

# LAND USE CODE

## TOWN OF BELLEFONTE NEW CASTLE COUNTY, DELAWARE



Prepared by  
Bellefonte Planning Commission

Adopted by  
The Commissioners of Bellefonte  
[INSERT DATE ADOPTED]  
Ordinance 2010-01

# TOWN, COUNTY, AND STATE OFFICIALS

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### *Town Solicitor*

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### *Planning Assistance*

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College of Education & Public Policy  
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**ZONING MAP**

A reference copy of the zoning map follows the last page. The official zoning map may be viewed at the Bellefonte Town Hall during business hours.

[REFERENCE COPY OF ZONING MAP TO BE ADDED AFTER CODE AND MAP ADOPTION]

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## Article 1. General Provisions

### § 1-01. Title

This Ordinance shall be known as the Land Use Code of the Commissioners of Bellefonte, commonly known as the Town of Bellefonte, New Castle County, Delaware (“Land Use Code”).

### § 1-02. Authority

This Land Use Code has been made in accordance with the grant of power in the Town Charter, Title 22, Chapters 3 and 7 of the *Delaware Code*, and other governing laws.

### § 1-03. Purposes

- A. Pursuant to the *Delaware Code* and other governing laws, this Land Use Code has been made in accordance with a comprehensive plan and is designed to accomplish the following:
- (1) Lessen congestion in the streets;
  - (2) Secure safety from fire, panic and other dangers;
  - (3) Promote health and the general welfare;
  - (4) Provide adequate light and air;
  - (5) Prevent the overcrowding of land;
  - (6) Avoid undue concentration of population; and
  - (7) Facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements.
- B. Pursuant to the *Delaware Code* and other governing laws, the regulations contained in this Land Use Code have been made with reasonable consideration, among other things, of the following:
- (1) The character of each district and its peculiar suitability for particular uses;
  - (2) Conserving the value of buildings;
  - (3) Encouraging the most appropriate use of land throughout the Town of Bellefonte.

### § 1-04. Applicability

This Land Use Code shall apply to all land within the incorporated boundaries of the Town of Bellefonte. It is intended that the extent of its applicability be automatically changed in accordance with any amendments of this Land Use Code or amendment of State law which may affect its applicability.

### § 1-05. Components

- A. Text and Map—This Land Use Code consists of the regulations written herein and a map depicting zoning districts in the Town, which shall be known as the official zoning map of the Town of Bellefonte.
- B. Tables—The tables contained herein are integrated as part of this Land Use Code.
- C. Drawings and Graphics—The drawings and graphics herein are integrated as part of this Land Use Code unless otherwise indicated.

### § 1-06. Compliance Required

- A. Partition, Combination, Land Development—Tracts, parcels, lots, or property shall be divided, partitioned, or combined, whether by metes and bounds, subdivision, or land development, in conformance with the provisions of this Land Use Code. This section also applies to land offered for sale or lease.
- B. Use—All buildings and land shall be used in conformance with the provisions of this Land Use Code.
- C. Construction, Reconstruction, Alteration, Relocation—Buildings and parts of buildings shall be erected, reconstructed, converted, enlarged, moved, or structurally altered in conformance with the provisions of this Land Use Code and Ordinance 2006-3.

**D. Yards and Open Space**

- (1) No structure shall be located, no existing structure shall be altered, enlarged, moved or rebuilt, and no open space surrounding any structure shall be encroached upon or reduced in any manner that does not conform with the yard, lot, area, and building location regulations designated for the zoning district in which such building or open space is located unless otherwise permitted by a variance granted by the Board of Adjustment.
- (2) A yard or other open space associated with a building on a lot shall not be considered as a required yard or open space for a building on any other lot.

**E. Height of Buildings and Structures**

- (1) **General**—No building shall be erected, reconstructed, or structurally altered to exceed the height limits designated for the zone in which such building is located, except as otherwise permitted by variance by the Board of Adjustment.
- (2) **Sloping Lot**—On any sloping lot, stories in addition to the number permitted in the zone in which such lot is situated shall be permitted on the downhill side of any building erected on such lot, but the building height limit shall not otherwise be increased above the maximum permitted height for the zoning district.

**§ 1-07. Provisions are Minimum Requirements**

The provisions of this Land Use Code shall be the minimum requirements for the promotion of the public health, safety, morals, convenience, order, comfort, prosperity, or general welfare.

**§ 1-08. References to Other Codes, Ordinances, and Regulations**

- A. References to titles, sections, subsections, and other parts of the Delaware Code, Administrative Code, and State Regulations shall apply to the Code/Regulations as existing or amended subsequently.
- B. References to titles, sections, subsections, and other ordinances the Town of Bellefonte or the Bellefonte Town Charter shall apply to the Code/Charter as existing or amended subsequently.
- C. References to titles, sections, subsections, and other parts of other codes, laws, regulations, or policies shall apply to the codes, laws, regulations, or policies as existing or amended subsequently.

**§ 1-09. Interpretation of Land Use Code Language**

- A. Certain words in the singular number shall include the plural number, and certain words in the plural number shall include the singular number, unless the obvious construction of the wording indicates otherwise.
- B. Words in the present tense shall include the past and future tenses, and words in the future tense shall include the present tense.
- C. The word "shall" is mandatory. The word "may" is permissive.
- D. The meaning of the word "used" shall include "designed" or "intended or arranged to be used."
- E. The meaning of the word "erected" shall include "constructed," "reconstructed," "altered," "placed," or "moved."
- F. The meaning of the terms "land use" and "use of land" shall include "building use" and "use of building."
- G. The meaning of the word "adjacent" shall include "abutting" and "adjoining."

**§ 1-10. Interpretation of Zoning Map**

- A. Zoning Districts—The incorporated area of the Town is divided into the zoning districts shown on the Zoning map. This map and its accompanying notations are adopted by reference and are declared to be a part of this Land Use Code.
- B. Land Created by Changing Level of Water Bodies—Land hereafter created by the filling or changing of the level of water bodies shall assume the zoning district of the contiguous land.
- C. Uncertainty as to Boundaries—Where uncertainty exists as to the boundaries of zoning districts as shown on the Zoning map, the following rules shall apply.
- (1) Boundaries indicated as approximately following the centerlines of streets, highways, or alleys shall be construed to follow such centerlines.
  - (2) Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
  - (3) Boundaries indicated as approximately following Town or County limits shall be construed as following Town or County limits.
  - (4) Boundaries indicated as following railroad lines shall be construed to be midway between the main track(s).
  - (5) Boundaries indicated as following shore lines shall be construed to follow such shore lines. If the shore line changes, the boundary shall be construed as moving with the actual low water mark of the shore line.
  - (6) Boundaries indicated as approximately following the centerlines of streams, lakes, ditches, or other bodies of water shall be construed as following such centerlines.
  - (7) Boundaries indicated as parallel to, or extensions of, features described in this subsection shall be so construed. Distances not specifically indicated on the Zoning map shall be determined by the scale of the map.
  - (8) Where physical or cultural features existing on the ground differ from those shown on the Zoning map, or in other circumstances not covered by this Section, the Board of Adjustment shall interpret the zone boundaries.
- D. Errors or Omissions—If because of error or omission, the Zoning map does not show a property as being in a zoning district, such property shall be classified in the least-intense Zoning district until changed by amendment.
- E. Parcels Split by Zoning Districts—Where a zoning district boundary divides a lot, tract, parcel, or property, the location of the district boundary, unless the Zoning map indicates its dimensions, shall be determined by applying the map scale shown on the Zoning map scaled to the nearest foot.
- F. Boundary Disputes—The Board of Adjustment shall decide disputes concerning the boundaries of zoning districts.

**§ 1-11. Interpretation of Uses**

- A. A use not specifically listed as permitted in a zoning district is prohibited unless determined to be comparable with, analogous with, akin to, or like a use permitted in that zoning district.
- B. Standards for Interpretation of Uses.
- (1) The use closely resembles and contains the same characteristics as the uses in the zone to which it is to be added.
  - (2) The use does not create dangers to health and safety and does not create offensive noise, vibrations, dust, heat, smoke, odor, glare, or other objectionable influences to an extent greater than normally resulting from other uses listed in the classification to which it is to be added.
  - (3) The use does not create traffic to a greater extent than do other uses listed in the classification to which it is to be added.
- C. The determination of similar uses shall not apply to off-street parking or signs.

**§ 1-12. Relationship to Prior Zoning Codes****A. Building Permits.**

- (1) Where construction has begun in accordance with a building permit validly issued more than 6 months prior to the adoption of this Land Use Code, such construction may be completed as long as it complies with the zoning or subdivision regulations in effect at the time the permit was issued in accordance with Ordinance 2006-3 as may be amended from time to time.
- (2) Where a building permit has been validly issued within 6 months prior to the adoption of this Land Use Code, construction may be completed as long as it complies with the zoning or subdivision regulations in effect at the time the permit was issued and as long as construction begins within 6 months of the adoption of this Land Use Code in accordance with Ordinance 2006-3 as may be amended from time to time.
- (3) Construction has begun when excavation and the piers or footings of at least 1 or more buildings covered by the permit have been completed.

**B. Lots.**

- (1) Provision—Any lot, which was legally recorded and was a buildable lot under the zoning or subdivision regulations in effect immediately prior to the effective date of this Land Use Code, is a buildable lot under this Land Use Code and does not require a variance to construct a single-family dwelling.
- (2) Applicability.
  - (a) This provision applies to all zones.
  - (b) This provision permits construction of a single-family dwelling only if the owner of the substandard lot owned no adjoining, unimproved lot or parcel on the effective date of this Land Use Code.

**C. Plats—Any final subdivision plat, approved during the 6 months immediately prior to the adoption of this Land Use Code, may be recorded. Any lot, shown on such plat, shall be a buildable lot even though it may contain less than the minimum required area for any residential zone. However, the plat containing such a lot must be recorded within 6 months following the adoption of this Land Use Code.****D. Vested-Rights Exemptions.**

- (1) Who May File—Any person, entity, owner or equitable owner of property not otherwise exempted from the requirements of this Land Use Code that asserts a vested right to continue with a pending development application under the ordinances, regulations, laws, policies, standards, or fee structures in place immediately before the adoption of this Land Use Code or any amendment thereto, such person or entity may seek a vested rights exemption from the Board of Adjustment.
- (2) Criteria for Approval—The Board of Adjustment may grant a vested rights exemption and allow the development to proceed under standards in place immediately prior to the adoption of this Land Use Code if the Board finds that the person or entity meets each of the following criteria:
  - (a) Has made a substantial change in position;
  - (b) Has made substantial expenditures;
  - (c) Incurred substantial obligations in good faith reliance upon the previous provisions of the ordinances, regulations, laws, policies, standards, or fee structures of the Town.
- (3) Filing Deadline—Any person or entity seeking a vested rights exemption must make a written request for a hearing on the exemption by the Board of Adjustment within 90 days after the adoption or amendment of this Land Use Code by the Town Commissioners.
- (4) Fee Required With Application—A fee for Board review, in the amount of \$700.00, must accompany the application for the exemption or the application. The application shall not be deemed filed until the fee is paid.

**§ 1-13. Relationship to Other Regulations**

- A. In General—Where this Land Use Code imposes a standard that differs from a standard imposed by other statutes, resolutions, ordinances, rules, regulations, easements, covenants, or agreements, the stricter standard shall govern.
- B. Conflict with Other Laws—Pursuant to Title 22, Section 307 of the *Delaware Code*,
- (1) Wherever the regulations contained in this Land Use Code require a greater width or size of yards or courts, or a lower height of building or less number of stories, or a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the regulations in this Land Use Code shall govern.
  - (2) Wherever any other statute, local ordinance or regulation requires a greater width or size of yards or courts, or a lower height of building or a less number of stories, or a greater percentage of lot to be left unoccupied, or imposed other higher standards than are required by the regulations in this Land Use Code, such statute, local ordinance or regulation shall govern.
- C. Compliance with Other Applicable Regulations—Compliance with the standards prescribed in this Land Use Code does not relieve an applicant from compliance with other applicable statutes, resolutions, ordinances, rules, regulations, easements, or deed restrictions
- D. Except as otherwise expressly stated herein, nothing in this Land Use Code shall be deemed to supersede Ordinance 2005-3 (adopting New Castle County's property maintenance code and transferring property maintenance functions to New Castle County) or Ordinance 2006-3 (Bellefonte's building, plumbing and mechanical regulations).

**§ 1-14. Relationship to Private Agreements**

It is not intended that this Land Use Code invalidate or annul any easements, covenants, or other private written agreements between parties.

**§ 1-15. Noise**

Noise standards, as adopted and promulgated by New Castle County, are hereby adopted by the Town of Bellefonte by reference, and shall act as the noise standards for the Town.

**§ 1-16. Fees**

Fees for all actions contemplated by this Land Use Code shall be paid in accordance with the express provisions herein or in accordance with Section 14 of Ordinance 2006-3. All fees shall be paid in advance of any application or service provided by the Town.

**§ 1-17. Annexation**

Land hereafter annexed to the Town of Bellefonte shall be placed in an appropriate zone, and shall be incorporated into the official zoning map, as part of the annexation proceedings.

**§ 1-18. Severability**

- A. The Town Commissioners hereby declare that the sections, paragraphs, sentences, clauses, and phrases of this Land Use Code can be separated from one another.
- B. Should a court decide that any section or provision of this Land Use Code is unconstitutional or invalid, such decision shall not affect the validity of this Land Use Code as a whole or any part other than the part judged unconstitutional or invalid.

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## Article 2. Planning Commission

### § 2-01. Membership

- A. Continuation and Membership—Pursuant to Title 22, Section 701(a) of the *Delaware Code*, the Town shall continue to maintain a Planning Commission. The Commission shall consist of five (5) members. Members of the Planning Commission shall be elected by the Commissioners of Bellefonte and may be nominated to serve by any Commissioner of Bellefonte holding office at the time of the vacancy on the Planning Commission.
- B. Original Membership—The original members of the Planning Commission shall be appointed by the Commissioners of Bellefonte. One original elected member shall serve a term of 1 year, 2 original elected members shall serve a term of 2 years, and 2 original elected members shall serve a term of 3 years.
- C. Subsequent Membership—Upon the expiration of the initial term of any original member of the Planning Commission, all subsequent persons elected by the Commissioners of Bellefonte to serve on the Planning Commission shall serve a 3-year term.
- D. Removal from Office—Members of the Planning Commission appointed by the Commissioners of Bellefonte shall only be removed by the Commissioners of Bellefonte for cause after a public hearing by a majority vote.
- E. Vacancy—Any vacancy on the Planning Commission occurring other than by expiration of term shall be filled for the unexpired term by appointment of a new member by the Commissioners of Bellefonte.
- F. Compensation—Members of the Planning Commission shall not receive compensation for the performance of their duties.

### § 2-02. Meetings

- (1) Meetings of the Planning Commission shall be held at the call of the chairperson of the Planning Commission or at such other times as requested by a majority vote of the Commissioners of Bellefonte.
- (2) The presence of 3 members of the Planning Commission shall constitute a quorum at any meeting.
- (3) All meetings of the Planning Commission shall be public.
- (4) The Planning Commission shall keep minutes of its proceedings showing its action and the vote of each member upon questions requiring a vote or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions.
- (5) The Planning Commission shall elect annually a chairperson and a secretary from among its own number.
- (6) Any vote of the Planning Commission must pass by a majority of the Planning Commission members present at the hearing, except as otherwise required by State law.

### § 2-03. Powers and Duties

- (1) The Planning Commission may make and alter rules and regulations for its conduct consistent with the laws of the State of Delaware.
- (2) The Planning Commission shall have all powers which are now or hereafter granted to it by ordinances of the Commissioners of Bellefonte or by Title 22, Chapter 7 of the *Delaware Code*, as amended, or by any other laws of the State of Delaware relating to the powers, governance, rights, responsibilities, or actions of the Planning Commission.
- (3) All recommendations of the Planning Commission made to Commissioners of Bellefonte shall be in writing.

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**Article 3. Zoning Districts (Zones)****§ 3-01. Residential Districts****A. 1- and 2-Family District.**

- (1) Name—1- and 2-Family District.
- (2) Symbol—R-1.
- (3) Purposes.
  - (a) This District is intended primarily for 1-family dwellings and customary accessory uses with 2-family dwellings allowed by special exception.
  - (b) In this District, home-based business that would not detract from the residential character of the District, are allowed.

**B. Multi-Family District.**

- (1) Name—Multi-Family District.
- (2) Symbol—R-2.
- (3) Purposes.
  - (a) This District is intended to accommodate a wider range of dwelling types than the 1- and 2-Family District.
  - (b) This District is intended for 1- and 2-family dwellings as well as small apartment (multi-family) buildings and customary accessory uses.
  - (c) This District is most appropriately located between commercial areas and homes in the 1- and 2-Family District.
  - (d) In this District, home-based business that would not detract from the residential character of the District, are allowed.

**§ 3-02. Mixed-Use Districts****A. Residential Mixed Use 1 District.**

- (1) Name—Residential Mixed Use 1 District.
- (2) Symbol—RMX-1.
- (3) Purposes.
  - (a) This District is intended for convenience retail and personal service uses as well as business and professional offices that provide services to surrounding residential neighborhoods. It is not intended for highway-oriented uses such as gasoline stations or drive-in uses.
  - (b) This District is most appropriately located along collector streets, such as Brandywine Boulevard.
  - (c) Residential uses, either free-standing or in combination with commercial establishments or offices, are also appropriate in this District.

**B. Mixed Use 2 District.**

- (1) Name—Mixed Use 2 District.
- (2) Symbol—MX-2.
- (3) Purposes.
  - (a) This District is most appropriately situated along arterial streets, such as Philadelphia Pike, and not within residential neighborhoods.
  - (b) This District is intended for a wider range of uses than provided for in the RMX-1 and might include certain highway-oriented uses.
  - (c) It is further intended to allow apartments as stand-alone uses (multi-family) or integrated with non-residential uses.
  - (d) Where possible, buffering, in the form of plantings, fencing, or additional building setback, is encouraged when commercial and office uses are adjacent to residential neighborhoods.

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**Article 4. Use and Dimensional Regulations**

**§ 4-01. Permitted Uses and Structures**

<b>USES AND STRUCTURES</b>				<b>ZONING DISTRICTS</b>			
Blank	Not Permitted	SE	Special Exception, see Article 9.				
P	Permitted Use	D	See Definition in Article 12.	<b>R-1</b>	<b>R-2</b>	<b>RMX-1</b>	<b>MX-2</b>
<b>Agriculture-Related Use</b>							
Community Garden				P	P	P	P
<b>Residential Uses</b>							
Bed and Breakfast				D	SE	P	P
Dwelling, 1-Family				D	P	P	P
Dwelling, 2-Family				D	SE	SE	SE
Dwelling, Commercial Apartment				D		P	P
Dwelling, Multi-Family (≥ 3 Dwelling Units)				D	P	P	P
Home-Based Business				D	P	P	P
Hotel or Motel							P
<b>Retail Sales and Service Uses</b>							
Automobile Repair Services				D			P
Automobile Sales				D			SE
Bank						P	P
Business Service Establishment				D		P	P
Gasoline Station				D			SE
Gasoline Station and Convenience Center				D			SE
Office				D		P	P
Personal Service Establishment				D		P	P
Restaurants				D		P	P
Retail Sales Establishments				D		P	P
Retail Service Establishment				D		P	P
Wholesale Trade Establishments				D		SE	P
<b>Other Uses</b>							
Club, Fraternal and Social Organization				D			P
Commercial Communications Towers, see § 9-12.C(1).					SE	SE	SE
Community Center, Public				D		P	P
Day-Care Center, Adult				D	P	SE	SE
Day-Care Center, Child				D	P	SE	SE
Funeral Home				D			P
Government Facilities and Services, Local				D	P	P	P
Government Facilities and Services, Non-Local				D	SE	SE	SE
Library						P	P
Medical Clinic				D		SE	SE
Museum							P
Nursing and Care Facilities				D			SE
Parks and Open Space					P	P	P
Place of Worship				D	SE	SE	P
Public-Safety Facilities				D			P
Public-Utility Service Facilities				D	SE	SE	P
Public-Utility Service Lines				D	P	P	P
Recreation Facility				D			SE
Recreation Facility, Public				D			SE
School				D			P
Surgical Center				D			SE
<b>Accessory Uses, see § 4-02</b>					P	P	P

**§ 4-02. Accessory Uses**

- A. Definition—A use is a permissible accessory use if it meets all of the following criteria:
- (1) It is located on the same lot as a principal building or structure;
  - (2) It is incidental and subordinate to the principal use;
  - (3) It is customary to the principal use;
  - (4) It is operated and maintained under the same ownership and on the same lot as the principal use;
  - (5) It does not include structures or structural features inconsistent with the principal use;
  - (6) Except for integrated garages as further provided for in this Section, it does not include overnight lodging or living space.
- B. Where Permitted—Except as otherwise provided, accessory uses are permitted in all zones.
- C. Additional Regulations for Certain Accessory Uses.
- (1) Private, Residential Garage.
    - (a) Where Permitted—On any lot containing a 1- or 2-family dwelling.
    - (b) Definition—See “Garage, Private Residential” in Article 12.
    - (c) Number Permitted—Each dwelling unit may have 1 private, residential garage associated with it, with up to three (3) garage bays.
    - (d) Arrangement—A private, residential garage may be integrated with the principal building or it may be detached from it.
    - (e) Living Space Standards.
      - [1] Integrated Garage—Living space permitted.
      - [2] Detached Garage—Living space and overnight lodging prohibited.
    - (f) See also § 4-07.
  - (2) Accessory Uses Other Than Private, Residential Garages.
    - (a) Where Permitted—In all zoning districts on lots containing a principal building.
    - (b) Number Permitted
      - [1] Each 1- or 2-family dwelling unit may have 1 accessory building or structure in addition to either an integrated garage or a detached garage.
      - [2] On lots having other than a 1- or 2-family dwelling unit, 1 accessory building or structure is permitted.
    - (c) Arrangement—An accessory building or structure, other than a private residential garage, may be either attached to or detached from the principal building or structure.
    - (d) See also § 4-07.

**§ 4-03. Prohibited Uses**

- A. Abattoir where livestock are killed and prepared for distribution to butcher shops and food markets.
- B. Animal Rendering where waste animal parts are converted into other materials.
- C. Asphalt Refining.
- D. Automobile Wrecking Yard—An establishment that cuts up, compresses, or otherwise disposes of motor vehicles.
- E. Blast Furnace, Garbage or Offal Reduction, Dumping.
- F. Bulk storage of toxic chemicals, gasoline above-ground, explosives, junk, oil, except those associated with, are located on the same lot with, and dispense heating fuels to dwelling units.
- G. Crude Oil Refining.
- H. Junkyard—Any lot, land, parcel, building, or structure, or part thereof, used for the storage, collection, processing, purchase, sale, salvage, or disposal of junk.
- I. Liquid Waste Disposal.
- J. Manufacture of asphalt, bleaching compounds, coal, coke, cork products, corrosive acid, fertilizer, gelatins, glue, industrial alcohol, linoleum, matches, oils, paint, rubber, soap, tar products.

- K. Ore Smelting.
- L. Rubber Treatment.
- M. Salvage Yard—A facility for storing, selling, dismantling, shredding, compressing, or reclaiming scrap, discarded material, or equipment.
- N. Tanning or Curing of Hides.

**§ 4-04. Basic Dimensional Standards—Residential Districts**

- A. Applicability—R-1 and R-2 Districts.
- B. Dimensional Standards for Principal Buildings and Structures.
  - (1) Intent—No owner(s) of real property situate in the Town of Bellefonte, nor their heirs, assigns, agents, attorneys or any other person acting in the stead of such owner(s) nor any other person or entity acting on behalf of any person or entity shall be permitted to seek or cause subdivision of any existing parcel of real estate where such subdivision would result in the creation of at least one subdivided parcel less than 6,500 square feet in area.
  - (2) Table of Standards

STANDARD  ZONING DISTRICT Building or Structure Type	R-1 DISTRICT	R-2 DISTRICT	
	1- or 2-Family Dwelling	1- or 2-Family Dwelling	Multi-Family (≥ 3 Dwelling Units)
Lot Area (Square Footage)		SAME	
Improved	None		6,500 SF
Unimproved	6,500 SF		
Street Frontage		AS	
Improved	None		50 Feet
Unimproved	40 Feet		
Setbacks		R-1	
From Any Lot Line Abutting a Street	20 Feet or EBL		10 Feet or EBL
From Interior Side Lot Line			
1 side	5 Feet	DISTRICT	8% of Lot Width, but no fewer than 3 feet, plus 2 feet for each story greater than 2
Sum of Both Sides	10 Feet		2 x 1 side
From Rear Lot Line	30 Feet		15 feet
Maximum Height		DISTRICT	
Feet	30 Feet		45 Feet
Stories	2 Stories		3 Stories
Maximum Building Coverage of Lot Area Including Accessory Buildings and Structures	40%		60%

**Notes**

1. All dimensions are minimum standards unless specified otherwise.
2. DU means Dwelling Unit. See definition in Article 12.
3. SF means Square Feet.
4. See Figure 1.
5. EBL means Established Building Line. See § 4-06 and Figure 2.

C. Dimensional Standards for Accessory Buildings and Structures.

(1) 1- and 2-Family Dwellings.

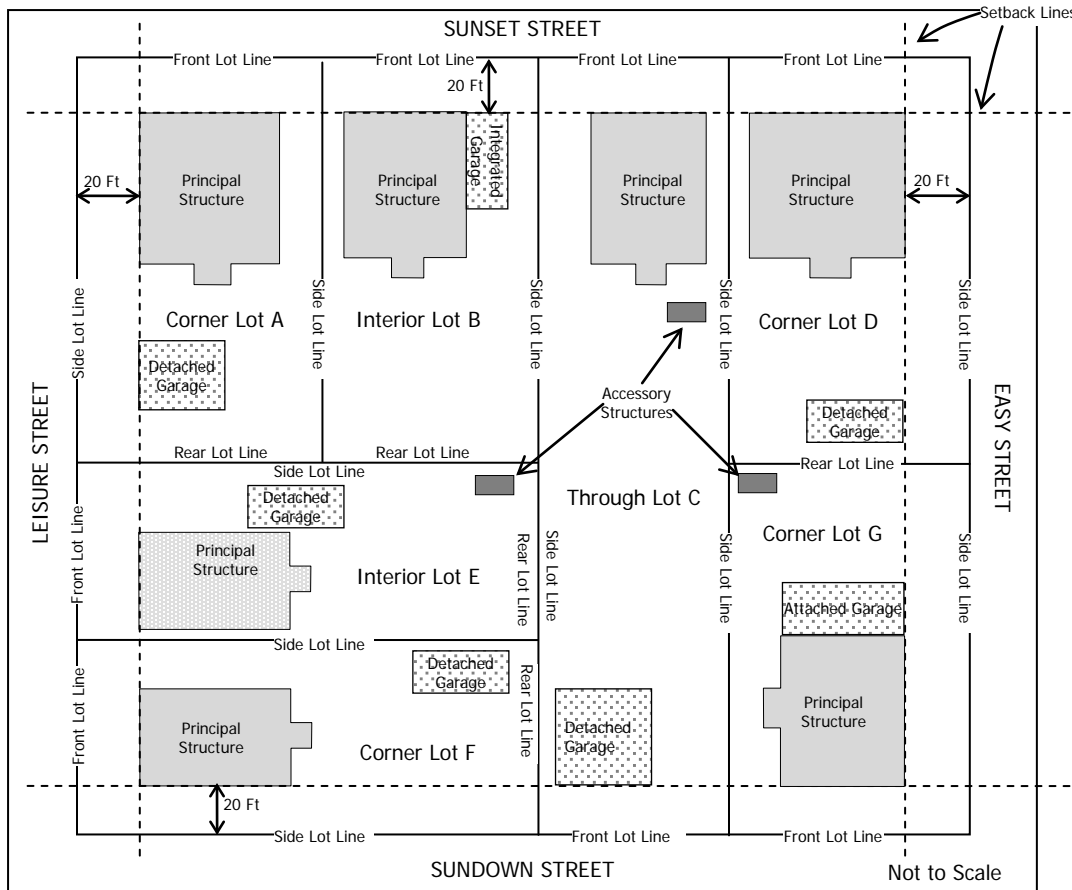
STANDARD	INTEGRATED GARAGE See definition in Article 12.	DETACHED GARAGE See definition in Article 12.	OTHER
Number Permitted	1, but not in addition to a detached garage	1, but not in addition to an attached garage	1 in addition to either attached or detached garage
Placement	Side or rear yard only	Side or rear yard only	Rear yard only
Setbacks			
From Any Lot Line Abutting a Street	Same as principal building	Same as principal building	Same as principal building
From Any Lot Line not Abutting a Street			
From Front Lot Line	Same as principal building	Same as principal building	Not allowed in front yard
From Side Lot Line	Same as principal building	2 Feet.	2 Feet.
From Rear Lot Line	Same as principal building	2 Feet.	2 Feet.
Maximum Height	Same as principal building	15 Feet.	15 Feet.
Building Coverage	Must be included with maximum building coverage of principal building		

**Notes**

1. All dimensions are minimum standards unless specified otherwise.
2. See § 4-02.
3. See Figure 1.

(2) Multi-Family—Same as standards for “Other” in § 4-04.C(1).

**Figure 1. Setbacks from Streets and Structure Placement for 1- and 2-Family Dwellings**



**§ 4-05. Basic Dimensional Standards—Mixed-Use Districts**

- A. Applicability—RMX-1 and MX-2 Districts.
- B. Dimensional Standards for Principal Buildings and Structures.

STANDARD	TYPE OF BUILDING OR STRUCTURE	1- OR 2-FAMILY & MULTI-FAMILY DWELLINGS	RESIDENTIAL & NON-RESIDENTIAL MIX	NON-RESIDENTIAL
Lot Area (Square Footage)		SAME	None	None
Street Frontage			None	None
Setbacks				
	From Any Lot Line Abutting a Street	AS	None	None
	From Interior Side Lot Line		Same as R-2 District	None
	From Rear Lot Line	R-2	Residential on First Story—15 Feet Other—None	None
Maximum Height		DISTRICT	45 Feet	45 Feet

**Notes**

- 1. All dimensions are minimum standards unless specified otherwise.
- 2. SF means Square Feet.
- 3. EBL means Established Building Line. See § 4-06.

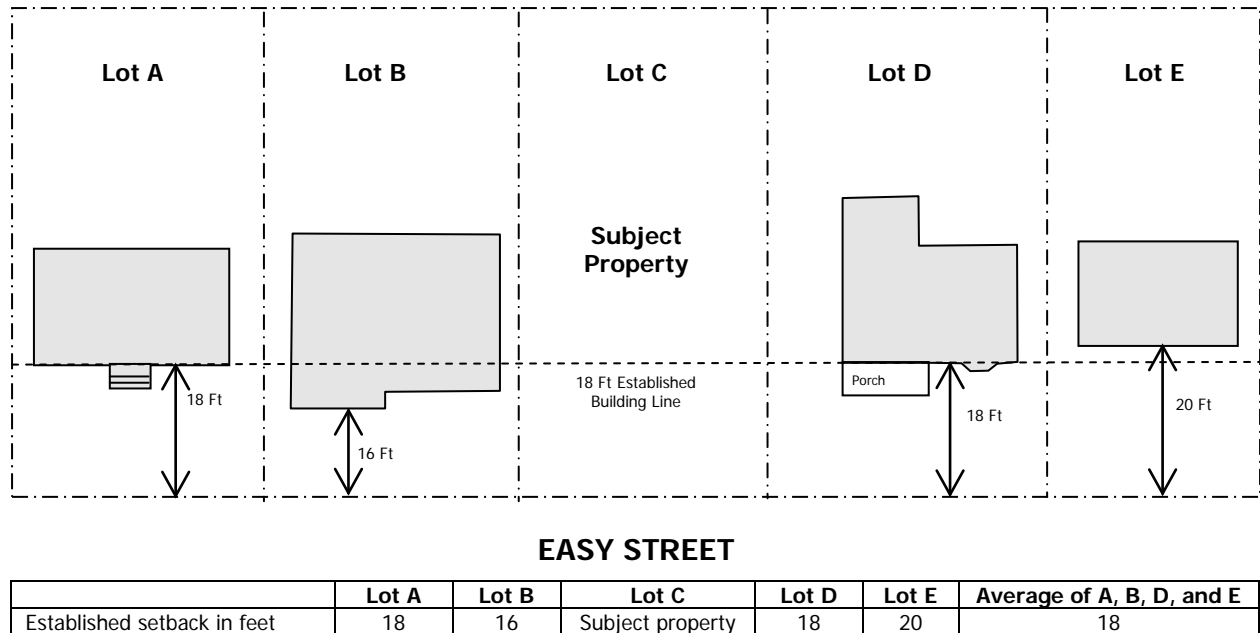
- C. Dimensional Standards for Accessory Buildings and Structures—Same as R-2 District.

**§ 4-06. Established Building Line**

- A. Regulation—When the established building line is less than a minimum setback required in this Land Use Code, the setback shall be not less than the established building line.
- B. Calculation—See Figure 2.

**Figure 2. Calculation of Established Building Line**

- 1. Identify each developed lot on the same side of the streets as, within 100 feet of, and within the same Zoning district as, the subject property, not including the subject property.
- 2. Measure the distance from the front lot line to the front edge of each principal building or structure, not including steps, any porch, or bay window
- 3. Average the distances. The result is the established building line.



**§ 4-07. Permitted Projections into Required Setbacks**

TYPE OF PROJECTION	FRONT YARD	REAR YARD	SIDE YARD
Balconies	3 feet. (1)	3 feet. (1)	3 feet. (2)
Bay or Oriel Windows	3 feet. (1)	3 feet. (1)	3 feet. (2)
Chimneys	2 feet.	2 feet.	2 feet.
Cornices, Eaves, Gutters, Windowsills, other Ornamental Features	2 feet.	2 feet.	2 feet. (2)
Fire Escapes	3 feet.	3 feet.	3 feet. (2)
Porches, Decks, Patios			
Open, 1-Story, Unscreened	R-1 District—5 feet beyond EBL Other Districts—5 feet	R-1 District—8 feet. Other Districts—5 Feet.	3 feet.
Enclosed or screened	Not Permitted	Not Permitted	Not Permitted
Open, Multiple Story, Unscreened	With BoA Authorization—5 feet and railings no more than 36 inches	With BoA Authorization—5 feet and railings no more than 36 inches	Not Permitted
Steps, Stoops, Exterior Stairways			
Open	3 feet.	3 feet.	3 feet.
Roof Cover for Steps, Stoops, Exterior Stairways	3 feet.	3 feet.	3 feet.

**Notes**—All dimensions are minimum standards unless specified otherwise.

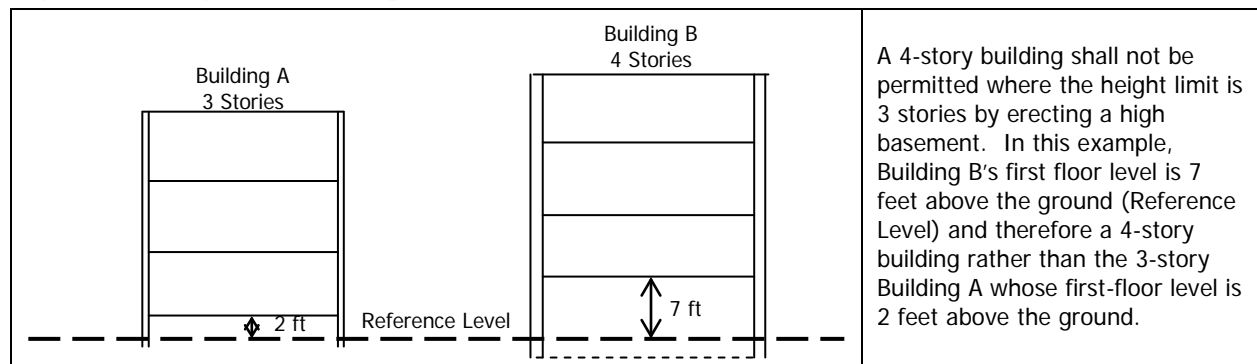
- (1) Shall not be wider than half the width of the building wall on which it is located.
- (2) Shall not be wider than 1/3 the depth of the side yard and shall not extend across more than 1/2 the width of the side yard or within 3 feet of the vertical plane of any side lot line.
- (3) Shall not extend farther than 1/2 the distance between the rear of the principal structure and the rear lot line.
- (4) BoA means Board of Adjustment.

**§ 4-08. Height**

A. Interpretation—See also Figure 3.

- (1) Heights shall be measured above a reference level, which is defined as the average curb level adjacent to the lot, except that if the average curb level is not established, or if the average natural ground level within 5 feet of the proposed building or structure is higher than such average curb level, then such average natural ground level shall be the reference level.
- (2) Heights of buildings shall be measured up to the mean level of the highest roof thereon. In all other cases, the height is defined as the maximum height.
- (3) No story shall be deemed a first story if its floor level is more than 4 feet above the reference level. Any basement which is occupied for sleeping purposes by other than a janitor or watchman shall be deemed a first story. A mezzanine story shall be deemed a full story if the mezzanine floor covers more than one-third the area of the ground floor, or the height of the story which includes the mezzanine is greater than 24 feet. An attic shall be a full story.

**Figure 3. Height Limit Interpretation**



**B. Height Limit Exemptions.**

See also maximum heights for each Zoning district in § 4-04 and § 4-05.

- (1) In all Zoning Districts.
  - (a) The height limitations of this Land Use Code do not apply to appurtenances usually required to be placed above the roof level and not intended for human occupancy, except where they would be a hazard to aircraft flight operations.
  - (b) The following specific structures are exempt from the height limitations provided that the area of the base of any such structure does not exceed 20% of the lot area: domes, spires, cupolas, belfries, monuments or chimneys, windmills, transmission towers, flag staffs, radio towers, water tanks or towers, or hose towers.
- (2) In R-1 and R-2 Districts—Structures exempt from height limitations shall not be placed within 30 feet of any street line or lot line.
- (3) For Multi-Family and Non-Residential Uses in RMX-1 and MX-2 Districts—Height limitations shall not apply to roof bulkheads, elevator enclosures or monitors as long as the area of the base of any such structure does not exceed 30% of the lot area.

**§ 4-09. Fences, Walls, Hedges, and Shrubbery**

A. Setbacks—The building setback and yard requirements of this Land Use Code shall not apply to fences, walls, hedges, or shrubbery.

**B. Residential Areas (R-1, R-2, and RMX-1).**

- (1) Applicability—Properties used for residential purposes.
- (2) Maximum Height.
  - (a) Front Yard—4 feet.
  - (b) Side and Rear Yards—6 feet.

**C. Non-Residential (MX-2).**

- (1) Applicability.
  - (a) Properties used for other than residential purposes.
  - (b) Properties used for mix of residential and non-residential purposes.
- (2) Maximum Height.
  - (a) Front Yard—4 feet.
  - (b) Side and Rear Yards—8 feet.

**D. Fence Materials.**

- (1) Generally—Fences shall be constructed of materials specifically designed for fences.
- (2) Residential—In residential zones and on property used residentially, barbed wire, razor wire or any similar material, or wire measuring less than 11 gauge is prohibited.
- (3) Non-Residential—Barbed or razor wire fencing may be utilized in conjunction with a mixed-use building or structure, but a landscape screen shall be provided between the fence and any street or adjacent residential use.

**§ 4-10. Garage and Yard Sales**

Garage and yard sales shall be permitted under the following conditions:

- A. No more than 4 sales shall be conducted in any calendar year; and
- B. No sale shall exceed 3 consecutive days.

**§ 4-11. Home-Based Businesses**

- A. Definition—A business, occupation, or activity undertaken for gain within a residential structure that is incidental and secondary to the use of that structure as a dwelling unit.
- B. Permitted Home-Based Businesses.
- (1) Offices for professionals, including architects, brokers, counselors, clergy, dentists, doctors, draftspersons and cartographers, engineers, insurance agents, lawyers, real estate agents, accountants, editors, publishers, journalists, psychologists, contract managers, graphic designers, construction contractors, landscape designers, surveyors, cleaning services personnel, salespersons, manufacturers' representatives, and travel agents.
  - (2) Personal services, including barbershops, beauty parlors, manicure and pedicure shops, pet grooming, catering, and chauffeuring services.
  - (3) Instructional services, including music, dance, art and craft classes, tutoring.
  - (4) Babysitting services defined as the occasional care of children.
  - (5) Studios for artists, sculptors, musicians, photographers, and authors.
  - (6) Workrooms for tailors, dressmakers, milliners, and craft persons, including weaving, lapidary, jewelry making, cabinetry, and woodworking.
  - (7) Repair services including watches and clocks, small appliances, computers, electronic devices, lawnmowers, and small engines.
  - (8) Family child care home (1-6 children), see definition in Article 12.
- C. Prohibited Home-Based Businesses.
- (1) Large-family day care home (7-12 children), see definition in Article 12.
  - (2) Kennels, stables, veterinary clinics and hospitals.
  - (3) Medical clinics, dental clinics, hospitals, see definition in Article 12.
  - (4) Restaurants, bars, and night clubs.
  - (5) Funeral homes and undertaking establishments.
  - (6) Adult entertainment uses as defined in Title 24, Chapter 16 of the *Delaware Code*.
- D. Operational Standards.
- (1) General—Businesses such as those listed in subsection § 4-11.B shall be considered as operating within the home-based business standards as long as they do not cause undue traffic congestion, and comply with the standards governing equipment used or operated by home-based businesses.
  - (2) Operating Hours.
    - (a) Customer and client visits to the home-based business are limited to the hours from 7:00 A.M. to 9:00 P.M.
  - (3) Employees.
    - (a) On-Premise Employees—A home-based business shall have not more than 2 non-resident employees on the premises at any 1 time.
    - (b) Off-Premise Employees—The number of non-resident employees, working at locations other than the home-based business (i.e., off-premise), is not limited.

- (4) Equipment—The operation of the home-based business, including equipment used therein, shall not:
  - (a) Create any vibrations, heat, glare, dust, odors, or smoke discernible at the property lines.
  - (b) Generate noise that violates any Town ordinance or regulation pertaining to noise.
  - (c) Create any electrical, magnetic, or other interference off the premises.
  - (d) Consume utility quantities that negatively impact the delivery of those utilities to surrounding properties.
  - (e) Use and/or store hazardous materials in excess of quantities permitted in residential structures.
- (5) Outdoor Storage Prohibited—Materials utilized in the home-based business shall be stored inside of the building or structure used for the home-based business.
- (6) Signs—See Article 6.

**§ 4-12. Drainage**

- A. No property shall be developed, redeveloped, or maintained in such a way that unreasonably hampers, collects, channels, discharges or alters the natural flow of water, or causes ponding on the subject property or any adjacent property.
- B. All lots on which new buildings and structures are built shall be graded so as to carry water away from the building or structure and dispose of all runoff without ponding. All federal, state, and common law regulations relating to drainage shall be followed.
- C. Drainage Plan Required—A drainage plan shall be submitted to the Building Inspector prior to the commencement of any development or redevelopment of property, change in land use, alteration, extension, or renovation that may cause a change in drainage.
- D. The Building Inspector shall not issue a Certificate of Occupancy until a property has been graded to comply with the standards in this Section.

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## Article 5. Off-Street Parking and Loading

### § 5-01. Purposes and Scope

#### A. Purposes.

- (1) Relieve congestion and facilitate the movement of vehicular traffic.
- (2) Facilitate the movement of police, fire, and other emergency vehicles.
- (3) Promote the safety and convenience of pedestrians and shoppers by locating parking areas so as to lessen vehicle movements in the vicinity of intensive pedestrian traffic.
- (4) Protect adjoining residential neighborhoods from the negative effects of on-street parking.
- (5) Promote the general convenience, welfare, and prosperity of commercial and other uses that depend on off-street parking and loading facilities.

#### B. Scope.

- (1) When Required—Off-street parking and loading facilities shall be provided under the following conditions:
  - (a) When there is a change in use that increases the parking requirements set forth in § 5-02.G.
  - (b) When any building or structure is erected, altered, renovated, or expanded.
- (2) The parking and loading requirements in this Article are in addition to requirements in other parts of this Land Use Code and other applicable laws and ordinances.
- (3) The parking and loading requirements in this part of the Land Use Code do not limit requirements or conditions that may be imposed in conjunction with other approvals, reviews, or applications.
- (4) Parking and loading facilities may not be used for the sale, repair, servicing, or dismantling of any type of vehicle, equipment, material, or supplies.

### § 5-02. Off-Street Parking

A. Definition—An off-street parking space is a permanently reserved, temporary storage area for 1 motor vehicle that is not located on, but is directly accessible to, a dedicated street right-of-way by a paved driveway that affords ingress and egress for a motor vehicle without requiring another motor vehicle to be moved.

#### B. Computation of Required Number of Spaces.

- (1) Fractional Spaces—Where the computation of spaces results in a fractional space, the fractional space shall be counted as 1 additional required space.
- (2) Shared Facilities.
  - (a) Places of worship, auditoriums, or educational institutions may make arrangements with business establishments, which normally have different days or hours of operation, for sharing their required parking facilities.
  - (b) The Building Inspector shall approve shared-parking arrangements.
- (3) Uses Not Specifically Listed—The required number of parking spaces for uses not specifically listed in this Code shall be the same as for a similar listed use.

#### C. Location.

- (1) General.
  - (a) Parking facilities shall be located on the same lot with the building or use served.
  - (b) Parking facilities may be located within required building setback areas.
- (2) Exception—Required parking facilities may be located within 300 feet of the building or use served in any of the following situations.
  - (a) When a change in use increases the parking requirements set forth in § 5-02.G.
  - (b) When spaces are provided collectively to serve more than 1 building.

**D. Design and Maintenance Standards.**

- (1) Spaces and Driveway Aisles.
  - (a) Parking Space—10 feet by 20 feet.
  - (b) Driveway Aisle Width—10 feet for 1-way traffic; 20 feet for 2-way traffic.
- (2) Entrances and Exits.
  - (a) The location and design of entrances and exits shall be in accord with the requirements of applicable state regulations and standards.
  - (b) Landscaping, curbing, pavement marking, or approved barriers shall be provided along lot boundaries to control entrance and exit of vehicles or pedestrians. They shall be of a type and sited so that, when mature, they will not obstruct visibility for vehicles that enter and exit the parking facility.
- (3) Drainage—Off-street parking facilities shall be drained to eliminate standing water and prevent damage to abutting property and/or public streets and alleys.
- (4) Surface Material—Off-street parking facilities shall be surfaced with erosion-resistant material in accordance with applicable State or Town specifications.
- (5) Separation from Walkways and Streets—Where feasible, off-street parking spaces shall be separated from walkways, sidewalks, streets, or alleys by a wall, fence, curbing, or other approved protective device or by distance so that vehicles cannot protrude over publicly used areas.
- (6) Marking.
  - (a) Parking spaces in lots of more than 10 spaces shall be marked by painted lines, curbs, or other means to delineate individual spaces.
  - (b) Signs or markers shall be used as necessary to ensure efficient traffic operation within the lot.
- (7) Lighting—On properties used for non-residential purposes, the following standards shall apply.
  - (a) Adequate lighting shall be provided if off-street parking spaces are to be used at night.
  - (b) The lighting shall be arranged and installed to minimize glare into residential areas.
- (8) Maintenance—Off-street parking areas shall be maintained in a clean and orderly condition at the expense of the owner or lessee.
- (9) DelDOT—All standards adopted and promulgated under state law or by the Delaware Department of Transportation (DelDOT) must be followed.

**E. Handicapped Parking.**

- (1) Number of Spaces, Design Standards—Parking spaces for the disabled shall be provided in compliance with the Town Building Code.
- (2) Reservation of Spaces—Property owners or tenants shall reserve required handicapped-accessible spaces for the duration of any approved land use.

**F. Front-Yard Parking—**Parking within front-yard setbacks shall be allowed only on surfaces designed and intended for the parking of vehicles.

G. Minimum Required Spaces

USES	PARKING SPACES REQUIRED	
	R-1, R-2, and MX-2 Zones	RMX-1 Zone
<b>Institutional: Community, Neighborhood, and Residential</b>		
Dwelling, 1-family	D 2.0 spaces per dwelling unit	None
Dwelling, 2-family	D 2.0 spaces per dwelling unit	None
Dwelling, commercial apartment	D 1.0 space per bedroom	None
Dwelling, multi-family	D 1.0 space per bedroom	None
Places of public assembly and places of worship	D 1.0 space per 4 permanent seats or 10.0 spaces per 1,000 SF of public assembly area, whichever is greater	None
Clubs & associations without food service	D 6.0 spaces per 1,000 SF of GFA	2.0 spaces
Clubs & associations with food service	D 10.0 spaces per 1,000 SF of GFA	3.0 spaces
Fire station	4.0 spaces per vehicle bay plus 10.0 spaces per 1,000 SF of public assembly area	None
Library or museum	3.5 spaces per 1,000 SF of GFA, calculate public assembly areas separately at 0.75 rate	None
Nursing homes	0.33 space per bedroom	None
Day care, kindergarten, preschool	D 3.5 spaces per 1,000 SF of GFA	None
Schools: elementary & junior high	2.0 spaces per classroom, calculate public assembly areas at 0.75 rate	None
Schools: senior high, trade and vocational, college and university	10.0 spaces per classroom, calculate public assembly areas at 0.75 rate	None
Age-restricted residential developments	1.50 spaces per dwelling unit	None
Group homes, institutional, residential, monasteries & convents	0.75 space per bedroom	None
Rooming & boarding houses	0.25 space per guestroom	None
Police station	4.0 spaces per 1,000 SF of GFA	None
Post office	5.0 spaces per 1,000 SF of GFA	2.0 spaces
<b>Commercial Uses: Office</b>		
General	3.5 spaces per 1,000 SF of GFA	None
Government offices	4.0 spaces per 1,000 SF of GFA	None
Medical	4.5 spaces per 1,000 SF of GFA	None
Bank/financial	4.0 spaces plus 6.0 stacking spaces per drive-in window	None
<b>Commercial Uses: Services</b>		
General	4.0 spaces per 1,000 SF of GFA	None
Shopping center	4.5 spaces per 1,000 SF of GFA	8.0 spaces
Furniture & carpet stores	5.0 spaces minimum, plus 1.0 space per 1,000 SF of GFA	None
Commercial temporary outdoor sales	1.0 space per 250 SF of sales and display area (exclusive of production area), minimum 4 spaces.	None
Roadside stand—permanent or temporary	1.0 space per 250 SF of sales and display area (exclusive of production area)	None
Hardware, paint & home improvement	4.0 spaces per 1,000 SF of GFA	None
<b>Commercial Uses: Light Auto Service</b>		
General	1.5 spaces, or 4.0 spaces per bay, whichever is greater	None
Carwashes—single car, automatic bay	2.0 spaces plus 6.0 stacking spaces per bay and 1.0 drying	None
Carwashes—multiple car, automatic bay	4.0 spaces plus 12.0 stacking spaces per bay and 2.0 drying	None
Carwash—self-wash bay	3.0 spaces per bay	None
Gasoline station	D 1.5 spaces or 4.0 per bay, whichever is greater	None
<b>Commercial Uses: Services</b>		
Drive-in facility	6.0 stacking spaces per window unless a stricter standard applies	None
Personal service businesses	4.0 spaces per 1,000 SF of GFA	None
Funeral homes	8.0 spaces per 1,000 SF of GFA	3.0 spaces
Fitness center/health club	10.0 spaces per 1,000 SF of GFA	3.0 spaces
Restaurants	D 9.0 spaces per 1,000 SF of GFA plus parking for one-quarter of the area of outdoor seating	3.0 spaces
Fast food restaurants with 20 or fewer seats, or take-out	9.0 spaces per 1,000 SF of GFA plus parking for one-quarter of the area of outdoor seating	3.0 spaces
Fast food restaurants with more than 20 seats	15.0 spaces plus parking for one-quarter of the area of outdoor seating	4.0 spaces

USES	PARKING SPACES REQUIRED	
	R-1, R-2, and MX-2 Zones	RMX-1 Zone
Veterinary services, pet grooming	3.5 spaces per 1,000 SF of GFA	None
Kennels	5.0 space minimum plus 0.5 per 1,000 SF of GFA	None
All others	4.0 spaces per 1,000 SF of GFA	None
<b>Commercial Uses: Commercial Lodging</b>		
Hotel, motel	1.0 space per guest room, plus required spaces for restaurant, lounge, banquet and meeting room facilities as they may exist	None
Bed & breakfast	1.0 space per guest room, plus 2.0 spaces per dwelling unit	None
Campgrounds	1.0 space per camp space, plus 3.0 spaces per 50 spaces at office	None
<b>Commercial Uses: Heavy Retail/Service</b>		
General	4.0 spaces per 1,000 SF of GFA	Same as R-1, R-2 & MX-2
Auto, boat, mobile dwelling unit, truck, trailer, outdoor equipment and machinery sales	5.0 space minimum, plus 1 per 1000 SF of floor and ground area devoted to sales, service, display and storage	Same as R-1, R-2 & MX-2
Building materials	2.0 spaces plus 5.0 space minimum	Same as R-1, R-2 & MX-2
Vehicle repair/service	1.0 space per 1,000 SF of GFA or 4.0 spaces per bay, whichever is greater	Same as R-1, R-2 & MX-2
<b>Recreation and Amusement Uses: Outdoor Recreational</b>		
Camps, day or youth	1.0 space per 1,500 SF of area	Same as R-1, R-2 & MX-2
Golf course	3.0 spaces per hole	Same as R-1, R-2 & MX-2
Golf driving range or rifle range	1.0 space per station	Same as R-1, R-2 & MX-2
Parks, playground	1.0 space per 5,000 SF of area	Same as R-1, R-2 & MX-2
Equestrian facilities	1.0 space per 4 stalls, plus 1 per 2000 SF of riding area	Same as R-1, R-2 & MX-2
Swimming pool	1.0 space per 400 SF pool surface area	Same as R-1, R-2 & MX-2
Tennis courts	3.0 spaces per court	Same as R-1, R-2 & MX-2
Athletic fields	15.0 spaces per field plus 1.0 space per 4 permanent seats	Same as R-1, R-2 & MX-2
All other active	1.0 space per 10,000 SF of area	Same as R-1, R-2 & MX-2
All other passive	5.0 space minimum plus 1.0 per acre for areas less than 50 acres or 1.0 space per 3 acres for areas over 50 acres	Same as R-1, R-2 & MX-2
<b>Recreation and Amusement Uses: Indoor Recreational</b>		
Swimming pool	1.0 space per 100 SF pool surface area	Same as R-1, R-2 & MX-2
Indoor court games	3.0 spaces per court	Same as R-1, R-2 & MX-2
Community center, auditorium, stadium, gymnasium and other similar uses	1.0 space per 4 permanent seats or 10.0 spaces per 1,000 SF of public assembly area, whichever is greater	Same as R-1, R-2 & MX-2
All others	1.0 space per 4 permanent seats or 10.0 spaces per 1,000 SF of public assembly area, whichever is greater	Same as R-1, R-2 & MX-2
<b>Recreation and Amusement Uses: Outdoor Commercial Amusement</b>		
General	5.0 space minimum plus 1.0 per 1,500 SF of area	Same as R-1, R-2 & MX-2
Outdoor court games	3.0 spaces per court plus 1.0 per 4 permanent seats	Same as R-1, R-2 & MX-2
Outdoor arenas	1.0 space per 3 seats	Same as R-1, R-2 & MX-2
<b>Recreation and Amusement Uses: Indoor Commercial Amusement</b>		
General	6.0 spaces per 1,000 SF of GFA	Same as R-1, R-2 & MX-2
Amusement parks	Special study	Same as R-1, R-2 & MX-2
Bowling alley/pool rooms	4.0 spaces per lane, 2.0 spaces per pool/billiard table	Same as R-1, R-2 & MX-2
Skating rinks	1.0 space per 100 SF skate surface	Same as R-1, R-2 & MX-2
Theaters/assembly rooms	1.0 space per 4 permanent seats or 10.0 spaces per 1,000 SF of public assembly area, whichever is greater	Same as R-1, R-2 & MX-2
<b>Industrial Uses</b>		
Mini-warehouses/self-storage	3.5 spaces per 1,000 SF of GFA of sales/rental office	Same as R-1, R-2 & MX-2
Warehouse, storage establishment, wholesaling, manufacturing or industrial establishment	5.0 space minimum plus 0.5 space per 1,000 SF of GFA	Same as R-1, R-2 & MX-2

**Notes**

1. All dimensions are minimum standards unless specified otherwise.
2. D means definition can be found in Article 12.
3. DU means Dwelling Unit. See definition in Article 12.
4. SF means Square Feet.
5. GFA means Gross Floor Area. See definition in Article 12.

H. Modification Permitted.

- (1) It is recognized that the character of the Town’s development pattern may preclude even partial compliance with the number of required off-street parking spaces in this Article, especially on lots occupied by retail, office, institutional, and other non-residential uses in the mixed use zoning districts.
- (2) The Board of Adjustment may modify, through the grant of a variance, the number of required off-street parking spaces when it finds that full or partial compliance is unreasonable or impractical due to the size or placement of existing structures or the lot size or configuration, where sufficient off-street parking is available, and where all applicable standards for the grant of a variance are met.

**§ 5-03. Off Street Loading**

- A. Definition—An off-street-loading space is a space, a bay or berth that is not on a dedicated street that is used for the loading or unloading of cargo, products, or materials from vehicles.
- B. Minimum Required Spaces.

USE OR CATEGORY	SQUARE FEET OF GFA	LOADING BAYS REQUIRED
Retail stores, shopping centers, supermarkets, restaurants, and storage warehouses	Fewer than 3,4999	No requirement
	3,500-7,999	1
	8,000-20,000	2
	20,001-40,000	3
	40001 or more	4
Office buildings, automobile dealerships, motels, and hotels	Fewer than 7,999	No requirement
	8,000-20,000	1
	20,001-70,000	2
	70,001-120,000	3

C. Design Standards.

- (1) Loading-Space Dimensions.
  - (a) Width—12 feet
  - (b) Depth—60 feet
  - (c) Vertical Clearance—14 feet
- (2) Maneuvering Space—Adequate off-street truck maneuvering space shall be provided on-lot and not within any public street right-of-way or other public lands.
- (3) Location—All loading areas shall be located on the same lot as the building or lot served by the loading area.
- (4) Obstructions
  - (a) At no time shall any part of a truck or van be allowed to extend into a public thoroughfare or right-of-way while the truck or van is being loaded or unloaded.
  - (b) All loading spaces and maneuvering spaces shall be accessible at all times.
- (5) Fire Exit or Emergency Access—Off-street loading facilities shall be designed so as not to interfere with any fire exits or emergency access facilities to either a building or site.

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## Article 6. Signs

### § 6-01. Applicability and Purposes

- A. Applicability—These sign regulations apply within every existing and future zoning district in the Town. A sign may be erected, placed, established, painted, created, or maintained in the Town only in conformance with this Land Use Code and other applicable ordinances and laws.
- B. Purposes.
- (1) Encourage the effective use of signs as a means of communication in the Town.
  - (2) Avoid visual clutter and competition among sign displays in their demand for public attention.
  - (3) Promote the safety and convenience of pedestrians and motorists.
  - (4) Minimize the adverse effects of signs on nearby public and private property.

### § 6-02. Regulations Applying to All Signs

- A. Sign Area Measurement—The sign area is the entire portion of the sign that can be enclosed within a single rectangle. The area includes the extreme limits of the letters, figures, designs, and illumination, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed.
- (1) Supports—The structure that supports a sign is not included in measuring the sign area unless the structure is designated and used as an integral part of the display. A support having a perimeter larger than 4 feet at the widest point is an integral part of the display.
  - (2) Multiple Sections—The area of a sign that consists of more than 1 section includes the space between the sections plus the measurement of the sections of the sign.
  - (3) Multiple Faces—The area of a sign with more than 1 face or plane is measured as follows.
    - (a) General—All sides of a sign that can be seen at any one time from any vantage point outside the property line of the site where the sign is located are included in the computation of sign area.
    - (b) Parallel Faces.
      - [1] A parallel sign is one whose faces or sides are equidistant from one another at all points.
      - [2] When the faces of a parallel sign are separated from each other by fewer than 2 feet or are double faced or back to back, the larger of the parallel faces is used in the computation of sign area.
      - [3] When the faces are more than 2 feet apart, the sum of both faces or sides is used in the computation of sign area.
    - (c) “V” Shaped—The area of a 2-sided sign constructed in the form of a “V” is calculated by the same method as parallel faces if the angle of the “V” is less than 30 degrees and the distance between the sides does not exceed 5 feet at any point. If the angle is equal to or greater than 30 degrees or the distance between the sides is greater than 5 feet, the sum of all the planes will be used in the computation of the sign area, unless the applicant demonstrates that only 1 side of the sign will be visible from any single vantage point.
    - (d) 3-Dimensional—Where 3-dimensional signs are used, the area of the sign equals the total surface area of the sides that can be seen from a single vantage point outside the property lines of the site where the sign is located.
  - (4) Non-Display Sides of Signs—In order for the sign back or non-display side of a sign to be excluded from consideration as sign area, it must be a single, neutral color, if the back or non-display side is visible from outside the property lines of the property where the sign is located.
- B. Sign Placement.
- (1) Setbacks—Setbacks are measured from the portion of the sign nearest the property line.
  - (2) Height—Height is measured from the portion of the sign that is vertically the farthest from the ground.

(3) Sign Illumination.

- (a) Prevention of Glare—Signs must be illuminated using an enclosed lamp design or indirect lighting from a shielded source in a manner that prevents glare from beyond the property line.
- (b) Near a Residence—Any sign on a lot or parcel within 150 feet of a residential use may be illuminated only during the hours the entity is open for public business, unless the applicant demonstrates that the sign is located so that it will not have an adverse impact on the residence.

**§ 6-03. Temporary Signs**

A. Real Estate and Construction Signs.

(1) General Requirements.

- (a) Materials—Real estate, development, and subdivision signs must be made of materials sufficiently durable for the time that they are displayed.
- (b) Where Allowed—In All Zoning Districts.

(2) Additional Requirements by Sign Type.

SIGN TYPE(S)	STANDARD	REGULATION
<b>Real Estate Sign</b> Indicates sale, rental or lease of the premises on which it is located.	Number Allowed	1 sign for each street frontage
	Maximum Area	8 square feet per side
	Max Number of Sides	2, must be back-to-back
	Maximum Height	4 feet
	Minimum Height	N/A
	Placement	Only on property offered for sale, rent, or lease and not in public right-of-way
	Illumination	Not Permitted
	Removal Required	Within 30 days of the sale of the property
	Permit Needed	No
<b>Construction Sign</b> Identifies those engaged in construction.	Number Allowed	1 for each street frontage
	Maximum Area	12 square feet
	Max Number of Sides	N/A
	Maximum Height	5 feet
	Minimum Height	N/A
	Placement	Only on property under construction
	Illumination	Not permitted
	Removal Required	Within 30 days following project completion
	Permit Needed	No

B. Temporary Signs in Residential Zones.

- (1) Definition—A temporary sign is a sign displayed on private property for fewer than 10 days, usually made of non-permanent material such as canvas, cardboard, paper, or wood.
- (2) Requirements.

ITEMS	REQUIREMENT
Number Allowed	1
Maximum Area	4 square feet
Maximum Height	4 feet
Placement	10 feet from property line
Illumination	Not Permitted
Permit Needed	No

§ 6-04. Permanent Signs

- A. Definition—A permanent sign is a sign intended to be displayed for an indefinite period of time and constructed in a manner and of materials that will withstand long-term exposure to the elements.
- B. Permanent Signs in the R-1 and R-2 Districts, Dwelling Units in Mixed-Use Districts.

SIGN TYPE	STANDARD	REGULATION
<b>Freestanding Sign</b> Not wholly or partially attached to a building. <i>Supported</i> —Attached to pole, column, frame, or brace as its means for support. <i>Ground</i> —Erected on the ground; bottom edge is within 12 inches of the ground, support structure is integral part of sign.	Number Allowed	1 per lot
	Maximum Area	2 square feet
	Maximum Height	4 feet
	Minimum Height	None
	Placement	5 feet from property line
	Illumination	Not Permitted
	Permit Needed	No
<b>Wall Sign</b> Parallel to the wall of the building to which it is attached and not extending more than 12 inches from the building.	Number Allowed	1 per lot
	Maximum Area	2 square feet
	Maximum Height	N/A
	Minimum Height	N/A
	Placement	N/A
	Illumination	Not Permitted
	Permit Needed	No
<b>Identification Sign for Public Facilities and Places of Assembly</b> — Examples include places of worship, schools, libraries, museums, hospitals. — Identifies location of the facility. — Must be either freestanding-ground or wall sign.	Number Allowed	1 per facility
	Maximum Area	48 square feet
	Maximum Height	N/A
	Placement	10 feet from property line
	Illumination	Indirect illumination only
	Permit Needed	Yes
<b>Announcement Sign for Public Facilities and Places of Assembly</b> — Examples include places of worship, schools, libraries, museums, hospitals. — Provides information about events taking place at, persons associated with, or services provided by the facility. — Must be either freestanding-ground or wall sign.	Number Allowed	1 per facility
	Maximum Area	20 square feet
	Maximum Height	12 feet
	Placement	10 feet from property line
	Illumination	Indirect illumination only
	Permit Needed	Yes

## C. Permanent Signs for Non-Residential Uses in the Mixed-Use Districts

SIGN TYPE	STANDARD	REGULATION
<b>Freestanding Sign</b> Not wholly or partially attached to a building <i>Supported</i> —Attached to pole, column, frame, or brace as its means for support <i>Ground</i> —Erected on the ground; bottom edge is within 12 inches of the ground, support structure is integral part of sign	Number Allowed	1 per lot
	Maximum Area	48 square feet
	Maximum Height	16 feet
	Minimum Height	N/A
	Placement	10 feet from property line
	Illumination	Allowed
	Permit Needed	Yes
<b>Wall Sign</b> Parallel to the wall of the building to which it is attached	Number Allowed	1 per building per business
	Maximum Area	15% of square footage of wall on which the sign is to be placed or 50 square feet whichever is less
	Maximum Height	May not extend above roof line or be placed on roof
	Minimum Height	N/A
	Placement	Not more than 12 inches from wall including supporting structure
	Illumination	Allowed
	Permit Needed	Yes
<b>Identification Sign</b> — Erected at entrance to a building — Identifies location of a business — Must be wall sign	Number Allowed	1 per building
	Maximum Area	15 square feet
	Maximum Height	N/A
	Placement	Same as for Wall Signs
	Illumination	Allowed
	Permit Needed	Yes
<b>Canopy Sign</b> A part of attached to an awning, canopy, or other fabric, plastic, or structural protective cover over a door, entrance, window, or outdoor service area	Number Allowed	1 per building per business
	Maximum Area	5% of square footage of surface on which the sign is to be placed
	Maximum Height	N/A
	Placement	N/A
	Illumination	From back of sign only
	Permit Needed	Yes

**§ 6-05. Prohibited Signs****A. General.**

- (1) Definition—A prohibited sign is one that cannot be erected or maintained.
- (2) The Board of Adjustment is not authorized to grant a variance permitting the erection of a sign that this Section prohibits.

**B. List of Prohibited Signs.**

- (1) Abandoned or Obsolete Signs—A legally erected sign, other than a temporary sign, including structural supports and electrical connections, directing attention to a business, commodity, service, or entertainment in a building that has not been used for 6 months or more.
- (2) Animated Signs—A sign, or any part of a sign, that changes physical position or light intensity by any movement or rotation or that gives the visual impression of such movement or rotation.
- (3) Attached to the Property of Others—A sign affixed to a structure or property such as a fence, wall, antenna, another sign, a tree or other vegetation, or any public structure, such as a utility pole, without permission of the owner.
- (4) Attached to a Vehicle—A sign affixed to a vehicle parked primarily for display purposes.
- (5) Communication-Interference Signs—A sign having any lighting or other control mechanism that causes interference with any communications system.
- (6) Flashing Signs—A sign that contains or is illuminated by flashing, revolving, intermittent lights, or lights that change intensity.
- (7) Noise-Emitting Signs—A sign that produces noise or sounds capable of being heard regardless of whether such sounds are understandable.
- (8) Obscene Signs—A sign that contains obscene statements, words, or depictions that are construed to offend public morals or decency.
- (9) Roof Signs—A sign painted on the roof of a building or structure, supported by poles, uprights, or braces extending from, or attached to, the roof of a building, or projecting above the roof of a building.
- (10) Shaped Like Humans or Animals—A sign shaped to resemble any human or animal form.
- (11) Signs emitting Odor Or Visible Smoke, Vapor, or Particles.
- (12) Signs Interfering with Traffic Safety—A sign that meets any of the following criteria:
  - (a) Is shaped like a traffic sign or signal, or uses wording similar to traffic signals, or interfere with traffic safety;
  - (b) Is placed in a location that obstructs the view of traffic signs, traffic signals, oncoming traffic, pedestrians.
  - (c) Interferes, in any way, with placement or function of any traffic-control device;
  - (d) Makes use of the words “stop,” “look,” “drive-in,” “danger,” or any other work, phrase, symbol, or character in such a manner as to interfere with, mislead, or confuse vehicular traffic.
- (13) Signs in the Public Right-of-Way—A sign located in a public right-of-way except one that has been so placed by a governmental agency or utility company in the performance of its official public duties.
- (14) Unsafe Signs—A sign that creates a safety hazard due to structural or electrical conditions or inadequate maintenance.
- (15) Wind-Activated Signs—Any banner, pennant, streamer, ribbon, spinner, balloon, string of lights, or other device that moves in the wind or is either set in motion or powered by wind.

**§ 6-06. Exempt Signs**

- A. Definition—An exempt sign is a sign that is not required to comply with the size, location, and number standards of this Article but must comply with applicable provisions governing Prohibited Signs.

**B. List of Exempt Signs.**

- (1) Measuring 2-Square Feet or Fewer.
  - (a) Newspaper and Mailbox—A sign that is part of a mailbox or a newspaper tube and conforms with applicable government regulations.
  - (b) Warning Signs—A sign warning the public about trespass, danger, or safety considerations.
- (2) Regardless of Size.
  - (a) Official Duties of Government or Utilities—A sign used by a government agency or utility company erected by, or on the order of, a public officer or utility official in the performance of official duties, such as controlling traffic, identifying streets, warning of danger, providing information.
  - (b) Required by Law—A sign whose display is required by law or regulation.
  - (c) Commemorative Sign—A sign that is cut into the masonry surface or constructed of bronze or other material and made an integral part of the structure, such as a cornerstone, memorial, plaque, or historical marker.
  - (d) Flags and insignia of any government except when displayed in connection with commercial promotion.
  - (e) Part of a Dispenser—A sign that is an integral part of a dispensing mechanism, such as a beverage machine, newspaper rack, or gasoline pump.
  - (f) Holidays—A sign, including lighting in accordance with applicable electrical requirements, displayed in connection with the observance of any holiday, provided that it is removed within 10 days of the end of the holiday.
  - (g) Adornments and Decoration—Any adornments or seasonal decoration.
  - (h) Historic Signs—A sign noting the location of a structure listed on a local, state, county, or national register of historic places.

**§ 6-07. Off Premises Signs**

- A. Definition—A sign that directs attention to a business, commodity, service, or entertainment conducted, sold, or offered at a location other than the premises on which the sign is located, often referred to as a billboard.
- B. Where Permitted—In the MX-2 Zoning District as a special exception.

**§ 6-08. Compliance, Maintenance, Nonconforming Signs, Permits**

- A. Compliance—The owner and/or tenant of the premises and the owner and/or erector of the sign shall be held responsible for any violation of these regulations. Where a sign has been erected in accordance with these regulations, the sign company shall be relieved of further responsibility under these regulations after final approval of the sign by the Building Inspector.
- B. Maintenance—All signs shall be maintained in good condition and appearance.
- C. Nonconforming Signs—See § 7-07.
- D. Permits—See § 8-01.

## Article 7. Nonconforming Situations

### § 7-01. Definition and Intent

- A. Definition—Nonconforming situations are existing buildings, structures, lots, signs, and uses of land that were lawful before this Land Use Code was adopted or amended but would be prohibited, regulated, or restricted under the provisions of this Land Use Code.
- B. Intent—Nonconforming situations may continue until they are removed, but their survival is not encouraged.

### § 7-02. Provisions Applying to All Nonconforming Situations

- A. Continuation Permitted—Except as otherwise provided in this Land Use Code, any nonconforming situation may continue as existing on the effective date of adoption or amendment of this Land Use Code.
- B. Effect of Ownership Change—Any change of title or right to possession shall not affect the continuation of a nonconforming situation, provided that the change in ownership does not result in changes inconsistent with any of the provisions of this Land Use Code.
- C. Proof of Legal Nonconformity—The landowner shall have the burden of establishing entitlement to the continuation of nonconforming situations or completion of nonconforming projects.

### § 7-03. Certification of Nonconforming Status

In the event of a dispute concerning non-conforming status, the Board of Adjustment shall determine the status of any nonconforming situation after public notice and hearing pursuant to Article 1.

### § 7-04. Nonconforming Lots

- A. Definition—A recorded lot, whose area and/or width were lawful before this Land Use Code was adopted, revised or amended, that does not meet the lot area and/or lot width standards of this Land Use Code.
- B. Development Standards for Unimproved, Nonconforming Lots—An unimproved, nonconforming lot may be developed without a variance under the following conditions:
  - (1) All other applicable dimensional standards are complied with except for lot area and/or lot width;
  - (2) The applicant does not own, or have control over, a sufficient amount of adjacent land to create a conforming lot without causing additional nonconforming situations unless otherwise permitted by a variance granted by the Board of Adjustment.
- C. Development Standards for Improved, Nonconforming Lots—On an improved, nonconforming lot, a building or structure may be enlarged, extended, or altered without a variance as long as all other applicable dimensional standards are complied with except for lot area and/or lot width.

### § 7-05. Nonconforming Buildings and Structures

- A. Definition—A building or structure, whose dimensional and density characteristics were lawful before this Land Use Code was adopted, revised, or amended, that does not meet the dimensional and density standards of this Land Use Code.
- B. Continued Existence.
  - (1) A nonconforming building or structure may be continued under the following conditions:
    - (a) Normal repair and maintenance is permitted;
    - (b) A nonconforming building or structure may not be enlarged or altered in any way that increases its nonconformity. It may be altered in a way that decreases its nonconformity;
    - (c) Nonconforming buildings or structures may not be used as grounds for addition of other structures or uses that do not conform to the standards of zoning district;
    - (d) If a nonconforming building or structure is moved, it shall be located in a manner that conforms to the requirements of the zone in its new location.

- C. Termination of Legal, Nonconforming Status.
- (1) When a nonconforming building or structure, as defined in this Section, is destroyed by more than 50% of its replacement cost at the time of destruction, the new or restored building or structure shall conform to current dimensional and density standards of this Land Use Code.
  - (2) When a building or structure, containing a nonconforming building or structure, is destroyed by more than 50% of its replacement cost at the time of destruction, the nonconforming use may not be re-established. Any subsequent use of the land must conform to the regulations of this Land Use Code and other applicable laws.
- D. Restoration When Destruction Less than 50%—Restoration of a building or structure destroyed less than 50% percent of its replacement market value, as established by an appraisal prepared by a professional appraiser qualified to do business in the State of Delaware shall be permitted, provided that the restoration commences within 12 months from the date of destruction.
- (1) Commencement of restoration shall mean the acquisition of a building permit and commencement of construction within 12 months from the date of destruction.
  - (2) The Building Inspector may extend this time frame for circumstances beyond the control of the applicant.

**§ 7-06. Nonconforming Uses**

- A. Definition—A use or activity, that was lawful before this Land Use Code was adopted, revised or amended, but is not permitted under the Use Regulations of this Land Use Code.
- B. Continued Existence—A nonconforming use may be extended over such portions of the building or premises that were manifestly designed or arranged for such use as of the effective date of this Land Use Code.
- C. Termination of Legal, Nonconforming Status.
- (1) When a nonconforming use ceases for any reason for more than 2 years, its legal, nonconforming status is terminated. Any subsequent use shall conform to the applicable regulations in this Land Use Code.
  - (2) When a building or structure, containing a nonconforming use, is destroyed by more than 50% of its replacement cost at the time of destruction, the nonconforming use may not be re-established. Any subsequent use of the land must conform to the provisions of this Land Use Code.

**§ 7-07. Nonconforming Signs and Billboards**

- A. Definition—A sign, whose characteristics were lawful before this Land Use Code was adopted, revised, or amended, that does not meet the current standards of this Land Use Code.
- B. Continued Existence—A nonconforming sign may be continued under the following conditions;
- (1) Normal repair and maintenance is permitted;
  - (2) A nonconforming sign shall not be enlarged or altered in a way that increases its nonconformity. It may be altered in a way that decreases its nonconformity;
  - (3) A nonconforming sign shall not be used as grounds for permission to construct additional signs that do not conform to the standards of this Land Use Code.
- C. Termination of Legal Nonconforming Status.
- (1) When a nonconforming sign is destroyed, by any means to the extent of 50% of its replacement value, or is removed, its legal, nonconforming status is terminated.
  - (2) Any subsequent sign shall conform to provisions of this Land Use Code.

**Article 8. Administration****§ 8-01. Building Inspector Responsible for Code Administration**

The Building Inspector, appointed by the Town Commissioners pursuant to Ordinance 2006-03, shall be responsible for the administration of, and securing compliance with, the provisions of this Land Use Code and other applicable laws.

**§ 8-02. Code Compliance Necessary to Obtain Building Permit**

- A. No building permit shall be issued unless the proposed buildings, uses of land, including signs, comply with all provisions of this Land Use Code.
- B. Prior to issuing a Building Permit, the Building Inspector shall review the applicant's proposal for compliance with this Land Use Code, other applicable laws, and assure that all appropriate fees are paid.
- C. The Building Inspector shall determine the procedure and information required to conduct such review for compliance with this Land Use Code.
- D. To the extent practical, review for compliance with the Land Use Code shall be coordinated with and/or made simultaneous with the applications and procedures of other development-related approvals.

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## Article 9. Board of Adjustment

### § 9-01. Composition

The Board of Adjustment shall consist of 5 members, who shall be residents of the Town who have knowledge of the problems of urban and rural development.

### § 9-02. Organization

#### A. Terms.

- (1) Each member of the Board of Adjustment shall be appointed for a period of 3 years, except that 1 of the initial members shall be appointed for a 1-year term, 2 of the initial members shall be appointed for a 2-year term, and 2 of the initial members shall be appointed for a 3-year term.
- (2) All subsequent appointments to the Board of Adjustment shall be for a period of 3 years.

#### B. Appointment.

- (1) The President of the Commissioners of the Town of Bellefonte, acting as the chief executive officer for the town, shall appoint all members of the Board of Adjustment.
- (2) No member of, or appointees to, the Board of Adjustment shall be candidates or members of the Commission or employees of the Town of Bellefonte.
- (3) All appointments to the Board of Adjustment must be confirmed by a majority vote of the Commissioners of the Town of Bellefonte.

#### C. Vacancy—A vacancy occurring otherwise than by the expiration of term shall be filled for the remainder of the unexpired term in the same manner as an original appointment.

#### D. Removal—Any member of the Board of Adjustment may be removed from office by the Commissioners for cause after a hearing by a majority vote of all the elected Commissioners.

#### E. Election of Chairperson and Secretary.

- (1) The Board of Adjustment, once confirmed by a majority vote of the Commissioners of the Town of Bellefonte, shall elect from among their own number a Chairperson and a Secretary.
- (2) Each year after appointment or reappointment of a member, the Board of Adjustment shall elect a Chairperson and Secretary.

### § 9-03. Board to Adopt Rules

#### A. The Board of Adjustment shall adopt rules as to the manner of filing appeals and applications, for the conducting of hearings, and for the giving of such notice or notices as may be required or deemed advisable by the Board.

#### B. All of the rules and regulations shall conform to the requirements of State law and all ordinances governing the Town of Bellefonte.

#### C. Rules of conduct may be adopted or amended by majority vote of the Board of Adjustment.

### § 9-04. Summary of Powers and Responsibilities

#### A. Appeals.

- (1) To hear and decide appeals from any decision or act of any administrative officer or Building Inspector in connection with any matter under this Land Use Code pursuant to Title 22, § 327 of the Delaware Code, except as relating to property maintenance, which is under the jurisdiction of the County pursuant to Ordinance 2005-3.
- (2) To hear any appeal of any decision of the Building Inspector as permitted by law or ordinance including any fine, violation notice, or cease and desist order issued by the Building Inspector pursuant to Article 11. except as relating to property maintenance, which is under the jurisdiction of the County pursuant to Ordinance 2005-3.
- (3) To hear and decide any appeal, matter, or application proscribed by State law or Town Ordinance that permits an appeal to or decision by the Board of Adjustment, except as relating to property maintenance, which is under the jurisdiction of the County pursuant to Ordinance 2005-3.

- B. Extensions and Changes of Nonconforming Uses.
  - (1) To authorize, after public notice and hearing, the extension of a nonconforming use or building, in cases where such extension is for a use which is a necessary incident to the existing use, and does not exceed in value 50% of the replacement valuation of existing buildings.
  - (2) To authorize the change of a nonconforming use to another nonconforming use which is not more detrimental to the neighborhood; or the alteration of a nonconforming building; but not the extension of a nonconforming building in connection with a change of use, unless the extension itself be conforming in its use and construction.
- C. Certification of Nonconforming Status—To certify the nonconforming status of a property or a situation as legal upon finding that sufficient evidence exists to substantiate the legal existence of the nonconforming situation pursuant to Article 7.
- D. District Boundary Locations—To determine the correct location of district boundaries in any disputed case pursuant to § 1-10.C.
- E. Vested-Rights Exemptions—To hear and decide applications from any person, entity, owner or equitable owner of property not otherwise exempted from the requirements of this Land Use Code, who asserts a vested right to continue development under the ordinances, regulations, laws, policies, standards, or fee structures in place immediately before the adoption of this Land Use Code or any amendment thereto pursuant to the standards in § 1-12.D.
- F. Beneficial-Use Appeals—To hear and decide applications for beneficial-use appeals where it is alleged that no beneficial use remains in a property and that some level of relief from this Land Use Code is warranted.
- G. Special Exceptions—To hear and decide applications for special exceptions pursuant to Title 22, § 327 of the *Delaware Code*.
- H. Variances—To hear and decide applications for variance from the strict application of this Land Use Code (as amended) pursuant to Title 22, § 327 of the *Delaware Code*.

#### **§ 9-05. Conduct of Hearings**

- A. The Board of Adjustment shall hold a public hearing on each application, petition, or appeal that it is authorized to hear.
- B. At such hearing, any resident or property owner of the Town of Bellefonte may appear in person or by agent, or by counsel.
- C. The Board of Adjustment shall consider all testimony offered by any witnesses in rendering its decision.
- D. The decision of the Board of Adjustment shall be in writing and a copy thereof shall be sent to the parties in interest.
- E. The written decision of the Town of Bellefonte shall be final upon the filing of the decision in the office of the Board of Adjustment.
- F. In exercising its powers, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify, any order, requirement, decision, or determination appealed from, and to that end shall have all the powers of the officer from whom the appeal is taken
- G. Approval of an application or appeal by the Board of Adjustment does not supersede or obviate the need for complying with any other applicable ordinance, standards, approvals, or review procedures.

#### **§ 9-06. Appeals; Hearing on Reversal; Limitation on Reapplication**

- A. Appeal to a Court of Law or Equity—Any party aggrieved by any decision of the Board of Adjustment shall have the remedies prescribed by State law. Any applicant appealing a decision of the Board of Adjustment shall be required to pay the full cost of preparing the record for appeal.
- B. Limitation on Reapplications—The Board of Adjustment shall not hear or accept an application requesting the same relief or permission for the same property for a period of 12 months from the date that the Board of Adjustment took action on the application.

**§ 9-07. Filing Applications**

- A. Filing—Applications shall be filed in the office of the Board of Adjustment, or with appropriate Town staff as designated by the Board. The Board, or Town staff as designated by the Board, may provide forms to facilitate application processing.
- B. Content—Applications shall be made in writing and shall provide the following information.
- (1) Information about the owner and applicant;
  - (2) Statement of the type of relief, permission, or review requested;
  - (3) Information about the property for which the application or review is being made;
  - (4) Information to support the application;
    - (a) Information about the property for which the application or review is requested; or
    - (b) Identification of the provisions of this Land Use Code, with which the application must comply, and statements as to how the application complies with those provisions;
  - (5) Plans or drawings that support or clarify the relief, review, or permission requested;
  - (6) Other information requested by the Board of Adjustment, including, but not limited to, survey information.
- C. Incomplete Applications.
- (1) No application is complete until all required items are received and applicable fees are paid in full.
  - (2) Incomplete applications may be rejected, and the application shall not be deemed filed until the applicable fee is paid in full.
- D. Burden of Proof on Applicant—Every applicant shall have the burden of presenting the information needed by the Board of Adjustment to make a determination.

**§ 9-08. Fee**

The fee for any variance request, appeal, vested rights exemption, beneficial use appeal, special exception, or any other matter to be heard by the Board of Adjustment is \$700.00 to cover administrative and advertising costs. No variance request, appeal, vested rights exemption, beneficial use appeal, special exception, or any other matter to be heard by the Board of Adjustment shall be considered filed until the application fee is paid in full.

**§ 9-09. Public Notice Provisions**

- A. Newspaper Notice—The Town shall advertise the public hearing in a newspaper of general circulation. The notice shall appear at least 15 calendar days prior to the public hearing date and shall contain the following information:
- (1) The type of application;
  - (2) A short description of the proposed action;
  - (3) A description of the parcel and the approximate street location or address;
  - (4) The location, date, and time of the public hearing;
  - (5) Information on where full details of the application may be obtained, including the hours of availability and phone number.
- B. Notice to Owner/Applicant—The Town shall notify by regular mail the owner and/or applicant of the time and place of the public hearing.
- C. Notice to Nearby Property Owners—The Town shall send by regular mail a copy of the public hearing notice to the last known address of all property owners within a 100-foot radius of the property measured at each property line or 12 different property owners, whichever is greater; no fewer than 15 calendar days prior to the public hearing. The notice shall contain the same information as in the newspaper notice.
- D. Property-Posted Notice—The applicant shall erect a sign giving notice of a public hearing on all subject properties at least 10 days in advance of a public hearing.

- (1) Location—The posted sign shall be placed in a conspicuous location (no greater than 7 feet from a residential or local road right-of-way, and no greater than 10 feet from a collector or arterial right-of-way); one (1) along each adjacent right-of-way and shall be perpendicular to the street so as to be clearly visible to the public. The Town shall have the discretion to require the applicant to move the posted sign to a more acceptable location if the Town determines that the location is inappropriate for public viewing. The Town shall also have the discretion to permit only one (1) posted sign on corner lots of less than one (1) acre.
  - (2) Size—The posted sign shall be double-faced and each side shall consist of a 4-foot by 4-foot laminated sign with a yellow background with two (2) inch black lettering in a sans serif typeface. If a posted sign already exists at the site, the notice for the public hearing may be affixed to the existing sign.
  - (3) Contents—The sign shall display prominently the applicant's name, type of application, tax parcel number(s) and the date, time, and location of the hearing.
  - (4) Maintenance—The applicant shall be responsible to clean or replace any posted sign no more than once which has been defaced to the extent that the information to be conveyed is no longer legible.
  - (5) Proof of Posting—The applicant shall provide the Town with photographic proof of posting and a signed affidavit prior to the public hearing. Failure of any such posted notice to remain in place after the notice has been posted shall not be deemed a failure to comply with these standards or be grounds to challenge the validity of any decision made on the application unless the notice was removed by the applicant or at his or her direction.
  - (6) Removal—The applicant shall remove the posted sign no later than 10 days after the public hearing being advertised has been completed. If the posted notice sign is giving notice of other public hearings concerning the property, the posted notice sign shall remain until after the hearings have taken place.
- E. Posting at Town Hall—Notice shall be posted at Town Hall no fewer than 15 calendar days prior to the hearing and shall contain the same information as required for the newspaper notice.

#### **§ 9-10. Appeals**

- A. Procedure for Filing an Appeal—Any person aggrieved or affected by any decision of the Building Inspector may appeal from such decision to the Board of Adjustment as provided by law.
- (1) Notice of appeal, specifying the grounds thereof, shall be given in writing to the Building Inspector and to the Board of Adjustment within 30 days from the date of the decision of the Building Inspector.
  - (2) Thereupon, the Board of Adjustment shall hold a public hearing on the appeal within 45 days of the filing of the appeal and shall publish notice of said hearing in a newspaper generally circulated in the Town of Bellefonte, at least once before said hearing.
- B. Stay of Proceedings—An appeal stays all proceedings in furtherance of the action appealed from unless the Building Inspector certifies to the Board of Adjustment that a stay would cause imminent peril to life or property. In such a case, proceedings shall be stayed only by a restraining order granted by the Board of Adjustment or a court having jurisdiction.
- C. Special Appeal Procedure For Property Maintenance Related Permits—Pursuant to Ordinance 2005-3, New Castle County has property maintenance jurisdiction within the Town of Bellefonte. Any permit sought by and granted to New Castle County or its designated agents or contractors to rectify any property maintenance violation within the Town of Bellefonte shall be appealed in and through the New Castle County appeal and review process. The Bellefonte Board of Adjustment shall have no jurisdiction to hear appeals concerning permits granted by Bellefonte, even permits granted by the Bellefonte Building Inspector, if such permits are initiated by New Castle County through the County's property maintenance jurisdiction, unless the Building Inspector issues a stop work order or determines that the work being performed is done in violation of Bellefonte standards set forth in

Ordinance 2006-3 or other laws of the Town of Bellefonte. It is intended that this provision is to clarify the existing law, shall supersede any inconsistent provision in Ordinance 2006-3, and is intended to apply retroactively to the adoption of Ordinance 2006-3.

**§ 9-11. Beneficial Use Appeals**

- A. Who May Apply—A landowner who alleges that the application of this Land Use Code denies all, or substantially all, economically viable use of property may apply for relief after exhausting all other available avenues of appeal (including variance requests) to the Board of Adjustment.
- B. Application Details—In addition to the general information required in § 9-07, the following data shall accompany all applications for a beneficial use appeal:
- (1) Documentation of the purchase date and price of the property;
  - (2) A description of the physical features of the property, total acreage, and present use, the use of the property at the time of the adoption of this Land Use Code or amendment thereto, and any known prior uses;
  - (3) A description of the specific portions of this Land Use Code which allegedly eliminate all or substantially all economically viable use of the property, together with all appraisals, studies, any other supporting evidence, and any actions taken by the Town related to the property;
  - (4) A description of the use which the landowner believes represents the minimum beneficial use of the property and all documentation, studies, and other evidence supporting that position;
  - (5) If the property has been listed for sale since the adoption of this Land Use Code or amendment thereto, originals or copies of all bids, offers-to-purchase, and other correspondence regarding the sale of such property.
- C. Deprivation Standards—In determining if a landowner has been deprived of the beneficial use of property, the Board of Adjustment shall take into account the following factors:
- (1) Diminution in Value—The property value, prior to the adoption of this Land Use Code, shall be compared to the property value with the regulations as applied. A mere decrease in value does not deprive the landowner of all or substantially all beneficial use of property. The diminution in value must be such that it effectively deprives the landowner of all or substantially all viable use or enjoyment of the property;
  - (2) Common Land Uses—A use common to the Town and/or the area of the subject site, although it may not involve further development of the land, may be considered a beneficial use. Attention shall also be given to land uses considered to be the lowest intensity in the Town or adjoining areas, but which uses still provide for occupation and living by the landowner;
  - (3) Subsidy—A minimum beneficial use of the land may be a use where a governmental subsidy is provided. If such a subsidy exists, its value should be reflected in the considered minimum beneficial use on a valuation basis. The cumulative public costs of a subsidy should be considered payment to the landowner for the restriction on the property if the annual subsidy enhances the economic return of the existing use to the landowner. The value of the proposed use shall be adjusted to reflect the degree to which a subsidy enhances the property value by determining the value of the use without the subsidy;
  - (4) Adverse Impacts—The extent to which this Land Use Code protects users, future users, or neighbors from threats to health, safety or general welfare shall be considered. A use that seriously threatens the health, safety or general welfare of current or future residents or neighbors shall not be considered a use the property owner is entitled to enjoy and shall not, when restricted by the Land Use Code, constitute a denial of all or substantially all economic viable use of the property;
  - (5) Expectations—Expectations shall, in general, not be considered. Only expectations backed by reasonable investments made prior to the adoption date of the regulations in question may be considered.

- (6) Nuisances—In no case shall a use that is a nuisance per se, or a use that in that particular location constitutes a nuisance, constitute grounds for relief;
- (7) Other—The Board of Adjustment may also take into account any factors that have been considered by a federal court or a Delaware court in determining whether all, or substantially all, economic use of a property has been denied a landowner who has made a takings claim pursuant to the federal or state Constitution.

D. Granting Relief.

- (1) If the finding is that a landowner has been denied all or substantially all economic viable use of the property, the Board of Adjustment shall grant relief. In the alternative, the Board of Adjustment may also find that some beneficial use of the property remains. The Board of Adjustment shall grant only that level of relief necessary to provide for a beneficial use of the property.
- (2) Minimum Increase—In granting relief, the landowner shall be given the minimum increase in use intensity or other possible concessions from this Land Use Code to permit a beneficial use of the land. The following guidelines shall be used to determine the minimum beneficial use of the property.
  - (a) The reality of limited development potential, given the natural condition of the property, shall not be attributed to the regulations applied to the property.
  - (b) The potential for damages to either future residents or property shall be assessed in determining a beneficial use. Conditions shall be placed on sites where damage from hazardous conditions is likely. The conditions may include location restrictions, size limitations, and increased building standards.

**§ 9-12. Variances**

- A. Definition—Relief from the strict application of the provisions of this Land Use Code when, owing to special conditions or exceptional situations, a literal interpretation of this Land Use Code will result in exceptional practical difficulties to the property owner.
- B. Required Findings—Pursuant to Title 22, Section 327 of the *Delaware Code* and applicable law, the Board of Adjustment shall determine whether each variance application meets the statutory and common-law standards for the grant of the variance.
  - (1) The variance relates to a specific parcel of land, and the hardship is not shared generally by other properties in the same zoning district and vicinity.
  - (2) The variance can be granted without substantial detriment to the public good.
  - (3) The benefits from granting the variance would substantially outweigh any detriment.
  - (4) Approval of the variance would not substantially impair the intent and purposes of the comprehensive plan or this Land Use Code.
- C. Additional Considerations—The Board of Adjustment shall also consider at least the following factors in reaching its decision on each variance application;
  - (1) Nature of the zone where the property lies;
  - (2) Character of the immediate vicinity;
  - (3) Whether the restrictions, if lifted, would affect neighboring properties and uses;
  - (4) Whether the restriction would tend to create a hardship on owner in relation to normal improvements.
- D. Additional Standards.
  - (1) Use Variances—Use variances may be granted only when such use variances strictly comply with the requirements for use variance under Delaware law. These provisions governing use variances shall not be construed to permit the Board of Adjustment, under the guise of a variance, to authorize a use of land not otherwise permitted in this Land-Use and Development Code.

**§ 9-13. Special Exceptions**

- A. Definition—A use permitted in a particular zoning district when it is shown that such use in a specified location will comply with all the conditions and standards for the location or operation of the use as specified in this Land Use Code and authorized by the Board of Adjustment.
- B. Required Findings—The Board of Adjustment shall determine whether each Special Exception application meets the following conditions:
- (1) Is in harmony with the purposes and intent of the comprehensive plan;
  - (2) Will be in harmony with the general character of its neighborhood considering density, design, bulk, and scale of proposed new structures;
  - (3) Will not be detrimental to the use, peaceful enjoyment, economic value, or development of surrounding properties;
  - (4) Will not cause objectionable noise, vibrations, fumes, odors, dust, glare, or physical activity.
  - (5) Will have no detrimental effect on vehicular or pedestrian traffic;
  - (6) Will not adversely affect the health, safety, security, or general welfare of residents, visitors, or workers in the area;
  - (7) Complies with all other applicable standards, laws, and regulations in addition to the provisions of this Land Use Code;
  - (8) Meets all other additional requirements for certain special exceptions in § 9-13.C.
- C. Additional Required Findings for Certain Special Exceptions—In addition to the required findings in § 9-13.B, the Board of Adjustment shall also determine whether each special exception application in this Subsection meets its applicable conditions.
- (1) Commercial Communications Tower.
    - (a) New Freestanding Tower/Monopole.
      - [1] In Residential Districts—Any new freestanding tower/monopole in any residential district requires a minimum lot size of 1 acre
      - [2] In Mixed Use Districts—No minimum lot size is required, however, any new freestanding tower/monopole proposed to be erected within five hundred (500) feet of any residentially zoned lot, improved or which can be improved with a residential dwelling unit.
    - (b) Co-Location—Co-location of telecommunication equipment (such as antenna) in any zoning district on existing or replacement freestanding towers/monopoles, buildings, water towers/tanks, pole signs, lighting standards, silos, smokestacks, steeples, billboards, telephone poles, and other similar structures is preferred.
    - (c) Submission Requirements.
      - [1] In addition to any other information required in this Land Use Code in connection with an application for a commercial telecommunications facility, all applicants shall submit a site plan and appropriate written documentation demonstrating compliance with the applicable conditions listed in this Section. Any application for a new tower/monopole shall include documentation substantiating the need for such tower at the proposed location and shall include an area map showing the location of all known commercial communication towers/antenna within a 1-mile radius of the proposed facility.
      - [2] Required Documentation.
        - [a] Evidence that no existing facilities are located within the area targeted to be served and which meet the applicant's engineering requirement.
        - [b] Evidence that existing facilities do not have sufficient height or cannot be increased to a height at a reasonable cost to meet the applicant's engineering requirements.
        - [c] Evidence that existing facilities do not have sufficient structural strength or space to support the proposed antenna and related equipment and that those existing facilities cannot be reinforced at a reasonable cost to accommodate new equipment.

- [d] Evidence that applicant's antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures or the antenna or equipment on the existing facility would cause interference with the applicant's proposed antenna.
- [e] Evidence of non-cooperation of landowners for alternative sites that might have been a better location.

**Article 10. Amendment****§ 10-01. Text and Map Amendments****A. Types of Amendments.**

- (1) Text Amendment—Addition, supplement, change, or modification to the text of this Land Use Code.
- (2) Zoning Map Amendment—Addition, supplement, change, or modification to the Zoning map
  - (a) Comprehensive Rezoning—Rezoning of the entire municipality following the adoption of a comprehensive plan pursuant to Title 22 Section 702(c) of the *Delaware Code* or amendments thereto.
  - (b) Local Rezoning—Change(s) in zoning district(s) for one or more parcels outside of the comprehensive rezoning process.

**B. Initiation.**

- (1) By Town Commissioners—The Town Commissioners may amend, supplement, change, or modify the number, shape, area, boundaries of the zoning districts (Rezoning or Zoning map Amendment), or may amend, supplement, change, or modify the text of the regulations (Text Amendment) contained in this Land Use Code by subsequent ordinance.
- (2) By Property Owner—A petition for change or amendment by a property owner shall be submitted to the Town Commissioners and contain the following information.
  - (a) For an Amendment to the Zoning Map (Local Rezoning).
    - [1] A metes and bounds description of the property.
    - [2] A recent survey plot of the property.
    - [3] A statement of the change requested and grounds to support it.
    - [4] A petition fee payable to The Town of Bellefonte in the amount of \$1,000.
    - [5] A certified list of all property owners and their addresses within 100 feet of the property which is the subject matter of the petition.
    - [6] Property owner's name, signature, address, telephone number, and other contact information.
  - (b) For an Amendment to the Text of this Land Use Code—A description of the proposed changes.

**§ 10-02. Public Hearing**

- A. Town Commissioners to Hold Hearing—Pursuant to Title 22, § 304 of the *Delaware Code*, the Town Commissioners shall hold a public hearing on each ordinance proposing an amendment to the text of this Land Use Code or a change in the zoning map.
- B. Conduct of Public Hearing.—All interested parties and citizens shall be given an opportunity to be heard, but presentation times may be limited as directed by the Town Commissioners.
- C. Review Criteria.
  - (1) Text Amendment.
    - (a) The relationship of the proposed change to the general purpose and intent of this Land Use Code and the comprehensive plan and associated maps.
    - (b) Information as to why the existing zoning text should be changed.
  - (2) Comprehensive Rezoning—Pursuant to Title 22, § 702(c), land shall be placed only in a zoning classification that is in accordance with the uses of land provided for in the Comprehensive plan and associated maps.
  - (3) Local Map Rezoning.
    - (a) Facts existing in the vicinity of the proposed change and the relationship of the proposed change to the general purpose and intent of the comprehensive plan.
    - (b) Whether the proposed zoning classification is in accordance with the land uses provided for in the comprehensive plan.

**§ 10-03. Public Notice Provisions for Comprehensive Rezoning**

- A. Newspaper Notice—The Town shall advertise the public hearing in a newspaper of general circulation. The notice shall appear at least 15 calendar days prior to the public hearing date and shall contain the following information.
- B. Mailed Notice—The Town shall send notice by regular mail to the last known address of all property owners whose zoning district is proposed to be changed no fewer than 15 calendar days prior to the public hearing.
- C. Town Hall Posted Notice—Notice shall be posted at Town Hall and shall contain the same information as required for the newspaper advertisement.

**§ 10-04. Public Notice Provisions for Local Rezoning**

- A. Newspaper Notice—The Town shall advertise the public hearing in a newspaper of general circulation. The notice shall appear at least 15 calendar days prior to the public hearing date and shall contain the following information.
  - (1) The type of application.
  - (2) A short description of the proposed action.
  - (3) A description of the parcel and the approximate street location or address.
  - (4) The location, date, and time of the public hearing.
  - (5) Information on where full details of the application may be obtained, including the hours of availability and phone number.
- B. Notice to Owner/Applicant—The Town shall notify by regular mail the owner and/or applicant of the time and place of the public hearing.
- C. Notice to Nearby Property Owners—The Town shall send by regular mail a copy of the public hearing notice to the last known address of all property owners within a 100-foot radius of the property measured at each property line or 12 different property owners, whichever is greater; no fewer than 15 calendar days prior to the public hearing. The notice shall contain the same information as in the newspaper notice.
- D. Property-Posted Notice—The applicant shall erect a sign giving notice of a public hearing on all subject properties at least 10 calendar days in advance of a public hearing.
  - (1) Location—The posted sign shall be placed in a conspicuous location (no greater than 7 feet from a residential or local road right-of-way, and no greater than 10 feet from a collector or arterial right-of-way); one (1) along each adjacent right-of-way and shall be perpendicular to the street so as to be clearly visible to the public. The Town shall have the discretion to require the applicant to move the posted sign to a more acceptable location if the Town determines that the location is inappropriate for public viewing. The Town shall also have the discretion to permit only one (1) posted sign on corner lots of less than one (1) acre.
  - (2) Size—The posted sign shall be double-faced and each side shall consist of a 4-foot by 4-foot laminated sign with a yellow background with two (2) inch black lettering in a sans serif typeface. If a posted sign already exists at the site, the notice for the public hearing may be affixed to the existing sign.
  - (3) Contents—The sign shall display prominently the applicant's name, type of application, tax parcel number(s) and the date, time, and location of the hearing.
  - (4) Maintenance—The applicant shall be responsible to clean or replace any posted sign no more than once which has been defaced to the extent that the information to be conveyed is no longer legible.
  - (5) Proof of Posting—The applicant shall provide the Town with photographic proof of posting and a signed affidavit prior to the public hearing. Failure of any such notice to remain in place after the notice has been posted shall not be deemed a failure to comply with these standards or be grounds to challenge the validity of any decision made on the application unless the notice was removed by the applicant or at his or her direction.

- (6) Removal—The applicant shall remove the posted sign no later than 10 days after the public hearing being advertised has been completed. If the posted notice sign is giving notice of other public hearings concerning the property, the posted notice sign shall remain until after the hearings have taken place.
- E. Posting at Town Hall—Notice shall be posted at Town Hall no fewer than 15 calendar days prior to the hearing and shall contain the same information as required for the newspaper notice.

**§ 10-05. Approval and Adoption**

- A. An amendment to the text of this Land Use Code or changes to the zoning map shall be made by Ordinance.
- B. Notice of Adoption—Following the adoption or denial of an amendment to the text of this Land Use Code or the zoning map, notice of such action shall be published in an official newspaper of general circulation in the Town.

**§ 10-06. Limitation on Reapplication**

Whenever a petition requesting an amendment, supplement or change has been denied by the Town Commissioners, such petition, or one substantially similar, shall not be reconsidered sooner than one year after the previous denial.

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**Article 11. Violations and Penalties****§ 11-01. Violations Enumerated**

The following actions shall be violations of this Land Use Code.

- A. Failure to secure a building permit, certificate of zoning compliance, temporary-use permit sign permit, or certificate from the Board of Adjustment, when required, previous to the erection, construction, extension, or demolition of, or addition to, a building.
- B. Failure to secure a certificate of occupancy or certificate of compliance.

**§ 11-02. Who Shall Be Liable**

Any person or entity who knowingly commits, takes part or assists in, any violation or who maintains any buildings or premises in which a violation exists, including, but not limited to, the following:

- A. The owner, general agent or contractor of a building or premises where such violation has been committed or shall exist, and
- B. The lessee or tenant of an entire building or entire premises where such violation has been committed or shall exist, and
- C. The owner, general agent, contractor, lessee or tenant of any part of a building or premises in which such violation has been committed or shall exist, and
- D. The general agent, architect, builder, contractor or any other similar person.

**§ 11-03. Unlawful Construction Declared Nuisance**

Any building or portion thereof or part of foundation wall hereafter erected or placed upon any lot or premises within the Town in violation of the provisions of this Land Use Code is hereby declared to be a common and public nuisance and may be abated in the same manner provided by the Charter or any other ordinance of The Town of Bellefonte for the abatement of any other nuisance in addition to the provisions of this Land Use Code.

**§ 11-04. Violation Abatement**

In addition to any other remedy provided by law, an appropriate action or proceeding, whether by legal process or otherwise, may be instituted to accomplish any or the following.

- A. Prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use.
- B. Restrain, correct, abate such violation.
- C. Prevent the occupancy of such building, structure or land.
- D. Prevent any illegal act, conduct, business or use in and about such premises.

**§ 11-05. Violation Notices and Cease and Desist Orders.**

- A. Whenever the Building Inspector determines that activity on any premises is being done in violation of this Land Use Code, the Building Inspector may issue a violation notice, or a cease and desist order that shall:
  - (1) Be in writing.
  - (2) Contain the address of the property or a description of the property sufficient for identification.
  - (3) State that the activity done in violation of this Land Use Code be immediately stopped.
  - (4) Include a clear statement of the reason or reasons why the order is being issued.
  - (5) State the conditions under which the activity will be permitted to resume.
  - (6) Be given to the owner, or the person or entity responsible for the property.
  - (7) Be physically posted upon the property.
- B. Effect of Issuance.
  - (1) Upon issuance of a violation or cease and desist order, all activity done in violation of this Land Use Code shall immediately cease.
  - (2) Any person, who shall continue any activity in violation of this Land Use Code after having been served with a violation notice or a cease and desist order, except such work as that person

or entity has been directed to perform in the violation notice or that is required to remove a violation of an unsafe condition under other provisions of this Code, shall be considered to be in violation of this Land Use Code and the Building Inspector may institute a fine for the maximum amount permitted.

**§ 11-06. Fines**

Any person or entity found in violation of this Land Use Code, or that violates the conditions of a violation notice or a cease and desist order issued by the Building Inspector, shall be subject to a fine by the Building Inspector of up to \$500.00 per day.

**§ 11-07. Each Day a Separate Offense**

Whenever the Building Inspector shall have notified a person by service of a notice in a prosecution or in any other way that he/she is committing such violation of this Land Use Code, each day that such violation continues shall be deemed a separate offense punishable by like fine or penalty.

**§ 11-08. Injunctive Relief**

The Town Solicitor or counsel hired by the Town may apply to the Court of Chancery for injunctive relief against any person or entity to prevent, abate, or enjoin any continuing violation of the provisions of this Land Use Code. If the Town obtains a temporary restraining order, or preliminary or permanent injunctive relief, the violator shall be responsible for any costs or expenses incurred (including attorneys' fees incurred by the Town or the Building Inspector) in preventing, abating, or enjoining any violations.

**§ 11-09. Effect of Outstanding Violations**

The Building Inspector may refuse to grant any further reviews of applications or building permits; perform inspections, or issue certificates of occupancy to the violator, to any corporation, partnership, joint venture, or other legal entity with which the violator has a controlling interest, or to any business entity formed by the violator in an attempt to circumvent the effect of any penalty. The Building Inspector is authorized to withhold additional reviews and permits only until the permit, license, or certificate holder remedies outstanding violations outlined in the violation notice or cease and desist order is rectified and the applicable fines and associated financial obligations to the Town are paid.

**§ 11-10. Collection of Fines**

If the violator fails to reimburse the Town for any fines, costs or attorneys' fees imposed for any violation of this Land Use Code, the Town may initiate any of the following actions.

- A. Place a lien against the property against which the cease and desist order was issued or upon which enforcement was sought.
- B. Institute a civil action for the recovery of such fines and charges, together and with any penalty and/or interest, against the person or entity responsible for the violation. The Town shall be awarded reasonable attorney fees and costs in any civil action to collect fines, fees and/or costs incurred by the Town.

**§ 11-11. Appeal**

Any fine, violation notice, or cease and desist order issued by the Building Inspector may be appealed to the Board of Adjustment as authorized by Article 9. and Ordinance 2006-3.

**Article 12. Definitions**

**ADJACENT**—Physically touching or bordering upon; sharing a common boundary, but not overlapping.

**ALTERATION**—Any change in or rearrangement of the supporting members of an existing building, such as bearing walls, columns, beams, girders, or interior partitions, as well as any change in doors, windows, means of ingress or egress, or any enlargement to or diminution of a building or structure, whether horizontally or vertically, or the moving of a building or structure from one location to another.

**APPLICANT**—Any individual, firm, partnership association, corporation, estate, trust, or any other group or combination acting as a unit that has filed an application for development; also includes agents of applicants.

**ARCHITECT**—An individual licensed to practice the profession of architecture by the State of Delaware.

**ATTIC**—That part of a building that is immediately below and wholly or partly within the roof framing.

**AUTOMOBILE**—A self-propelled, free-moving vehicle, with not more than 2 axles, usually used to transport passengers and licensed by the state as a passenger vehicle

**BASEMENT**—A story in a building having a floor partly below the finished grade but having more than 1/2 of its height (measured from the finished ceiling) above the average level of the finished grade where such grade abuts the exterior walls of the building. A basement shall be considered as one story in determining the permissible number of stories.

**BED AND BREAKFAST**—Overnight accommodations and a morning meal in a dwelling unit provided to transients for compensation.

**BUILDABLE AREA**—The area of a lot remaining after the minimum yard and open space requirements of this Land Use Code have been met.

**BUILDING**—Any structure having a roof supported by columns or walls intended for the shelter, housing, or enclosure of any individual, animal, process equipment, goods, or materials of any kind.

**BUILDING, ACCESSORY**—A subordinate structure on the same lot as a main building in which is conducted a use that is clearly incidental and subordinate to the lot's principal use. See Figure 4.

**BUILDING, PRINCIPAL**—A structure in which is located the primary use of the lot on which it is located. See Figure 4.

**BUILDING CODE**— Ordinance 2006-3 as amended from time to time.

**CEMETERY**—Property used for the internment of the dead.

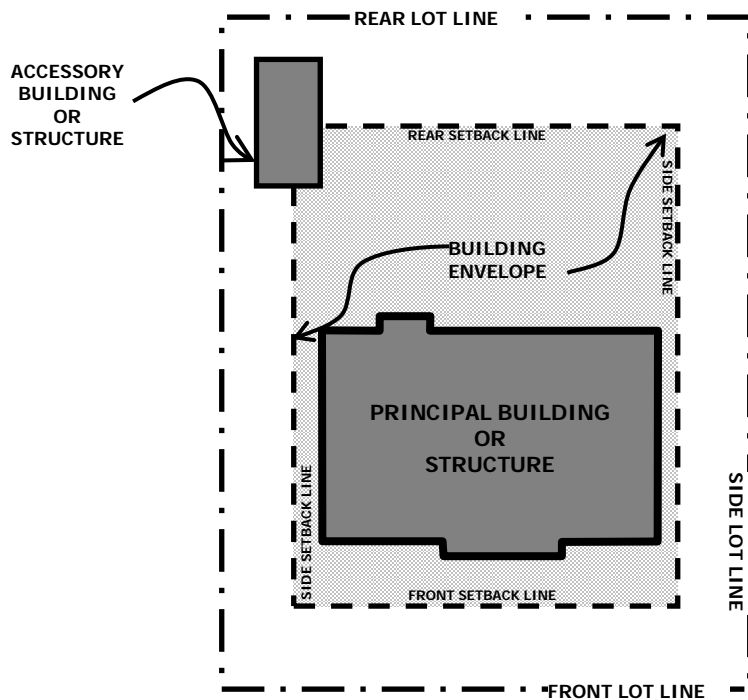
**COMMISSIONERS OF BELLEFONTE OR TOWN COMMISSIONERS**—The governing body of the Town of Bellefonte elected pursuant to Section 4 of the *Bellefonte Town Charter* as existing or amended subsequently.

**CLUB**—A group of people, organized for a social, educational, or recreational purpose, operating primarily neither for profit nor to render services customarily carried on by commercial businesses.

**COMMUNITY CENTER**—A facility used for recreational, social, educational, and cultural activities, open to the public or a designated part of the public.

**COMMUNITY FACILITY**—A building or structure owned and operated by a governmental agency to provide a governmental service to the public.

**CONDOMINIUM**—A legal form of real estate ownership—not a type of dwelling unit or building style—where a building, or group of buildings, in which dwelling units, offices, or floor area are owned individually, and the structure, common areas, and facilities are owned by all the owners on a proportional, undivided basis.

**Figure 4. Principal and Accessory Buildings and Structures**

**CONVENIENCE STORE**—Any retail sales establishment consisting of 5,000 square feet or fewer selling primarily food products, household items, newspapers, magazines, snacks, beverages, and a limited amount of freshly prepared foods, such as sandwiches and salads, for off-premises consumption.

**COUNTRY CLUB**—A recreational facility, usually restricted to members and their guests, which generally includes a clubhouse, dining and eating establishments, and recreational facilities such as golf courses, tennis courts, and swimming pools.

**COUNTY**—New Castle County, Delaware.

**DAY CARE CENTER**—An establishment providing for the care, supervision, and protection of persons away from their homes.

**DAY CARE CENTER, ADULT**—An establishment providing health, social, and related support services for the elderly and/or functionally impaired adults in a protective setting for part of a day, including, but not limited to, those centers licensed and regulated by the State Department of Health and Social Services pursuant to Title 16, Chapter 4402 of the *Delaware Administrative Code*.

**DAY CARE, CHILD**—Child day care includes the following types of facilities.

**FAMILY CHILD CARE HOME**—A private home in which care, education, protection, supervision, and guidance is provided on a regular basis for 1 to 6 children, including, but not limited to, those facilities licensed by the State Department of Services for Children, Youth and Their Families pursuant to Title 9, Chapter 103 of the *Delaware Code*.

**LARGE FAMILY CHILD CARE HOME**—A private home in which care, education, protection, supervision and guidance is provided on a regular basis for 7 to 12 children, including, but not limited to, those facilities licensed by the State Department of Services for Children, Youth and Their Families pursuant to Title 9, Chapter 104 of the *Delaware Code*.

**CHILD DAY CARE CENTER**—A place that provides care, protection, supervision and guidance for 13 or more children, including, but not limited to, those facilities licensed by the State Department of

Services for Children, Youth and Their Families pursuant to Title 9, Chapter 101, of the *Delaware Code*.

DEVELOPMENT—Development means any of the following:

- A. The construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure;
- B. Any mining excavation, landfill, or land disturbance;
- C. Any use, or extension of the use, of land.

DWELLING—A structure or portion thereof that is used exclusively for human habitation.

DWELLING, COMMERCIAL APARTMENT—A dwelling unit located in the same building and on the same lot as a building or structure containing office, retail, or other non-residential uses.

DWELLING, 1-FAMILY—A building containing 1 dwelling unit that is not attached to any other dwelling by any means, is surrounded by open space or yards, and does not have any roof, wall, or floor in common with any other dwelling unit.

DWELLING, 2-FAMILY—A building containing 2 dwelling units arranged side-by-side or one over the other.

DWELLING, MULTI-FAMILY—A building containing 3 or more dwelling units which may or may not share a single common entry and are located one over another, often called apartment buildings.

DWELLING UNIT—One (1) or more rooms, designed occupied or intended for occupancy as a separate living quarter, with cooking, sleeping, and sanitary facilities provided within the dwelling unit for the exclusive use of a single family, as defined in this Code, maintaining a household.

EASEMENT—Authorization by a property owner for another to use that owner's property for a specified purpose.

ENGINEER—An individual licensed to practice the profession of engineering by the State of Delaware.

FAMILY—A group of individuals not necessarily related by blood, marriage, adoption, or guardianship living together in a dwelling unit as a single-housekeeping unit. The term "single-housekeeping unit" means common use of and access to all living and eating areas, bathrooms, and food-preparation and serving areas. For purposes of this Land Use Code, the term "family" does not include any society, club, fraternity, sorority, association, lodge, federation, or similar organizations; or any group of individuals in group living arrangements as a result of criminal offenses.

FLOOR AREA, GROSS (GFA)—The sum of the gross horizontal areas of all enclosed floors of a building, including cellars, basements, mezzanines, penthouses, corridors, and lobbies from the exterior face of exterior walls, or from the centerline of a common wall separating 2 buildings, but excluding any space with a floor-to-ceiling height of less than 6 feet, 6 inches.

FLOOR AREA, NET—The total of all floor areas of a building, excluding stairwells and elevator shafts, equipment rooms, interior vehicular parking or loading, and all floors below the first or ground floor, except when these are used or intended to be used for human habitation or service to the public.

GARAGE—A deck, building, structure or part thereof, used for the parking and storage of vehicles.

GARAGE, DETACHED—A garage that is not attached to and does not have access from the principal building.

GARAGE, INTEGRATED—A garage that is attached to or a part of a principal building.

GARAGE, PRIVATE RESIDENTIAL—A structure that is accessory to a 1- or 2-family dwelling and used for the parking and storage of vehicles utilized by the residents of the 1- or 2-family dwelling, but not used as, a commercial enterprise available to the general public.

**GASOLINE STATION**—Any building, land area, premises, or portion thereof, where gasoline or other petroleum products or fuels are sold. Gasoline station shall not include premises where automobile maintenance activities such as engine or drive-train maintenance, automobile painting, and body or fender work are conducted.

**GASOLINE STATION AND CONVENIENCE STORE**—A gasoline station (*See definition in this Article*) and convenience store (*See definition in this Article*) located on the same lot and planned, operated, and maintained as an integrated planned development.

**GLARE**—A direct or reflected light source creating a harsh brilliance that causes the observer to squint or shield the eyes from the light.

**ILLUMINATION, INDIRECT**—A light source not seen directly, derived from an external artificial source so arranged that no direct rays of light are projected into a public street or adjoining property.

**ILLUMINATION, INTERNAL**—A light source concealed or contained within a sign which becomes visible in darkness through a translucent surface. Illumination must not shine onto adjoining property or in the eyes of motorists or pedestrians.

**INSTITUTIONAL USE**—A nonprofit, religious, or public use, such as a religious building, library, public or private school, hospital, or government-owned or-operated building, structure, or land used for public purpose.

**LANDSCAPE ARCHITECT**—An individual licensed to practice the profession of landscape architecture by the State of Delaware.

**LAND SURVEYOR**—An individual licensed to practice the profession of land surveying by the State of Delaware.

**LOT**—A designated parcel, tract, or area of land established either by plat, subdivision, or considered as a unit of property by virtue of a metes-and-bounds description, to be separately owned, used, developed, or built upon. Figure 5 illustrates the types of lots.

**LOT CHARACTERISTICS**—See Figure 5.

**LOT DEPTH**—The average distance measured from the front lot line to the rear lot line.

**LOT FRONTAGE**—The length of front lot line measured at the street right-of-way line.

**LOT WIDTH**—The horizontal distance between the side lines of a lot measured at right angles to its depth along a straight line parallel to the front lot line at the minimum required building setback line, i.e., the buildable width of a lot.

**LOT LINE**—A line of record bounding a lot that divides one lot from another lot, a public street, or any other public space. Figure 5 depicts lot lines.

**LOT LINE, FRONT**—The line separating a lot from a street right-of-way.

**LOT LINE, REAR**—The line opposite and most distant from the front lot line.

**LOT LINE, SIDE**—Any lot line other than a front or rear lot line.

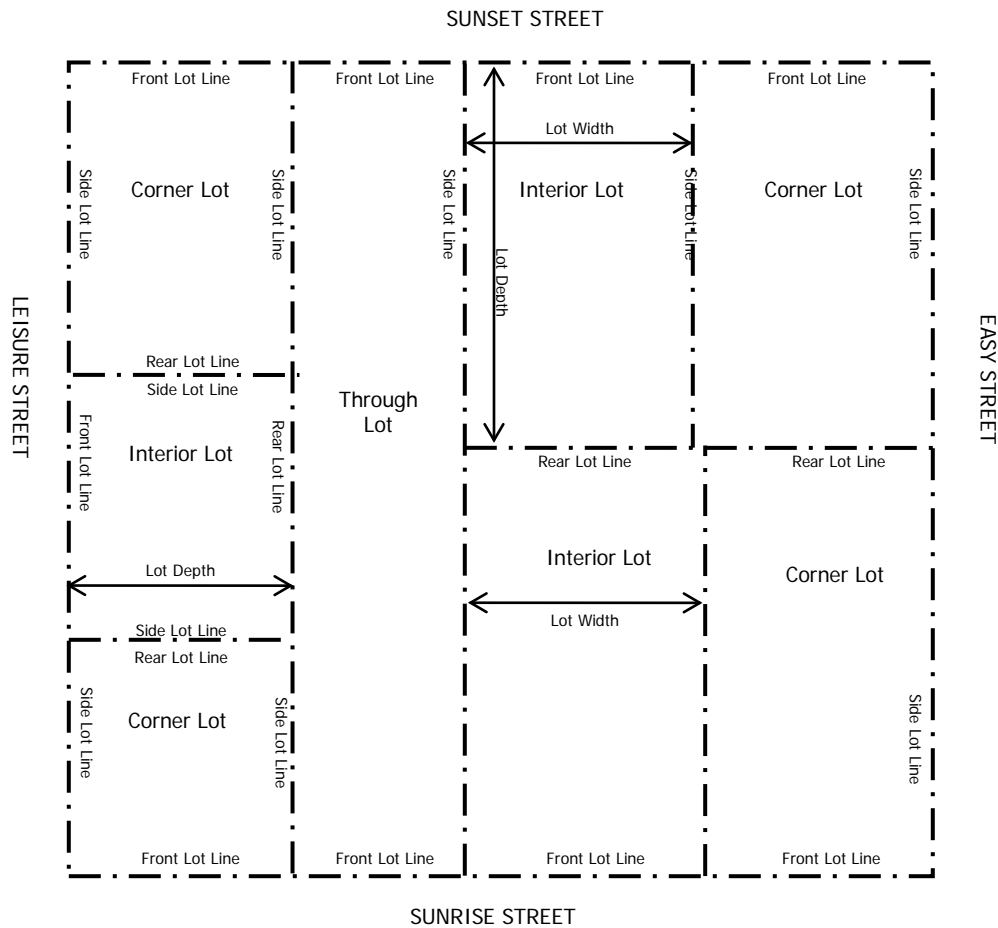
**LOT TYPES**—See Figure 5.

**LOT, CORNER**—A lot or parcel of land abutting upon 2 (two) or more streets at their intersection or upon 2 (two) parts of the same street forming an interior angle of less than 135 degrees.

**LOT, INTERIOR**—A lot other than a corner lot.

**LOT, THROUGH**—A lot that fronts on either 2 (two) parallel streets or two streets that do not intersect at the boundaries of the lot, i.e., a corner lot; also called a double-frontage lot.

**Figure 5. Lot Characteristics, Lines, and Types**



**LOT, IMPROVED**—A lot with buildings or structures.

**LOT, MINIMUM AREA OF (MINIMUM LOT SIZE)**—The smallest lot area on which a use or structure may be located in any zoning district.

**LOT, UNIMPROVED**—A lot having no buildings or structures.

**LOT of RECORD**—A lot that exists either by virtue of a metes and bounds description or by depiction on a plat or deed recorded in the Office of the New Castle County Recorder of Deeds.

**MEZZANINE**—An intermediate level between the floor and ceiling of any story and covering not more than 33% of the floor area of the room in which it is located.

**OFFICE**—A room or group of rooms used for conducting the affairs of a business, profession, service, industry, or government and generally furnished with desks, tables, files, and communications equipment.

**PLACE OF WORSHIP**—A building or structure, or groups of buildings or structures, that by design and construction are primarily intended for conducting organized religious services and associated accessory uses.

**PREMISES**—A lot, parcel, tract, or plot of land together with the buildings and structures on them.

**RESTAURANT**—(1) Establishments where food and drink are prepared, served, and sold primarily for consumption within the principal building; and (2) Establishments where food and/or beverages are sold in a form ready for consumption, where all or a significant portion of the consumption takes place or is designed to take place outside of the confines of the restaurant, and where ordering and pickup of food may take place from an automobile.

**RESTAURANT, FAST-FOOD**—An establishment whose principal business is the sale of pre-prepared or rapidly prepared food directly to the customer in a ready-to-consume state for consumption either within the restaurant building, in vehicles on the premises, or off the premises.

**RETAIL SALES**—Establishments engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods and whose characteristics include the following: (1) Usually business places engaged in activity to attract the general public to buy; (2) Buy and receive as well as sells merchandise; (3) May process or manufacture some products—a jeweler or a bakery—but processing is secondary to principal use; and (4) Generally sell to customers for personal or household use.

**RIGHT-OF-WAY**—Land occupied or intended to be occupied by a street, crosswalk, railroad, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, shade trees, or another special use.

**SERVICES**—Establishments primarily engaged in providing assistance, as opposed to products, to individuals, businesses, industry, government, and other enterprises, including hotels and other lodging places; personal, business, repair, and amusement services; health legal, engineering, and other professional services, educational services; membership organizations; and other miscellaneous services.

**SERVICES, BUSINESS**—Establishments primarily engaged in rendering services to business establishments on a fee or contract basis, such as advertising and mailing; building maintenance; employment services; management and consulting services; protective services; equipment rental and leasing; commercial research; development and testing; photo finishing; and personal-supply services.

**SERVICES, PERSONAL**—Establishments primarily engaged in providing services involving the care of a person or his/her personal goods or apparel, examples of which include, but not limited to, laundry, cleaning and pressing, beauty shops, shoe repair, and tailors.

**SETBACK**—The distance between a building or structure and any lot line.

**SETBACK LINE**—The line that is the required minimum distance from any lot line and that establishes the area within which the principal structure must be placed. See Figure 6.

**STATE**—The State of Delaware.

**STORY**—That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there is no floor above it, then the space between such floor and the ceiling next above it. A basement shall be counted as a story for the purpose of height measurement if its ceiling is over 5 feet above the level from which the height of the building is measured or if it is used for business purposes other than storage.

**STREET**—Any vehicular way that is: (1) an existing State, County, or Town roadway; (2) shown upon an approved plat; (3) approved by other official action; (4) shown on a plat duly filed and recorded in the Office of the New Castle County Recorder of Deeds prior to the grant of power to review plats. A street includes the land between the right-of-way lines, whether improved or unimproved.

**STRUCTURE**—A combination of materials that form a construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of land or water.

**TOWN**—“The Town of Bellefonte” as exists pursuant to Section 1 of the *Bellefonte Town Charter* as existing or amended subsequently.

USE—The purpose or activity for which land or buildings are designed, arranged, or intended or for which land or buildings are occupied or maintained.

USE, ACCESSORY—A use of land, or a building, or portion thereof, customarily incidental and subordinate to the principal use of the land or building and located on the same lot with the principal use.

USE, PRINCIPAL—The primary or predominant use of any lot or parcel.

YARD—An open space that lies between the principal building or buildings and the nearest lot line.

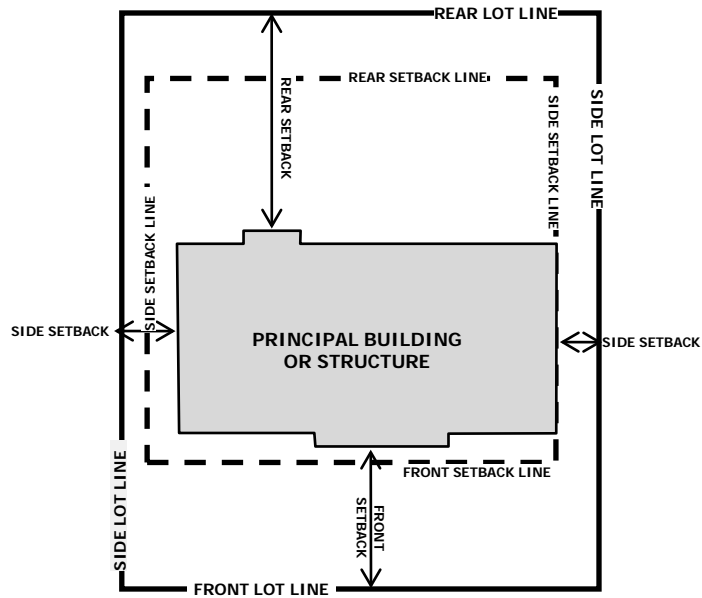
YARD, FRONT—A space extending the full width of the lot between any building and the front lot line and measured perpendicular to the building to the closest point of the front lot line

YARD, REAR—A space extending across the full width of the lot between the principal building and the rear lot line and measured perpendicular to the building to the closest point of the rear lot line

YARD, SIDE—A space extending from the front yard to the rear yard between the principal building and the side lot line and measured perpendicular from the side lot line to the closest point of the principal building.

ZONING DISTRICT—A specifically delineated area in the Town within which uniform regulations and requirements govern the use, placement, spacing, area, height, and bulk of land and buildings.

**Figure 6. Setbacks and Setback Line**



**Figure 7. Yards**

