will not reduce or impede the flood carrying capacity of the watercourse in any way.
  - 3. In addition, the FEMA and Pennsylvania Department of Community and Economic Development, shall be notified prior to any alteration or relocation of any watercourse.
  
- B. Technical or scientific data shall be submitted by the Borough of Middletown to FEMA for a Letter of Map Revision (LOMR) as soon as practicable but within six (6) months of any new construction, development, or other activity resulting in changes in the BFE. The situations when a LOMR or a Conditional Letter of Map Revision (CLOMR) are required are:
  - 1. Any development occurring in Zone A which will cause a rise of more than one foot in the base flood elevation (as determined using methodology in Chapter 158-18 C.2.b); or
  - 2. Alteration or relocation of a stream (including but not limited to installing culverts and bridges)
  
- C. Any new construction, development, uses or activities allowed within any identified floodplain area shall be undertaken in strict compliance with the provisions contained in this Ordinance and any other applicable codes, ordinances and regulations.

**§ 260-1321. Special Requirements in Identified Floodplain Areas.**

- A. Within any identified floodplain area new construction or development is prohibited with the following exceptions provided the use does not require structures other than as indicated or fill other than as indicated:
  - 1. Accessory uses such as sheds or pavilions. Such uses are limited to 600 square feet of floor area. The total amount of floor area per lot for accessory uses is limited to 600 square feet regardless of the number of such accessory structures.
  - 2. Plowing, seeding, harvesting, pasture, plant nurseries, horticulture, forestry, aquaculture and other normal farming operations.

3. Vehicle access uses including driveways, roads, streets, bridges and culverts. Impacts to the floodplain are limited to the least amount needed to construct the use and provide safety and structural integrity.
4. Public and Private recreational uses such as parks, camps, picnic areas, swimming areas, boat launches, wildlife areas and preserves, hunting and fishing, game farms, trails for hiking, horse riding, athletic fields and other recreational activities.
5. Accessory residential uses such as yards, gardens and play areas.
6. Projects conducted with the objective of improvement, stabilization, restoration, or enhancement of the stream bank, stream channel, floodplain or aquatic habitat. Such projects must receive appropriate permits and approvals from DEP prior to starting the project.
7. Utility lines and pipes
8. Similar uses determined to be acceptable by the Borough Council, provided the use does not require structures other than as indicated above or fill other than the minimal amount needed for the use.

**B. Pre-Existing lots or parcels**

1. Where a lot or parcel that has been legally created and recorded prior to the effective date of this Ordinance is located entirely or partially within any identified floodplain area, the following conditions apply:
  - (a) If the lot or parcel is located entirely within any identified floodplain area, development may be allowed by variance. Such development shall be in full compliance with all other requirements of this ordinance.
  - (b) If the lot or parcel is located partially within any identified floodplain area, development shall be confined to the area outside of the floodplain area to the maximum extent practical. If the area outside of the floodplain area is insufficient for the proposed use, development within the floodplain may be allowed by variance. Such development shall be in full compliance with all other requirements of this Ordinance.

**§ 260-1322. Elevation and Floodproofing Requirements.**

**A. Residential Structures.**

1. In AE, A1-30, and AH Zones, any new construction or substantial improvement shall have the lowest floor (including basement) elevated to or above the regulatory flood elevation.

2. In A Zones, where there no Base Flood Elevations specified on the FIRM, any new construction or substantial improvement shall have the lowest floor (including basement) elevated to or above the regulatory flood elevation in accordance with Subsection 1158-18 C.2.b of this ordinance.
3. The design and construction standards and specifications contained in the 2009 International Building Code (IBC) and in the 2009 International Residential Code (IRC) or the most recent revisions thereof and ASCE 24 and 34 PA Code (Chapters 401-405 as amended) shall be utilized.

B. Non-residential Structures.

1. In AE, A1-30 and AH Zones any new construction or substantial improvement of a non-residential structure shall have the lowest floor (including basement) elevated to or above the regulatory flood elevation, or be designed and constructed so that the space enclosed below the regulatory flood elevation:
  - (a) is floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water and,
  - (b) has structural components with the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy:
2. In A Zones, where there no Base Flood Elevations are specified on the FIRM, any new construction or substantial improvement shall have the lowest floor (including basement) elevated or completely floodproofed to or above the regulatory flood elevation in accordance with Subsection 158-18 C.2.b of this Ordinance.
3. Any non-residential structure, or part thereof, made watertight below the regulatory flood elevation shall be floodproofed in accordance with the WI or W2 space classification standards contained in the publication entitled "FloodProofing Regulations" published by the U.S. Army Corps of Engineers (June 1972, as amended March 1992) or with some other equivalent standard. All plans and specifications for such floodproofing shall be accompanied by a statement certified by a registered professional engineer or architect which states that the proposed design and methods of construction are in conformance with the above referenced standards.
4. The design and construction standards and specifications contained in the 2009 International Building Code (IBC) and in the 2009 International Residential Code (IRC) or the most recent revisions thereof and ASCE 24 and 34 PA Code (Chapters 401-405 as amended) shall be utilized.

C. Space below the lowest floor.

1. Fully enclosed space below the lowest floor (excluding basements) which will be used solely for the parking of a vehicle, building access, or incidental storage in an area other than a basement, shall be designed and constructed to allow for the automatic entry and exit of flood waters for the purpose of equalizing hydrostatic forces on exterior walls. The term "fully enclosed space" also includes crawl spaces.
2. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria:
  - (a) A minimum of two openings having a net total area of not less than one square inch for every square foot of enclosed space.
  - (b) The bottom of all openings shall be no higher than one (1) foot above grade.
  - (c) Openings may be equipped with screens, louvers, etc. Or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

D. Accessory structures.

1. Structures accessory to a principal building need not be elevated or floodproofed to remain dry, but shall comply, at a minimum, with the following requirements:
  - (a) The structure shall not be designed or used for human habitation, but shall be limited to the parking of vehicles, or to the storage of tools, material, and equipment related to the principal use or activity.
  - (b) Floor area shall not exceed 60 square feet.
  - (c) The structure will have a low damage potential.
  - (d) The structure will be located on the site so as to cause the least obstruction to the flow of flood waters.
  - (e) Power lines, wiring, and outlets will be elevated to the regulatory flood elevation.
  - (f) Permanently affixed utility equipment and appliances such as furnaces, heaters, washers, dryers, etc. Are prohibited.
  - (g) Sanitary facilities are prohibited.

- (h) the structure shall be adequately anchored to prevent flotation or movement and shall be designed to automatically provide for the entry and exit of floodwater for the purpose of equalizing hydrostatic forces on the walls. Designs for meeting this requirement must either be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria:
  - [1] A minimum of two openings having a net total area of not less than one (1) square inch for every square foot of enclosed space.
  - [2] The bottom of all openings shall be no higher than one (1) foot above grade.
  - [3] Openings may be equipped with screens, louvers, etc. Or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

**§ 260-1323. Design and Construction Standards.**

A. The following minimum standards shall apply for all construction and development proposed within any identified floodplain area:

- 1. Fill. If fill is used, it shall:
  - (a) Extend laterally at least fifteen. (15) feet beyond the building line from all points;
  - (b) Consist of soil or small rock materials only - Sanitary Landfills shall not be permitted;
  - (c) Be compacted to provide the necessary permeability and resistance to erosion, scouring, or settling;
  - (d) Be no steeper than one (1) vertical to two (2) horizontal, feet unless substantiated data, justifying steeper slopes are submitted to, and approved by the Zoning Officer; and
  - (e) Be used to the extent to which it does not adversely affect adjacent properties.
  - (f) Be limited to only the amount! Needed for the intended use.
- 2. Drainage Facilities
  - (a) Storm drainage facilities shall be designed to convey the flow of storm water runoff in a safe and efficient manner. The system

shall insure proper drainage along streets, and provide positive drainage away from buildings. The system shall also be designed to prevent the discharge of excess runoff onto adjacent properties.

3. Water and Sanitary Sewer Facilities and Systems

- (a) All new or replacement water supply and sanitary sewer facilities and systems shall be located, designed and constructed to minimize or eliminate flood damages and the infiltration of flood waters.
- (b) Sanitary sewer facilities and systems shall be designed to prevent the discharge of untreated sewage into flood waters.
- (c) No part of any on-site sewage system shall be located within any identified floodplain area except in strict compliance with all State and local regulations for such systems. If any such system is permitted, it shall be located so as to avoid impairment to it, or contamination from it, during a flood.
- (d) The design and construction provisions of the UCC and FEMA #348, Protecting Building Utilities From Flood Damages and The International Private Sewage Disposal Code shall be utilized.

4. Other Utilities

- (a) All other utilities such as gas lines, electrical and telephone systems shall be located, elevated (where possible) and constructed to minimize the chance of impairment during a flood.

5. Streets

- (a) The finished elevation of all new streets shall be no more than one (1) foot below the Regulatory Flood Elevation.

6. Storage

- (a) All materials that are buoyant, flammable, explosive, or in times of flooding, could be injurious to human, animal, or plant life, and not listed in Section 158-25 Development Which May Endanger Human Life, shall be stored 1-1/2 feet above the Regulatory Flood Elevation and/or flood proofed to the maximum extent possible.

7. Placement of Buildings and Structures

- (a) All buildings and structures shall be designed, located, and constructed so as to offer the minimum obstruction to the flow of water and shall be designed to have a minimum effect upon the flow and height of flood water.

8. Anchoring

- (a) All buildings and structures shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, or lateral movement.
- (b) All air ducts, large pipes, storage tanks, and other similar objects or components located below the regulatory flood elevation shall be securely anchored or affixed to prevent flotation.

9. Floors, Walls and Ceilings

- (a) Wood flooring used at or below the Regulatory Flood Elevation shall be installed to accommodate a lateral expansion of the flooring, perpendicular to the flooring grain without causing structural damage to the building.
- (b) Plywood used at or below the regulatory flood elevation shall be of a "marine" or "water-resistant" variety.
- (c) Walls and ceilings at or below the regulatory flood elevation shall be designed and constructed of materials that are "water-resistant" and will withstand inundation.
- (d) Windows, doors, and other components at or below the regulatory flood elevation shall be made of metal or other "water-resistant" material.

10. Paints and Adhesives

- (a) Paints and other finishes used at or below the regulatory flood elevation shall be of "marine" or "water-resistant" quality.
- (b) Adhesives used at or below the regulatory flood elevation shall be of a "marine" or "water-resistant" variety.
- (c) All wooden components ( doors, trim, cabinets, etc.) shall be finished with a "marine" or "water-resistant" paint or other finishing material.

11. Electrical Components

- (a) Electrical distribution panels shall be at least three (3) feet above the base flood elevation.
- (b) Separate electrical circuits shall serve lower levels and shall be dropped from above.

12. Equipment

- (a) Water heaters, furnaces, air conditioning and ventilating units, and other electrical, mechanical or utility equipment or apparatus shall be located at or above the Regulatory Flood Elevation.

13. Fuel Supply Systems

- (a) All gas and oil supply systems shall be designed to prevent the infiltration of flood waters into the system and discharges from the system into flood waters. Additional provisions shall be made for the drainage of these systems in the event that flood water infiltration occurs.

14. Uniform Construction Code Coordination

- (a) The Standards and Specifications contained 34 PA Code (Chapters 401-405), as amended and not limited to the following provisions shall apply to the above and other sections and sub-sections of this ordinance, to the extent that they are more restrictive and/or supplement the requirements of this Article.

[1] International Building Code (IBC) 2009 or the latest edition thereof: Sections. 801, 1202, 1403, 1603, 1605, 1612, 3402, and Appendix G.

[2] International Residential Building Code (IRC) 2009 or the latest edition thereof: Sections. R104, R105, R109, R323, I ppendix AE101, Appendix E and Appendix J.

**§ 260-1343. Development Which May Endanger Human Life.**

A. In accordance with the Pennsylvania Flood Plain Management Act, and the regulations adopted by the Department of Community and Economic Development as required by the Act, any new or substantially improved structure which:

- 1. Will be used for the production or storage of any of the following dangerous materials or substances; or,

2. will be used for any activity requiring the maintenance of a supply of more than 550 gallons, or other comparable volume, of any of the following dangerous materials or substances on the premises; or,
3. Will involve the production, storage, or use of any amount of radioactive substances; shall be subject to the provisions of this section, in addition to all other applicable provisions. The following list of materials and substances are considered dangerous to human life:
  - (a) Acetone
  - (b) Ammonia
  - (c) Benzene
  - (d) Calcium carbide
  - (e) Carbon disulfide
  - (f) Celluloid
  - (g) Chlorine
  - (h) Hydrochloric acid
  - (i) Hydrocyanic acid
  - (j) Magnesium
  - (k) Nitric acid and oxides of nitrogen
  - (l) Petroleum products (gasoline, fuel oil, etc.)
  - (m) Phosphorus
  - (n) Potassium
  - (o) Sodium
  - (p) Sulphur and sulphur products
  - (q) Pesticides (including insecticides, fungicides, and rodenticides)
  - (r) Radioactive substances, insofar as such substances are not otherwise regulated.

- B. Within any Floodway Area, any structure of the kind described in Subsection A., above, shall be prohibited.

- C. Where permitted within any floodplain area, any new or substantially improved structure of the kind described in Subsection A, above, shall be:
1. Elevated or designed and constructed to remain completely dry up to at least one and one half (1½) feet above Base flood elevation,
  2. Designed to prevent pollution from the structure or activity during the course of a base flood elevation.
  3. Any such structure, or part thereof, that will be built below the regulatory flood elevation shall be designed and constructed in accordance with the standards for completely dry floodproofing contained in the publication "Flood-Proofing Regulations (U.S. Army Corps of Engineers, June 1972 as amended March 1992), or with some other equivalent watertight standard.
- D. Within any floodplain area, any new or substantially improved structure of the kind described in Subsection A., above, shall be prohibited within the area measured fifty (50) feet landward from the top-of-bank of any watercourse.

**§ 260-1344. Special Requirements for Subdivisions.**

- A. All subdivision proposals and development proposals containing at least 5 lots or at least 2 acres, whichever is the lesser, in flood hazard areas where base flood elevation data are not available, shall be supported by hydrologic and hydraulic engineering analyses that determine base flood elevations and floodway information. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA for Conditional Letter of Map Revision or Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant.

**§ 260-1345. Special Requirements for Manufactured Homes.**

- A. Within any FW (Floodway Area), manufactured homes shall be prohibited.
- B. Within Approximate Floodplain or Special Floodplain Area, manufactured homes shall be prohibited within the area measured fifty (50) feet landward from the top-of-bank of any watercourse.
- C. Where permitted within any floodplain area, all manufactured homes, and any improvements thereto, shall be:
1. placed on a permanent foundation.
  2. elevated so that the lowest floor of the manufactured home is at least one and one half (1½) feet above base flood elevation.
  3. anchored to resist flotation, collapse, or lateral movement.

- D. Installation of manufactured homes shall be done in accordance with the manufacturers' installation instructions as provided by the manufacturer. Where the applicant cannot provide the above information, the requirements of Appendix E of the 2009 International Residential Building Code or the U.S. Department of Housing and Urban Development's Permanent Foundations for Manufactured Housing, 1984 Edition, draft or latest revision thereto shall apply and 34 PA Code Chapter 401-405.
- E. Consideration shall be given to the installation requirements of the 2009 IBC, and the 2009 IRC or the most recent revisions thereto and 34 P A Code, as amended where appropriate and/or applicable to units where the manufacturers' standards for anchoring cannot be provided or were not established for the units(s) proposed installation.

**§ 260-1346. Special Requirements for Recreational Vehicles.**

- A. Recreational vehicles in Zones A1-30, AH and AE must either
  1. Be on the site for fewer than 1180 consecutive days,
  2. Be fully licensed and ready for highway use, or
  3. Meet the permit requirements for manufactured homes in Section 158.27.

**§ 260-1347. Activities Requiring Special Permits.**

- A. In accordance with the administrative regulations promulgated by the Department of Community and Economic Development to implement the Pennsylvania Flood Plain Management Act, the following activities shall be prohibited within any identified floodplain area unless a Special Permit has been issued by the Zoning Hearing Board:
  1. The commencement of any of the following activities; or the construction enlargement, or expansion of any structure used or intended to be used, for any of the following activities:
    - (a) Hospitals.
    - (b) Nursing homes.
    - (c) Jails or prisons.
  2. The commencement of, or any construction of, a new manufactured home park or manufactured home subdivision, or substantial improvement to an existing manufactured home park or manufactured home subdivision.

**§ 260-1348. Application Requirements for Special Permits.**

- A. Applicants for Special Permits shall provide five copies of the following items:
1. A written request including a completed Permit Application Form.
  2. A small scale map showing the vicinity in which the proposed site is located.
  3. A plan of the entire site, clearly and legibly drawn at a scale of one (1) inch being equal to one hundred (100) feet or less, showing the following:
    - (a) North arrow, scale and date;
    - (b) Topography based upon the north american vertical datum (navd) of 1988, showing existing and proposed contours at intervals of two (2) feet;
    - (c) All property and lot lines including dimensions, and the size of the site expressed in acres or square feet;
    - (d) The location of all existing streets, drives, other access ways, and parking areas, with information concerning widths, pavement types and construction, and elevations;
    - (e) The location of any existing bodies of water or watercourses, buildings, structures and other public or private facilities, including railroad tracks and facilities, and any other natural and man-made features affecting, or affected by, the proposed activity or development;
    - (f) The location of the floodplain boundary line, information and spot elevations concerning the base flood elevation elevations, and information concerning the flow of water including direction and velocities;
    - (g) The location of all proposed buildings, structures, utilities, and any other improvements; and
    - (h) Any other information which the municipality considers necessary for adequate review of the application.
  4. Plans of all proposed buildings, structures and other improvements, clearly and legibly drawn at suitable scale showing the following:
    - (a) Sufficiently detailed architectural or engineering drawings, including floor plans sections, and exterior building elevations, as appropriate;

- (b) For any proposed building, the elevation of the lowest floor (including basement) and, as required, the elevation of any other floor;
- (c) Complete information concerning flood depths, pressures, velocities, impact and uplift forces, and other factors associated with the base flood elevation;
- (d) Detailed information concerning any proposed floodproofing measures;
- (e) Cross section drawings for all proposed streets, drives, other accessways, and parking areas, showing all rights-of-way and pavement widths;
- (f) Profile drawings for all proposed streets, drives, and vehicular accessways including existing and proposed grades; and
- (g) Plans and profiles of all proposed sanitary and storm sewer systems, water supply systems, and any other utilities and facilities.

5. The following data and documentation:

- (a) Certification from the applicant that the site upon which the activity or development is proposed is an existing separate and single parcel, owned by the applicant or the client he represents;
- (b) Certification from a registered professional engineer, architect, or landscape architect that the proposed construction has been adequately designed to protect against damage from the base flood elevation;
- (c) A statement, certified by a registered professional engineer, architect, landscape architect, or other qualified person which contains a complete and accurate description of the nature and extent of pollution that might possibly occur from the development during the course of a base flood elevation, including a statement concerning the effects such pollution may have on human life;
- (d) A statement certified by a registered professional engineer, architect, or landscape architect, which contains a complete and accurate description of the effects the proposed development will have on base flood elevation elevations and flows;

- (e) A statement, certified by a registered professional engineer, architect, or landscape architect, which contains a complete and accurate description of the kinds and amounts of any loose buoyant materials or debris that may possibly exist or be located on the site below the base flood elevation and the effects such materials and debris may have on base flood elevation elevations and flows;
- (f) The appropriate component f the department of environmental protection's "planning module for land development;"
- (g) Where any excavation or grading is proposed, a plan meeting the requirements of the department of environmental protection to implement and maintain erosion and sedimentation control;
- (h) any other applicable permits such as, but not limited to, a permit for any activity regulated by the department of environmental protection under Section 302 of act 1978-166; and
- (i) An evacuation plan which fully explains the manner in which the site will be safely evacuated before or during the course of a base flood.

**§ 260-1349. Application Review Procedures.**

- A. Upon receipt of an application for a Special Permit by the Borough of Middletown the following procedures shall apply in addition to all others contained in this Article:
  1. Within three (3) working days following receipt of the application, a complete copy of the application and all accompanying documentation shall be forwarded to the County Planning Commission by registered or certified mail for its review and recommendations. Copies of the application shall also be forwarded to the Borough of Middletown Planning Commission and Borough of Middletown Engineer for review and comment.
  2. If an application is received that is incomplete, the Borough of Middletown shall notify the applicant in writing, stating in what respect the application is deficient.
  3. If the Borough of Middletown decides to disapprove an application, it shall notify the applicant, in writing, of the reasons for the disapproval.
  4. If the Borough of Middletown approves an application, it shall file written notification, together with the application and all pertinent information, with the Department of Community and Economic

Development, by registered or certified mail, within five (5) calendar days after the date of approval.

5. Before issuing the Special Permit, the Borough of Middletown shall allow the Department of Community and Economic Development thirty (30) days, after receipt of the notification by the Department, to review the application and decision made by the Borough of Middletown.
6. If the Borough of Middletown does not receive any communication from the Department of Community and Economic Development during the thirty (30) day review period, it may issue a Special Permit to the applicant.
7. If the Department of Community and Economic Development should decide to disapprove an application, it shall notify the Borough of Middletown and the applicant, in writing, of the reasons for the disapproval, and the Borough of Middletown shall not issue the Special Permit.

**§ 260-1350. Special Technical Requirements.**

- A. In addition to the requirements of contained above, the following minimum requirements shall also apply to any proposed development requiring a Special Permit. If there is any conflict between any of the following requirements and those in any other code, ordinance, or regulation, the more restrictive provision shall apply.
- B. No application for a Special Permits all be approved unless it can be determined that the structure or activity will be located, constructed and maintained in a manner which will:
  1. Fully protect the health and safety of the general public and any occupants of the structure. At a minimum, all new structures shall be designed, located, and constructed so that:
    - (a) the structure will survive inundation by waters of the base flood elevation without any lateral movement or damage to either the structure itself, or to any of its equipment or contents below the BFE.
    - (b) the lowest floor (including basement) will be elevated to at least one and one half (1½) feet above base flood elevation.
    - (c) the occupants of the structure can remain inside for an indefinite period of time and be safely evacuated at any time during the base flood elevation.
  2. Prevent any significant possibility of pollution, increased flood levels or flows, or debris endangering life and property.

- C. All hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc. shall be submitted in sufficient detail to allow thorough technical review by the Borough of Middletown and the Department of Community and Economic Development.

**§ 260-1351. Existing Structures in Identified Floodplain Areas.**

- A. The provisions of this Ordinance do not require any changes or improvements to be made to lawfully existing structures. However, when an improvement is made to any existing structure, the provisions of Section 158-33 shall apply.
- B. Improvements. The following provisions shall apply whenever any improvement is made to an existing structure located within any identified floodplain area:
  - 1. No expansion or enlargement of an existing structure shall be allowed within any floodway area that would cause any increase in the elevation of the base flood elevation.
  - 2. No expansion or enlargement of an existing structure shall be allowed within any Special Floodplain Area that would, together with all other existing and anticipated development, increase the BFE more than one (1) foot at any point.
  - 3. Any modification, alteration, reconstruction, or improvement, of any kind to an existing structure, to an extent or amount of fifty (50) percent or more of its market value, shall constitute a substantial improvement and shall be undertaken only in full compliance with the provisions of this Ordinance.
  - 4. The above activity shall also address the requirements of the 34 PA Code, as amended and the 2009 IBC and the 2009 IRC.
  - 5. Any modification, alteration, reconstruction, or improvement of any kind to an existing structure, to an extent or amount of less than fifty (50) percent of its market value, shall be elevated and/or floodproofed to the greatest extent possible.
  - 6. Any modification, alteration, reconstruction, or improvement of any kind that meets the definition of "repetitive loss" shall be undertaken only in full compliance with the provisions of this Article.

**§ 260-1352. Variances.**

- A. In General

1. If compliance with any of the requirements of this Article would result in an exceptional hardship to a prospective builder, developer or landowner, the Borough of Middletown may, upon request, grant relief from the strict application of the requirements.

B. Procedures and Conditions

1. Requests for variances shall be considered by the Zoning Hearing Board in accordance with the procedures contained in Section 2016.E and the following:
  - (a) No variance shall be granted for any construction, development, use, or activity within any floodway area that would cause any increase in the BFE.
  - (b) No variance shall be granted for any construction, development, use, or activity within any Special Floodplain Area that would, together with all other existing and anticipated development, increase the BFE than one (1) foot at any point.
  - (c) Except for a possible modification of the regulatory flood elevation requirement involved, no variance shall be granted for any of the other requirements pertaining specifically to development regulated by Special Permit or to Development Which May Endanger Human Life.
  - (d) If granted, a variance shall involve only the least modification necessary to provide relief.
  - (e) In granting any variance, the Zoning Hearing Board shall attach whatever reasonable conditions and safeguards it considers necessary in order to protect the public health, safety, and welfare, and to achieve the objectives of this Ordinance.
  - (f) Whenever a variance is granted, the Zoning Hearing Board shall notify the applicant in writing that:
  - (g)
    - [1] The granting of the variance may result in increased premium rates for flood insurance.
    - [2] Such variances may increase the risks to life and property.
2. In reviewing any request for a variance, the Zoning Hearing Board shall consider, at a minimum, the following:
  - (a) That there is good and sufficient cause.
  - (b) That failure to grant the variance would result in exceptional hardship to the applicant.

- (c) That the granting of the variance will:
  - [1] neither result in an unacceptable or prohibited increase in flood heights, additional threats to public safety, or extraordinary public expense,
  - [2] nor create nuisances, cause fraud on, or victimize the public, or conflict with any other applicable state or local ordinances and regulations.
- 3. A complete record of all variance requests and related actions shall be maintained by the Zoning Officer. In addition, a report of all variances granted during the year shall be included in the annual report to the FEMA.
- 4. Notwithstanding any of the above, however, all structures shall be designed and constructed so as to have the capability of resisting the one hundred (1 00) year flood.

**§ 260-1353. Definitions.**

A. In General.

- 1. Unless specifically defined below, words and phrases used in this Article shall be interpreted in conformity with Article 2, or if undefined, so as to give this Article its most reasonable application.

B. Specific Definitions, as used in this Article.

- 1. Accessory use or structure - a use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.
- 2. Base flood - a flood which has a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood").
- 3. Base flood elevation (BFE) - the elevation shown on the Flood Insurance Rate Map (FIRM) for Zones AE, AH, A1-30 that indicates the water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year.
- 4. Basement- any area of the building having its floor below ground level on all sides.
- 5. Building- a combination of materials to form a permanent structure having walls and a roof. Included shall be all manufactured homes and trailers to be used for human habitation.
- 6. Development- any man-made change to improved or unimproved real estate, including but not limited to the construction, reconstruction,

renovation, repair, expansion, or alteration of buildings or other structures; the placement of manufactured homes; streets, and other paving; utilities; filling, grading and excavation; mining; dredging; drilling operations; storage of equipment or materials; and the subdivision of land.

7. Existing manufactured home park or subdivision - a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.
8. Expansion to an existing manufactured home park or subdivision -the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).
9. Flood - a temporary inundation of normally dry land areas.
10. Flood Insurance Rate Map (FIRM) ~the official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.
11. Flood Insurance Study (FIS) – the official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Insurance Rate Map, the Flood Boundary and Floodway Map, and the water surface elevation of the base flood.
12. Floodplain area- a relatively flat or low land area which is subject to partial or complete inundation from an adjoining or nearby stream, river or watercourse; and/or any area subject to the unusual and rapid accumulation of surface waters from any source.
13. Floodproofing - any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.
14. Floodway- the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.
15. Highest Adjacent Grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

16. Historic structures - any structure that is:
  - (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
  - (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
  - (c) Individually listed on a state inventory of historic places in states which have been approved by the Secretary of the Interior; or
  - (d) Individually listed on a local inventory of historic places in communities with historic preservation that have been certified either:
    - [1] By an approved state program as determined by the Secretary of the Interior; or
    - [2] Directly by the Secretary of the Interior in states without approved programs.
17. Lowest floor - the lowest floor of the lowest fully enclosed area (including basement). An unfinished, flood resistant partially enclosed area, used solely for parking of vehicles, building access, and incidental storage, in an area other than a basement area is not considered the lowest floor of a building, provided that such space is not designed and built so that the structure is in violation of the applicable non-elevation design requirements of this ordinance.
18. Manufactured home- a structure, transportable in one or more sections, which is built on a permanent chassis, and is designed for use with or without a permanent foundation when attached to the required utilities. The term includes park trailers, travel trailers, recreational and other similar vehicles which are placed on a site for more than 180 consecutive days.
19. Manufactured home park or subdivision a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
20. Minor repair -the replacement of existing work with equivalent materials for the purpose of its routine maintenance and upkeep, but not including the cutting away of any wall, partition or portion thereof,

the removal or cutting of any structural beam or bearing support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the exitway requirements; nor shall minor repairs include addition to, alteration of, replacement or relocation of any standpipe, water supply, sewer, drainage, drain leader, gas, oil, waste, vent, or similar piping, electric wiring or mechanical or other work affecting public health or general safety.

21. New construction - structures for which the start of construction commenced on or after the effective date of this Ordinance and includes any subsequent improvements to such structures. Any construction started after December 8, 1976 and before the effective date of this Ordinance is subject to the ordinance in effect at the time the permit was issued, provided the start of construction was within 180 days of permit issuance.
22. New manufactured home park or subdivision- a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of this Ordinance.
23. Person - an individual, partnership, public or private association or corporation, firm, trust, estate, municipality, governmental unit, public utility or any other legal entity whatsoever, which is recognized by law as the subject of rights and duties.
24. Recreational vehicle - a vehicle which is:
  - (a) Built on a single chassis;
  - (b) Not more than 400 square feet, measured at the largest horizontal projections;
  - (c) Designed to be self-propelled or permanently towable by a light-duty truck,
  - (d) Not designed for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
25. Regulatory flood elevation- the base flood elevation (BFE) plus a freeboard safety factor of one and one-half (1½) feet.
26. Repetitive loss - flood related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on average, equals or

exceeds 25 percent of the market value of the structure before the damages occurred.

27. Special permit - a special approval 'which is required for hospitals, nursing homes, jails, and new manufactured home parks and subdivisions and substantial improvements to such existing parks, when such development is located in all, or a designated portion of a floodplain. .
28. Special flood hazard area (SFHA) - means an area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. It is shown on the FIRM as Zone A, AO, A1-A30, AE, A99, or, AH.
29. Start of construction - includes substantial improvement and other proposed new development and means the date the Permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date of the permit and shall be completed within twelve ( 12) months after the date of issuance of the permit unless a time extension is granted, in writing, by the Floodplain Administrator. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first, alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.
30. Structure - a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.
31. Subdivision - the division or redivision of a lot, tract, or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs, or devisees, transfer of ownership or building or lot development. Provided, however, that the subdivision by lease of land for agricultural purposes into parcels of more than ten acres, not involving any new street or easement of access or any residential dwelling, shall be exempted.

32. Substantial damage- damage from any cause sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty (50) percent or more of the market value of the structure before the damage occurred.
33. Substantial improvement - Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred substantial damage or repetitive loss regardless of the actual repair work performed. The term does not, however include any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.
  - (a) Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined in this ordinance, must comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic Places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.
34. Uniform Construction Code (UCC) - The statewide building code adopted by The Pennsylvania General Assembly in 1999 applicable to new construction in all municipalities whether administered by the municipality, a third party or the Department of Labor and Industry. Applicable to residential and commercial buildings, The Code adopted The International Residential Code (IRC) and the International Building Code (IBC), by reference, as the construction standard applicable with the State floodplain construction. For coordination purposes, references to the above are made specifically to various sections of the IRC and the IBC.
35. Violation- means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR §60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.



## ARTICLE 14

### A-Z AIRPORT ZONING OVERLAY DISTRICT

#### **§ 260-1400. Application.**

The regulations and standards contained in this Article shall apply to all applications to:

- A. Erect a new structure;
- B. Add to or increase the height of an existing structure; and
- C. Establish, erect, and/or maintain any use, structure, or object (natural or manmade), within the Airport Zoning Overlay District of the Borough of Middletown, Dauphin County, PA.

#### **§ 260-1401. Purpose and Intent.**

The purpose and intent of the Airport Zoning Overlay District is to:

- A. Create an overlay district that considers safety issues around the Capital City Airport (CXY) and Harrisburg International Airport (MDT);
- B. Regulate and restrict the heights of established uses, constructed structures, and objects of natural growth;
- C. Create a permitting process for certain uses, structures, and objects within said related zones.

#### **§ 260-1402. Relation to Other Zoning Districts.**

The Airport Zoning Overlay District shall not modify the boundaries of any other overlay zoning district. Where identified, the Airport Zoning Overlay District shall impose certain requirements on land use, construction and development in addition to those contained in the applicable underlying zoning district and/or applicable overlay zoning district for the same area.

#### **§ 260-1403. Definitions.**

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

**AIRPORT(S) – HARRISBURG INTERNATIONAL AIRPORT (MDT) AND CAPITAL CITY AIRPORT (CXY)** — Any area of land or water which is used, or intended to be use, for the landing and takeoff of aircraft and any appurtenant areas which are used, or intended to be used, for airport buildings or air navigation facilities for rights-of-way, together with all airport buildings and facilities thereon. As used herein, the term “Airport” includes public airports, but excludes private airports and heliports. Public and private airports are defined separately in this Section.

**AIRPORT ELEVATION** — The highest point of an airport's useable landing area measured in feet above sea level. The Airport elevation for Harrisburg International Airport is three hundred ten (310) feet; the Airport Elevation for Capital City Airport is three hundred forty seven (347) feet.

**AIRPORT HAZARD** — Any structure or object, natural or manmade, or use of land which obstructs the airspace required for flight or aircraft in landing or taking off at an airport or is otherwise hazardous as defined in 14 CFR Part 77 and 74 Pa. Cons. Stat. §5102.

**AIRPORT HAZARD AREA** — Any area of land or water upon which an airport hazard might be established if not prevented as provided for in this Ordinance and the Act 164 of 1984 (Pennsylvania Laws Relating to Aviation).

**APPROACH SURFACE (ZONE)** — An imaginary surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface. An approach surface is applied to each end of the runway based on the planned approach. The inner edge of the approach surface is the same width as the primary surface and expands uniformly depending on the planned approach. The approach surface zone, as shown on Figure 1, is derived from the approach surface.

**CONICAL SURFACE (ZONE)** — An imaginary surface extending outward and upward from the periphery of the horizontal surface at a slope of twenty (20) feet horizontally to one (1) foot vertically for a horizontal distance of four thousand (4,000) feet. The conical surface zone, as shown on Figure 1, is based on the conical surface.

**DEPARTMENT** — Pennsylvania Department of Transportation.

**FAA** — Federal Aviation Administration of the United States Department of Transportation.

**HEIGHT** — For the purpose of determining the height limits in all zones set forth in this Ordinance and shown on the zoning map, the datum shall be mean sea level elevation unless otherwise specified.

**HORIZONTAL SURFACE (ZONE)** — An imaginary plane 150 feet above the established airport elevation that is constructed by swinging arcs of various radii from the center of the end of the primary surface and then connecting the adjacent arc by tangent lines. The radius of each arc is based on the planned approach. The horizontal surface zone, as shown on Figure 1, is derived from the horizontal surface.

**LARGER THAN UTILITY RUNWAY** — A runway that is constructed for and intended to be used by propeller driven aircraft of greater than 12,500 pounds maximum gross weight and jet powered aircraft.

**NONCONFORMING USE** — Any pre-existing structure, object of natural growth, or use of land which is inconsistent with the provisions of this Ordinance or an amendment thereto.

**NON-PRECISION INSTRUMENT RUNWAY** — A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in non-precision instrument approach procedure has been approved or planned.

**OBSTRUCTION** — Any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth by this Ordinance.

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

**PRIMARY SURFACE (ZONE)** — An imaginary surface longitudinally centered on the runway, extending 200 feet beyond the end of paved runways or ending at each end of turf runways. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The primary surface zone, as shown on Figure 1, is derived from the primary surface.

**RUNWAY** — A defined area of an airport prepared for landing and takeoff of aircraft along its length.

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

**TRANSITIONAL SURFACE (ZONE)** — An imaginary surface that extends outward and upward from the edge of the primary surface to the horizontal surface at a slope of seven (7) feet horizontally to one (1) foot vertically (7:1). The transitional surface zone, as shown on Figure 1, is derived from the transitional surface.

**TREE** — Any object of natural growth.

**UTILITY RUNWAY** — A runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 pounds maximum gross weight or less.

**VISUAL RUNWAY** — A runway intended solely for the operation of aircraft using visual approach procedures.

**§ 260-14054. Conflict.**

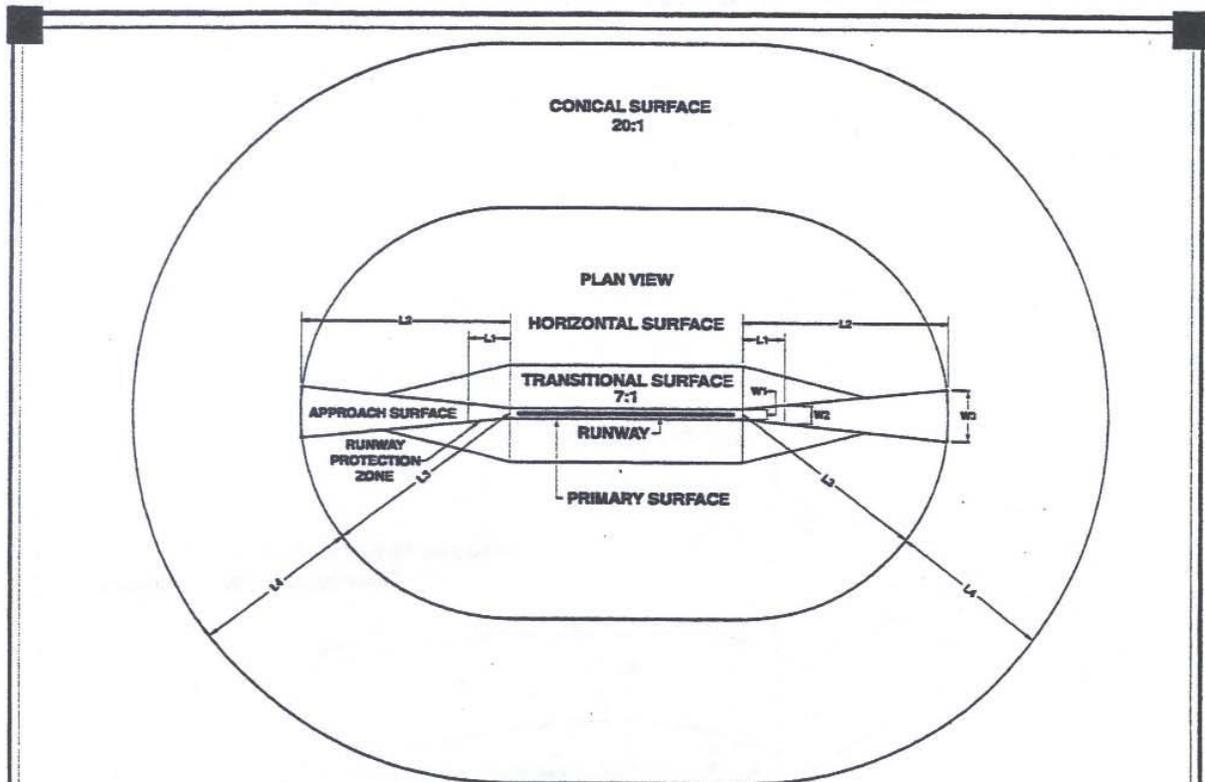
Wherever and whenever the requirements of this Article are at variance with the requirements of any other Section of this Chapter, the most restrictive, or that imposing the higher standards shall govern.

**§ 260-1405. Establishment of Airport Zones.**

There are hereby created and established certain zones within the Airport Zoning Overlay District, defined in this Chapter and depicted on Figure 1 and illustrated on the “Borough of Middletown, Dauphin County, PA: Airport Zoning Overlay District Map” as follows:

- A. Approach Surface Zone.
- B. Conical Surface Zone.
- C. Horizontal Surface Zone.
- D. Primary Surface Zone.
- E. Transitional Surface Zone.

Figure 1: Part 77 Surface Areas



**FAR PART 77 "IMAGINARY SURFACES" DIMENSION REQUIREMENTS**

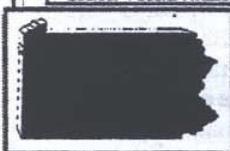
Runway Type	Runway End		Conical Surface (L4)	Horizontal Surface (L3)	Approach Surface			Approach Slope	Primary Surface Width	Transitional Surface
	Approach	Other			Length (L2)	Inner Width (W1)	Other Width (W3)			
Small Airplanes <sup>2</sup>	V	V	4,000	5,000	5,000	250	1,250	20:1	250	7:1
		NP	4,000	5,000	5,000	500	1,250	20:1	500	7:1
		NP 3/4	4,000	5,000	5,000	1,000	1,250	20:1	1,000	7:1
	NP	P	4,000	5,000	5,000	1,000	1,250	20:1	1,000	7:1
		V	4,000	5,000	5,000	500	2,000	20:1	500	7:1
		NP	4,000	5,000	5,000	500	2,000	20:1	500	7:1
Large Airplanes <sup>3</sup>	V	V	4,000	5,000	5,000	500	1,500	20:1	500	7:1
		NP	4,000	10,000	5,000	500	1,500	20:1	500	7:1
		NP 3/4	4,000	10,000	5,000	1,000	1,500	20:1	1,000	7:1
	NP	P	4,000	10,000	5,000	1,000	1,500	20:1	1,000	7:1
		V	4,000	10,000	10,000	500	3,500	34:1	500	7:1
		NP	4,000	10,000	10,000	500	3,500	34:1	500	7:1
Large and Small Airplanes	NP 3/4	V	4,000	10,000	10,000	1,000	4,000	34:1	1,000	7:1
		NP	4,000	10,000	10,000	1,000	4,000	34:1	1,000	7:1
		NP 3/4	4,000	10,000	10,000	1,000	4,000	34:1	1,000	7:1
	P	V	4,000	10,000	10,000/40,000	1,000	4,000/16,000	50:1/40:1	1,000	7:1
		NP	4,000	10,000	10,000/40,000	1,000	4,000/16,000	50:1/40:1	1,000	7:1
		NP 3/4	4,000	10,000	10,000/40,000	1,000	4,000/16,000	50:1/40:1	1,000	7:1
	P	4,000	10,000	10,000/40,000	1,000	4,000/16,000	50:1/40:1	1,000	7:1	

1 - In Feet  
 2 - Less than 12,500 lbs maximum certified takeoff weight  
 3 - Greater than 12,500 lbs maximum certified takeoff weight

V = Visual approach 20:1  
 NP = Nonprecision approach 34:1  
 NP 3/4 = Nonprecision approach with visibility minimums as low as 3/4 statute miles 34:1  
 P = Precision approach 50:1

Note: L1 is the length of the RPZ and W2 is the outer width of the RPZ as defined by approach visibility minimums

Source: Federal Aviation Administration



Pennsylvania Land Use  
Compatibility  
Guidelines

**FAR PART 77 SURFACES  
AND DIMENSION REQUIREMENTS**

Exhibit  
3

**§ 260-1406. Permit Applications.**

- A. As regulated by Act 164 and defined by 14 Code of Federal Regulations Part 77.13(2) (as amended or replaced), proposals for applications to:
1. Erect a new structure whose height does not surpass that of the primary structure on the property;
  2. Add to or increase the height of an existing primary structure; or
  3. Establish, erect, and/or maintain any use, structure, or object (natural or manmade), in the Airport Zoning Overlay District:

shall first notify the Department's Bureau of Aviation (BOA) by submitting PENNDOT Form AV-57 to obtain an obstruction review of the proposal at least 30 days prior to commencement thereof. The Department's BOA response must be included with this permit application for it to be considered complete. If the Department's BOA returns a determination of no penetration of airspace, the permit request should be considered in compliance with the intent of this Overlay Ordinance. If the Department's BOA returns a determination of a penetration of airspace, the permit shall be denied, and the project sponsor may seek a variance from such regulations as outlined in Section 1408.

- B. Exceptions. In the following circumstances notification of an approval by PennDOT's Bureau of Aviation (BOA) shall not be required:
1. No permit is required to make maintenance repairs to or to replace parts of existing structures which do not enlarge or increase the height of an existing structure.

**§ 260-1407. Variances.**

- A. In addition to the provisions set forth in Section 2016.E relating to variances, Any request for a variance shall include documentation in compliance with 14 Code of Federal Regulations Part 77 Subpart B (FAA Form 7460-1 as amended or replaced). Determinations of whether to grant a variance will depend on the determinations made by the FAA and the Department's BOA as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable air space. In particular, the request for a variance shall consider which of the following categories the FAA has placed the proposed construction in:
1. No Objection - The subject construction is determined not exceed obstruction standards and marking/lighting is not required to mitigate potential hazard. Under this determination a variance shall be granted.

2. Conditional Determination - The proposed construction/alteration is determined to create some level of encroachment into an airport hazard area which can be effectively mitigated. Under this determination, a variance shall be granted contingent upon implementation of mitigating measures as described in Section 9 - Obstruction Marking and Lighting.
  3. Objectionable - The proposed construction/alteration is determined to be a hazard and is thus objectionable. A variance shall be denied and the reasons for this determination shall be outlined to the applicant.
- B. Such requests for variances shall be granted where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship and that relief granted will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the intent of this Ordinance.

**§ 260-1408. Use Restrictions.**

Notwithstanding any other provisions of this Ordinance, no use shall be made of land or water within the Airport District Overlay in such a manner as to:

- A. Create electrical interference with navigational signals or radio communications between the airport and aircraft;
- B. Make it difficult for pilots to distinguish between airport lights and others;
- C. Impair visibility in the vicinity of the airport;
- D. Create bird strike hazards; or
- E. Otherwise endanger or interfere with the landing, takeoff or maneuvering of aircraft utilizing the airport(s).

**§ 260-1409. Pre-Existing Non-Conforming Uses.**

The regulations prescribed by this Ordinance shall not be construed to require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations as of the effective date of this Ordinance, or otherwise interfere with the continuance of a non-conforming use. No non-conforming use shall be structurally altered or permitted to grow higher, so as to increase the non-conformity, and a non-conforming use, once substantially abated (subject to the underlying zoning ordinance,) may only be reestablished consistent with the provisions herein.

**§ 260-1410. Obstruction Marking and Lighting.**

Any permit or variance granted pursuant to the provisions of this Article may be conditioned according to the process described in Section 2016.E to require the owner of the structure or object of natural growth in question to permit the municipality, at its own expense, or

require the person requesting the permit or variance, to install, operate, and maintain such marking or lighting as deemed necessary to assure both ground and air safety.

## ARTICLE 15

### GENERAL AND SUPPLEMENTAL REGULATIONS

#### § 260-1500. Purpose.

This Article contains provisions which qualify or supplement the district regulations appearing elsewhere in this chapter.

#### § 260-1501. Accessory buildings, structures or uses.

Accessory buildings, structures or uses shall only be constructed on a lot containing a principal structure or use. No use of an accessory building will be permitted until completion of the permitted principal building or use. Unless specified elsewhere in this chapter, accessory buildings, including, but not limited to detached garages, shall comply with the following:

- A. Detached private garage for no more than three (3) automobiles shall be permitted in any district.
- B. Detached accessory structures, buildings shall not exceed sixteen (16) feet in height in all residential districts except as noted in Section 1501 H.
- C. Attached accessory buildings shall not exceed the height of the principal structure
- D. Temporary buildings and structures are not permitted, except as otherwise permitted in this article.
- E. No detached or free-standing accessory building or structure shall be located within any required front yard, except fences and walls in accordance with Section 1505.
- F. An accessory building or structure may be erected in the side or rear yard, provided that such building is entirely separated from the principal building by a minimum distance of 10 feet and is located farther back from the front street line than the front most portion of the principal building.
- G. An accessory building shall have a maximum area no larger than three hundred (300) square feet in ground floor area, with the exception of accessory garages, which shall not exceed one thousand (1000) square feet.
- H. An accessory building may be erected within the rear yard provided where such rear yard is along an alley or adjacent to another lot, the accessory building shall be located not less than five (5) feet from such side or rear lot line.
- I. Any accessory building or structure erected, set or placed less than ten (10') feet from the principal or main building shall be attached to the principal or main building and shall be considered as part of that structure.

- J. An existing non-conforming accessory building or structure may be repaired or completely removed, but shall not be expanded or substantially altered.
- K. No dwelling unit shall be permitted in any basement, cellar or any other accessory building or structure except that a dwelling unit having a minimum of four hundred and fifty (450) square feet of habitable floor area may be constructed above an existing detached garage (s) or accessory building with non-habitable floor area on the ground level up to a maximum of two (2) stories above grade. Conversion of ground level non-habitable floor area into habitable floor area creates a principal building.
- L. Accessory uses include but are not limited to swimming pools, greenhouses and tennis courts.
- M. The use of non-traditional storage units, including those commercially known as “pods” or enclosed “container” of a box trailer with or without wheels, shall be permitted on a temporary basis subject to the following:
  1. Units shall be permitted for a maximum period of 60 days in any one calendar year. This period may be extended upon written request to the Zoning Officer for a period not exceeding 180 days.
  2. The enclosed “container” of a box trailer with wheels may be used for temporary construction storage for the period for which a valid building permit has been issued. Such units shall be licensed and located in accordance with the required accessory use setback of the zoning district in which the property is located.
  3. The “container” of a box trailer, with or without wheels, shall not be used for permanent storage in any zoning district.
  4. A zoning permit must be obtained from the zoning officer.

**§ 260-1502. Antenna, Standard (includes amateur radio antenna)**

- A. No standard antenna, including its supporting structure, shall have a total height exceeding fifteen feet (15’) above the top of the principal building on the lot, except that an amateur radio antenna may have a maximum height above the average surrounding ground level of seventy feet (70’).
- B. An antenna shall be properly anchored to resist high winds.

**§ 260-1503. Dumpster Screening and Location**

- A. Solid waste dumpsters shall be screened on three sides. Such screening shall consist of decorative masonry walls, solid weather-resistant wood fencing or a material of a similar appearance (such as white vinyl vertical planks). Evergreen plantings are also encouraged in addition to the fence or

wall. The fence or wall shall include a self-latching door or gate.

- B. Setback from Dwellings. An outdoor solid waste container with a capacity of over 25 cubic feet shall be kept the maximum distance that is feasible from any abutting dwelling, provided that the container is not in the minimum front yard setback area. In any case, an outdoor solid waste container shall be kept a minimum of 15 feet from an abutting dwelling. A solid waste dumpster shall not be located in a front, side or rear setback yard or a required buffer yard.
- C. All waste containers shall be completely enclosed, and the lid shall be kept in place. The locations of all dumpsters shall be shown on all site plans and land development plans submitted to the Borough of Middletown.
- D. This Section shall not apply to dumpsters temporarily placed during actual construction or demolition on the premises, or for recycling containers that do not involve garbage.

**§ 260-1504 Excavation and demolition.**

- A. It shall be the duty of each person or contractor who intends to perform excavation or demolition work at a site within the Borough to obtain a permit from the Code Enforcement Officer. Such permit shall not be issued unless the person or contractor establishes proof of compliance with the appropriate notification requirement under Pennsylvania law (Act No. 287, approved December 10, 1974, as the same may be changed or amended from time to time Editor's Note: See 73 P.S. § 176 et seq.).
- B. Any excavations for the removal of topsoil or other earth products must be adequately drained to prevent the formation of pools of water. The Zoning Officer may require that such an excavation be enclosed by a fence if it is deemed to be a menace to the public health, safety and welfare. Such excavation shall be graded to avoid the creation of open pits, holes or depressions which are below the elevation of adjacent roadways.
- C. Unless specifically permitted by the Zoning Hearing Board, open excavations shall not be maintained, except those excavations made for the erection of a building or structure for which a permit has been issued.
- D. The dumping of earth, gravel, rock or other materials not subject to decay shall not be permitted in any zone or any vacant land except by permit. In any event, the existing grade shall not be raised more than three (3) feet above the nearest road, hazardous or nuisance conditions shall not be created, nor shall an unsightly appearance or unstable slopes be created. The dumping of materials subject to decay, noxious or offensive materials or junk shall not be permitted in any district.
- E. Excavations shall be made only by permit and such permit shall be issued only when shown not to be detrimental to the neighborhood or objectives of

ordinances. Excavations must not remain as a scar to the land and must be contoured and seeded to restore the continuity of surrounding land.

- F. A maximum of thirty percent (30%) graded incline or decline shall be permitted in relationship to existing adjoining property grades after excavation.

**§ 260-1505. Fences and walls.**

- A. Fences and free standing walls may be erected, altered and maintained within the yards, provided that any such fence or wall in the front yard shall not exceed four (4) feet in height, and any fence or wall in the side or rear yard exceeding six (6) feet in height shall contain openings therein equal to fifty percent (50%) of the area of that portion of the wall or fence exceeding six (6) feet in height, not to exceed two (2) feet. Barbed wire will be permitted at the top of a fence or barrier in the C-1, C-2 and M-1 Districts or publicly owned properties at a minimum height of six (6) feet. No fence or other barrier may be electrified.
- B. All yards used for the storage of any material needed for the operation or conduct of a manufacturing or commercial enterprise shall be enclosed by a solid wall, uniformly painted board fence or screen planting on all sides which face upon a street or face upon a lot in a more restricted zone.
- C. All fences and walls shall be located and constructed so that no portion of the structure extends beyond the property line.
- D. No fence, wall or hedge shall obstruct the clear-sight triangle requirements of this Chapter, as defined in Section 1509 "Obstruction to vision."
- E. No fence, wall, or structure shall be permitted or erected in a public or private drainage, utility or access easement, unless otherwise required by this Chapter or other Borough ordinance. Any such fence erected in violation of this Section shall be removed or relocated at the owner's expense.
- F. Engineered retaining walls necessary to hold back slopes are exempted from the regulations of this Section and are permitted by right as needed in all zoning districts.

**§ 260-1506. Habitable floor area.**

Each dwelling unit shall not have less than six hundred fifty (650) square feet of habitable floor area, except that efficiency units intended for occupancy by not more than two (2) persons shall have not less than four hundred and fifty (450) square feet of habitable floor space

**§ 260-1507. Municipal uses.**

In any district, including a residential planned development district, a building may be erected, altered or extended and land may be developed which is arranged, intended or

designed for municipal uses, including firehouses of volunteer fire companies and municipal recreation uses.

**§ 260-1508. Number of Principal Uses and Principal Buildings Per Lot**

- A. A lot in a commercial or industrial district may include more than one principal use and/or more than one principal building, provided that every requirement is met for each use and each building. If differing dimensional requirements apply for different uses on the lot, then the most restrictive requirement shall apply.
  - 1. For example, if use one requires a one acre lot area and use two on the same lot requires a 2 acre lot area, then the lot shall have a minimum lot area of 2 acres.
  - 2. The lot may include a condominium form of ownership of individual buildings, with a legally binding property-owner's association, if the applicant proves to the satisfaction of the Zoning Officer, based upon review by the Borough Solicitor, that there will be appropriate legal mechanisms in place and compliance with applicable State law.
- B. A lot within a residential district shall not include more than one principal use and shall not include more than one principal building unless specifically permitted by this Chapter.
  - 1. A manufactured/mobile home park, condominium residential development, student housing development or apartment development may include more than one principal building per lot, provided all other requirements of this Chapter are met.
  - 2. A condominium form of ownership of individual dwelling units, with a legally binding homeowners or other association, may be established if the applicant proves to the satisfaction of the Zoning Officer, based upon review by Borough's Solicitor, that there will be appropriate legal mechanisms in place and compliance with applicable State law.
  - 3. Each principal building must be served by its own utilities.

**§ 260-1509. Obstruction to vision; visibility at intersections.**

- A. Walls, fences, signs or other structures shall not be erected or altered and hedges, trees or other growth shall not be planted or maintained which may cause danger to traffic on a street or road by obstructing the view.
- B. In a clear sight triangle, no walk, fence, sign or other structure shall be erected or altered, and no hedge, tree, shrub or other growth shall be maintained or permitted between 3' and 8' above the street grade which may cause danger to traffic on a street or public road by obscuring the view.
- C. Where two streets intersect, a clear sight triangle shall be required. Each of

the two shorter legs of the triangle shall be measured from 30 feet back from the point of intersection of the street cartways (disregarding the curbed radius at the corner). These two legs shall be connected by a third longer leg.

- D. Where a street intersects with an alley, a clear sight triangle shall be established with one leg of the triangle 15 feet long along the edge of the right-of-way of the street and one leg of the triangle 10 feet long along the centerline of the alley, with the 2 legs connected by a third longer leg.
- E. Where 2 alleys intersect, a clear sight triangle shall be established with each leg of the triangle 10 feet long along the centerline of each alley, and with the 2 legs connected by a third longer leg.
- F. All fences and walls shall be in accordance with Section 1505.

**§ 260-1510. Performance standards.**

- A. Middletown Borough requires safeguards to assure compliance with the following environmental performance standards. When required, the applicant shall demonstrate that adequate provisions will be made to reduce and minimize any objectionable elements. Nothing in this performance standard shall take precedence over any applicable current state or federal law governing air management, wastewater management, solid waste management or noise.
- B. Upon request of the Borough Zoning Officer or Planning Committee, the owner shall furnish or obtain proof, at his own expense, that the proposed use will comply with the following standards. A use of activity shall not:
  - 1. Constitute a nuisance or danger to human health and safety, livestock or plants or any other property as a result of light flicker, emission or dissemination of any fumes, smoke, odor or dust beyond the property lot of the premises upon which such use or activity is located.
  - 2. Create any noise or vibration exceeding the average intensity of noise or vibration occurring from other sources at the property line.
  - 3. Endanger any surrounding area by reason of fire or explosion.
  - 4. Produce any objectionable heat or glare beyond the property line.
  - 5. Create any electrical disturbances or adversely affect the operation of equipment located off the premises.
  - 6. Discharge any dangerous or untreated effluent into any stream or other body of water or otherwise contribute to the pollution of surface or underground water.
  - 7. Create an undesirable or dangerous traffic condition on the street or in a nearby area or generate a nuisance to any nearby property because

of increased traffic.

8. Create any other objectionable condition which will endanger public health and safety or be detrimental to the proper use of the surrounding area.

C. Outdoor Lighting: Where light fixtures are installed to provide exterior illumination, excluding overhead street lighting and warning, emergency, or traffic signals, the following restrictions shall apply. These standards will only apply to non-residential, apartment and single-family attached or semi-attached uses abutting residential uses.

1. All outdoor lighting, whether or not required by this Chapter, shall have intensities and uniformity ratios in accordance with the current recommended practices of the Illuminating Engineering Society of North America (IESNA) as contained in the IESNA Lighting Handbook.
2. All future amendments to the recommended practices of the IESNA shall be made a part of the Chapter without further action by Borough Council.
3. Street lighting fixtures, when required for safety considerations, may be controlled by photocells for dusk to dawn operation.
4. The lighting from any luminary shall be shaded, shielded, or directed to prevent direct light from being distributed onto adjacent properties and/or surrounding areas. Unshielded lighting is not permitted, except for temporary holiday lighting.
5. Lighting shall be designed so that glare or direct illumination does not exceed one (1') foot candle beyond the property line on which the lighting originates.
6. Lighting on private, residential, commercial, industrial, municipal, recreational or institutional property; shall be aimed, located, designed, fitted and maintained so as not to present a hazard to drivers or pedestrians by impairing their ability to safely traverse (disabling glare).
7. Pole-mounted lamps shall be placed directly above the area to be illuminated and shielded at the top and sides; or positioned near the perimeter of a property and aimed toward the area requiring illumination, subject to applicable yard setback provisions.
8. Vegetation screens shall not be employed to serve as the primary means for controlling glare. Rather, glare control shall be achieved primarily through the use of such means as cutoff fixtures, shields and baffles, and appropriate application of mounting height, wattage, aiming angle, fixture placement, etc.

9. The installation or erection of any lighting, which may be confused with warning signals, emergency signals, or traffic signals, shall not be permitted.
10. Lighting of parking lots shall be in accordance with this Chapter.
11. Maintenance: Lighting fixtures shall be maintained so as to always meet the requirements of this Ordinance.
12. Nonconforming Lighting: Any lighting fixture existing on the effective date of this Chapter which does not conform with the requirements of this Chapter shall be considered a lawful, nonconforming lighting fixture. A nonconforming lighting fixture shall be made to comply with the requirements of this Chapter when such fixture is replaced or relocated.

**§ 260-1511. Pets, Keeping Of**

- A. Keeping of pets is permitted by right as an accessory use in all zoning districts.
- B. No use shall involve the keeping of animals or fowl in such a manner or of such types of animals that it creates a serious nuisance (including noise or odor), a health hazard or a public safety hazard. The owner of the animals shall be responsible for collecting and properly disposing of all fecal matter from pets. No dangerous animals shall be kept outdoors in a residential district.
- C. It shall be unlawful on a residential property to maintain any “exotic wildlife” as defined by the Pennsylvania Game & Wildlife Code, whether or not an exotic wildlife possession permit has been issued.

**§ 260-1512. Prohibited uses.**

- A. The primary living and sleeping quarters of dwelling units shall not be permitted in cellars or basements.
- B. The following uses are prohibited in all districts throughout the municipality:
  1. The incineration, reduction or storage of garbage, offal, animals, fish or refuse unless by the authority of or under the supervision of the Borough of Middletown.
  2. Dumps and dumping of any kind, unless by the authority of or under the supervision of the Borough of Middletown.
  3. The stripping of topsoil for sale, exclusive of the process of grading a lot preparatory to the construction of a building for which a zoning permit has been issued.

- C. No use or activity shall be permitted which, by reason of noise, dust, odor, appearance, smoke or other objectionable factor, creates a nuisance, hazard or other adverse effect upon the value or reasonable enjoyment of the surrounding properties.
- D. Keeping of livestock and poultry, except as part of a permitted agricultural operation, shall be prohibited.
  - 1. Regulations pertaining to the keeping of household pets shall be as specified in the Borough Code of Ordinance, Chapter 101, "Animals".

**§ 260-1513. Public utility facilities.**

- A. Public utility facilities shall be permitted in any district without regard to the use and area regulations; provided, however, that buildings or structures erected for these utilities shall be subject to the following regulations:
- B. Front, side and rear yards shall be provided in accordance with the regulations of the district in which the facility is located.
- C. The maximum permitted height shall be as regulated by the district regulations.
- D. Unhoused equipment shall be enclosed by a chain link fence six (6') feet in height.
- E. Housed equipment. When the equipment is totally enclosed within a building, no fence or screen planting shall be required, and the yards shall be maintained in conformity with the district in which the facility is located.
- F. Screen planting in residential districts. In the R-1, R-1A, R-2, R-C and R-3 districts, the required fence for unhoused equipment shall be surrounded by an evergreen planting as approved by the Planning Committee.
- G. The external design of the building shall be compatible with the buildings in the district.

**§ 260-1514. Satellite Dish Antennas**

- A. Satellite dish antennas are subject to all accessory use standards, except as provided herein this Section.
- B. All wiring for ground-based antennas shall be underground.
- C. Every satellite antenna shall be adequately grounded for protection against a direct strike of lightning.
- D. Any satellite dish antenna located within the R-1, R-1A, R-2, R-3 and C-2

zoning districts shall be used only to receive signals, not to transit them and shall be subject to the following criteria:

1. Only one (1) satellite dish antenna shall be permitted per unit of occupancy.
  2. In a residential district or the C-2 district, a satellite dish antenna or satellite antenna shall not be located within the required front yard nor on front facades of buildings
  3. The maximum diameter of any satellite dish installed on any lot, building or structure shall not exceed 3 feet.
  4. The height of the proposed installation does not exceed the maximum height restriction imposed upon primary and accessory uses within the district.
  5. All applications must include certification by a registered engineer that the proposed installation complies with all applicable Building Code standards. Furthermore, written documentation of such compliance, including load distributions within the building's support structure, shall be furnished.
  6. A satellite dish antenna shall not project above the peak of a roof, and if said satellite dish antenna is roof-mounted, no point of the satellite dish antenna shall be greater than three (3) feet from the roof's surface. A satellite dish antenna shall be permitted to be mounted on a flat roof so long as the satellite dish projects less than three (3) feet from the roof surface and is mounted in an inconspicuous location.
  7. Ground-mounted satellite dish antennas shall not be permitted to be located in required front or side yards.
- E. Any satellite dish located within the C-1 and M-1 zoning districts shall be subject to the following criteria:
1. All ground-mounted satellite dishes shall be completely enclosed by an eight foot (8') high, non-climbable fence that includes signage warning of dangerous radiation levels. Any gates within the fence shall be locked when unattended.
  2. Ground-based satellite antennas shall be placed only in the side or rear yard. No antenna shall be placed in the front yard.
  3. Satellite dish antennas must be set back from the side and rear property lines a minimum distance equal to the height of the satellite earth station, but the setback shall in no case be less than 10 feet.

4. The maximum height of a station being limited to 14 feet. Height of the apparatus shall include all poles, supports and related apparatus and shall be measured vertically from the ground to the maximum point when positioned for operation.

**§ 260-1515. Solar Energy Systems.**

Solar collectors and solar-related equipment shall be permitted in any zoning district as an accessory use to a building or as a detached accessory structure and may be installed upon receipt of the necessary construction, electrical and/or mechanical permit(s).

- A. No solar energy system or equipment shall be permitted to be located between the principal building and the public street (excluding alleys) or within any required front yard area.
- B. To the extent applicable, the Solar Energy System shall comply with the Pennsylvania Uniform Construction Code, Act 45 of 1999 as amended and the regulations adopted by the Department of Labor and Industry.
- C. There shall be no commercial use of Solar Energy Collectors, except in the M-1 Manufacturing District as noted below. Solar Energy Collectors shall be subject to the following conditions:
  1. Solar Energy Collectors shall not generate in excess of 125% of the estimated need of the principal use of the property.
  2. The solar energy collectors shall be connected to the public utility grid. Energy generated in excess of the requirements of the principal use of the property may be purchased or acquired by a public utility in accordance with the law or other government regulations.
  3. The area of any residential solar collection system shall not exceed 500 square feet cumulatively. In the M-1 district, the cumulative area of the solar energy system shall be considered as building coverage.
  4. A roof mounted solar collector shall not extend beyond the existing overhangs of the structure to which it is attached.
  5. A roof mounted Solar Energy System shall conform to the height regulations of the zoning district where the Solar Energy System is installed.
  6. No point on a ground-mounted solar collector or its support structure shall exceed a height of fifteen (15) feet.
  7. All exterior electrical and/or plumbing lines on a ground mounted system must be buried below the surface of the ground and be placed in a conduit.
  8. Ground mounted solar collectors shall comply with the setback

requirements of the underlying zoning district.

9. Non-functioning solar energy collectors shall be repaired or replaced within three (3) months of becoming non-functional.
- D. A solar energy collection system shall be located to ensure solar access without reliance on adjacent properties.
1. Where necessary to ensure that solar access is not obstructed over time by permissible uses on adjacent properties (i.e. planting and growth of landscape vegetation or new construction), it shall be the responsibility of the owner of the solar energy collector to obtain appropriate solar access easements from the neighboring property owner(s).
  2. It shall be the responsibility of the owner of the solar energy collector to notify the Borough upon the recording of the Solar Access Easement and to record such easement in the Dauphin County Recorder of Deeds.
- E. No person shall install any solar energy system for a building or structure, either residential or commercial, within the Borough, without first obtaining a permit from the Borough.
- F. The design of the Solar Energy System shall conform to applicable industry standards.

**§ 260-1516. Storage, Temporary.**

The temporary storage of portable dumpsters and bulk materials, including , but not limited to stone, mulch, firewood, and building materials within the public right-of-way shall be permitted for a period not to exceed 48 hour, unless a zoning permit is obtained from the zoning officer.

**§ 260-1517. Storage, Unenclosed.**

- A. In all zones, no outdoor stockpiling of any material shall be permitted in the required front yard.
- B. In any residential zone, the outdoor stockpiling of materials (except firewood) for more than one (1) year is prohibited.

**§ 260-1518. Swimming pools.**

- A. The construction of all outdoor swimming pools designed to contain a water depth of twenty-four (24) inches or more, including structure, filtration and drainage systems and all safety equipment, shall require a building permit and meet the specifications of the Borough or Engineer of the Borough.
- B. A single private outdoor swimming pool per dwelling is permitted as an

accessory use of a residential structure, provided that such pool is for the private use of the residents of the dwelling unit or for their guests.

- C. No pool shall be located in any required front yard or located closer than ten (10) feet from any property line.
- D. Every pool shall be completely enclosed by a fence or wall not less than four (4) feet in height.
  - 1. Every entryway in such fence or wall shall be closed by a self-closing, self-latching gate. Such gates shall be maintained in good repair and be fully functional and shall be in use at all times the pool contains water.
  - 2. Such fences or walls and gates shall be located and constructed so that no portion of the structure extends beyond the property line of the lot on which located.
  - 3. Such fence or wall shall be erected before any pool is filled with water.
- E. Whenever the water in a pool is provided or replenished from a public water supply system, the hose or pipe connected to the public water system shall be located at a physical height greater than the overflow level of the pool. Water discharged from the public system to the pool must pass through the air. At no time shall a hose or pipe connected to the public water system be located at or below the surface of the water in a pool.
- F. Water may not be discharged from a swimming pool directly onto adjacent properties or rights-of-way.
- G. No permanent pool structure shall be located over an on-lot septic system, drain field, utility, or access easement.

**§ 260-1519. Yard regulations.**

- A. Front yards.
  - 1. Front Yard Setback Exception. In any district within a block containing a lot proposed for construction or expansion of a building, where 50 percent or more of the improved lots on such block frontage on one side of a street currently have front yards of less depth than is currently required for that district, and where the clear majority of such lots are already developed, then the building line of the majority of the buildings on that side of the block may be used.
- B. Side yards
  - 1. Extension of any primary building and detached accessory building that is nonconforming with respect to the required side yard setback shall comply with Section 1902(E)(5).

2. The minimum residential driveway setback shall be three feet (3') from the side lot line, which shall be maintained as vegetation, with the exception of shared driveways for single family semi-detached units or single family attached units (townhouses), in which case the driveway may extend over the common property line of the attached or semi-detached units. A maintenance agreement shall be required between property owners for the shared driveway.
- C. Extensions into required yards. Structures may extend into the minimum required yards, as herein specified:
1. Cornices, eaves, gutters, bay windows and chimneys may extend into a front, side or rear yard not more than twenty-four (24) inches.
  2. On interior lots attached carports, porches and decks open on three (3) sides may protrude into required side yards up to fifty (50) percent of the side yard required for that district.
- D. In a commercial or manufacturing district, merchandise may be displayed in the yard space in accordance with the following regulations:
1. In side or rear yards not abutting streets or alleys: not closer to the side or rear lot line than three (3) feet.
  2. In side or rear yards abutting alleys: not closer to the right-of-way of the alleys than five (5) feet.
  3. In front yards not abutting streets or alleys on the side lot lines: not closer to the side lot lines than three (3) feet; setback from the front lot line is not required.
  4. In front yards not abutting alleys on the side lot lines: not closer to the side lot lines than five (5) feet; setback from the front lot line is not required.
  5. Merchandise displayed in front, side or rear yards abutting lots in more restricted districts shall be enclosed by a solid wall, uniformly painted board fence or screen planting.
- E. Obstruction of vision. See Section 1509

**§ 260-1520. Dwelling Location**

- A. In all residential districts no dwelling unit may be established on any street having less than a twenty (20) ft. cartway.

## ARTICLE 16

### OFF-STREET PARKING

#### § 260-1600. General regulations

- A. Existing use and permitted change of use. Any change of a permitted use to another use or any increase in the area of a use, which, by this Chapter requires a greater number of parking spaces than existing conditions, shall meet the requirements of this Chapter. All extensions, expansions, or changes of existing uses or structures shall meet the requirements of this Chapter for the additional space proposed to be added or for the new use proposed.
- B. For the purposes of this Chapter, expansion of a use shall include an increase in the number of uses within the original area of the existing use and an increase in floor area or outside area devoted to a use. All existing parking spaces shall be continued and maintained unless equivalent spaces are found elsewhere on the lot.
- C. A zoning permit must be secured from the Zoning Officer before any parking area is established or changed, if such change would result in a parking area of three or more spaces or deletion of any spaces. Application for a permit shall be made to the Zoning Officer in accordance with the following rules and regulations.
  - 1. The applicant shall submit the required number of copies of the information requested on the application and a fee and or escrow amount set by resolution of the Council when the application is submitted.
  - 2. The Zoning Officer shall forward copies of the application to the Borough Engineer for review. All engineering expenses incurred by the Borough in connection with the Borough Engineer's review of the application and inspection of the construction work shall be reimbursed by the applicant.
  - 3. The Zoning Officer and/or the Borough Engineer shall inspect the work periodically to determine the degree of compliance with the regulations and permit governing the work.
- D. Conflict with other uses. No parking area or space shall be used for any use that interferes with its availability for the parking need it is required to serve.
- E. Multiple uses. Where two or more uses occupy a common structure, building, or lot, the total number of parking spaces provided and maintained will be calculated as the sum of the parking spaces required for the individual uses that occupy the structure, building or lot or as the combined gross floor area or number of seats devoted to customer or patron use.

- F. Joint use. Two or more uses may provide for required parking in a common lot, if the total spaces provided are not less than the sum of the spaces required for each use individually, unless such parking is shared as permitted and defined below in Section 1601.
- G. Parking may not be located in the front yard in the C-2 district.
- H. Remote off street parking as per Section 1602.G.

**§ 260-1601. General provisions.**

- A. For the purposes of this Section, required standard parking spaces shall have an area of not less than 162 square feet, measured nine feet wide by 18 feet long, except that parallel parking spaces may be eight (8) feet wide and twenty-one feet (21) feet long. Spaces in parking lots, shall be physically separated from a street or sidewalk by a barrier or landscape planting area and shall have access to a street or alley by way of an approved curb opening.
- B. Accessible parking spaces shall have dimensions not less than the dimensions listed in the Americans with Disabilities Act, latest edition. Accessible parking spaces must be clearly marked on the pavement in the standard blue marking, with a sign heading the space using the international wheelchair profile symbol for handicapped persons. These spaces must be located as close as possible to public entrances and ramps to buildings.
- C. Accessible handicapped spaces shall be provided in the amounts required for parking areas serving multifamily dwellings with five or more units and commercial, institutional or public uses:

<b>Total Number of Parking Spaces Provided in Parking Facility</b>	<b>Minimum Number of Required Accessible Parking Spaces</b>
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	2% of total
1,001 and over	20, plus 1 for each 100 or fraction thereof, over 1,000

- D. The minimum width of aisles in parking areas shall be as noted below:

<b>Parking Angle</b>	<b>Minimum Width of Aisle One Way</b>	<b>Minimum Width of Aisle Two Way</b>

30°	16 feet	22 feet
45°	18 feet	22 feet
60°	20 feet	22 feet
90°	24 feet	24 feet

- E. Parking areas for 10 or more vehicles shall be so divided by permanent raised curbing at end islands that access lanes and parking spaces are clearly defined, and that moving traffic will be confined to designated lanes. All parking spaces shall be line striped with white or yellow paint.
- F. A structurally sound curb or bumper guard to ensure safety shall be provided so that no part of any parked vehicle shall extend over the property line.
- G. Outdoor parking spaces and the approaches thereto shall be paved. Off-street parking lots must be provided with a minimum three (3) foot-wide vegetative planting area around the perimeter.
- H. Drive-through establishments such as fast food order and pickup, automatic bank teller and similar uses shall provide not fewer than three waiting spaces for each drive-up lane, in addition to the space where the transaction takes place and in addition to the required parking.
- I. Parking areas for non residential uses shall be designed such that vehicles will not back into public streets.
- J. Except for residential uses, for the purpose of traffic channelization, defining parking areas and the reduction of visual monotony, a minimum of 5% of all interior surface parking areas shall be devoted to vegetative cover planted with a mixture of trees, shrubs, ground covers and lawn areas.
- K. A garage or carport may be located wholly or partly inside the walls of the principal building or attached to the outer walls. If attached to the principal building, the garage shall conform to all principal building requirements. The garage may be constructed under a yard or court, provided that the level of such yard or court shall conform to the general level of the outer yards or courts on the lot.
- L. Porous type pavement shall be permitted for open space parking within a floodplain district to accommodate recreation activities and other Municipal activities.

**§ 260-1602. Facilities required**

Parking spaces and connecting driveways shall hereafter be provided for each building or use in accordance with the provisions herein, including the table which follows and the preceding design standards.

- A. For newly constructed buildings, the enlargement portion of any addition to an existing building and any new or expanded commercial open-area usage,

parking shall be provided for each use, with the number of spaces not less than that indicated by the table.

- B. For existing buildings or existing commercial open-area uses, when changes in uses occur, with or without building renovation, existing off-street parking shall not be reduced to less than the number of spaces indicated by the table. On properties where the land area is insufficient to enable provision of spaces in accordance with the table, spaces shall be provided in accordance with Section 1602.F and Section 1602.G, conformant with coverage and safety limitations,
- C. The number of parking spaces indicated by the table shall be the minimum number required.
- D. All required off-street parking spaces shall be on the same lot as the principal building or commercial open area and shall be readily accessible to and within a reasonable distance from the building or open area served by the spaces, except as noted elsewhere in this Section.
- E. All parking areas and means of access, other than those relating to a dwelling, shall be illuminated during night hours of use.
- F. Alternative parking. Within all Districts any use existing as of the effective date of this chapter which can be lawfully expanded, or any new use that cannot meet the parking requirements of this chapter within the lot or boundary lines of the principal use may meet the parking requirements of this chapter in one of two ways listed below. If spaces are leased or licensed, the Borough shall require proof of the leasing or licensing arrangement and use of the spaces to be kept on file. Proof of ongoing leases or licenses and use of the spaces will be required every year. Parking spaces designated for one use may not be used to satisfy parking requirements for another use, unless the requirements of (1) are met.
  - 1. Valet parking. Valet parking may be used to meet any portion of the required off-street parking requirement, provided that the application indicates where the cars will be parked. An annual permit shall be required from the Borough for uses meeting parking requirements through valet parking arrangements. Valet parking arrangements shall be adequately managed and staffed to minimize disruption to traffic on local roads. The use shall be discontinued immediately upon loss of parking arrangements; and/or
  - 2. The applicant shall provide an agreement in writing at intervals determined by Middletown Borough that the parking spaces are available and secured by lease or license, or the applicant shall provide proof of the availability of the required parking spaces, which are not needed to meet the requirements of another use and which can be used for parking purposes by the applicant. This option may be used to meet any portion of the parking requirement. The use shall

be discontinued immediately upon loss of parking arrangements; and/or new lease or license agreements must be secured. Alternative parking may be within 600 feet of the primary residence.

3. In the C-2 Commercial District, the applicant may credit those on-street parking spaces which abut their premises toward the parking requirement for the uses contained within the proposed development.

G. For any building or use not covered above, the Zoning Officer shall apply the standard for off-street parking spaces in the below schedule deemed to most closely approximate the proposed building or use.

<b>Type of Use</b>	<b>Number of Parking Spaces Required</b>
Retail business and customer service establishments and public buildings	1 for every 250 square feet of gross floor area 1 for every 400 square feet of gross floor area in the C-2 district
Offices	1 for every 250 square feet of gross floor area 1 for every 400 square feet of gross floor area in the C-2 district
Restaurants, taverns and nightclubs	1 for every 2.5 seats 1 for every 250 square feet of Gross Floor Area in the C-2 district
Medical and dental clinics	4 for every doctor or dentist
Motels, tourist homes or hotels	4 for every 3 sleeping rooms
Churches, theaters, auditoriums and places or assembly	1 for every 3.5 seats
Elementary and secondary public and parochial schools	1 for every 2 teachers and employees, plus 1 for every 15 students
Colleges, universities and commercial schools	1 for every 5 classroom seats
Social halls, clubs and lodges, health clubs and libraries	1 for every 250 square feet of Gross Floor Area
Bowling alleys	4 for every 1 alley + 1/employee
Single- and two-family dwellings	2 for every dwelling unit
Apartment houses/Single-family attached dwellings	1.33 for every dwelling unit
Student housing	1.33 for every dwelling unit
Conversion apartments	1.33 for every dwelling unit
Funeral homes	10 for every parlor
Boarding-, lodging and rooming houses	1 for each occupant
Manufacturing plants	1 for every 1,000 square feet of Gross Floor Area
Wholesale establishments and warehouses	1 for every 1,000 square feet of Gross Floor Area
Nursing and convalescent homes	1 for every 4 beds

NOTES:

<sup>1</sup> The parking space requirements set forth above shall not apply to the C-2 district, except in those situations in which a new building or structure is erected or a structural addition is added to an existing building or structure

<sup>2</sup> Existing structures and uses in existence on the effective date of this chapter shall not be subject to the requirements of this article so long as the kind or extent of use is not changed so as to require additional parking.

**§ 260-1603. Vehicle parking regulations.**

- A. Any vehicle may be parked in any garage or other suitable enclosed building, provided that said building is a conformant principal or **accessory building or is a non-conforming building in accordance with the provisions of Article 19.**
- B. An inspected motor vehicle or licensed trailer may be parked on the public street in accordance with the street ordinances of Middletown Borough and the motor vehicle laws of Pennsylvania.
- C. Off-street parking for single-family detached, single-family semidetached and two-family detached dwellings may occur in front and side yards, in accordance with the following:
  - 1. Parking shall be permitted only on a paved driveway or parking area.
  - 2. No more than two (2) parking spaces may be located end-to-end.
  - 3. Only personal autos, personal trucks or light commercial vehicles (maximum of 1 per dwelling unit), may be parked in front yards.
  - 4. Driveways are expected to connect a permitted garage, carport or side or rear parking area to the street.
  - 5. The paving and spacing requirements of this Article shall apply.
  - 6. Rear yard parking is permitted if connected to a street.
- D. Off Street parking for two-family semi-detached, townhouses, and apartments shall not be permitted in front yards.
- E. Repair of Personal Motor Vehicles. The routine maintenance, repair and servicing of personal motor vehicles, including go-carts and racing vehicles, owned or leased by the person performing such services when performed outside of a building within the (R-1), (R-1A), (R-2), (R-3), and (C-2) zones, shall comply with Chapter 210 of the Borough of Middletown Codified Ordinances, and the International Property Maintenance Code.
- F. Storage of vehicles.

1. Except for licensed motor vehicles, no vehicle, machinery, trailer, mobile home, boat or other similar equipment shall be parked or stored outside, except as follows:
  - (a) In any residential district within any front yard area or any required side yard areas, for more than three (3) days.
  - (b) No more than one (1) such item shall be stored outside at any time.
2. The parking or storage of any licensed motor vehicle in a front yard area shall occur only upon a driveway.
3. In commercial and industrial districts, motor vehicles and mobile homes of any type without current license plates must be parked or stored within completely enclosed accessory buildings, unless the motor vehicles or motor homes are for sale by a licensed agency.

**§ 260-1604. Loading and unloading spaces.**

In addition to the off-street parking space required above, all commercial and industrial establishments, hospitals or sanitariums and other similar uses shall provide adequate off-street area for loading and unloading of supplies to and from vehicles. At least one (1) loading berth shall be provided; however, should the gross floor area of the main buildings and buildings accessory thereto used for commercial and/or industrial purposes exceed ten thousand (10,000) square feet, one (1) additional loading berth shall be provided for each twenty thousand (20,000) square feet of gross floor area. The off-street loading berth shall be not less than ten by twenty-five (10 x 25) feet in size.

## ARTICLE 17

### SIGNS

#### § 260-1700. Sign Definitions

As used in this Article, the following terms shall have the meanings indicated:

**SIGN--** Any permanent or temporary structure or part thereof, or any device attached, painted, or represented directly or indirectly on a structure or vehicle intended to attract the attention of those outside in the public right-of-way, that displays or includes any letter, word, insignia, flag, object, device, or representation used as an advertisement or announcement. Signs may be of the following types:

- A. **ANNOUNCEMENT BOARD** — A sign on which the message copy can be changed through the use of attachable letters, numerals, or graphics or through the use of electronic switching of lamps or other illuminated devices. This includes public service information, such as time and temperature displays, or any sign that features automatic or manual switching or changing of its message content, except animated signs that involve motion, flashing lights, or color changes requiring electrical energy or electronic or manufactured sources of supply.
- B. **AWNING** — An architectural projection that provides weather protection, identity signage or decoration and is wholly supported by the building to which it is attached.
  - 1. An awning is comprised of a lightweight, rigid noncombustible frame with covering material and shall be either fixed, retractable, folding or collapsible, designed and located
  - 2. in accordance with the Uniform Construction Code.
- C. **CANOPY----** An architectural projection that provides weather protection, identity
  - 1. signage or decoration and is supported by the building to which it is attached and at the outer end by not less than one stanchion. A canopy is comprised of a rigid noncombustible frame with covering material and shall be designed and located in accordance with the Uniform Construction Code. This shall include freestanding structures like those over fuel dispersing islands.
- D. **DIRECTORY SIGN** — A sign advertising a group of establishments occupying one property, with the name of the property and the names of the individual establishments located within the property or building.
- E. **ELECTRONIC MESSAGE CENTER (EMC)** — A sign, or portion thereof, that displays animated images, moving video images, graphics, or scrolling messages, electronic images, static images, static graphics or static pictures, with or without textual information. EMCs are capable of change or alteration by electronic means on a fixed display screen composed of a series of lights

including light emitting diodes (LEDs), organic light emitting diodes (OLEDs), liquid crystal displays (LCDs), digital light processing (DLPs), plasma, fiber optics, light bulbs, or other illumination devices within the area where the message is displayed. EMCs include computer programmable, microprocessor controlled electronic or digital displays. EMCs include signs that utilize technology not listed in this definition and shall include similar technology which may be developed in the future, or the use of which may become widespread in the future.

- F. **FREESTANDING SIGN** a sign and supporting structure which is secured on the principal lot in the ground and independent of any building, fence or other support. For the purpose of this definition. “freestanding signs” may consist of the following:
1. **Pylon Sign** - A permanent sign(s) permanently by upright or uprights which are permanently anchored into the ground. This may have two (2) displayed sides.
  2. **Ground Sign** - A sign permanently located on the principal lot independent of any building designed to be viewed at eye level or below within the immediate vicinity and which is intended to be designed and viewed as an architecturally unified and proportional element. Ground signs shall be constructed so that the maximum height from mean grade to the lowest area of the sign face does not exceed a maximum height of eight (8) feet except that it shall comply with Section 1510.
- G. **POLITICAL SIGN** – The term “political sign” (within the following time and manner limitations) means any sign or poster which displays or advertises the name, photograph, image or likeness of, or which is intended to promote the election of, any candidate for public office.
- H. **PORTABLE SIGN** — Any sign used, or intended to be used, for a short period of time and which is not affixed to a location on a building, structure or the ground. A portable sign includes, but is not limited to, sandwich boards, signs on wheels, buntings, A-frame signs, wire frame signs and the like.
- I. **PROJECTING SIGN** — A sign that is dependent on a building for support and which projects more than 12 inches from the building, including an awning or canopy sign. Whenever a canopy or awning is affixed with any lettering, design, symbol, or made from any special material, which is intended to be or by its nature is an identification of a business, the applicable measurable area of the awning or canopy is a projecting sign. The lowest edge of a projecting sign shall not be less than 7 1/2 feet above the sidewalk or ground level elevation. A projecting sign shall not project above the eave of a structure. Any nonparallel wall sign is a projecting sign.
- J. **WALL SIGN**— A sign mounted parallel to the face of a building or wall, which does not project above the eaves of the structure and is not more than 12 inches from the plane or facade of the building or wall.

- K. WINDOW SIGN — PERMANENT: A sign permanently affixed to a building storefront window containing only the name of the establishment and the type of establishment. A storefront window shall be defined as and limited to a ground floor or first-story window which is located in the main door to an establishment or on the same side of the building where the main door to the establishment is located, or in the side of a building which faces a public street, right-of-way, or public parking lot. An exterior mounted permanent window sign shall have a rigid frame with weatherproofing cover.
- L. WINDOW SIGN –TEMPORARY. (see Section 1703.B.10)

**§ 260-1701. Permit required sign categories.**

- A. The erection or placement of a sign is regulated and requires a permit unless a sign is specifically exempt from regulation. The erection shall include any building, construction, attachment, hanging, suspension, alteration, repair, repainting, removal, relocation, or demolition of a sign of any type.
- B. All signs in the Borough fall into one of the following categories:
  - 1. Signs exempt from the provisions of this Article.
  - 2. Prohibited signs.
  - 3. Permitted signs:
    - (a) Temporary permitted signs.
    - (b) Permanent permitted signs.
- C. The Borough Zoning Officer will provide applications for sign permits, fee information, inspection requirements, and application requirements dealing with submission of drawings and construction information.

**§ 260-1702. General sign regulations.**

- A. Area of a sign.
  - 1. The area of a sign shall include all lettering, wording, and accompanying designs and symbols, together with the background, whether open or enclosed, on which it is displayed. The area shall not include any supporting framework, bracing, or decorative trim, which may be incidental to the copy content of the display itself.
  - 2. In the computation of the area of a double-faced sign, only one side shall be considered, provided all faces are identical in size and content and are parallel to each other. No signs with more than two faces are permitted.
  - 3. Where a sign type cannot be determined the area and height restrictions for the most restrictive type of sign shall apply.

4. Total sign area permitted may be divided among different types of signs, provided that the total sign area allowed for each use is not exceeded. All tenants occupying the same building shall be limited to the total sign area permitted for the building. The building owner, or his or her designee, shall be responsible for the allocation of the total allowable sign area among the various tenants; however, each tenant may select a sign option with the individual sign area limited in size to the assigned proportional areas.

B. Height of a sign.

1. The maximum height to the top of a freestanding ground sign shall be measured from the ground level where the sign is mounted. The height of an earth mound on which a sign is mounted shall be included in the allowable height. No freestanding ground sign shall exceed a height of eight (8) feet.
2. The maximum height to the top of a freestanding pylon sign shall be measured from the ground level where the sign is mounted. The height of an earth mound on which a sign is mounted shall be included in the allowable height. No freestanding pylon sign shall exceed a height of twenty (20) feet. The bottom of a pylon sign frame shall not be less than eight (8) feet above grade.
3. No sign or part of a sign may extend above the eaves of a sloping roof or the roofline of a flat roof.
4. Signs unless otherwise specified shall not project above the height of twenty (20) feet in any district.

C. Location of signs.

1. A sign located along the right-of-way of a state or federal highway shall comply with all requirements of the state or federal government relating thereto, in addition to all requirements of this chapter.
2. No sign or portion of any sign shall project into or over a cart way.
3. No overhanging and projecting signs shall be less than eight (8) feet above any walkway.
4. Obstruction. No sign shall be located or arranged so that it interferes with traffic through glare or blocking of sight lines of streets, sidewalks or driveways, or conflicts with a traffic control device by color, location, shape or any other characteristic. No sign shall violate the corner visibility restrictions of this chapter.
5. Hereafter signs may project beyond the property line abutting a street provided that the overhanging sign is not less than eight (8) feet above the sidewalk and at least two (2) feet from the curb line. Overhanging signs shall not project over the cart way of a street or alley.

6. The main supporting structure of all freestanding signs shall not be located closer than three (3) feet to any property line except for official traffic signs or other government signs.
  7. In all districts no signage may be located outside the property line except exempt signs.
- D. Illumination of signs. Only the following types of illumination are permitted:
1. Internally illuminated sign: a sign designed to give forth artificial light directly (or through transparent or translucent material) from a source of light within the sign and shall be shielded to prevent or control glare.
  2. Indirectly illuminated sign: a sign illuminated with a light external to the sign, which shall be shielded so that no direct rays are visible elsewhere. Lighting fixtures used to illuminate any sign shall be shielded to prevent or control glare.
  3. Non-illuminated sign: a sign that is not illuminated either internally or indirectly.
- E. Construction of signs.
1. Supports for a sign or sign structure shall conform to the requirements set forth in the Pennsylvania Uniform Construction Code, as amended.
  2. Signs using electricity shall be installed in conformance with the Pennsylvania Uniform Construction Code, as amended.
  3. Every sign permitted in this chapter must be constructed with durable materials and must be kept in good condition and repair or must be removed.
  4. All signs shall be removed when the circumstances leading to their erection no longer apply.
- F. Zoning information. No sign shall be erected that contains information which states or implies that a property to which the sign relates may be used for any purpose not permitted under the provisions of this chapter in the zoning district in which the property is located.
- G. Permit required. All signs over two (2) square feet in area shall require the issuance of a zoning permit before erection, placement, construction, or alteration except those in Section 1703. All signs must comply with all other regulations regardless of whether a permit is required. Multiple signs totaling more than two (2) square feet shall require issuance of separate zoning permits.
- H. All valid nonconforming signs and all signs granted a sign permit prior to the adoption of this chapter (except illegal signs) may be continued. All new signs shall meet the terms of this chapter.

**§ 260-1703. Exempt Signs**

- A. No sign permit shall be required for exempt signs.
- B. The following signs are exempt from the requirement of obtaining a sign permit. Exempt signs shall be erected only in accordance with the standards set for these signs.
  - 1. Street sign: official highway street name, directional, or other traffic sign erected in accordance with the Pennsylvania Motor Vehicle Code.
  - 2. No trespassing sign: a sign not exceeding two square feet, indicating the prohibition or control of fishing, hunting, trespassing, etc., or a sign indicating a private road.
  - 3. Residential, identification sign: a sign, not exceeding two (2) square feet, and not more than six (6) feet in height bearing only the property number, street address, and/or names of the occupants of the residence, or the name of the dwelling.
  - 4. Governmental flag or insignia: flags, other than those flown by local, state or federal governments, are permitted, provided that they do not exceed a size of six feet by 10 feet, are affixed to a pole no higher than 25 feet, and meet the requirements of the Flag Code, Public Law 94-344.
  - 5. Governmental, regulatory and official signs including safety signs; signs indicating points of interest, historical plaques, public parks or recreation facilities; and signs identifying official Borough buildings or facilities: Signs identifying Borough buildings, police stations, or other Borough facilities may be internally or indirectly illuminated.
  - 6. Decorative flags and plaques: Flags and plaques that are decorative and contain designs marking seasons, holidays, welcome, sports, and the like are permitted, provided that they contain no advertising, no company or business logos, and no names of businesses. Flags may be no larger twelve (12) square feet. Plaques shall be no larger than two (2) square feet.
  - 7. Legal notices.
  - 8. Information sign: an information or public service sign indicating hours of operation, availability of a public telephone, or directions to an entrance or parking area is permitted, provided that the sign area does not exceed one (1) square foot and that there shall be no more than two (2) signs of this type per property.
  - 9. Temporary professional signs: a temporary advertising sign for mechanics, contractors, architects or realtors. Such a sign may be maintained only during the duration of the work being done at the property, or during the duration of the sale and/or lease. No sign shall exceed six (6) square feet. Only one sign may be installed for each

professional and no more than four (4) such signs on any property at any one time. No illumination is permitted.

10. Temporary window sign: a sign or signs displayed on the inside surface of a window for the purpose of advertising a sale, grand opening, new products or services. Temporary window signs may have a total combined sign area of no more than twelve (12) square feet. The sign may be in place no longer than sixty (60) days except neon signs less than two (2) square feet in area. The applicant shall inform the Zoning Officer of the time period during which a grand opening sign will be in place. Signs shall be constructed of durable material and may not include tablet type paper and the like.
11. Temporary yard sale sign: an on-site sign advertising a yard sale. The sign shall not exceed four (4) square feet in area and may remain up only during the sale but in no case longer than five days. One sign only shall be permitted per property. No illumination is permitted.
12. Temporary activity signs of religious organizations, volunteer fire companies, non-profit educational institutions, civic organizations and community groups advertising a temporary fund raising gathering or activity erected for a special event or promotion of civic welfare or charitable purposes including but not limited to exhibits, shows, sales or special events provided that :
  - (a) Such temporary sign is located on the property of such organization company or institution
  - (b) Such temporary sign conforms to the following regulations to ensure that they in no way lend a commercial aspect to such property and its adjoining properties:
    - [1] Types permitted: portable, projecting, or wall
    - [2] The size of any such sign shall not exceed 24 square feet.
    - [3] Height of portable sign: maximum five (5) feet.
  - (c) Such temporary sign is displayed for a duration limited to a short time in keeping with the limits of a special event not to exceed two (2) full weeks unless briefly extended by the Borough Manager for cause shown by prior written request.
  - (d) Such temporary sign shall be removed by the property owner when circumstances leading to its erection no longer apply (that is expiration of said two (2) week period or briefly extended period) within one (1) working day.
13. Temporary political signs.

- (a) Temporary signs advertising political parties or candidates for public office may be erected or displayed and maintained provided that:
  - [1] The signs are erected or displayed by the owner or lessee of the parcel of real property on said parcel or by the candidate, political party or other authorized agent of either of them, with the express permission of the owner or lessee of the parcel of real property;
  - [2] The size of any sign is not in excess of six square feet; and
  - [3] The signs shall not be erected or displayed earlier than 60 days prior to the election to which they pertain.
  - [4] No political sign shall be permitted to remain more than 72 hours after the election to which they pertain.
- (b) Nothing contained herein shall be construed to permit the placing or erecting of any such signs within a street right-of-way or within or on any public alley, sidewalk, parking lot or other public place, which placement is hereby prohibited.
- (c) The erection of temporary political signs permitted by this Section by the owner or lessee of the parcel of real property, candidate, political party or other authorized agent shall not require a permit or other approval; provided, however, that it shall be unlawful for any such owner or lessee of the lot, candidate, political party or other authorized agent to permit such signs to remain erected more than 72 hours after the date of the election to which they relate, and failure to remove such signs as required hereby shall subject such offenders to the penalties prescribed in this chapter.
- (d) No illumination is permitted.
- (e) Enforcement Violations and Penalties
  - [1] Remedies for violations of the foregoing limitations shall include the penalties set forth in Article 2013 of this Chapter. As an additional remedy for Section 1703.B.13 above, the Code Enforcement Officer may after Notice and at the expense of the responsible owner, tenant or person in control of the premises on which such sign remains more than 72 hours after the election remove any such sign; appropriate Notice by said officer may include inter alia the placing by him on any such sign of a legend, sticker or Notice to the effect that if this sign is not removed within seventy-two hours it will be removed by the Zoning Hearing Officer citing by number this Section of the Code of the Borough of Middletown.

[2] This subsection adopted in lieu of the prohibition in effect since 1960 when the Middletown Zoning Ordinance codified in Chapter 21 was adopted includes the foregoing time and manner limitations which are required by compelling governmental interests. It is further found as a fact that in the light of local conditions experience and history this subsection will not deter at all (much less significantly) the effective exercise of First Amendment rights and the foregoing limitations are necessary to give effect to and to promote compelling interests in the appearance of residential districts in conserving property values in reducing accumulations of debris in minimizing hazards and blight resulting from the effects of the elements and of local weather conditions upon the types of unreinforced signs commonly employed in political campaigns in the area upon signs of various sizes and upon signs of varying ages and time spans including signs for temporary purposes and in regard to other governmental interests.

**Section 1704. Prohibited Signs**

- A. following signs are prohibited:
1. Any sign that states that a property may be used for a non-permitted use.
  2. Any sign that flashes, rotates, revolves or oscillates. This does not include electronic message centers.
  3. Any animated signs, movable message signs or signs with internally generated messages or symbols; no sign shall consist of any moving, rotating, or otherwise animated part or message. This does not include electronic message centers.
  4. Any roofed sign structure attached to and supported by the building placed above the roofline of a flat roof or the lowest point of eaves of a sloping or mansard roof.
  5. Any portable sign of any kind, other than a portable menu sign 3 square feet or less placed at the entrance to a restaurant, is prohibited, including any signs on wheels or advertising banners.
  6. Any vehicle or trailer which is parked on public or private property so as to be visible from a public right-of-way, which has attached thereto or located thereon any sign or advertising device for the basic purpose of providing advertisement of products or directing people to a business or activity located on the same or on another property.
  7. Any sign nailed or in any way attached to a tree, utility pole, streetlight pole, street identification sign, another sign, mailbox, fence, rock or

natural features, traffic signal device, or other regulatory device, such as stop signs, yield signs, etc.

8. Signs erected within any public right away or near the intersections of any streets in such a manner as to materially obstruct free and clear vision.
9. Signs not properly maintained, showing neglect, or in a dilapidated or hazardous condition so as to violate the purpose, intent and objective of this chapter are required to be repaired or removed.
10. Abandoned signs.
11. Pylon signs, except as noted in Article 1705.

#### **§ 260-1705. Permitted Signs**

##### **A. Residential signs in R-1 and R1A districts.**

1. The following sign uses are permitted:
  - (a) Professional office as follows:
    - [1] Projecting sign having a maximum area of two (2) square feet;
    - [2] Wall sign having a maximum area of six (6) square feet or ground sign having a maximum area of six (6) square feet and a maximum height of three (3) feet.
  - (b) Home occupation having a maximum area of two (2) square feet.
  - (c) Exempt signs except temporary window signs
2. Projecting signs may be attached to a decorative freestanding post, lighted lamp post or building.
3. Illumination: residential signs may be illuminated indirectly and must be shielded to prevent glare.
4. All signs must be inside the property line.
5. No sign shall be in violation of Section 1509.

##### **B. Residential signs in R2, R3, and RC Districts.**

Individual buildings containing apartments or multifamily dwelling units may contain a sign which identifies an individual building having multiple dwelling units. The sign may identify only the property number, street address and/or the name of the building for a multiple-family dwelling development.

1. Types permitted:

- (a) Freestanding ground, wall, or projecting
    - (b) Exempt signs except temporary window signs
  - 2. Signs in R-2 District
    - (a) No more than one sign shall be placed on any one building unless the building is located on a corner lot, in which case a sign may be erected on each street frontage.
    - (b) Total sign area permitted for all signs: 12 square feet.
  - 3. Signs in R-3 and RC District
    - (a) All signs in R-2 district in addition to the following:
      - [1] One sign for each entrance; and
      - [2] Each entrance sign shall have maximum area of twelve (12) square feet.
  - 4. Signs shall be located in compliance with Section 1702.C.
- C. Religious, educational, recreational, and institutional uses in any district.
- 1. An identification sign for the following uses is permitted:
    - (a) Religious use.
    - (b) School or nonprofit educational institution.
    - (c) Library or museum.
    - (d) Public recreation facility.
    - (e) Nursing home.
    - (f) Personal care facility.
    - (g) Volunteer fire companies
    - (h) Civic organizations
  - 2. Number: no more than one sign except for corner properties where one sign is permitted along each street frontage.
  - 3. Types permitted: freestanding ground, projecting, or wall.
  - 4. Size: 16 square feet maximum for buildings located 35 feet or more from the cartway of the street; 12 square feet maximum for buildings located less than 35 feet from the cartway of the street.

5. Height of freestanding sign: eight (8) feet maximum.
6. Temporary announcement board. In addition to the provisions for signs above, one temporary announcement board may be placed on the property for the purpose of announcing events. An announcement board is permitted for the above uses following uses only: place of worship, school, library or museum, and emergency services. The size shall not exceed 12 square feet. The announcement board may be placed at the site for a period of 15 days prior to the event and must be removed by the second day following the event. No such sign may be illuminated.

D. Signs for C-2 District

Office, retail, service, and other require a permit and shall comply with the following:

1. Sign area and number:
  - (a) The total area of all signs together shall not exceed a total of one square foot for each two linear feet of building width measured along the front of the building and in no case shall the total number of permanent signs exceed four (4).
2. Sign options for the uses. The following sign options are permitted:
  - (a) Wall, projecting, freestanding ground, permanent window signs are permitted in any combination not to exceed the following: one (1) wall sign having a maximum area of twenty (20) square feet; one (1) projecting sign having a maximum area of twelve (12) square feet; one (1) freestanding ground sign having a maximum area of twelve (12) square feet; one (1) permanent window sign having a maximum area of twelve (12) square feet.
  - (b) Window signs shall be painted on the window and shall contain only the name of the establishment and type of establishment. The area devoted to window signs may be split evenly between two storefront windows.
  - (c) The maximum height of a freestanding ground sign is eight (8) feet
  - (d) Fuel island type canopies may have no more than two (2) business names, identification or logos signs not to exceed twenty (20) sq. Ft. Total.
  - (e) Pylon signs are permitted by special exception.
3. If a property is a corner lot or has frontage on a street or a public parking lot, one additional sign may be erected on the side street frontage or the building facade facing the parking lot. The size shall not exceed 12 square feet.

4. Directory sign for group of establishments.
  - (a) Number: No more than one directory sign shall be placed for the joint use, unless it fronts on a corner lot or parking lot, in which case one additional sign may be erected on the side street frontage or the public parking lot side.
  - (b) Types permitted: freestanding ground or wall sign.
  - (c) Size: 20 square feet maximum for the sign, to be divided among the businesses occupying the building or property jointly.
  - (d) Height of freestanding sign: six (6) feet maximum.
  - (e) Uniformity: The sign dimensions for each establishment in directory listings shall be exactly the same as the dimensions of each of the establishment's other listings within the directory sign and shall be the same color and style.

E. Signs for C-1 and M-1 Districts

For a shopping center in the C-1 district, with six (6) or more individual stores and a total floor area of 20,000 square feet or greater, one freestanding pylon sign for each front primary entrance will be permitted.

1. A pylon sign may be double sided.
2. A pylon sign may be internally illuminated. No ground lighting or spot lighting of a pylon sign shall be allowed.
3. A pylon sign shall not exceed 20 feet in height.
4. An entrance pylon sign may identify the name of shopping center and individual businesses within the center, as long as the total square footage does not exceed 75 square feet of sign(s).
5. Individual stores having a store frontage up to 100 feet shall have a total sign area equal to no more than one (1) square foot of sign area for each two (2) linear feet of store frontage width measured along the front of the store.
6. Individual stores having a store frontage greater than 100 feet up to a maximum of 200 feet shall have a total sign area equal to no more than one (1) square foot of sign area for each one and a half (1.5) linear feet of store frontage width measured along the front of the store.
7. Individual stores having a store frontage greater than 200 feet shall have a total sign area equal to no more than one (1) square foot of sign area for each one and a quarter (1.25) linear feet of store frontage width measured along the front of the store to a maximum of 160 square feet.

8. Fuel island type canopies may have no more than two (2) business names, identification or logos signs not to exceed twenty (20) sq. ft. total.
- F. Accessory uses.
1. The following accessory uses and no others are permitted to have signs:
    - (a) Accessory office.
  2. Number: No more than one sign shall be placed on a property containing an accessory office.
  3. Types permitted: freestanding, projecting, or wall.
  4. Size: three square feet maximum.
  5. Height of freestanding sign: three feet maximum.
  6. Illumination: Accessory office signs may be indirectly illuminated during hours of office operation only.

#### **§ 260-1706. Nonconforming signs**

The following regulations shall apply to signs legally existing at the time of passage of this chapter that do not conform in use, location, type, illumination, height or size with the regulations of the district in which the sign is located.

- A. Any sign existing at the time of the passage of this chapter that does not conform in use, location, illumination, height or size with the regulations of the district in which the sign is located shall be considered a nonconforming sign and may continue in such use in its present location, subject to the following caveats:
1. If a new use or occupancy is established, all new signs or replacement signs must comply with this chapter in terms of quality, type, and dimensional requirements.
  2. A sign not complying with this chapter may continue if a building or structure is renovated. If a building or structure is demolished and rebuilt, all signs must be made to conform to this chapter in terms of quality, type, and dimensional requirements.
  3. If a new business certificate is issued all signs must be made to conform to this chapter in terms of quality, type and dimensional requirements.

## ARTICLE 18

### SPECIFIC CRITERIA FOR CERTAIN USES PERMITTED BY RIGHT, BY SPECIAL EXCEPTION, AND BY CONDITIONAL USE

In addition to the General and Supplemental Regulations listed in Article 12, the following sets forth standards that shall be applied to each individual special exception, conditional use, or use permitted by right. These standards must be satisfied prior to approval of any applications for a special exception or conditional use, or prior to issuance of a zoning permit for a use permitted by right. The applicant shall be required to demonstrate compliance with these standards and must furnish whatever evidence is necessary to demonstrate such compliance. All uses must comply with the standards expressed within the underlying zone, unless those standards expressed for each special exception, conditional use or use permitted by right specify different standards. In such cases, the specific special exception, conditional use, or use permitted by right use standards shall apply.

#### § 260-1800. Accessory Child Care

- A. The accessory child-care center shall meet all state and federal licensing and registration requirements and shall provide proof of compliance with the Commonwealth of Pennsylvania Code, Title 55, Chapter 3270, Child Day Care Centers or Title 6, Chapter 11, Older Adult Daily Living Centers.
- B. The accessory day-care center is located at and is accessory to a legally established house of worship, a public or nonpublic school, or a place of employment. Such buildings shall obtain an Occupancy Certificate.
- C. Off-street parking shall be provided in accordance with Article 16.
- D. The accessory day-care center provides safe off-street pickup and drop-off points in order to minimize traffic congestion. Vehicles shall enter and exit from the pickup and drop-off points at least 60 feet from any intersection. The passenger pickup and drop-off points shall be arranged so that the passengers do not have to cross traffic.
- E. An outdoor play area shall be provided in accordance with state regulations. Adult passive recreation areas may be provided for older adult daily living centers. Off-street parking compounds shall not be used as outdoor play areas. Outdoor play areas shall not be located within the front yard and must be set back 25 feet from all property lines. Outdoor play areas shall be completely enclosed by a four-foot-high fence that shall screen the area from adjoining residentially zones or use properties. All outdoor play areas must provide a means of shade such as shade tree(s) or pavilion(s).

#### § 260-1801. Agricultural Operation

- A. Agricultural operations, excluding commercial livestock operations, shall be permitted in the C-D Zone, subject to the following criteria:

1. No structure for the housing of poultry, livestock or feedlot including the storage of manure or odor or dust-producing substances shall be located:
  - (a) Within 300 feet of any residential structure, other than a structure in which the applicant resides, located on the same lot.
  - (b) Within 125 feet of any right-of-way line.
  - (c) Within 300 feet from adjoining property line in other than the C-D Zone.
2. The building height restrictions shall be subject to provisions of the Zoning District.
3. Greenhouse heating plants shall not be operated within one hundred (100) feet of any lot line, unless contained within a building.

**§ 260-1802. Animal Hospitals, Veterinary Offices and/or Kennels**

- A. Within the (C-1) Zone animal hospitals, veterinary offices, dog day care and/or kennels shall be permitted, subject to the following criteria:
  1. Kennels and/or animal hospitals shall have a minimum lot size in accordance with the requirements of the zoning district.
  2. All areas used for exercise shall be securely fenced.
  3. All animal boarding buildings that are not wholly enclosed and any outdoor animal pens, stalls or runways shall be a minimum of 25 feet from all property lines and a minimum of 200 feet from any adjacent residence whose owner is other than the animal building owner.
  4. Animals shall be permitted to exercise outside daily between the hours of 8:00 a.m. to 8:00 p.m.

**§ 260-1803. Apartment Houses and Conversion Apartments.**

- A. Apartment houses, including garden apartments, shall be permitted subject to the following criteria:
  1. Public sanitary sewer and public water supply utilities shall be provided.
  2. The floor area ratio shall not exceed four-tenths (0.4). See Article 2 definitions of "floor area of building" and "floor area ratio."
  3. Building height shall be controlled by floor area ratio.

4. The lot area per dwelling unit shall be not less than two thousand (2,000) square feet.
  5. The lot width at the building line shall be not less than one hundred (100) feet.
  6. For each apartment building of one (1) or two (2) stories, there shall be a front yard, two (2) side yards and a rear yard each of not less than thirty (30) feet. For each story over two (2), five (5) feet of width or depth shall be added to each yard.
  7. Parking shall be provided in accordance with the provisions of Article 16.
  8. Applications shall comply with Section 1822.
- B. Conversion apartments shall be permitted subject to the following criteria:
1. An existing single-family detached, single-family semidetached, two-family detached or two-family semidetached dwelling may be converted to contain additional dwelling units, but shall have a total of no more than four (4) dwelling units each containing no more than one (1) family living independent of each other.
  2. Lot area, lot width, minimum yards and maximum coverage shall be in accordance with the standards of the applicable zone in which the Conversion Apartment(s) will be located and this article, corresponding to the type and number of dwelling units as converted.
  3. Off-street parking shall be provided for all uses on the property, in accordance with Article 16.
  4. There shall be no exterior evidence of change in the building except as required by building or housing codes.
  5. Exterior fire escapes, where required, shall be in the rear or side of the building if practical and shall not be located on any wall facing a street. Exterior fire escapes above the second floor level shall be non-combustible.
  6. Each dwelling unit shall contain not less than six hundred fifty (650) square feet of habitable floor area.
  7. No dwelling unit shall be permitted in basements or cellars.
  8. All units shall be served by public sanitary sewer and public water supply utilities.
  9. Applications shall comply with Section 1822.

## **§ 260-1804. Automobile Service Garage**

- A. Auto repair garages are permitted by right in the (C-1) and (M-1) Zones, subject to the following criteria:
1. All paint work shall be performed within a building with a fume collection and ventilation system that directs fumes away from any adjacent dwellings. Outdoor major repairs (such as body work and grinding) and outdoor welding shall not occur within 250 feet of a residential lot line.
  2. All reasonable efforts shall be made to prevent or minimize noise, odor, vibration, light or electrical interference to adjacent lots in accordance with this Ordinance.
  3. Overnight outdoor storage of “junk” other than permitted junk vehicles shall be prohibited within view of a public street or a dwelling.
  4. Any “junk vehicle” shall not be stored for more than 20 days. A maximum of 4 junk vehicles may be parked on a lot outside of an enclosed building at any one time, except that additional numbers of vehicles may be parked outside overnight if they: (1) are screened from view from streets and other lots by landscaping or buildings and (2) are actively undergoing repair.
  5. Service bay doors shall not face directly towards an abutting dwelling (not including a dwelling separated from the garage by a street).

## **§ 260-1805. Automobile Service Stations**

- A. Automobile service stations (including minor incidental repair) are permitted in the (C-1) Zone, subject to the following criteria.
1. The subject property shall have a minimum width of one hundred twenty-five feet (125’);
  2. The subject property shall front on an arterial or collector road;
  3. The subject property shall be setback at least three hundred feet (300’) from any lot containing a school, day care facility, park, playground, library, hospital or nursing, rest or retirement home;
  4. The outdoor storage of motor vehicles (whether capable of movement or not) for more than one (1) month is prohibited;
  5. All structures (including air compressors, kiosks, gasoline pump islands, but not including signs) shall be setback at least fifteen feet (15’) from any street right-of-way line;

6. No outdoor storage of auto parts shall be permitted.
7. All ventilation equipment associated with fuel storage tanks shall be set back one hundred feet (100') from and oriented away from any adjoining residence.
8. The applicant shall furnish evidence that the storage and disposal of materials will be accomplished in a manner that complies with State and Federal regulations.

**§ 260-1806. Bed-and-breakfast accommodations and residential tourist homes.**

A. Residential bed-and-breakfast accommodations and residential tourist homes shall be permitted by special exception within the R-2 Zone and as a permitted use in the C-2 Zone, subject to the following criteria:

1. The owner of the dwelling structure in which such uses are conducted must reside in the dwelling structure. No modification to the external appearances of the building (except fire and safety requirements) which would alter its residential character shall be permitted.
2. The dwelling structure is served by public sanitary sewer and public water supply utilities. The use of a residential dwelling for a bed and breakfast home or inn must be in compliance with the Borough of Middletown Sewer Authority requirements.
3. Accommodations at bed and breakfast homes and inns may include breakfast prepared on the premises for guests and included in the charge for the room. No meal other than breakfast may be prepared on the premises for the registered guests. Catered food service from a licensed facility is permitted without additional licensing requirements. Bedrooms shall not be used for cooking of any kind, and all meals for transient or semi-permanent residents shall be taken in substantially family-type dining facilities.
4. No public restaurant service shall be conducted.
5. Bedrooms shall contain a minimum of one hundred twenty (120) square feet of habitable floor area for two (2) persons.
6. No more than two (2) persons per bedroom shall be permitted.
7. Off-street parking shall be provided on the premises, for all uses, improved in accordance with Article 16.
  - (a) Spaces for the owner of the premises shall be as specified in Article 16 for single-and two-family dwellings.
  - (b) Spaces for residential bed-and-breakfast accommodations and for residential tourist home accommodations shall be as

specified Article 16 for motels, tourist homes or hotels.

(c) Spaces for other uses on the premises shall be in accordance with the applicable provisions of Article 16.

8. All bed and breakfast homes and bed and breakfast inns shall comply with the Federal Life Safety Code, and all other applicable building, safety, and fire codes of the federal, state, or local government.

## **§ 260-1807 Boarding-, Lodging and Rooming houses**

A. Within the R-2 Zone, Boarding-, Lodging and Rooming houses, shall be permitted by special exception, subject to the following criteria:

1. The owner of the dwelling structure in which such uses are conducted must reside in the dwelling structure.

2. The dwelling structure is served by public sanitary sewer and public water supply utilities. The applicant shall furnish evidence that approved systems for sewage disposal and water supply shall be used and all other federal and state license requirements have been met.

3. Bedrooms shall not be used for cooking of any kind, and all meals for transient or semi-permanent residents shall be taken in substantially family-type dining facilities.

4. No public restaurant service shall be conducted.

5. Bedrooms shall contain a minimum of seventy (70) square feet of habitable floor area for one (1) person.

6. A boarding-, lodging or rooming house shall not accommodate more than five (5) persons as paying guests.

7. No more than one (1) person per bedroom shall be permitted.

8. Off-street parking shall be provided on the premises, for all uses, improved in accordance with Article 16.

(a) Spaces for the owner of the premises shall be as specified in Article 16 for single-and two-family dwellings.

(b) Spaces for boarding, lodging or rooming houses shall be as specified in Article 16 for boarding-, lodging and rooming houses.

(c) Spaces for other uses on the premises shall be in accordance with the applicable provisions of Article 16.

(d) No modifications to the external appearance of the building

(except fire escapes) which would alter its residential character shall be permitted.

**§ 260-1808. Child Care, In Home**

In home child care shall be permitted by right in all zoning districts. The child care shall be limited to six (6) children not related to the operator by legal marriage, birth or adoption. All child care facilities shall obtain and maintain proper licensure from the Commonwealth of Pennsylvania.

**§ 260-1809. Commercial Child Day Care Facilities**

- A. Within the (C-1) and (C-2) Zones, commercial day care facilities are permitted by right subject to the following criteria:
  - 1. An outdoor play area shall be provided, at a rate of sixty five (65) square feet per individual enrolled. Off street parking compounds shall not be used as outdoor play areas. Outdoor play areas shall not be located within the front yard. Additionally, outdoor play areas shall be located and designed so as not to disrupt normal activities of adjoining uses. There shall be a minimum of a four foot (4') high fence with screening to screen the play area from adjoining residentially used or zoned properties. Any vegetative materials located within the outdoor play areas shall be of a non-harmful type (poisonous, thorny, allergenic, etc.) All outdoor play areas must provide a means of shade, such as a shade tree(s) or pavilion(s);
  - 2. Enrollment shall be defined as the largest number of persons and/or children under day care supervision at any one time during a seven day period;
  - 3. Passenger “drop off” and “pick up” areas shall be provided on site and arranged so that the passengers do not have to cross traffic lanes on or adjacent to the site;
- B. All commercial day care facilities shall obtain and maintain proper licensure from the Commonwealth of Pennsylvania.

**§ 260-1810. Communication Antennas, Towers, Equipment, Transmitting and Receiving Facilities**

- A. Within non-residential districts, Communication Antennas, Towers, Equipment, Transmitting and Receiving Facilities are permitted by special exception, subject to the following criteria:
  - 1. Applicants are required to show compliance with the provisions of this Section and other applicable provisions of this Zoning Ordinance.

2. Applications for the construction of communication antennas, support structures, and related facilities shall include a written report containing the following:
  - (a) Information describing the tower height and design;
  - (b) A cross section of the structure;
  - (c) Engineering specifications detailing construction of tower, base, and guy wire anchorage;
  - (d) Information describing the proposed painting and lighting schemes;
  - (e) Information describing the tower's capacity, including the number and type of antennas that it can accommodate;
  - (f) All tower structure information shall be certified by a licenses professional engineer;
  - (g) Certification that there is not suitable space on existing sites or structures where the intended facility can be accommodated and function as required without reasonable modification;
  - (h) Technological evidence that the facility must go where proposed in order to satisfy its function in the grid system and provide the quality of service required by law;
  - (i) Written authorization from the property owner of the proposed site;
  - (j) Inventory of existing antenna support structures within a two-mile radius of the proposed site, discussing the unavailability of sites and reasons therefore; and
  - (k) Evidence of the applicant's good faith efforts to locate the antenna on an existing structure.
  - (l) Applicant shall demonstrate that he/she is licensed by the FCC to operate a communications tower and/or communications antenna.
3. All other uses ancillary to the antenna, tower, and associated equipment are prohibited (except accessory equipment buildings), unless otherwise permitted in the zoning district in which the site is located. This includes, but is not limited to, business offices, maintenance depots and vehicle storage.
4. Other standards of approval for antenna support structures and antenna-related facilities include the following:

(a) Setbacks

- [1] Antenna support structures shall be set back from all property lines a distance equal to the height of the antenna.
- [2] The structure shall be self-collapsing or have a clear fall area setback equal to the height of the structure and any attached antennas.

(b) Antenna support structure height

- [1] The maximum height of any single antenna support structure located at a single site for one antenna shall be at the lowest height to function at the proposed location, based upon specific engineering data pertaining to the function of the antenna support structure, to be supplied to the applicant.
- [2] An antenna support structure may exceed the maximum allowable height to allow for the collocation of another antenna; provided that the applicant shows evidence that the antenna support structure will be a shared location site.

(c) Landscaping and screening

- [1] If the antenna support structure site is located in an area of existing woodlands, the existing woodlands shall be preserved to the fullest extent possible. The existing woodlands shall be supplemented as needed to fully screen the antenna support base.
- [2] If the site is not wooded, the entire perimeter of the fence surrounding the antenna support structure compound shall be planted with evergreen trees for other planting as approved by the Borough Council or Zoning Hearing Board, at least six feet in height at the time of planting. The planting area around the antenna support structure shall have a minimum radius of 10 feet. The evergreens shall be planted every five feet on center.
- [3] The site shall be landscaped to a density and height sufficient enough to screen the facility base tower and buildings from abutting properties.

- (d) Equipment or accessory buildings. Accessory buildings must conform to the yard setbacks as required for the zoning district in which the tower is located.
- (e) Parking. At least one off-street parking space shall be provided.
- (f) Security, maintenance, and fencing
  - [1] The site shall be secured by a fence with a minimum height of eight feet to limit accessibility by the general public.
  - [2] All guy wires shall be clearly marked so as to be visible at all times and shall be located within the fence enclosure.
  - [3] All equipment and buildings shall be constructed and maintained in accordance with the applicable Building Code.
- (g) Lighting and signs
  - [1] No signs shall be mounted on a communications tower except as may be required by the Federal Communications Commission, Federal Aviation Administration, or other governmental agency which has jurisdiction.
  - [2] All communications towers shall have lights as may be required by the Federal Communications Commission, Federal Aviation Administration, or other governmental agencies which have jurisdiction. If lighting is not required by other agencies, then lighting acceptable to the Borough of Middletown shall be required.
- (h) Antenna support structures shall be painted in the color that best allows it to blend into the surroundings unless otherwise required by the Federal Aviation Administration regulations. The use of grays, blues and greens may be appropriate.
- (i) Antenna support structure design and structural integrity. The owner of the antenna or antenna support structure shall provide a registered professional engineer's report documenting that the structure meets the structural standards of the applicable building code in the Telecommunications Industry Association.
- (j) Other:

- [1] Evidence shall be submitted from a registered professional engineer certifying that the proposed installation will not exceed the structural capacity of the building or structure, taking into consideration winds and other loads associated with location.
- [2] The applicant, owner, or operator of the antenna shall be licensed by the Federal Communications Commission.
- [3] The tower shall comply with all applicable Federal Aviation Administration, Commonwealth Bureau of Aviation, and zoning regulations.
- [4] Certification of insurance evidencing general liability in the minimum amount of \$1,000,000 per incident and property damage coverage in the minimum amount of \$1,000,000 per incident is required to cover the tower, antenna and structures.

(k) Abandonment:

- [1] If an antenna support structure is unused, as evidenced by notice to the Federal Communications Commission of intent to cease operations, for a continuous period of 12 months after said notice, it shall be deemed abandoned.
- [2] Any antenna support structure or antenna that is deemed to be “abandoned” must be removed within 90 days.
- [3] Removal of the antenna support structure shall be the responsibility of the owner of the antenna support structure. At the time of land development plan approval, the owner and/or his successors and assigns of the antenna support structure must enter into an agreement with the Borough of Middletown regarding the removal of an abandoned antenna support structure, as herein defined.
- [4] In the case of multiple operators sharing the use of a single tower, this provision shall become effective when all users cease operation.

- B. The collocation of a communications antenna upon an existing antenna structure shall be a use permitted by right in all zoning districts, provided that the Zoning Officer determines that the proposed placement of the communications antenna is permitted by right pursuant to the Wireless Broadband Collocation Act, 53 P.S. § 11702.1 *et seq.*

**§ 260-1811. ECHO HOUSING (Eden Council for Home Opportunity)**

Within the C-2 and R-2 Zones, ECHO Housing is permitted by special exception, subject to the following criteria:

- A. The ECHO Housing may not exceed nine hundred (900) square feet of floor area;
- B. The total building coverage for the principal dwelling, any existing accessory structures and the ECHO Housing together shall not exceed the maximum requirement for the zone in which the ECHO housing is located;
- C. The ECHO Housing shall be occupied by either an elderly, handicapped or disabled person related to the occupants of the principal dwelling by blood, marriage or adoption;
- D. The ECHO Housing shall be occupied by a maximum of two (2) people;
- E. Utilities
  - 1. For public sewer and water supply and all other utilities, the ECHO housing shall be physically connected to those systems serving the principal dwelling. No separate utility systems or connections shall be constructed or used. All connections shall meet the applicable utility company standards; and
  - 2. If the ECHO Housing use is discontinued, utilities that would not otherwise be allowed in an accessory structure must be disconnected.
- F. A minimum of one (1) off street parking space, with unrestricted ingress and egress to the street or alley, shall be provided for the ECHO Housing, in addition to that required for the principal dwelling;
- G. The ECHO Housing shall not be permitted in the required front yard setback and shall adhere to all side and rear yard setback requirements for principal uses. Conversion of an existing accessory structure may be permitted by a grant of special exception by the Zoning Hearing Board, in which case the accessory structure setback standards shall apply.
- H. If the ECHO Housing use is discontinued, the structure used for the ECHO Housing shall not be converted to or leased as an apartment or any use not otherwise permitted in the district.

**§ 260-1812. Home Improvement and Building Supply Stores**

- A. Within the C-1 Zone, home improvement and building supply stores are permitted by right, subject to the following criteria:

1. If the subject property contains more than two (2) acres, it shall front along an arterial or collector road;
2. The retail sales area shall be all areas open for public display, including but not limited to shelves, racks, bins, stalls, tables, and booths, plus any adjoining aisles or walkways from which consumers can inspect items for sale. The retail sales area shall include both interior and exterior areas as listed above;
3. Off-street parking shall be provided as specified in Article 16.
4. All exterior retail sales areas shall include a dust-free surface.
5. All exterior storage and retail sales areas (exclusive of nursery and garden stock) shall be screened from adjoining residential properties
6. The applicant shall furnish expert evidence that any exterior amplified public address system and/or exterior lighting has been arranged and designed so as to prevent objectionable impact off the site.
7. Any drilling, cutting, sawing, mixing, crushing or other preparation of building materials shall be conducted within a completely enclosed building.

**§ 260-1813 Home occupations.**

- A. Within all residential districts home occupation is a permitted use, and subject to the following criteria:
  1. The use shall be conducted primarily by a permanent resident of the dwelling, and involve a maximum of one person working on-site at any one time who does not reside within the dwelling.
  2. The use shall be conducted indoors. No outdoor storage or display related to the home occupation shall be permitted. No changes shall occur to the exterior of a building that would reduce its residential appearance as viewed from a street.
  3. The use shall occupy an area that is not greater than 25 percent of the total floor area of the principal dwelling unit. The use shall clearly be secondary to the residential use.
  4. Two off-street parking spaces shall be required.
  5. The use shall not require delivery or pickup by tractor-trailer trucks.
  6. No excavating equipment shall be parked overnight on a residential lot or an adjacent street as part of a home occupation.
  7. No equipment or machinery shall be permitted that produces noise,

noxious odor, vibration, glare, electrical or electronic interference detectable on another property. The use shall not involve the storage or use of hazardous, flammable or explosive substances, other than types and amounts typically found on a residential property. The use shall not involve the storage or use of “toxic” or “highly hazardous” substances.

8. A home occupation shall not be conducted in a manner that is perceptible to other residents between the hours of 9 p.m. and 7:30 a.m.
  9. Any tutoring or instruction shall be limited to a maximum of 3 students at a time.
  10. A barber or beauty shop shall not include any non-resident employees.
  11. The main office of a medical doctor, chiropractor or dentist shall not be permitted as a home occupation.
  12. See Home Occupation Sign requirements in Article 17.
  13. The use shall not involve manufacturing, other than of custom crafts and sewing. The use shall not involve commercial repair of motor vehicles.
  14. Retail sales shall be limited to sales that are clearly accessory to the primary residential use.
  15. If more than one home occupation is accessory to a dwelling, the total aggregate impact of the home occupations shall be considered in determining compliance with this Ordinance. In any case, no more than one non-resident employee shall be allowed to work on site at one time.
- B. No-impact home-based businesses, as defined in the Municipalities Planning Code, shall be permitted in all residential zones of the Borough as a use permitted by right, except that such permission shall not supersede any deed restriction, covenant or agreement restricting the use of land, nor any master deed, bylaw or other document applicable to a common interest ownership community.
1. The business activity shall be compatible with the residential use of the property and surrounding residential uses.
  2. The business shall employ no employees other than family members residing in the dwelling.
  3. There shall be no display or sale of retail goods and no stockpiling or inventory of a substantial nature.

4. There shall be no outside appearance of a business use, including but not limited to parking, signs or lights.
  5. The business activity may not use any equipment or process which creates noise, vibration, glare, fumes, odors or electrical or electronic interference, including interference with radio or television reception, which is detectable in the neighborhood.
  6. The business activity may not generate any solid waste or sewage discharge in volume or type which is not normally associated with residential use in the neighborhood.
  7. The business activity shall be conducted only within the dwelling and may not occupy more than 25% of the habitable floor area.
  8. The business may not involve any illegal activity.
- C. The home occupation proposed must be covered by a home occupation permit, applied for by the person conducting such occupation.
1. The application for such permit shall include:
    - (a) The name and address of the applicant.
    - (b) The type of home occupation.
    - (c) Whether a state license is required and, if so, whether there is a validly issued license currently in effect.
    - (d) The number of parking spaces provided for the residence and for the home occupation.
    - (e) Other information relevant to a permit for such home occupation in the designated dwelling, including a copy of the applicant's lease, if any, and of the deed.
  2. Such home occupation permits are required for all home occupations, including those already in existence.
  3. A fee is required for a home occupation permit. Said fee includes an inspection, by the Zoning Officer, for compliance with all applicable ordinances and regulations, and such inspection shall be made prior to the issuance of a home occupation permit.
  4. Failure to hold a home occupation permit shall constitute a violation of this chapter by the operator of a home occupation, and such person, owner or lessee of a dwelling and residing therein under the very definition of a home occupation otherwise lawful hereunder shall be subject to the provisions of this chapter and the penalties therein provided for violations, including hereby failure to hold a home

occupation permit.

### **§ 260-1814. Housing for the Elderly**

Housing for the Elderly shall be permitted by special exception within the C-2 Zone, subject to the following criteria:

- A. The housing units designed and intended for occupancy exclusively by the elderly
- B. The following uses shall be permitted as principal uses within the housing for the elderly community.
  - 1. Nursing Home.
  - 2. Personal care home.
  - 3. Multi-family Independent Elderly Housing to include:
    - (a) Single-family attached dwellings.
    - (b) Apartment house.
  - 4. Public uses:
    - (a) Public park, recreational areas and greenways.
    - (b) Public libraries and community activity buildings.
- C. The following uses shall be permitted as accessory uses in the housing for the elderly community for the use of residents and guests:
  - 1. Accessory service uses:
    - (a) Adult and child day care.
    - (b) Dispensaries.
    - (c) Medical facilities.
    - (d) Common dining facilities.
    - (e) Group recreation facilities.
  - 2. Accessory commercial uses:
    - (a) Banks and financial institutions.
    - (b) Florists, stationery and gift stores.

- (c) Food and beverage stores.
  - (d) Personal care services.
  - (e) Restaurants.
  - (f) Hobby, book, and music stores.
3. Each accessory use shall be located in a building occupied by residential uses or in a community activities building.
  4. Each accessory commercial use shall not exceed 2,500 square feet of net floor area (for accessory commercial uses, net floor area as defined herein shall also exclude food preparation areas and lavatories).
  5. The total area reserved of commercial accessory uses shall not exceed 4% of the total land area, including buildings, sidewalks, open space, access drives and parking, and no more than 25,000 square feet, whichever is less.
  6. Parking spaces shall be provided, per Article 16 for each accessory commercial use in addition to other required parking for the facility.
- D. Housing for the Elderly communities shall meet the following area, density, coverage and yard requirements:
1. Minimum development area shall be 40,000 square feet.
  2. Maximum density for residential units shall be 18 units per acre.
  3. Maximum impervious lot coverage shall be 80%.
  4. Yards shall meet the following minimum setback requirements.
    - (a) Front yard: 10 feet.
    - (b) Side yards: District standard.
    - (c) Rear yard: District standard.
  5. More than one building on a single lot shall meet the minimum building to building spacing standards of the district
  6. Staging of development. When the housing for the elderly community is to be developed in stages, the following criteria must be met:
    - (a) The land development plan presented to the Borough must show the approximate location and type of use for each stage

of the development.

- (b) If nonresidential uses will be a part of the development, the sequencing shall be shown so that not all residential development is constructed prior to the construction of the nonresidential development, unless the development involves an existing continuing care retirement community that already includes existing nonresidential components, in which case the staging requirement would not apply.

E. Public water and public sewer shall be required.

F. A landscaping plan for the entire tract shall be required. A landscape architect licensed by the Commonwealth of Pennsylvania shall be retained to complete such a plan to ensure the proper species, use, arrangement of plant materials and installation by the developer. All areas of the development not covered by impervious surfaces shall be landscaped and maintained with suitable ground cover and plants.

1. The plan shall indicate the extent in which existing vegetation will be preserved for landscaping purposes.
2. When deemed necessary by the Borough Council or Zoning Hearing Board, earthen berms shall be incorporated into the landscaping plan along public street frontage and along property lines abutting existing dwellings.
3. Landscaped areas shall be continually maintained by the landowner or retirement community association. Care, grooming, and replacement of plants shall be included as part of the required maintenance. Failure to adequately maintain landscaped areas shall be subject to a citation issued by the Borough.
4. In addition to landscape elements, the plan shall include the layout of walkways, lighting in accordance with the Borough Subdivision and Land Development Ordinance and recreation areas throughout the development for the safety and security of the residents.
  - (a) Entrances to dwelling units shall be provided with all-weather walkways to parking and refuse collection points.
  - (b) The development shall have shaded sidewalks or shaded paved walking paths throughout the development.
  - (c) The layout and design of pedestrian-level street lighting shall be provided throughout the development and parking areas.
5. Parking areas within the housing for the elderly community shall be adequately landscaped in order to provide shade, to screen vehicles from public streets, and to reduce glare and noise within the

development itself, and shall be designed in accordance with the Borough Subdivision and Land Development Ordinance.

- G. The continuing care retirement community shall provide proof that all applicable state, county and municipal licenses have been obtained.

**§ 260-1815      Manufactured (Mobile) home parks.**

- A. A permit to construct or make alterations to a manufactured (mobile) home park shall be issued only after a plan which has been approved by the Pennsylvania Department of Environmental Protection has been filed with and approved by the Zoning Hearing Board. The Board shall require that the surrounding areas are satisfactorily protected by planting or other suitable buffer or screening arrangements.
- B. Manufactured (mobile) homes shall be placed only in a Manufactured home park, and each such park shall contain a minimum of five (5) acres.
- C. Yard and Area Regulations
  - 1. The maximum density of manufactured (mobile) homes shall be based on eight (8) manufactured (mobile) homes per acre.
  - 2. Each manufactured (mobile) home space shall have a minimum area of four thousand two hundred (4,200) square feet.
  - 3. Each manufactured (mobile) home space shall be at least forty (40) feet wide.
  - 4. There shall be a minimum of twenty (20) feet between manufactured (mobile)-homes.
  - 5. No manufactured (mobile) home shall be closer to the street right-of-way line of a public street than the minimum requirements of thirty (30) feet.
  - 6. All manufactured( mobile) homes shall be located a minimum of twenty-five (25) feet from the manufactured (mobile) home park boundary line, and all manufactured (mobile) homes shall be set back a minimum of twenty-five (25) feet from the edge of all internal private driveways.
- D. All roads in the park shall be private driveways, shall be lighted and shall be paved with a bituminous or concrete surface at least twenty-four (24) feet wide.
- E. Each manufactured (mobile) home space shall abut on a park driveway with access to such driveway. Access to all manufactured (mobile) home spaces shall be from the driveways and not from public streets or highways.

- F. Service and accessory buildings located in a manufactured (mobile) home park shall be used only by the occupants and guests of the manufactured (mobile) home park.
- G. Each manufactured (mobile) home space shall contain no more than one (1) manufactured (mobile) home for not more than one (1) family.
- H. A manufactured home park shall only include homes of single or multiple widths, but shall not include travel trailers or motor homes.
- I. The maximum coverage of any individual manufactured home lot by all principal and accessory buildings and structures, including covered patios, and decks, shall not exceed thirty (30%) percent.
- J. Each manufactured (mobile) home space shall be provided with a minimum of two (2) paved parking spaces of bituminous or concrete surface.
- K. Each manufactured( mobile) home park shall be established, maintained, conducted and operated in strict compliance with the rules and regulations of the Commonwealth of Pennsylvania, Department of Environmental Protection, Chapter 4, Article 415, Regulations of Mobile Home Parks, adopted October 30, 1959, as the same may be changed or amended from time to time.

**§ 260-1816 Manufacturing.**

- A. In order that the Zoning Officer may have a reasonable basis upon which to approve a proposed industrial operation for conformity with the requirements of this chapter, the following data shall be submitted with an application for a permit:
  - 1. The plot plan.
  - 2. The architectural plan.
  - 3. A description of the operation.
  - 4. Engineering and architectural plans for water supply and sewage disposal.
  - 5. Plans for prevention or control of noise, vibration, glare, fire hazards, air pollution, water pollution and traffic.
  - 6. Proposed fuel.
  - 7. The number of shifts and the maximum employment per shift.
  - 8. Additional pertinent data as may be required by the Zoning Officer.

- B. As a special exception, front, side or rear yards may be modified.

**§ 260-1817. Private Recreation Facilities**

- A. Within the C-D Zone, private, commercial recreation facilities are permitted by right, subject to the following criteria:
  - 1. If the subject property contains more than two (2) acres, it shall front on an arterial or collector road;
  - 2. Those uses involving extensive outdoor activities shall provide sufficient screening and/or landscaping measures to mitigate any visual and/or audible impacts on adjoining properties;
  - 3. Any structures exceeding the maximum permitted height may be permitted so long as they are set back from all property lines at least the horizontal distance equal to their height, plus an additional fifty feet (50'). Furthermore, such structures shall not be used for occupancy;
  - 4. The applicant shall furnish expert evidence that the proposed use will not be detrimental to the use of adjoining properties due to hours of operation, noise, light, litter, dust and pollution;
  - 5. Required parking will be determined based upon a combination of the types of activities proposed and the schedule listed in this Ordinance. In addition, an unimproved grassed overflow parking area provided for peak use periods may be required. Such overflow parking areas shall be accessible only from the interior driveways of the permanent parking lot. Overflow parking areas shall contain fencing to prevent vehicles from crossing adjoining properties or directly accessing adjoining roads; and,
  - 6. Any booths or other structures used for the collection of admission and/or parking fees shall be set back and arranged to prevent vehicle back-ups on adjoining roads during peak arrival periods. Any other collection of fees (roaming parking lot attendants) shall be conducted in a manner to prevent vehicle back-ups on adjoining roads.
- B. If, at any time after the opening of the commercial recreation facility, the Borough of Middletown determines that traffic back-ups are occurring on adjoining roads, and such back ups are directly related to the means of access to the subject property, the Borough can require the applicant to revise means of access to relieve the undue congestion.
- C. Where required the private recreation facilities shall comply with the current Flood Plain Ordinance.

**§ 260-1818 Public utility facilities.**

Public utility facilities shall be permitted in the R-1, R-1A, and R-2 districts as a Special

Exception, and in the C-1 and M-1 districts as a permitted use, without regard to the use and area regulations; provided, however, that buildings or structures erected for these utilities shall be subject to the following regulations:

- A. Front, side and rear yards shall be provided in accordance with the regulations of the district in which the facility is located.
- B. Height shall be as required by the district regulations.
- C. Unhoused equipment shall be enclosed with a chain link fence six (6) feet in height topped with barbed wire.
- D. Housed equipment. When the equipment is totally enclosed within a building, no fence or screen planting shall be required, and the yards shall be maintained in conformity with the district in which the facility is located.
- E. Screen planting in residential districts. The required fence for unhoused equipment shall be surrounded by an evergreen planting as approved by the Planning Committee.
- F. The external design of the building shall be compatible with the buildings in the district.
- G. For Special Exception applications the applicant must demonstrate that the selected location is necessary for public service and the use cannot be supplied if located elsewhere.

**§ 260-1819. Student Housing.**

- A. Student housing is permitted subject to the following criteria:
  - 1. Each apartment must have a minimum of 650 square feet of habitable floor area.
  - 2. The owner of a student housing building shall annually register the tenants in accordance with Chapter 219, Ordinance 635.
  - 3. In no case shall the number of tenants exceed the number of bedrooms in each apartment of the student housing building.
  - 4. The owner of a student housing building shall obtain an occupancy permit.
  - 5. Off-street parking shall be provided for all uses on the property, in accordance with Article 16.
  - 6. Exterior fire escapes, where required, shall not be located on any wall facing a street. Exterior fire escapes above the second floor level shall be non-combustible.

7. No apartment shall be permitted in the basement or cellar of the student housing building.
  8. All apartments shall be served by public sanitary sewer and public water supply utilities.
- B. The requirements of Section 707.D notwithstanding, the total coverage ratio for lots containing student housing shall not exceed sixty percent (60%).
- C. The total coverage ratio, for lots containing student housing, may be increased, not to exceed a total of sixty-five percent (65%), by special exception, consistent with the requirements of Sections 709 and 2016.E.3.

**§ 260-1820. Wind Energy Facility**

- A. Non-personal wind energy facilities shall be permitted in the (M-1) zone by special exception, subject to the following:
1. Definitions
    - (a) “Applicant” is the person or entity filing an application under this Section.
    - (b) “Facility Owner” means the entity or entities having an equity interest in the Wind Energy Facility, including their respective successors and assigns.
    - (c) “Operator” means the entity responsible for the day-to-day operation and maintenance of the Wind Energy Facility.
    - (d) “Hub Height” means the distance measured from the surface of the tower foundation to the height of the Wind Turbine hub, to which the blade is attached.
    - (e) “Occupied Building” means a residence, school, hospital, church, public library or other building used for public gathering that is occupied or in use when the permit application is submitted.
    - (f) “Shadow Flicker” means alternating changes in light intensity caused by the moving Wind Rotor blade casting shadows on the ground and stationary objects.
    - (g) “Turbine Height” means the distance measured from the surface of the tower foundation to the highest point of the Wind Rotor.
    - (h) “Wind Turbine” means a wind energy conversion system that converts wind energy into electricity through the use of a wind

turbine generator, and includes the nacelle, rotor, tower, and pad transformer, if any.

- (i) "Wind Energy Facility" means an electric generating facility, whose main purpose is to supply electricity, consisting of one or more Wind turbines and other accessory structures and buildings, including substations, meteorological towers, electrical infrastructure, transmission lines and other appurtenant structures and facilities.
- (j) "Non-Participating Landowner" means any landowner except those on whose property all or a portion of a Wind Energy Facility is located pursuant to an agreement with the Facility Owner or Operator.

## 2. Applicability

- (a) These provisions apply to all wind Energy Facilities proposed to be constructed after the effective date of the Ordinance, except that this Ordinance is not intended to apply to stand-alone Wind Turbines constructed primarily for use on the property upon which the Wind turbine is located. Where permitted, stand alone Wind Turbines constructed primarily for use on the property upon which the Wind Turbine is located shall conform to the following requirements:
  - [1] Any structure supporting the Wind Turbine, including guideposts and cables, shall be independent of any occupied structure and located a minimum distance of the Turbine Height plus 10 feet from any existing aerial utility line or occupied dwelling, and shall not be more than 75 feet in height.
  - [2] The minimum distance between the Wind Turbine and any property line shall not be less than twice the Turbine Height.
  - [3] The minimum distance between the ground and the lowest point of the Wind Rotor blade shall be 20 feet.
  - [4] All electrical or utility lines shall be buried underground.
  - [5] One Wind Turbine shall be permitted per lot, and all energy produced from such turbine shall be used on the lot.
  - [6] The Wind Turbine shall be enclosed by a six foot fence with locking gate or the base of the Wind Turbine shall not be climbable for a distance of 12 feet.

- (b) Wind Energy Facilities constructed prior to the effective date of this Ordinance shall not be required to meet the requirements of this Ordinance; provided that any physical modification to an existing Wind Energy Facility that materially alters the size, type and number of Wind Turbines or other equipment shall require a permit under this Ordinance.
3. A Wind Energy Facility shall be permitted in the M-1 Zone as a special exception subject to the following criteria:
- (a) Any physical modification to an existing and permitted wind energy facility that materially alters the size, type and number of Wind Turbines or other equipment shall require a conditional use or special exception permit modification under this Ordinance. Like kind replacements shall not require a permit modification.
  - (b) The design of the Wind energy Facility shall conform to applicable industry standards, including those of the American National Standards Institute. The Applicant shall submit certificate of design compliance obtained by the equipment manufacturers from Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energies, or other similar certifying organizations.
  - (c) To the extent applicable, the Wind Energy Facility shall comply with the Pennsylvania Uniform Construction Code, 34 PA Code §§403.1 – 403.142
  - (d) All Wind Energy Facilities shall be equipped with a redundant braking system. This includes both aerodynamic overspeed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Mechanical brakes shall be operated in a fail-safe mode. Stall regulation shall not be considered a sufficient braking system for overspeed protection.
  - (e) All electrical components of the Wind Energy Facility shall conform to relevant and applicable local, state and national codes, and relevant and applicable international standards.
  - (f) Wind Turbines shall be a non-obtrusive color such as white, off-white or gray.
  - (g) Wind Energy Facilities shall not be artificially lighted, except to the extent required by the Federal Aviation Administration or other applicable authority that regulates air safety.
  - (h) Wind Turbines shall not display advertising, except for reasonable identification of the turbine manufacturer, Facility Owner or Operator.

- (i) On-site transmission and power lines between Wind Turbines shall, to the maximum extent practicable, be placed underground.
- (j) The design of buildings and related structures shall, to the extent reasonable, use materials, colors, textures, screening and landscaping that will blend the Wind Energy Facility into the natural setting and existing environment.
- (k) A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.
- (l) Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on the anchor points of guy wires and along the guy wires up to a height of ten feet from the ground.
- (m) All access doors to Wind Turbines and electrical equipment shall be locked or fenced, as appropriate, to prevent entry by non-authorized persons.
- (n) The minimum distance between the ground and any part of the Wind Rotor blade shall be 30 feet.
- (o) To limit climbing access, a 6 foot high fence with a locking gate shall be placed around the Wind Energy Facility, or the Wind Turbines' climbing apparatus shall be limited to no lower than 12 feet from the ground or the Wind Turbines' climbing apparatus shall be fully contained and locked within the tower structure.
- (p) Wind Turbines shall be set back from the nearest Occupied Building or Non-Occupied Building on the participating landowner's property a distance not less than the greatest normal boundary setback requirements for the zoning classification or 1.1 times the Turbine Height, whichever is greater. The setback distance shall be measured from the center of the Wind Turbine base to the nearest point on the foundation of the Occupied Building or Non-Occupied Building.
- (q) Wind Turbines shall be set back from the nearest Occupied Building or Non-Occupied Building located on a Non-participating Landowner's property a distance of not less than two (2) times the Turbine Height, as measured from the center of the Wind Turbine base to the nearest point on the foundation of the Occupied or Non-Occupied Building.
- (r) All Wind Turbines shall be set back from the nearest property line a distance of not less than the normal setback

requirements for that zoning classification of 1.1 times the Turbine Height, whichever is greater. The setback distance shall be measured to the center of the Wind Turbine base.

- (s) All Wind Turbines shall be set back from the nearest public road a distance of not less than 1.1 times the Turbine Height, as measured from the right-of-way line of the nearest public road to the center of the Wind Turbine base.
- (t) Audible sound from a Wind Energy Facility shall not exceed fifty five (55) dBA, as measured at the exterior of any Occupied Building on a Non-participating Landowner's property. Methods for measuring and reporting acoustic emissions from Wind Turbines and the Wind Energy Facility shall be equal to or exceed the minimum standards for prevision described in AWEA Standard 2.1 – 1989 titled Procedures for the Measurement and Reporting of Acoustic Emissions from Wind Turbine Generation Systems Volume I. First Tier.
- (u) The Facility Owner and Operator shall make reasonable efforts to minimize shadow flicker to any Occupied Building on a Non-participating Landowner's property.

#### 4. Use of Public Roads

- (a) The Applicant shall identify all state and local public roads to be used within the Borough to transport equipment and parts for construction, operation or maintenance of the Wind energy Facility.
- (b) The Borough engineer or a qualified third party engineer hired by the Borough and paid for by the Applicant, shall document road conditions prior to construction. The engineer shall document road conditions again thirty (30) days after construction is complete or as weather permits.
- (c) The Borough may bond the road in compliance with state regulations.
- (d) Any road damage caused by the applicant or its contractors shall be promptly repairs at the Applicant's expense.
- (e) The Applicant shall demonstrate that it has appropriate financial assurance to ensure the prompt repair of damaged roads.

#### 5. Local Emergency Services

- (a) The Applicant shall provide a copy of the project summary and site plan to local emergency services, including paid or

volunteer Fire Department(s).

- (b) Upon request, the Applicant shall cooperate with emergency services to develop and coordinate implementation of an emergency response plan for the Wind Energy Facility.

6. Signal Interference

- (a) The Applicant shall make reasonable efforts to avoid any disruption or loss of radio, telephone, television or similar signals, and shall mitigate any harm caused by the Wind Energy Facility.

7. Liability Insurance

- (a) There shall be maintained a current general liability policy covering bodily injury and property damage with limits of at least \$1 million per occurrence and \$1 million in the aggregate. Certificates shall be made available to the Borough upon request.

8. Decommissioning

- (a) The Facility Owner and Operator shall, at its expense, complete decommissioning of the Wind Energy Facility, or individual Wind turbines, within (12) twelve months after the end of the useful life of the Facility or individual Wind Turbines. The Wind Energy Facility or individual Wind Turbines will be presumed to be at the end of its useful life if no electricity is generated for a continuous period of twelve (12) months.
- (b) Decommissioning shall include removal of Wind Turbines, buildings, cabling, electrical components, roads, foundations to a depth of 36 inches, and any other associated facilities.
- (c) Disturbed earth shall be graded and re-seeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored.
- (d) An independent and certified Professional Engineer shall be retained to estimate the total cost of decommissioning ("Decommissioning Costs") without regard to salvage value of the equipment, and the cost of decommissioning net salvage value of the equipment ("Net Decommissioning Costs"). Said estimates shall be submitted to the Borough after the first year of operation and every fifth year thereafter.
- (e) The Facility Owner or Operator shall post and maintain Decommissioning Funds in an amount equal to Net Decommissioning Costs; provided that at no point shall

Decommissioning Funds be less than one hundred percent (100%) of Decommissioning Costs. The Decommissioning Funds shall be posted and maintained with a bonding company or Federal or Commonwealth chartered lending institution chosen by the Facility Owner or Operator and participating landowner posting the financial security, provided that the bonding company or lending institution is authorized to conduct such business within the Commonwealth and is approved by the Borough.

- (f) Decommissioning Funds may be in the form of a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance as may be acceptable to the Borough.
- (g) If the Facility Owner or Operator fails to complete decommissioning within the period, prescribed above, then the landowner shall have six (6) months to complete decommissioning.
- (h) If neither the Facility Owner or Operator, nor the landowner complete decommissioning within the periods prescribed by above then the Borough may take such measures as necessary to complete decommissioning. The entry into and submission of evidence of a Participating Landowner agreement to the Borough shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors and assigns that the Borough may take such action as necessary to implement the decommissioning plan.
- (i) The escrow agent shall release the Decommissioning Funds when the Facility Owner or Operator has demonstrated and the Borough concurs that decommissioning has been satisfactorily completed, or upon written approval of the Borough in order to implement the decommissioning plan.

#### 9. Public Inquiries and Complaints

- (a) The Facility Owner and Operator shall maintain a phone number and identify responsible person for the public to contact with inquiries and complaints throughout the life of the project.
- (b) The Facility Owner and Operator shall make reasonable efforts to respond to the public's inquiries and complaints.
- (c) The Faculty Owner and/or Operator shall keep a record of all such inquiries and complaints and shall submit a report thereof to the Borough not less than quarterly.

#### 10. Remedies

- (a) It shall be unlawful for any person, firm, or corporation to violate or fail to comply with or take any action which is contrary to the terms of this Article, or any permit issued under Article, or cause another to violate or fail to comply, or to take any action which is contrary to the terms of this Article or any permit issued under this Article.
- (b) If the Borough determines that a violation of this Article or the permit has occurred, the Borough shall provide written notice to any person, firm, or corporation alleged to be in violation of this Article or permit. If the alleged violation does not pose an immediate threat to public health or safety, the Borough and the parties shall engage in good faith negotiations to resolve the alleged violation. Such negotiations shall be conducted within thirty (30) days of the notice of violation.
- (c) If after thirty (30) days from the date of the notice of violation the Borough determines, in its discretion, that the parties have not resolved the alleged violation, the Borough may institute civil enforcement proceedings or any other remedy at law to ensure compliance with this Article or permit.

11. Application for Wind Energy Facilities

- (a) Among other things, the application shall contain the following:
  - [1] A narrative describing the proposed Wind Energy Facility, including an overview of the project; the project location; the approximate generating capacity of the Wind Energy Facility; the approximate number, representative types and height or range of heights of Wind Turbines to be constructed, including their generating capacity, dimensions and respective manufacturers, and a description of ancillary facilities.
  - [2] An affidavit or similar evidence of agreement between the property owner and the Facility Owner or Operator demonstrating that the Facility Owner or Operator has the permission of the property owner to apply for necessary permits for construction and operation of the Wind Energy Facility and setting forth the Applicant's and property owner's name, address and phone number.
  - [3] Identification of the properties on which the proposed Wind Energy Facility will be located, and the properties adjacent to where the Wind Energy Facility will be located.

- [4] A site plan showing the planned location of each Wind turbine, property lines, setback lines, access road and turnout locations, substation(s), electrical cabling from the Wind energy Facility to the substation(s), ancillary equipment, buildings, and structures, including permanent meteorological towers, associated transmission lines, and layout of all structures within the geographical boundaries of any applicable setback.
- [5] Documents related to decommissioning.
- [6] Other relevant studies, reports, certifications and approvals as may be reasonably requested by the Borough to ensure compliance with this Ordinance.

- (b) Throughout the permit process, the applicant shall promptly notify the Borough of any changes to the information contained in the conditional use permit application. Changes to the pending application that do not materially alter the initial site plan may be adopted without a renewed public hearing.

**§ 260- 1821. Temporary FEMA Trailers.**

In the event of a major storm occurrence, trailers provided by the Federal Emergency Management Agency (FEMA) shall be a permitted temporary use in all zoning districts.

**§ 260- 1822. Applications**

- A. Applications for special exception uses shall be approved by the Zoning Hearing Board, with recommendations by the Middletown Borough Planning Committee.
- B. Applications for permitted uses involving development activities shall be reviewed and approved by the Zoning Officer.
- C. Applications shall be accompanied by a plan providing the information herein below required:
  - 1. A location map to scale which provides the following information:
    - (a) Proposed development area and surrounding areas
    - (b) Identification of all streets, avenues and alleys
    - (c) Existing zoning districts
  - 2. A property plan which provides the following information:
    - (a) Tract boundaries

- (b) Adjacent properties by deed reference and tax parcel number
  - (c) Rights of way and cartway of streets, avenues or alleys
  - (d) Location and description of all easements
  - (e) Topographic contour information with salient physical features
  - (f) Location of existing sanitary sewer and water supply systems
3. A plan which provides the following information:
- (a) Location, type, use and mix of all buildings and facilities existing and proposed
  - (b) Existing uses of all adjacent lands and buildings
  - (c) Existing and proposed public and / or private streets, avenues, alleys, driveways
  - (d) Off-street parking plan, compliant with the requirements and standards of Article 16 providing sufficient spaces for all uses, existing and continued, as well as added or new uses
  - (e) Storm water drainage facilities existing and proposed
  - (f) Erosion control plan
  - (g) Buffer areas, natural and constructed
  - (h) Impervious coverage by each building and total buildings, coverage by driveways, parking, walkways, other facilities and total coverage.
  - (i) Total tract area, tract area allocated for nonresidential uses, tract area allocated to residential uses and residential density in units per acre.
4. Reports addressing the following:
- (a) Capacity of the sanitary sewer system to handle the flow from the development at the point at which it would be connected.
  - (b) Capacity of the public water supply system to supply the necessary domestic and firefighting water flow, at the point at which it would be connected.
  - (c) Traffic impact analysis on the public streets which provide access to the site.

(d) Storm water management plan.

## ARTICLE 19

### NONCONFORMING STATUS

#### § 260-1900. Nonconforming Status.

All buildings, structures, uses of land, uses of buildings, lots and signs which do not conform to all of the applicable requirements of this Chapter shall be considered as nonconforming, provided that:

- A. They lawfully existed on the date of passage of this Chapter.
- B. They lawfully existed on the date of passage of a text or map amendment to this Chapter, which amendment caused the nonconforming status.

#### § 260-1901. Nonconforming Classifications.

Nonconforming status shall be classified as follows:

- A. Nonconforming Use. The existing lawful use of land and/or buildings and/or structures upon the land which does not conform to any of the permitted uses of the district in which it is located.
- B. Nonconforming Building or Structure. Any existing lawful building or structure that does not conform to the height, location, size, bulk or other dimensional requirements of the district in which it is located. This does not include signs.
- C. Nonconforming Lot. Any existing lot which does not conform to the area and/or width requirement for lots in the district in which it is located.
- D. Nonconforming Sign. Any sign, signboard, billboard or advertising device existing at the time of the passing of this Chapter that does not conform in use, location, height or size with the regulations of this Chapter shall be considered a nonconforming sign.
- E. Temporary Nonconforming Use. A temporary nonconforming use, which will benefit the public health, safety or welfare or promote proper development of a district in conformity with the intent of this Chapter, may be permitted for a period of not more than 30 days on the approval of an application for a special exception by the Zoning Hearing Board, but any such use to be permitted for a longer period shall require a public hearing thereon, after which a Zoning Hearing Board approval may be granted for a period not to exceed one year. A building permit and/or use and occupancy permit shall be required for any structure associated with such a temporary use, in accordance with the standards and regulations for permanent structures and uses.

#### § 260-1902. Nonconforming Uses.

The following regulations shall govern all properties to which nonconforming status is applied.

- A. Nonconforming status shall be permitted to continue and a property may continue to be used as nonconforming until it complies with the requirements of this Chapter.
- B. Change of Use.
  - 1. A nonconforming use may be changed only to a conforming use.
  - 2. If a nonconforming use is changed to a conforming use, then the previous nonconforming status shall become null and void.
  - 3. The conversion of one nonconforming use to another nonconforming use on a lot or in a building that is nonconforming shall be permitted by special exception from the Zoning Hearing Board, in accordance with the provisions of this chapter. Where a Special Exception approval is required, the Zoning Hearing Board shall determine whether the applicant has provided sufficient proof to show that the proposed new use will be equal or less objectionable in external effects than the pre-existing nonconforming use with regard to:
    - (a) Traffic safety and generation (especially truck traffic)
    - (b) Noise, dust, fumes, vapors, gases, odors, glare, vibration, fire, hazardous substances and explosive hazards.
    - (c) Amount and character of outdoor storage
    - (d) Late night and early morning hours of operation if the new use would be close to dwellings
    - (e) Compatibility with the character of surrounding uses.
- C. Abandonment and Discontinuance
  - 1. A nonconforming use shall be presumed abandoned when operations associated with the nonconforming use have ceased by an apparent act or failure to act on the part of the tenant or owner to reinstate such use within one (1) year from the date the activity stopped and the use is not actively advertised for sale or lease. Such nonconforming use shall not thereafter be reinstated except in conformance with this Ordinance. A nonconforming building or land, which is actively marketed, but has not been sold or leased, shall not be considered abandoned. The applicant shall be responsible to provide evidence that the nonconformity was not abandoned.

2. Except for in a Mobile Home Park, the removal of a nonconforming mobile home from the site it occupied [and if such site is not leased, actively marketed, or purchased within one (1) year or less] shall constitute abandonment of the site, and any occupation or subsequent use of said site shall conform with the provisions of this Ordinance.
  3. The removal of a mobile home from a residential lot already occupied by a residential building shall constitute abandonment of the nonconforming use and such use shall not thereafter be permitted. [Exception: mobile homes utilized for temporary housing for farm employees].
  4. Mobile Home Parks, trailer camps or trailer parks, which are nonconforming under the terms of this Ordinance, shall be operated in accordance with Public Health Regulations, Commonwealth of Pennsylvania, Department of Environmental Protection, under the provisions of Act 175 of April 9, 1929, P.L. 177, as amended, and all other applicable laws.
- D. Whenever a district classification shall be thereafter changed, any existing use in such changed district may be continued, provided that no structural alterations are made other than those permitted by this Chapter.
- E. Extension of Expansion. A nonconforming use, building or structure, not including signs, may be extended or expanded in compliance with the following:
1. The parcel on which extension or expansion occurs shall include only that lot, held in single and separate ownership, on which the use, building or structure existed at the time it became nonconforming. Expansion or extension onto adjoining lots is prohibited.
  2. Nonconforming use of a building may be extended throughout the building.
  3. A nonconforming use may be extended to a new building on the same lot, in compliance with subsection (E)(5) below, and provided that the nonconforming use continues in the existing building.
  4. A building which houses a non-conforming use may be expanded by no more than 25% of its gross floor area at the time it became nonconforming.
  5. Extension and/or expansion as provided for above shall be permitted only to extent that all new construction shall comply with the dimensional standards of the district in which the building is located, except that expansion of a building that is nonconforming with respect to a required setback may be built on line with the existing nonconforming building line. A violation of any dimensional standard not previously

violated shall not be permitted, unless a variance is granted by the Zoning Hearing Board.

**§ 260-1903. Additional Building Regulations.**

- A. Buildings that are under construction at the time they become nonconforming may be continued to completion; provided, that valid building permits have been issued for those buildings and substantial construction has begun. If the building was intended for a use which has become nonconforming after construction of the building had begun, the building may be occupied and used for that legal use intended at the time the building permit was issued, or for one which is otherwise in conformance with the regulations for the zoning district in which the building is located.
- B. Nonconforming primary structures damaged or destroyed by fire, explosion, accident of calamity (as contrasted to deterioration due to time or neglect) may be reconstructed and used as before; provided, that:
  - 1. The reconstructed building shall not exceed the dimensions of the damaged or destroyed building, including height, width, depth, volume.
  - 2. Building reconstruction shall be started within twelve months from the date the building was damaged or destroyed and shall be carried out without interruption.
  - 3. The building will pose no hazard to safety.
- C. Legally condemned nonconforming buildings shall not be rebuilt or used except to conformance with this Chapter.

**§ 260-1904. Nonconforming Lots of Record.**

- A. A lot of public record, in single and separate ownership at the time of enactment of this Chapter, or amendments thereto, which is not in conformance with the area or width requirements of the district in which it is located, shall be deemed nonconforming and shall be subject to the following regulations:
  - 1. Said lot may be used as otherwise permitted in that district following the granting of a variance by the Zoning Hearing Board for the particular use.
  - 2. Where two or more contiguous undeveloped lots are held in single ownership, within a subdivision which has been duly recorded prior to the effective date of this Chapter, which lots are individually not of the required minimum area or width for the district in which they are situated, such lots shall be developed in groups thereof in order to provide the minimum lot area and frontage required for each lot.

- B. Exception. A nonconforming lot of record, which is part of a subdivision plan approved by Borough Council and recorded in the office of Recorder of Deeds as such and which is in compliance with the zoning regulations in effect immediately prior to the date of enactment of this Chapter may be developed in accordance with the terms of such approval and preceding zoning regulations.

**§ 260-1905. Non-conforming Signs.**

- A. A nonconforming sign may continue in its current use and location provided it is maintained in safe and good repair.
- B. If and when the sign is replaced, the new sign shall comply with the requirements of this Chapter. Replacement of the sign shall not include simply revising the text or color of the sign, but shall include structural replacement and/or relocation of the sign.

**§ 260-1906. Administration.**

- A. In all matters pertaining to nonconforming status, the Zoning Officer shall make the initial determination. The Zoning Officer may seek the advice of the Borough Planning Committee, Borough Solicitor and/or others in making a determination.
- B. If it cannot be determined by means of positive documentation that a use or structure was in lawful existence at the time an ordinance or amendment would have rendered it nonconforming, the Zoning Officer must refuse to confer nonconforming status.
- C. If the applicant disagrees with the Zoning Officer's determination, the applicant may appeal to the Zoning Hearing Board as provided by law.

## ARTICLE 20

### ADMINISTRATION & ENFORCEMENT

#### § 260-2000. Applicability of this Ordinance

This Zoning Ordinance shall apply throughout the Borough. Any activity regulated by this Ordinance shall only occur in such a way that conforms with the regulations of this Ordinance.

#### § 260-2001. Administration

- A. The provisions of this Ordinance shall be enforced by an agent, to be appointed by the Middletown Borough Council who shall be known as the Zoning Officer. The Zoning Officer may have designated an employee of the Borough as his Assistant, who shall exercise all the powers of the Zoning Officer during the temporary absence or disability of the Zoning Officer.
- B. The duties of the Zoning Officer shall be:
  - 1. Administer the Zoning Ordinance in accordance with its literal terms;
  - 2. To receive, examine and process all applications and permits as provided by the terms of this Ordinance. The Zoning Officer shall also issue zoning permits for special exception and conditional uses, or for variances after the same have been approved by the Zoning Hearing Board or Borough Council.
  - 3. To record and file all applications for zoning permits or certificates of occupancy, and accompanying plans and documents, and keep them for public record;
  - 4. To inspect properties to determine compliance with all provisions of this Ordinance as well as conditions attached to the approval of variances, special exceptions, conditional uses and curative amendments.
  - 5. Determine the date before which steps for compliance must be commenced and the date before which the steps must be completed. The Zoning Officer shall determine an appropriate duration of time for compliance of the specified activity, not to exceed 30 days. Extensions up to a total of 90 days from the date of receipt of the enforcement notice may be granted at the discretion of the Zoning Officer if applied for in writing;
  - 6. Upon the request of the Borough Council, the Borough Manager, the Planning Committee or the Zoning Hearing Board, present to such

bodies facts, records, and any similar information on specific requests, to assist such bodies in reaching their decisions;

7. To be responsible for keeping this Ordinance and the Official Zoning Map up to date, including any amendments thereto. The zoning officer shall maintain a map or maps showing the current zoning district and overlay areas for all the land within the Borough. Upon request, the Zoning Officer shall make determination of any Zoning Map district boundary question.
8. To revoke a permit or approval issued under the provisions of this Ordinance in case of any false statement or misrepresentation of fact in the application or on the plans on which the permit or approval was based or for any other cause set forth in the Zoning Ordinance, or otherwise permitted by law;
9. To receive and review all applications for proposed subdivisions, land developments, building permits or zoning permits for compliance with this Ordinance.
10. To take enforcement actions as provided by the State Municipalities Planning Code, as amended.

#### **§ 260-2002. Permits & Certificates**

- A. A Zoning Permit indicates that a zoning application complies with this Ordinance to the best knowledge of the Zoning Officer or his/her designee. No zoning permit or certificate of use and occupancy shall be granted by him/her for any purpose except in compliance with the literal provisions of this Ordinance and with all the provisions of the Borough's Building Codes. The Zoning Officer may be authorized to institute civil enforcement proceedings as a means of enforcement when acting within his/her scope of employment.
  1. A Zoning Permit is required to be issued prior to the start of any of the following activities:
    - (a) Erection, construction, movement, placement, razing, demolition, removal, alteration or expansion (vertical or horizontal) of a structure, building or sign;
    - (b) of the type of use or expansion of the use of a structure or area of land
    - (c) Creation of a new use
    - (d) Demolition of a building
    - (e) Other activities required to have a permit by this Ordinance

- (f) The alteration or development of any improvement or unimproved real estate, including, but not limited to, mining, dredging, filling, grading, paving, excavation or drilling operations for underground utilities provided the final grade is not altered.
  - (g) The erection or alteration of any signs specified in Article 17 of this Ordinance;
  - (h) The construction or installation of animal waste impoundments, lakes, ponds, dams, or other water retention basins;
  - (i) No zoning permit shall be required for repairs or maintenance of any structure or land provided such repairs do not change the use or the exterior dimensions of the structure, or otherwise violate the provisions of this Ordinance;
2. The Borough may, at its option, issue combined or separate Building Permits and Zoning Permits and/or may utilize a single or separate application for the permits.
  3. The only determination by the Zoning Officer that shall be official shall be a written determination after the Zoning Officer receives a duly submitted written official application.
  4. Such zoning permits shall be granted or refused within ninety (90) days from date of application.
  5. No zoning permit shall be issued except in conformity with:
    - (a) All applicable regulations of this Ordinance;
    - (b) Any conditions imposed upon the site by the Zoning Hearing Board or the Borough Council; and
    - (c) Any recorded subdivision or land development plan.
  6. In all instances in which the Zoning Officer expresses a reasonable doubt as to the ability of a proposed use to meet all of the above-described requirements, it will be incumbent upon the applicant to furnish adequate evidence in support of his application. If such evidence is not presented, the zoning permit will be denied.
  7. Application for a zoning permit shall be made by the Owner or Lessee of any building or structure, or the agent of either; provided, however, that if the application is made by a person other than the Owner or Lessee, it shall be accompanied by a written authorization of the

Owner or the qualified person making the application, that the proposed work is authorized by this Owner. The full names and addresses of the Owner, Lessee, Applicant, and of the responsible officers, if the Owner or Lessee is a corporate body, shall be stated in the application.

8. The Zoning Officer may call upon other Borough staff and/or municipal appointed consultants in the review of submitted materials for applications;
9. The Zoning Officer may revoke a permit or approval issued under the provisions of this Ordinance in case of any false statement or misrepresentation of fact in the application or on the plans which the permit or approval was based or for any other cause set forth in the Zoning Ordinance.
10. Where a zoning permit is required by this Ordinance, but the work is commenced or changed prior to obtaining such permit and after notice by the Borough the fees set by ordinance or resolution of the Borough Council for such permit shall be doubled. The doubling of the permit fee shall be required to reflect the additional expense incurred by the Borough resulting from the need to inspect the property, respond to any complaints, and issue any enforcement notices and/or process the application as soon as it is received. The payment of such increased permit fee shall not relieve any person from complying with all requirements of this Ordinance or any other applicable Borough ordinances or from any penalties or enforcement actions authorized by this Ordinance.
11. Issuance of Permits. Upon receiving the application, the Zoning Officer shall examine the same within a reasonable time after filing. If the application or plans do not conform to the provisions of all pertinent local laws, he shall reject such application in writing, stating the reasons therefore. He shall inform the applicant of his right to appeal to the Zoning Hearing Board in the event such application is rejected. If satisfied that the proposed work and/or use conforms to the provisions of the Zoning Ordinance and all laws and ordinances applicable thereto, and that the certificate of use and occupancy as required herein has been applied for, he shall issue a permit therefore as soon as practical but not later than ninety (90) days from receipt of the application.
12. Reconsideration of Application. An applicant whose request for a permit has been denied by the Zoning Officer may make a later application for a permit provided all deficiencies which were the basis for the prior denial of the permit have been eliminated. Additional fees may apply as set by the Borough Council.

13. Expiration of Zoning Permit. The permit shall expire after one (1) year from the date of issuance; provided, however, that the same may be extended one time for one (1) additional year, upon written request by the applicant on a form provided by the Borough.
14. Compliance with Ordinance. The permit shall be a license to proceed with the work and should not be construed as authority to violate, cancel, or set aside any of the provisions of the Zoning Ordinance, except as stipulated by the Zoning Hearing Board.
15. Compliance with Permit and Plot Plan. All work or uses shall conform to the approved application and plans for which the permit has been issued as well as the approved plot plan.
16. Display of Zoning Permit. All approved zoning permits shall be prominently displayed on the subject property during construction, renovation, reconstruction, repair, remodeling or the conduct of other site improvements. Such permit displays shall occur within five (5) days of permit issuance, or prior to the commencement of actual work on the site, whichever occurs first. Such permit display shall be continuous until the site receives its certificate of occupancy.
17. Inspections. Inspections of the property in question by the Zoning Officer or other duly appointed official may be required at various intervals during the construction process. By submitting an application for a zoning permit, the landowner authorizes the Borough to perform such inspections as required.

**§ 260-2003. Certificate of Use and Occupancy**

- A. It shall be unlawful to use and/or occupy any structure, sign, land area or portion thereof for which a Zoning Permit is required until a Certificate of Use and Occupancy for such activity has been issued by the Zoning Officer.
- B. The Borough staff may permit the Zoning Permit application to serve as the application for the Certificate of Use and Occupancy.
- C. The Certificate of Use and Occupancy shall only be issued by the Zoning Officer if the Zoning Officer determines that the activity complies with this Ordinance, to the best knowledge of the Zoning Officer.
- D. The applicant shall keep a copy of the Certificate of Use and Occupancy available for inspection.
- E. Upon request of the applicant, the Zoning Officer may issue a temporary Certificate of Use and Occupancy. Such temporary Certificate may permit as activity to occur in all or part of a structure before the entire work covered by the zoning permit has been completed.

1. However, such temporary Certificate shall only be issued if the applicant proves to the Zoning Officer that the activity or occupancy can occur safely without endangering public health or safety.
  2. The temporary Certificate shall establish in writing a maximum time period under which it is valid. A 6 month maximum time period shall apply if not otherwise specified.
  3. Failure to receive a permanent Certificate of Use and Occupancy within such time period shall be a violation of this Ordinance.
  4. The temporary Certificate may be conditioned upon compliance with certain specific requirements within certain time periods.
- F. The Zoning Officer shall inspect any structure, building, or sign within ten (10) days upon notification that the proposed work that was listed under a zoning permit has been completed and if satisfied that the work is in conformity and compliance with the work listed in the issued permit and all other pertinent laws, he shall issue a Certificate of Use and Occupancy for the intended use listed in the original application. Where a building permit is required under the Uniform Construction Code, a certificate of use shall not be issued until a final inspection by the Building Code Official is complete and found to be satisfactory.

**§ 260-2004. Zoning Permit for Temporary Uses and Structures**

- A. A Zoning Permit for a temporary use or structure may be issued by the Zoning Officer for any of the following:
1. Customary, routine and accessory short-term special events, provided that only a well-established nonprofit organization or a permitted place of worship proposing a temporary use demonstrates clearly that the proposed use will primarily serve a charitable, public service or religious purpose in order to be eligible to receive approval for commercial-type activities in a district where a commercial use would not otherwise be permitted;
  2. Temporary storage and office trailers that are necessary to serve on-site construction, while such construction is actively underway;
  3. Such other activities that the applicant proves are routine, customary and temporary.
- B. Time Period. The Zoning Officer shall state a reasonable maximum time period on the temporary permit. If no time limit is stated, then a 6 month maximum period shall apply. A temporary permit may be renewed for just cause.

## **§ 260-2005. Types of Uses**

- A. Permitted By Right Uses. The Zoning Officer shall issued a zoning permit under this Ordinance in response to an application for a use that is “permitted by right” if it meets all of the requirements of this Ordinance.
- B. Special Exception Use. A zoning permit under this Ordinance for a use requiring a Special Exception Permit shall be issued by the Zoning Officer only in response to a written approval by the Zoning Hearing Board, following a hearing, and compliance with any conditions by the Zoning Hearing Board and any conditions required by this Ordinance.
- C. Conditional Use. A zoning permit under this Ordinance for a use requiring a Conditional Use Permit shall be issued by the Zoning Officer only in response to a written approval by the Borough Council, following a hearing, and compliance with any conditions by the Borough Council and any conditions required by this Ordinance.
- D. Application Requiring a Variance. A permit under this Ordinance for a use requiring a Variance shall be issued by the Zoning Officer only in response to a written approval by the Zoning Hearing Board, following a hearing, and compliance with any conditions by the Zoning Hearing Board.

## **§ 260-2006. Applications for Zoning Permits**

- A. Submittal. All applications for a Zoning Permit shall be made in writing on a form provided by the Borough. Such completed application, with required fees, shall be submitted to a designated Borough employee.
- B. Site Plan. The applicant shall submit a minimum of 2 copies of a site plan with the application if the application involves a new principal building, expansion of a principal building or addition of 3 or more parking spaces. The site plan shall be drawn to scale and show the following:
  - 1. Locations, dimensions and uses of existing and proposed structures, parking and loading areas, and location of existing and proposed uses of areas of land, with existing features clearly distinguished from proposed features.
  - 2. Notes showing the dimensions of all buildings from lot lines and street rights-of way.
  - 3. Location of any watercourses and any 100 year floodplain.
  - 4. Proposed lot areas, lot widths and other applicable dimensional requirements.

5. Locations and widths of existing and proposed sidewalks.
- C. Additional Information. Any application under this Ordinance shall include the following information, unless the Zoning Officer determines such information is unnecessary to determine compliance with this Ordinance:
1. Address of the lot.
  2. Name and address of the applicant, and of the owner of the property if different from the applicant.
  3. Description of the proposed use of the property.
  4. All other applicable information listed on the official Borough application form.
  5. Such additional information that the Zoning Officer may determine is reasonably necessary to determine compliance with this Ordinance.
- D. Application for Zoning Permits for Uses in All Commercial and Industrial Zones (excluding demolition permits) shall include the following:
1. A location plan showing the tract to be developed, zone boundaries, adjoining tracts, significant natural features, and streets for a distance of two hundred feet (200') from all tract boundaries;
  2. A plot plan certified by a professional surveyor or engineer of the lot showing the location of all existing and proposed buildings, driveways, parking lots showing access drives, circulation patterns, curb cut accesses, parking stalls, access from streets, screening fences and walls, waste disposal fields or other methods of sewage disposal, other construction features on the lot, and the location of all topographical features;
  3. A description of the operations proposed in sufficient detail to indicate the effects of those operations in producing traffic congestion, noise, glare, air pollution, water pollution, vibration, fire hazards, safety hazards, or the emission of any potentially harmful or obnoxious matter or radiation;
  4. Evidence that the disposal of materials and wastes will be accomplished in a manner that complies with State and Federal regulations. Such evidence shall, at a minimum, include copies of contracts with waste haulers licensed to operate within Dauphin County which have been contracted to dispose of the materials used and wastes generated on-site. The zoning permit shall remain valid only so long as such contracts remain in effect and all materials and wastes are properly disposed of on a regular basis. Should the nature

of the use change in the future such that the materials used or wastes generated change significantly, either in type or amount, the owner shall so inform the Zoning Officer, and shall provide additional evidence demonstrating continued compliance with the requirements of this Section;

5. Engineering plans for the handling of traffic, noise, glare, air pollution, water pollution, vibration, fire hazards, or safety hazards, smoke, or emission of any potentially harmful or obnoxious matter or radiation;
  6. Designation of the manner by which sanitary sewage and storm water shall be disposed and water supply obtained;
  7. The proposed number of shifts to be worked and the maximum number of employees on each shift;
  8. Where use by more than one firm is anticipated, a list of firms which are likely to be located in the center, their floor area, and estimated number of employees; and
  9. Submission, approval and recordation of a Subdivision or Land Development plan, as required.
- E. Areas Subject to Flooding. If the proposed development, excavation or construction is located within an area subject to regulation by the Borough Floodplain Ordinance, the following information is specifically required to accompany all applications, as prepared by a licensed professional:
1. The accurate location and elevation of the floodplain and floodway;
  2. The elevation, in relation to the National Geodetic Vertical Datum of 1929 (NGVD), of the lowest floor, including basements;
  3. The elevation, in relation to the NGVD, to which all structures and utilities will be flood-proofed or elevated;
  4. Where floodproofing is proposed to be utilized for a particular structure, the zoning permit application shall be accompanied by a document certified by a licensed professional engineer registered by the Commonwealth of Pennsylvania, or a licensed professional architect registered by the Commonwealth of Pennsylvania certifying that the flood-proofing methods used meet all applicable codes and ordinances; and,
- F. Uniform Construction Code. Where the proposed use is regulated under the Uniform Construction Code, the applicant shall submit an application of building permit concurrently with the zoning permit. A zoning permit will not

be issued until satisfactorily meeting the requirements of the Uniform Construction Code.

G. Submittals for Special Exception or Conditional Uses. In addition to the information listed above, an application for a Special Exception or Conditional Use requiring a site plan and action by the Zoning Hearing Board or Borough Council shall also include the following information, unless the Zoning Officer determines that such information is not necessary to determine compliance with this Ordinance:

1. Present zoning district and major applicable lot requirements.
2. For non-residential use:
  - (a) Description of the proposed non-residential operations and storage in sufficient detail to indicate potential nuisances and hazards regarding noise, large truck traffic, glare, odors, dust, fire or toxic or explosive hazards or other significant public health and safety hazards.
  - (b) Maximum hours of operation.
3. Existing directions of stormwater flow (and any proposed revisions) and any proposed methods of stormwater management.
4. Listing of any sections of this Ordinance from which a Variance is being requested.
5. Approximate locations of principal buildings and locations of streets and alleys and zoning district boundaries within 100 feet of the boundaries of the tract, and description of uses of adjoining properties (such as “drug store” or “single-family detached dwelling”).
6. Heights, locations, methods of illumination and intensity of exterior lighting and sign lighting.
7. Name and address of person who prepared the site plan.
8. Signed acknowledgement of the site plan by the applicant.
9. Such additional information required under applicable sections of this Ordinance.

**§ 260-2007. Issuance of Permits**

A. At least 1 copy of each zoning permit application and any other zoning approvals shall be retained in the Borough files.

- B. PennDOT Permit. Where necessary for access onto a State road, a Borough zoning or building permit shall be conditioned upon issuance of a PennDOT Highway Occupancy Permit.

**§ 260-2008. Revocation of Permits; Appeal of Permit or Approval**

- A. Revocation. The Zoning Officer shall revoke, withhold or suspend a permit or approval issued under the provisions of this Ordinance in the case of one or more of the following:
  - 1. Any false statement or misrepresentation of fact in the application or on the plans on which the permit or approval was based. (Note: The Pennsylvania Criminal Code provides for penalties for providing false information to a municipal employee in the carrying out of his/her duties).
  - 2. Upon violation of any condition lawfully imposed by the Zoning Hearing Board for a Special Exception Use or a Variance.
  - 3. Upon violation of any condition lawfully imposed by the Borough Council for a Conditional Use.
  - 4. Any work being accomplished or use of land or structures in such a way that does not comply with this Ordinance or an approved site plan or approved permit application.
  - 5. Any other just cause set forth in this Ordinance.
- B. Appeals. A party with legitimate standing, or as otherwise provided by State law, may appeal decisions made under this Ordinance within the provisions of the MPC. Such appeal shall occur within the time period established by the MPC.

**§ 260-2009. Compliance with the Borough Subdivision and Land Development Ordinance.**

- A. If an application under this Ordinance would also be regulated by the Borough of Middletown Subdivision and Land Development Ordinance ("SALDO"), then any permit or approval under this Zoning Ordinance shall automatically be conditioned upon compliance with the SALDO.
  - 1. For example, if an applicant applies for a permit for a single-family detached dwelling on a proposed new lot, the construction permit for such dwelling shall not be valid until after the lot is granted final subdivision and land development approval and the lot is officially recorded by the County Recorder of Deeds.

**§ 260-2010. General Procedure for Permits**

- A. After receiving a proper application, the Zoning Officer shall either (1) issue the applicable permit(s); or (2) deny the application(s) as submitted, indicating one or more reasons in writing to the applicant.
- B. After the permit under this Ordinance has been issued, the applicant may undertake the action specified in the permit, in compliance with other Borough Ordinances. However, it is recommended that applicants wait 30 days to begin construction if there is a possibility of an appeal by another party to have the permit revoked. Any commencement of construction or a use within this 30 day appeal period shall be at the risk of the applicant.

**§ 260-2011. Interpretation and Uses Not Regulated**

- A. Minimum Requirements. Where more than one provision of this Ordinance controls a particular matter, the provision that is more restrictive upon uses and structures shall apply. The provisions of this Ordinance are in addition to any other applicable Borough Ordinance.
- B. Uses Not Specifically Regulated. If a use clearly is not permitted By Right, Conditional Use or as a Special Exception Use by this Ordinance within any Zoning District, the use is prohibited, except that the Zoning Hearing Board may permit such use as a Special Exception use if the applicant specifically proves to the clear satisfaction of the Zoning Hearing Board that all of the following conditions would be met:
  - 1. Proposed use would be less intensive in external impacts and nuisances than uses that are permitted in the Zoning District.
  - 2. Proposed use would be closely similar in impacts and character to uses permitted in that zoning district.
  - 3. Use would meet the standards that would apply under Section 2016(E)(3)(b) for a Special Exception use.
  - 4. Use is not specifically prohibited in that Zoning District.
- C. Interpretation of Ordinance Text and Boundaries
  - 1. The Zoning Officer shall literally apply the wording of this Ordinance and the location of all Zoning District boundaries to applications. In any case, the Zoning Officer may also request an advisory opinion from the Borough Solicitor to aid in the Zoning Officer's determination.
  - 2. If an applicant disagrees with the Zoning Officer's determination and believes that the Ordinance should be interpreted in the applicant's favor, the applicant may appeal to the Zoning Hearing Board.

## **§ 260-2012. Interpretation of Zoning Boundaries**

The following rules shall apply where uncertainty exists as to boundaries of any district as shown on the Zoning Map:

- A. District boundary lines are intended to follow or be parallel to the center line of street rights-of-way, creeks, railroads and lot lines (according to official County records) as they existed at the time of the adoption of this Ordinance, unless such District boundary lines are fixed by dimensions as shown on the Official Zoning Map.
- B. Where a district boundary is not fixed by dimensions and where it approximately follows lot lines, such boundary shall be construed to follow such lot lines unless specifically shown otherwise.
- C. The location of a district boundary that divides a lot shall be determined by the use of the scale appearing on the Zoning Map unless indicated otherwise by dimensions.
- D. Where a municipal boundary divides a lot, the minimum lot area shall be regulated by the municipality in which the principal use(s) are located, unless otherwise provided by applicable case law. The land area within each municipality shall be regulated by the use regulations and other applicable regulations of each municipality.

## **§ 260-2013. Enforcement, Violations and Penalties**

All of the enforcement, violations and penalty provisions of the Pennsylvania Municipalities Planning Code, as amended, are hereby incorporated into this Ordinance by reference.

- A. Violations. Any person who shall commit or who shall permit any of the following actions violates this Ordinance:
  - 1. Failure to secure a Zoning Permit prior to a change in use of land or structure, or the erection, construction or alteration of any structure or portion thereof, or the excavation of land to prepare for the erection, construction or alteration of any structure or portion thereof.
  - 2. Placement of false statements on or omitting relevant information from an application for a Zoning Permit.
  - 1. Undertaking any action in a manner which does not comply with an approved Zoning Permit.
  - 4. Violation of any conditions imposed by a decision of the Zoning Hearing Board in granting a Variance, Special Exception or other approval.

5. Violation of any condition imposed by a decision of the Borough Council in granting a Conditional Use.

B. Causes of Action; Enforcement; Remedies

1. Enforcement. If it appears to the Borough that a violation of this Zoning Ordinance has occurred, the Borough shall initiate enforcement proceedings by sending an enforcement notice, as provided in this Section. Prior to sending an official enforcement notice, the Zoning Officer may at his/her option informally request compliance.
2. Enforcement Notice. The enforcement notice shall be sent to the owner of record of the parcel on which the violation has occurred, to any person who has filed a written request to receive enforcement notices regarding that parcel, and to any other person requested in writing by the owner of record. An enforcement notice shall state the following, at minimum:
  - a. The name of the owner of record and any other person against whom the Borough of Middletown intends to take action.
  - b. The location of the property in violation.
  - c. The specific violation with a description of the requirements which have not been met, citing in each instance the applicable provisions of the Zoning Ordinance.
  - d. The date before which the steps for compliance must be commenced and the date before which the steps must be completed.
  - e. That the recipient of the notice has the right to appeal to the Zoning Hearing Board within 15 days, in accordance with procedures set forth in this Ordinance.
  - f. That failure to comply with the notice within the time specified, unless extended by appeal to the Zoning Hearing Board, constitutes a violation, with possible sanctions clearly described.
3. Evidence & Fees. In any appeal of an enforcement notice to the Zoning Hearing Board, the Borough shall have the responsibility of presenting its evidence first. Any filing fees paid by a party to an appeal to an enforcement notice to the Zoning Hearing Board shall be returned to the appealing party by the Borough if the Zoning Hearing Board, or any court in a subsequent appeal, rules in the appealing party's favor.

4. Cause of Action. If the enforcement notice is not complied with, within the specified time period, the Zoning Officer shall notify the Borough Council. With the consent of the Borough Council, the Borough Solicitor or other officer of the Borough may institute any appropriate action or proceeding to prevent, restrain, correct or abate such building, structure, landscaping or land, or to prevent in or about such premises, any act, conduct, business or use constituting a violation.
5. Violations and Penalties. Any person, partnership or corporation who or which has violated or permitted the violation of the provisions of this Ordinance shall, upon being found liable therefore in a civil enforcement proceeding commenced by the Borough, pay a judgment of not more than five hundred dollars (\$500) plus all court costs, including the reasonable attorney's fees incurred by the Borough as a result thereof. No judgment shall commence or be imposed, levied or be payable until the date of the determination of a violation by the District Justice. If the defendant neither pays nor timely appeals the judgment, the Borough may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues shall constitute a separate violation, unless the ~~a~~ District Justice determining that there has been a violation, further determines that there was a good faith basis for the person, partnership or corporation violating this Ordinance to have believed that there was no such violation, in which event there shall be deemed to have been only one such violation until the fifth day following the date of the determination by the District Justice, and thereafter each day that a violation continues shall constitute a separate violation. All judgments, costs and reasonable attorney's fees collected for the violation of this Ordinance shall be paid over to the Borough. Imprisonment shall not be authorized by this Ordinance.
6. The Court of Common Pleas, upon petition, may grant any order of stay, upon cause shown, tolling the per diem fine pending a final adjudication of the violation and judgment.
7. Nothing in this Section shall be construed or interpreted to grant to any person or entity, other than the Borough, the right to commence any action for enforcement pursuant to this Section.

#### **§ 260-2014. Fees**

Determination. The Borough Council may, by resolution, establish fees for the administration of this Ordinance. All fees shall be determined by a schedule that is made available to the general public. The Borough Council may reevaluate the fees schedule and make necessary alterations to it. Such alterations shall not be considered an amendment to this Ordinance and may be adopted at any public meeting of the Borough Council.

#### **§ 260-2015. Amendments**

- A. Power of Amendment. The Borough Council may from time to time, by the affirmative vote of a majority of the members amend, supplement, change or repeal this Ordinance including the Official Zoning Map. Any amendment, supplement, change or repeal may be initiated by the Borough Planning Committee, the Borough Council or by a petition to the Borough Council by an interested party, by proceeding in the following manner;
1. The Borough Council, by resolution adopted at a stated meeting, shall fix the time and place of a public hearing on the proposed amendment, advertised as noted in this Section.
  2. At the public hearing, full opportunity to be heard shall be given to any citizen and all parties in interest.
- B. Hearing and Enactment Procedures for Zoning Amendments:
1. Public Hearing. Before hearing and enacting Zoning Ordinance and/or Zoning Map amendments, the Borough Council shall conduct a public hearing to inform the general public of the nature of the amendment, and to obtain public comment. Such public hearing shall be conducted after public notice (as defined herein and listed below) has been given.
  2. Public Notice. Before conducting a public hearing, the Borough shall provide public notice as follows:
    - (a) This notice must appear in a newspaper of general circulation in the Borough of Middletown at least fourteen (14) days in advance but not more than thirty (30) days in advance of the public hearing. It must also be advertised twice; however, not twice within the same week. Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing. Publication of the proposed amendment shall include either the full text thereof or the title and brief summary, prepared by the municipal solicitor and setting forth all the provisions in reasonable detail.
    - (b) For Zoning Map amendments, public notice shall also include the posting of a sign at conspicuous locations along the perimeter of the subject property; these sign(s) shall be posted at least one week prior to the hearing and will exhibit the nature, date, time, Borough of Middletown, location of the hearing;
    - (c) In addition to the requirement, that notice be posted on the subject property, where the proposed amendment involves a zoning map change, notice of the public hearing shall be mailed by the Borough at least thirty (30) days prior to the date of the hearing by first class mail to the addresses to which real

estate tax bills are sent for all real property located within the area being rezoned, as evidenced by tax records within the possession of the Borough. The notice shall include the location, date and time of the public hearing. The provisions of this Section shall not apply when the rezoning constitutes a comprehensive rezoning.

- (d) For curative amendments, public notice shall also indicate that the validity of the Ordinance and/or map is in question, and shall give the place where and the times when a copy of the request including any plans, explanatory material or proposed amendments may be examined by the public; and,
  - (e) If, after any public hearing held upon an amendment, the proposed amendment is changed substantially, or is revised, to include land previously not affected by it, the Borough Council shall hold another public hearing, pursuant to public notice, before proceeding to vote on the amendment;
3. Enactment Notice. In addition to the public notice requirements defined herein, the Borough Council must publish a reference to the time and place of the meeting at which passage of the Ordinance or amendment will be considered, and a reference to a place within the Borough where copies of the proposed Ordinance or amendment may be examined without charge, or obtained for a charge not greater than the cost thereof. Enactment notice shall be published at least once in one newspaper of general circulation in Middletown Borough not more than sixty (60) days nor less than seven (7) days prior to passage. The published content of the enactment notice shall be the same as that required for public notice described in the preceding subsection;
2. Borough Planning Committee Referrals. For amendments proposed by parties other than the Borough Planning Committee, the Borough Council shall submit each amendment at least thirty (30) days prior to public hearing to the Borough Planning Committee for review and comment. The Borough Planning Committee shall submit a report of its review, together with any recommendations, to the Borough Council within forty-five (45) days from the date of said referral. The recommendation of the Borough Planning Committee may include a specific statement as to whether or not the proposed amendment is in accordance with the intent of this Ordinance and any officially adopted Comprehensive Plan of the Borough of Middletown. The Borough Council cannot act upon the amendment until it has received a recommendation from the Borough Planning Committee; however, should the Borough Planning Committee fail to submit its recommendation within forty-five (45) days, the Borough Council may proceed without its recommendation;

3. County Planning Committee Referrals. All proposed amendments shall be submitted to the County Planning Committee at least thirty (30) days prior to public hearing on such amendments. The County Planning Committee may submit recommendations to the Borough Council within forty-five (45) days of such referral. The Borough Council cannot act upon the amendment until it has received a recommendation from the County Planning Committee; however, should the County Planning Committee fail to submit its recommendation within forty-five (45) days, the Borough Council may proceed without its recommendation;
  4. Adjournment of Public Hearing. If during the public hearing process, the Borough Council needs additional time to understand the proposal, inform the public, receive public comment, and/or render a decision, it may adjourn the public hearing to a specific time and place; and,
  5. Within thirty (30) days after enactment, a copy of the amendment to the Zoning Ordinance shall be forwarded to the County Planning Committee;
- C. Amendment Initiated by the Borough Planning Committee. When an amendment, supplement, change or repeal is initiated by the Borough Planning Committee, the proposal shall be presented to the Borough Council which shall then proceed in the same manner as with a petition to the Borough Council which has already been reviewed by the Borough Planning Committee;
  - D. Amendment Initiated by the Borough Council. When an amendment, supplement, change or repeal is initiated by the Borough Council, such amendment, supplement, change or repeal shall follow the procedure prescribed for a petition under Section 2015 above.
  - E. Amendment Initiated by a Petition from an Interested Party. A petition for amendment, supplement, change or repeal for a portion of this Ordinance shall include an accurate legal description and surveyed plan of any land to be rezoned, and all of the reasons supporting the petition to be considered. The petition shall also be signed by at least one record owner of the property in question whose signature shall be notarized attesting the truth and correctness of all the facts and information presented in the petition. A fee to be established by Borough Council shall be paid upon the filing of such petition for change and for the purpose of defraying the costs of the proceedings prescribed herein. The Borough Council may require duplicate sets of petition materials.
  - F. Curative Amendment by a Landowner. A landowner, who desires to challenge on substantive grounds the validity of this Ordinance or the Official Zoning Map or any provision thereof which prohibits or restricts the use or development of land in which he has an interest, may submit a curative

amendment to the Borough Council, including all of the reasons supporting the request to be considered, with a written request that his challenge and proposed amendment be heard and decided as provided in the PA Municipalities Planning Code, as amended. The Borough Council shall commence a hearing thereon within sixty (60) days of the request. The curative amendment shall be referred to the County Planning Commission as provided for in Section 2015 and public notice of the hearing shall be provided as defined herein.

1. In reviewing the curative amendment, the Borough Council may deny the request, accept the request as submitted, or may adopt an alternative amendment which will cure the challenged defects. The Borough Council shall consider the curative amendments, plans and explanatory material submitted by the landowner and shall also consider;
  - a. The impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities;
  - b. If the proposal is for a residential use, the impact of the proposal upon regional housing needs and the effectiveness of the proposal in providing housing units of a type actually available to and affordable by classes of persons otherwise unlawfully excluded by the challenged provisions of the Ordinance or map;
  - c. The suitability of the site for the intensity of use proposed by the site's soils, slopes, woodland, wetlands, floodplains, aquifers, natural resources and other natural features;
  - d. The impact of the proposed use on the site's soils, slopes, woodlands, wetlands, floodplains, natural resources and natural features, the degree to which these are protected or destroyed, the tolerance of the resources to development and any adverse environmental impacts; and,
  - e. The impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare;
2. The Borough Council shall render its decision within forty-five (45) days after the conclusion of the last hearing;
1. If the Borough Council fails to act on the landowner's request within the time limits referred to above, a denial of the request is deemed to have occurred on the 46<sup>th</sup> day after the close of the last hearing;

2. Public notice of the hearing shall include notice that the validity of the Ordinance or Zoning Map is in question and shall give the place where and the times when a copy of the request including any plans, explanatory material or proposed amendments may be examined by the public;
3. The challenge shall be deemed denied when:
  - a. The Borough Council fails to commence the hearing within sixty (60) days;
  - b. The Borough Council notified the landowner that it will not adopt the curative amendment;
  - c. The Borough Council adopts another curative amendment which is unacceptable to the landowner; or
  - d. The Borough Council fails to act on the request forty-five (45) days after the close of the last hearing on the request, unless the time is extended by mutual consent by the landowner and Borough of Middletown;
6. Where, curative amendment proposal is approved by the grant of a curative amendment application by the Borough Council pursuant to this Section or a validity challenge is sustained by the Zoning Hearing Board or the court acts finally on appeal from denial of a curative amendment proposal or a validity challenge, and the proposal or challenge so approved requires a further application for subdivision or land development, the developer shall have two years from the date of such approval for a subdivision, land development or planned residential development. Within the two-year period, no subsequent change or amendment in the zoning, subdivision or other governing ordinance or plan shall be applied in any manner which adversely affects the rights of the applicant as granted in the curative amendment or the sustained validity challenge. Upon the filing of the preliminary or tentative plan, the provisions of the PA Municipalities Planning Code shall apply; and,
7. Where the proposal appended to the curative amendment application or the validity challenge is approved but does not require further application under any subdivision or land development Ordinance, the developer shall have one year within which to file for a zoning permit. Within the one-year period, no subsequent change or amendment in the zoning, subdivision or other governing Ordinance or plan shall be applied in any manner which adversely affects the rights of applicant as granted in the curative amendment or the sustained validity challenge. During these protected periods, the court shall retain or

assume jurisdiction for the purposes of awarding such supplemental relief as may be necessary;

G. Curative Amendment by the Borough Council

1. The Borough Council, by formal action, may declare this Ordinance or portions thereof substantively invalid and propose to prepare a curative amendment to overcome such invalidity. Within thirty (30) days following such declaration proposal, the Borough Council shall:
  - (a) By resolution, make specific findings setting forth the declared invalidity of the Ordinance or portions thereof which may include:
    - [1] references to specific uses which are either not permitted or not permitted in sufficient quantity;
    - [2] references to a class of use or uses which require revision; or
    - [3] references to the entire Ordinance which requires revisions.
  - (b) Begin to prepare and consider a curative amendment to the Ordinance to correct the declared invalidity.
2. Within one hundred eighty (180) days from the date of the declaration and proposal, the Borough Council shall enact a curative amendment to validate or reaffirm the validity of this Ordinance pursuant to the provisions required by the PA Municipalities Planning Code in order to cure the declared invalidity of the Ordinance;
3. Upon the date of the declaration and proposal, the Borough Council shall not be required to entertain or consider any curative amendment filed by a landowner. Nor shall the Zoning Hearing Board be required to give a report, upon request, for a challenge to the validity of the Ordinance subsequent to the declaration and proposal, based upon the grounds identical to or substantially similar to those specified in the resolution required by this Section. Upon the enactment of a curative amendment to, or the reaffirmation of the validity of this Ordinance, no rights to a cure by amendment or challenge shall, from the date of the declaration and proposal, accrue to any landowner on the basis of the substantive invalidity of the unamended Zoning Ordinance for which the Borough Council propose to prepare a curative amendment; and,
4. The Borough Council, having utilized the procedures as set forth in this Section, may not again utilize said procedures for a thirty-six (36) month period following the date of the enactment of a curative

amendment, or reaffirmation of the validity of the Ordinance; provided however, that if after the date of declaration and proposal there is a substantially new duty or obligation imposed upon the Borough by virtue of a decision by any Court of competent jurisdiction, the Borough Council may utilize the provisions of this Section to prepare a curative amendment to the Ordinance to fulfill this duty or obligation.

- H. Authentication of Official Zoning Map. Whenever there has been a change in the boundary of a zone or a reclassification of the zone adopted in accordance with the above, the change on the Official Zoning Map shall be made, and shall be duly certified by the Borough Secretary and shall thereafter be refilled as part of the permanent records of Borough.

## **§ 260-2016. Zoning Hearing Board**

- A. Establishment and Membership

There shall be a Zoning Hearing Board which shall consist of three (3) members who shall be appointed by resolution by the Borough Council. The membership of the Zoning Hearing Board shall consist of residents of the Borough. Their terms of office shall be three (3) years and shall be so fixed that the term of office of one member shall expire each year. The Zoning Hearing Board shall promptly notify the Borough Council of any vacancies which occur. Appointments to fill vacancies shall hold no other office in the Borough. Any member of the Zoning Hearing Board may be removed for malfeasance, misfeasance, or nonfeasance in office or for other just cause by a majority vote of the Borough Council taken after the member has received fifteen (15) days advance notice of the intent to take such a vote. A hearing shall be held in connection with the vote if the member shall request it in writing.

The Borough Council may appoint by resolution at least one (1) but no more than three (3) residents of the Borough of Middletown to serve as alternate members of the Zoning Hearing Board. The term of office of an alternate member shall be three (3) years. When seated pursuant to the provisions of this Section, an alternate shall be entitled to participate in all proceedings and discussions of the Zoning Hearing Board to the same and full extent as provided by law for Zoning Hearing Board members, including specifically the right to cast a vote as a voting member during the proceedings, and shall have all the powers and duties set forth in this Ordinance and as otherwise provided by law. Alternates shall hold no other office in the Borough, including membership on the Planning Committee and Zoning Officer. Any alternate may participate in any proceeding or discussion of the Zoning Hearing Board but shall not be entitled to vote as a member of the Zoning Hearing Board nor be compensated, unless designated as a voting alternate member pursuant to this Article.

- B. Organization of Zoning Hearing Board

The Zoning Hearing Board shall elect from its own membership its officers, who shall serve annual terms as such and may succeed themselves. For the conduct of any hearing and the taking of any action, a quorum shall be not less than a majority of all members of the Zoning Hearing Board, but the Zoning Hearing Board may appoint a hearing officer from its own membership to conduct any hearing on its behalf and the parties may waive further action by the Zoning Hearing Board as provided in Section 2016.D.2. If, by reason of absence or disqualification of a member, a quorum is not reached, the Chairman of the Zoning Hearing Board shall designate as many alternate members of the Zoning Hearing Board to sit on the Zoning Hearing Board as may be needed to provide a quorum. Any alternate member of the Zoning Hearing Board shall continue to serve on the Zoning Hearing Board in all proceedings involving the matter or case for which the alternate was initially appointed until the Zoning Hearing Board has made a final determination of the matter or case. Designation of an alternate pursuant to this Section shall be made on a case-by-case basis in rotation according to declining seniority among all alternates. The Zoning Hearing Board may make, alter, and rescind rules and forms for its procedure, consistent with Ordinances of the Borough and laws of the Commonwealth. The Zoning Hearing Board shall keep full public records of its business, which records shall be the property of the Borough, and shall submit a report of its activities to the Borough Council upon request.

C. Expenditures for Services

Within the limits of funds appropriated by the Borough Council, the Zoning Hearing Board may employ or contract for secretaries, clerks, legal counsel, consultants and other technical and clerical services. Members of the Zoning Hearing Board may receive compensation for the performance of their duties, as may be fixed by the Borough Council. Alternate members of the Zoning Hearing Board may receive compensation, as may be fixed by the Borough Council, for the performance of their duties when designated as alternate members pursuant to Section 2016(A), but in no case shall such compensation exceed the rate of compensation authorized to be paid to the members by the Borough Council.

D. Hearings

1. The Zoning Hearing Board shall conduct hearings and make decisions in accordance with the following requirements:
  - (a) Public notice, as defined herein shall be provided. In addition, the Zoning Hearing Board shall notify by mail the Zoning Officer, Borough Secretary, each member of the Borough Council, Secretary of the Planning Committee, and every other person or organization who shall have registered with the Zoning Hearing Board for the purposes of receiving such

notices. Such mailed notices shall state the location of the site and the nature of the request. It shall also state the time, date, and location of the proposed hearing. In addition to the written notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one week prior to the hearing;

- (b) The Borough Council may prescribe reasonable fees with respect to hearing before the Zoning Hearing Board. Fees for said hearings may include compensation for the secretary and members of the Zoning Hearing Board, notice and advertising costs and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses of the Zoning Hearing Board, expenses for engineering, architectural or other technical consultants or expert witness costs;
- (c) The first hearing before the Zoning Hearing Board or hearing officer shall be commenced within sixty (60) days from the date of receipt of the applicant's application, unless the applicant has agreed in writing to an extension of time. Each subsequent hearing before the Zoning Hearing Board or hearing officer shall be held within forty-five (45) days of the prior hearing, unless otherwise agreed to by the applicant in writing or on the record. An applicant shall complete the presentation of its case-in-chief within one hundred (100) days of the first hearing. Upon the request of the applicant, the Zoning Hearing Board or hearing officer shall assure that the applicant receives at least seven (7) hours of hearing within the one hundred (100) days, including the first hearing. Persons opposed to the application shall complete the presentation of their opposition to the application within one hundred (100) days of the first hearing held after the completion of the applicant's case-in-chief. An applicant may, upon request, be granted additional hearings to complete its case-in-chief provided the persons opposed to the application are granted an equal number of additional hearings to complete their opposition to the application provided the applicant is granted an equal number of additional hearings for rebuttal.

- 2. The hearings shall be conducted by the Zoning Hearing Board or the Zoning Hearing Board may appoint any member or an independent attorney as a hearing officer. The decision, or, where no decision is called for, the findings shall be made by the Zoning Hearing Board; however, the appellant or the applicant, as the case may be, in addition to the Borough, may, prior to the decision of the hearing, waive decisions or findings by the Zoning Hearing Board and accept the decision or findings of the hearing officer as final;

3. The parties to the hearing shall be the Borough, any person affected by the application who has made timely appearance of record before the Zoning Hearing Board, and any other person including civic or community organizations permitted to appear by the Zoning Hearing Board. The Zoning Hearing Board shall have power to require that all persons who wish to be considered parties enter appearances in writing on forms provided by the Zoning Hearing Board for that purpose;
4. The Chairman or Acting Chairman of the Zoning Hearing Board or the hearing officer presiding shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses and documents requested by the parties;
5. The parties shall have the right to be represented by council and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues;
6. Formal rules of evidence shall not apply, but irrelevant, immaterial, and unduly repetitious evidence may be excluded;
7. The Zoning Hearing Board or the hearing officer, as the case may be, shall keep a stenographic record of the proceedings. The appearance fee for a stenographer shall be shared equally by the applicant and the Zoning Hearing Board. The cost of the original transcript shall be paid by the Zoning Hearing Board if the transcript is ordered by the Zoning Hearing Board or hearing officer; or shall be paid by the person appealing the decision of the Zoning Hearing Board if such appeal is made, and in either event the cost of additional copies shall be paid by the person requesting such copy or copies. In other cases the party requesting the original transcript shall bear the cost thereof;
8. The Zoning Hearing Board or the hearing officer shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials, except advice from their solicitor, unless the parties are afforded an opportunity to contest the materials so noticed and shall not inspect the site or its surroundings after the commencement of hearings with any party or his representative unless all parties are given an opportunity to be present;
9. The Zoning Hearing Board or the hearing officer, as the case may be, shall render a written decision or, when no decision is called for, make

written findings on the application within forty-five (45) days after the last hearing before the Zoning Hearing Board or hearing officer. Where the application is contested or denied, each decision shall be accompanied by the findings of fact and conclusions based thereon together with the reasons therefore. Conclusions based on any provisions of this or of any ordinance, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in light of the facts found. If the hearing is conducted by a hearing officer, and there has been no stipulation that his decision or findings are final the Zoning Hearing Board shall make his report and recommendations available to the parties within forty-five (45) days and the parties shall be entitled to make written representations thereon to the Zoning Hearing Board prior to final decision or entry of findings, and the Zoning Hearing Board's decision shall be entered no later than thirty (30) days after the report of the hearing officer. Except for challenges filed under Article IX of the MPC, where the Zoning Hearing Board fails to render the decision within the period required by this subsection or fails to commence, conduct or complete the required hearing as provided in Section 2016.D of this Ordinance, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the Zoning Hearing Board to meet or render a decision as hereinabove provided, the Zoning Hearing Board shall give public notice of said decision with ten (10) days from the last day it could have met to render a decision in the same manner as provided in Section 2016.D of this Ordinance. If the Zoning Hearing Board shall fail to provide such notice, the applicant may do so. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal.

10. A copy of the final decision or, where no decision is called for, of the findings shall be delivered to the applicant personally or mailed to him not later than the next business day following its date. To all other persons who have filed their name and address with the Zoning Hearing Board not later than the last day of the hearing, the Zoning Hearing Board shall provide by mail or otherwise, brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined; and,
11. Effect of Zoning Hearing Board's Decision
  - (a) If the variance or special exception is granted or the issuance of a permit is approved, or other action by the appellant is authorized, the necessary permit shall be secured and the authorized action begun within two (2) years after the date when the variance or special exception is finally granted, or the

issuance of a permit is finally approved, or the other action by the appellant is authorized, and the building or alteration, as the case may be, shall be completed within three (3) years of said date. For good cause, the Zoning Hearing Board may at any time, upon application in writing, extend either of these deadlines;

- (b) Should the appellant or applicant fail to obtain the necessary permits within said two (2) year period, or having obtained the permit, should he fail to commence work thereunder within such two (2) year period, it shall be conclusively presumed that the appellant or applicant has waived, withdrawn, or abandoned his appeal or his application, and all provisions, variances and permits granted to him shall be deemed automatically rescinded by the Zoning Hearing Board;
- (c) Should the appellant or applicant commence construction or alteration within said two (2) year period, but should he fail to complete such construction or alteration within said three (3) year period, the Zoning Hearing Board may, upon ten (10) days' notice in writing, rescind or revoke the granted variance or special exception, or the issuance of the permit, or permits, or the other action authorized to the appellant or applicant, if the Zoning Hearing Board finds that no good cause appears for the failure to complete within such three (3) year period, and if the Zoning Hearing Board further finds that conditions have so altered or changed in the interval since the granting of the variance, permit or action, that revocation or rescission of the action is justified; and,
- (d) As an alternative to the preceding, an applicant can request, as part of the original application before the Zoning Hearing Board, the granting of a timetable associated with the request which would supersede the deadlines imposed. In so doing, the applicant must demonstrate that the times requested are logically related to normal and expected progress of the project. In approving a timetable under this Section, the Zoning Hearing Board must establish and bind a definite time frame for (1) issuance of a zoning permit, and (2) completion of construction of the project.

#### E. Zoning Hearing Board's Functions

The Zoning Hearing Board shall have the exclusive jurisdiction to hear and render decisions in the following matters:

1. Substantive Challenges to the Validity of the Zoning Ordinance, except those brought before the Borough Council pursuant to Section 916.1(a)(2) of the MPC.
  - (a) If a challenge heard by a Zoning Hearing Board is found to have merit, the decision of the Zoning Hearing Board shall include recommended amendments to the challenged Ordinance which will cure the defects found. In reaching its decision, the Zoning Hearing Board shall consider the amendments, plans and explanatory material submitted by the landowner and shall also consider:
    - [1] The impact of the proposal upon roads, sewer facilities, water supplies, schools and other public service facilities;
    - [2] If the proposal is for a residential use, the impact of the proposal upon regional housing needs and the effectiveness of the proposal in providing housing units of a type actually available to and affordable by classes of persons otherwise unlawfully excluded by the challenged provisions of the Ordinance or Zoning Map;
    - [3] The suitability of the site for the intensity of use proposed by the site's soils, slopes, woodland, wetlands, floodplains, aquifers, natural resources and other natural features;
    - [4] The impact of the proposed use on the site's soils, slopes, woodlands, wetlands, floodplains, natural resources and nature features, the degree to which these are protected or destroyed, the tolerance of the resources to development and any adverse environmental impacts; and,
    - [5] The impact of the proposal on the preservation of agriculture and other land uses which are essential to public health and welfare;
  - (b) Public notice of the hearing shall be provided as specified in Section 2016.D of this Ordinance.
  - (c) The Zoning Hearing Board shall commence its hearings within sixty (60) days after the request is filed unless the landowner requests or consents to an extension of time; and,
  - (d) The Zoning Hearing Board shall render its decision with forty-five (45) days after the conclusion of the last hearing. If the

Board fails to act on the landowner's request within this time limit a denial of the request is deemed to have occurred on the 46<sup>th</sup> day after the close of the last hearing;

2. Challenges to the Validity of the Zoning Ordinance, raising procedural questions or alleged defects in the process of enactment or adoption which challenges shall be raised by an appeal taken within thirty (30) days after the effective date of the Ordinance;
3. Special Exceptions as provided for in this Ordinance and subject to all applicable requirements, including, but not limited to:
  - (a) Filing Requirements. In addition to the required zoning permit information, each Special Exception application shall include the following:
    - [1] Ground floor plans and elevations or proposed structures;
    - [2] Names and address of adjoining property owners including properties directly across a public right-of-way;
    - [3] A scaled drawing (site plan) of the site with sufficient detail and accuracy to demonstrate compliance with all applicable provisions of this Ordinance; and,
    - [4] A written description of the proposed use in sufficient detail to demonstrate compliance with all applicable provisions of this Ordinance;
  - (b) General Criteria. Each applicant must demonstrate compliance with the following:
    - [1] The proposed use shall be consistent with the purpose and intent of the Zoning Ordinance;
    - [2] The proposed use shall not detract from the use and enjoyment of adjoining or nearby properties;
    - [3] The proposed use will not substantially change the character of the subject property's neighborhood;
    - [4] Adequate public facilities are available to serve the proposed use (e.g., schools, fire, police and ambulance protection, sewer, water and other utilities, vehicular access, etc.);

- [5] The proposed use complies with the Borough Floodplain Ordinance;
  - [6] The proposed use shall comply with those criteria specifically listed in Article 18 of this Ordinance. In addition, the proposed use must comply with all other applicable regulations contained in this Ordinance; and,
  - [7] The proposed use will not substantially impair the integrity of the Borough of Middletown Comprehensive Plan;
- (c) Conditions. The Zoning Hearing Board in approving Special Exception applications may attach conditions considered necessary to protect the public welfare and the purposes listed above, including conditions which are more restrictive than those established for other uses in the same zone. The conditions shall be enforceable by the Zoning Officer and failure to comply with such conditions shall constitute a violation of this Ordinance and,
  - (d) Site Plan Approval. Any site plan presented in support of the Special Exception pursuant to Section 2016.E.3 shall become an official part of the record for said Special Exception. Approval of any Special Exception will also bind the use in accordance with the submitted site plan; therefore, should a change in the site plan be required as part of the approval of the use, the applicant shall revise the site plan prior to the issuance of a zoning permit. Any subsequent change to the use on the subject property not reflected on the originally approved site plan, shall require the obtainment of another Special Exception Approval;
4. Variances. The Zoning Hearing Board shall hear requests for Variances where it is alleged that the provisions of this Ordinance inflict unnecessary hardship upon the applicant. The Zoning Hearing Board may, by rule, prescribe the form of application to the Zoning Officer. The Zoning Hearing Board may grant a Variance, provided that all of the following findings are made where relevant in a given case:
- (a) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions

of this Ordinance in the neighborhood or zone in which the property is located;

- (b) That because of such physical circumstances or conditions, there is not a possibility that the property can be developed in strict conformity with the provisions of this Ordinance and that the authorization of a Variance is therefore necessary to enable reasonable use of the property;
- (c) That such unnecessary hardship has not been created by the appellant;
- (d) That the Variance, if authorized, will not alter the essential character of the zone or neighborhood in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, not be detrimental to the public welfare;
- (e) That the Variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulations in issue;
- (f) The proposed use complied with the Borough Floodplain Ordinance;
- (g) In granting any variance, the Zoning Hearing Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Ordinance. These conditions shall be enforceable by the Zoning Officer and failure to comply with such conditions shall constitute a violation of this Ordinance;
- (h) Filing Requirements. In addition to the required zoning permit each variance application shall include the following:
  - [1] Ground floor plans and elevations of existing and/or proposed structures;
  - [2] Names and addresses of adjoining property owners, including properties directly across a public right-of-way;
  - [3] A scaled drawing (site plan) of the site with sufficient detail and accuracy to demonstrate compliance with all applicable provisions of this Ordinance; and,
  - [4] A written description of the proposed use in sufficient detail to demonstrate compliance with all applicable provisions of this Ordinance;

- (i) Conditions. The Zoning Hearing Board in approving Variance applications may attach conditions considered necessary to protect the public welfare and the purposes listed above, including conditions which are more restrictive than those established for other uses in the same zone. These conditions shall be enforceable by the Zoning Officer and failure to comply with such conditions will constitute a violation of this Ordinance; and,
- (j) Site Plan Approval. Any site plan presented in support of a Variance shall become an official part of the record for said Variance. Approval of any Variance will also bind the use in accordance with the submitted site plan;

- 5. Appeals from the determination of the Zoning Officer, including, but not limited to, the granting or denial of any permit, or failure to act on the application therefore, the issuance of any cease and desist order or the registration or refusal to register any nonconforming use, structure or lot;
- 6. Appeals from the determination of any officer or agency charged with the administration of any transfers of development rights or performance density provisions of the Zoning Ordinance;
- 7. Appeals from the Zoning Officer's determination under Section 916.2 (and any subsequent amendments) of the PA Municipalities Planning Code; and,
- 8. Appeals from the determination of the Zoning Officer or municipal engineer in the administration of any land use Ordinance with reference to sedimentation and erosion control, and/or storm water management for applications not involving a subdivision/land development, nor a planned residential development as regulated in Article V and VII of the PA Municipalities Planning Code.

F. Parties Appellant before the Zoning Hearing Board

Appeals under Sections 2016.E.4(d), 2016.E.4(e); 2016.E.4(f); 2016.E.4(g);and 2016.E.4(h) and proceedings to challenge this Ordinance under Section 2016(E) may be filed with the Zoning Hearing Board in writing by the landowner affected, any officer or agency of the Borough of Middletown, or any person aggrieved. Requests for a variance or a special exception may be filed with the Zoning Hearing Board by any landowner or any tenant with the permission of such landowner. Any appeal shall state:

- 1. The name and address of the appellant and applicant;

2. The name and address of the landowner of the real estate to be affected;
3. A brief description and location of the real estate to be affected by such proposed change together with a plot plan drawn to scale with sufficient clarity to show the nature and character of the request;
4. A statement of the present zoning classification of the real estate in question, the improvements thereon, and the present use thereof; and,
5. A statement of the Section of this Ordinance under which the request may be allowed, and reasons why it should, or should not be granted.

G. Time Limitations

1. No person shall be allowed to file any proceeding with the Zoning Hearing Board later than thirty (30) days after an application for development, preliminary or final, has been approved by the Zoning Officer or the agency responsible for granting such approval if such proceeding is designed to secure reversal or to limit the approval in any manner unless such person alleges and proves that he had no notice or knowledge, or reason to believe that such approval had been given. If such person has succeeded to his interest after such approval, he shall be bound by the knowledge of his predecessor in interest.
2. The failure of anyone other than the landowner to appeal from an adverse decision by the Zoning Officer a challenge to the validity of this Ordinance or the Official Zoning Map pursuant to Section 916.2 of the PA Municipalities Planning Code, as amended, shall preclude an appeal from a final approval except in the case where the final submission substantially deviates from the approved tentative preliminary approval.

H. Stay of Proceeding

1. Upon filing of any proceeding referred to in Section F above and during its pendency before the Zoning Hearing Board, all land development pursuant to any challenged Ordinance, order or approval of the Zoning Officer or of any agency or body, and all official action thereunder, shall be stayed unless the Zoning Officer or any other appropriate agency or body certifies to the Zoning Hearing Board facts indicating that such stay would cause imminent peril to life or property, in which case, the development or official action shall not be stayed otherwise than by a restraining order, which may be granted by the Zoning Hearing Board or by the court having jurisdiction of zoning appeals on petition after notice to the Zoning Office or other appropriate agency or body. When an application for development,

preliminary or final, has been duly approved and proceedings designed to reverse or limit the approval are filed with the Zoning Hearing Board by person other than the applicant, the applicant may petition the court having jurisdiction of zoning appeals to order such person to post bond as a condition to continuing the proceedings before the Zoning Hearing Board. After the petition is presented, the court shall hold a hearing to determine if the filing of the appeal is frivolous. At the hearing, evidence may be presented on the merits of the case. It shall be the burden of the applicant for a bond to prove the appeal is frivolous. After consideration of all evidence presented, if the court determines that the appeal is frivolous it shall grant the petition for a bond. The right to petition the court to order the appellants to post bond may be waived by the appellee but such waiver may be revoked by him if an appeal is taken from a final decision of the court. The question whether or not such petition should be granted and the amount of the bond shall be within the sound discretion of the court. An order denying a petition for bond shall be interlocutory. An order directing the responding party to post a bond shall be interlocutory.

2. If an appeal is taken by a respondent to the petition for a bond from an order of the court dismissing a zoning appeal for refusal to post a bond and the appellant court sustains the order of the court below to post a bond, the respondent to the petition for a bond, upon motion of the petitioner and after hearing in the court having jurisdiction of zoning appeals, shall be liable for all reasonable costs, expenses, and attorney fees incurred by the petitioner.

I. Appeal

Any person, taxpayer, or the Borough aggrieved by any decision of the Zoning Hearing Board may within thirty (30) days after such decision of the Zoning Hearing Board seek review by the Court of Common Pleas of such decision in the manner provided by the laws of the Commonwealth of Pennsylvania and the PA Municipalities Planning Code as amended.

**§ 260-2017. Conditional Uses**

- A. Filing of Conditional Use. For any use permitted by Conditional Use, a conditional use must be obtained from the Borough Council. In addition to the information required on the zoning permit application, the Conditional Use application must show:
  1. Ground floor plans and elevations of proposed structures;
  2. Names and addresses of adjoining property owners including properties directly across a public right-of-way;

3. A scaled drawing (site plan) of the site with sufficient detail and accuracy to demonstrate compliance with all applicable provisions of this Ordinance; and,
- B. General Criteria. Each applicant must demonstrate compliance with the following:
1. The proposed use shall be consistent with the purpose and intent of the Zoning Ordinance;
  2. The proposed use shall not detract from the use and enjoyment of adjoining or nearby properties;
  3. The proposed use will not affect a change in the character of the subject property's neighborhood;
  4. Adequate public facilities are available to serve the proposed use (e.g. schools, fire, police and ambulance protection, sewer, water, and other utilities, vehicular access, etc.);
  5. The proposed use complies with the Borough Floodplain Ordinance;
  6. The proposed use shall comply with those criteria specifically listed in Article 18 of this Ordinance. In addition, the proposed use must comply with all other applicable regulations of this Ordinance; and,
  7. The proposed use will not substantially impair the integrity of the Borough of Middletown's Comprehensive Plan;
- C. Conditions. The Borough Council in approving Conditional Use applications may attach conditions considered necessary to protect the public welfare and the purposes listed above, including conditions which are more restrictive than those established for other uses in the same zone. These conditions shall be enforceable by the Zoning Officer and failure to comply with such conditions shall constitute a violation of this Ordinance;
- D. Site Plan Approval. Any site plan presented in support of the Conditional Use shall become an official part of the record for said Conditional Use. Approval of any Conditional Use will also bind the use in accordance with the submitted site plan; therefore, should a change in the site plan be required as part of the approval of the use, the applicant shall revise the site plan prior to the issuance of a zoning permit. Any subsequent change to the use on the subject property not reflected on the originally approved site plan shall require the obtainment of another Conditional Use approval;
- E. Hearing Procedures:

1. Before voting on the approval of a Conditional Use, the Borough Council shall hold a public hearing thereon, pursuant to public notice. The Borough Council shall submit each such application to the Borough Planning Committee at least thirty (30) days prior to the hearing held upon an application to provide the Borough Planning Committee an opportunity to submit recommendations. If, after any public hearing held upon an application, the proposed application is revised, the Board of Supervisors shall hold another public hearing, pursuant to public notice, before proceeding to vote on the application;
2. Public notice as defined herein, and written notice shall be given to the applicant, the Zoning Officer, such other persons as the Board of Supervisors shall designate by Ordinance, and to any person who has made timely request for the same. Written notices shall be given at such time and in such manner as shall be prescribed by Ordinance or, in the absence of Ordinance provisions, by rules of the Borough Council. In addition to the written notice provided herein, written notice of said hearing shall be conspicuously posted on the affected tract of land at least one week prior to the hearing;
3. The Borough Council may prescribe reasonable fees with respect to hearings. Fees for said hearings may include compensation for the secretary, notice and advertising costs, and necessary administrative overhead connected with the hearing. The costs, however, shall not include legal expenses, expenses for engineering, architectural, or other technical consultants, or expert witness costs;
4. The parties to the hearing shall be the Borough, any person affected by the application who has made timely appearance of record before the Borough Council, and any other person, including civic or community organizations permitted to appear by the Borough Council. The Borough Council shall have power to require that all persons who wish to be considered parties enter appearance in writing on forms provided by the Borough Council for that purpose;
2. The Council President or Acting Council President of the Borough Council shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and paper, including witnesses and documents requested by the parties;
3. The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues;
4. Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded;

5. The Borough Council may keep a stenographic record of the proceedings. The appearance fee for a stenographer shall be shared equally by the applicant and the Borough Council. The cost of the original transcript shall be paid by the Borough Council if the transcript is ordered by the Borough Council; or shall be paid by the person appealing the decision of the Borough Council if such appeal is made, and in either event, the cost of additional copies shall be paid by the person requesting such copy or copies. In other cases the party requesting the original transcript shall bear the cost thereof; and,
6. The Borough Council shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials, except advice from their solicitor, unless parties are afforded an opportunity to contest the material so noticed and shall not inspect the site or its surroundings after the commencement of hearings with any party or his representative unless all parties are given an opportunity to be present,
7. The hearing shall be conducted by the Borough Council or the Borough Council may appoint any member or an independent attorney as a hearing officer. The decision, or, where there is no decision, the findings shall be made by the Borough Council. However, the appellant or the applicant, as the case may be, in addition to the Borough, may, prior to the decision of the hearing, waive decision or findings by the Borough Council and accept the decision or findings of the hearing officer as final.
8. The Borough Council shall render a written decision or, when no decision is called for; make written finds on the Conditional Use application within forty-five (45) days after the last hearing before the Borough Council. Where the application is contested or denied, each decision shall be accompanied by findings of fact or conclusions based thereon, together with any reasons therefore. Conclusions based on any provisions of this Ordinance or of any ordinance, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found.
12. Where the Borough Council fails to render the decision within the period required by this Article or fails to commence, conduct or complete the required hearing as provided in this Ordinance, the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record of an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the Borough Council to meet or

render a decision as hereinabove provided, the Borough Council shall give public notice of the decision within ten (10) days from the last day it could have met to render a decision in the same manner as required by the public notice requirements of this Article. If the Borough Council shall fail to provide such notice, the applicant may do so.

F. Time Limitation

1. If a Conditional Use is granted, the necessary permit shall be secured and the authorized action begun within two (2) years after the date when the Conditional Use is finally granted, and the building or alteration, as the case may be, shall be completed within three (3) years of said date. For good cause, the Borough Council may at any time, upon application in writing, extend either of these deadlines;
2. Should the appellant or applicant fail to obtain the necessary permits within said two (2) year period, or having obtained the permit should he fail to commence work there under within such two (2) year period, it shall be conclusively presumed that the appellant or applicant has waived, withdrawn, or abandoned his application, and all approvals and permits granted to him shall be deemed automatically rescinded by the Borough Council;
3. Should the appellant commence construction or alternation within said two (2) year period, but should he fail to complete such construction or alteration within said three (3) year period, the Borough Council may, upon ten (10) days notice in writing, rescind or revoke the granted Conditional Use, if the Borough Council finds that no good cause appears for the failure to complete within such three (3) year period, and if the Borough Council further finds that conditions have altered or changed in the interval since the granting of the Conditional Use that revocation or rescission of the action is justified; and,
4. As an alternative to the preceding, an applicant can request, as part of the original application before the Borough Council the granting of a timetable associated with the request which would supersede the deadlines imposed in this Article. In so doing, the applicant must demonstrate that the times requested are logically related to normal and expected progress of the project. In approving a timetable under this Section, the Borough Council must establish and bind a definite time frame for (1) issuance of a zoning permit, and (2) completion of construction of the project.

**ORDAINED AND ENACTED** into law by the Borough of Middletown on this \_\_\_\_ day of \_\_\_\_\_, 2013.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2013.

**ATTEST:**

**BOROUGH COUNCIL OF THE  
BOROUGH OF MIDDLETOWN**

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
President

**AND NOW**, this \_\_\_\_ day of \_\_\_\_\_, 2013, the foregoing Ordinance is hereby approved.

\_\_\_\_\_  
Mayor

I hereby certify the foregoing Ordinance was advertised in the Patriot-News on \_\_\_\_\_, 2013, a newspaper of general circulation in the municipality and was duly enacted and approved as set forth at a regular meeting of the municipality's governing body held on \_\_\_\_\_, 2013.

\_\_\_\_\_  
Secretary