

# ***ZONING ORDINANCE***

## ***TOWN OF MIDDLETOWN, VA***

### **CODES, CHANGES AND AMENDMENTS AS OF 2022**

**ZONING**

**CHAPTER 17**

**ZONING<sup>1</sup>**

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### **Article I. In General.**

#### **Section 17-1. Definitions**

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

**Access.** A public or private right-of-way providing the ability to enter, approach or pass to and from one area to another area.

**Accessory Structure.** A building subordinate to and located on the same lot with a main building, the use of which is clearly incidental to that of the main building or to the use of the land, and which is not attached by any part of a common wall or roof to the main building.

**Accessory Use.** A use of a building, lot or portion thereof, which is customarily incidental and subordinate to the principal use of the main building or the lot/

Administrator. The official charged with the administration and enforcement of this chapter.

Alley. A public right-of-way which affords pedestrian access and a secondary means of vehicular access to the side or rear of property.

All-Weather Surface. Crushed rock, gravel or similar surface.

Amendment. A change in this chapter and/or the zoning map granted by the town Council after review and comment by the Town Planning Commission.

Apartment House. A multi-family structure originally intended, arranged or designed to be occupied by three or more families, each in an individual dwelling unit and living independently of each other. The number of families in permanent residence shall not exceed the number of dwelling units provided. Entranceways through the structure to the units may be either common or separate, and each lot on which the building is located shall be held in single ownership, even though individual units may be sold in accordance with this chapter. Such term shall not include “row house” or “town house.”

Architect - Registered. A licensed professional architect, registered in the commonwealth by the department of professional and occupational registration as an “architect.”

Auction House. A commercial building where goods and other items are sold at public auction.

Automobile Graveyard. Any lot or place that is exposed to weather and upon which more than five vehicles of any kind that are incapable of being operated and which it would not be economically practical to make operative are placed, located or found. The movement or rearrangement of vehicles within an existing lot or facility does not render this definition inapplicable. The provisions established by this subsection shall begin with the first day that the vehicle is placed on the subject property.

Automobile Parking Lot - Commercial. A lot or portion thereof, other than an automobile sales lot, held out or used for the storage or parking of six or more motor vehicles for a consideration, where service or repair facilities are not permitted. Such parking lot shall not be considered an accessory use, nor shall be used for the storage of dismantled or wrecked motor vehicles, parts thereof or junk.

Automobile Sales Lots. A lot arranged, designed or used for the storage and display for sale of any new or used motor vehicle capable of independent operation or any type of travel trailer and recreation vehicle; provided, that the travel trailer and recreation vehicle is unoccupied, and where repair work is done wholly enclosed within a building.

Automobile Service Station. Any place of business with pumps and underground storage tanks, having as its purpose the servicing, at the retail, of motor vehicles but not including a paint or body shop, machine shop or vulcanizing shop. Major repairs undercover.

Bank. Any establishment, including an unmanned bank teller machine(s), wherein the primary occupation is concerned with such State regulated businesses as banking, savings and loan companies and investment companies. Any drive-in automatic teller machine(s) not ancillary to a bank or any bank having a drive-in window(s) or drive-in automatic bank teller machine(s) shall be deemed a drive-in facility as defined herein.

Basement. A story partly underground and having fifty percent or more of the total exterior wall area exposed. It shall not be occupied for residential purposes until the remainder of the building has been completed. A basement shall be counted as a story for the purpose of height requirements.

Bed and Breakfast (B&B) Establishment. A business consisting of a single-family dwelling that provides overnight accommodations for paying guests with no more than five (5) guest rooms for rent. Breakfast shall be provided to the guests only. The operator of the Bed and Breakfast Establishment shall be the owner or the owner's agent, who is required to reside in the Bed and Breakfast Establishment, or on contiguous property.

Block. The property bound on all sides by one side of a street or combination of street line, railroad right-of-way, unsubdivided land, river, live stream, stream bed or any other barrier to the continuity of development.

Board. The Town Board of Zoning Appeals.

Boardinghouse. A building where, for compensation, lodging and meals are provided for a least three and not more than thirteen persons. A boardinghouse is to be distinguished from a hotel. No provisions shall be made for cooking in individual rooms or suites.

Building. A structure having a roof, supported by columns or by walls and intended for the shelter, housing or enclosure of any person, animal or chattel. The word "building" shall include the word "structure."

Building Inspector. An official designated by the town or county to be responsible for certifying building inspections.

Building Scale. The relationship between the mass of a building and its surroundings, including the width of street, open space and mass of surrounding building. Mass is determined by the three-dimensional bulk of a structure; height, width and depth.

Caregiver - an adult who provides care for a mentally or physically impaired person within the Commonwealth. A caregiver shall be either related by blood, marriage or adoption to, or the legally appointed guardian of, the mentally or physically impaired person for whom he is caring. (9-12-11)

Cellar. A portion of a building having less than fifty percent of the total exterior wall area exposed. All portions of the total exterior wall area exposed shall be counted for the purpose of height requirements, but shall not be considered a story.

Cemetery. A place for burial of the human dead, or remains of the human dead.

Child Day Center. A state-licensed facility in which child day programs are offered to two or more children under the age of 13 years old in a facility that is not the residence of the provider or of any of the children in care or to 13 or more children at any location for only part of a twenty-four-hour period.

Clinic. An establishment where human patients who are not lodged overnight are admitted for examination or treatment by physicians or dentist.

Commission. See “Planning Commission.”

Common Open Space. An open tract or parcel of land, owned in undivided interest, not devoted to structures but directly related and adjunct to a development, as provided in this chapter.

Convalescent Home. See “nursing home.”

Coverage, Building or Lot Percentage Percentage of the total lot area which may be occupied by all buildings or located under projections from building. Parking area or patios constructed at ground level shall not be included in the calculation of coverage.

Density. The number of dwelling units permitted on one acre of land as specified in this chapter.

Development. The process of erecting or causing to be erected buildings or structures on a lot.

Distances. Unless otherwise specified, all distances shall be measured horizontally and at right angles to the line in relation to which the distance is specified.

Distillery. A site devoted to the production, warehousing and distribution of alcohol or spirits.

District. A portion of the town within which, on a uniform basis, only certain uses of land and buildings are permitted as set forth in this chapter, and within which certain lot areas and other uniform requirements are established.

Driveway. A space or area providing access specifically designated and reserved on a lot for the movement of vehicles from one lot to another or from a lot to a public street.

Drive-in Eating Establishment. Any place or premises used for the sale, dispensing or serving of food, refreshments or beverages in automobiles, including those establishments, where customers may serve themselves and may eat or drink the food, refreshments or beverages in motor vehicles on the premises; a refreshment stand, a “fast food” or, primarily, a “carry out” establishment. Food may also be eaten inside.

Duplex. A two-family residential structure, with each unit having its own exterior entrance and its own kitchen and bath facilities. The residential units may be arranged one above the other or be semi-detached.

Dwelling. A building or portion thereof which is used or intended to be used exclusively for human habitation. A dwelling shall be constructed in accordance with the State Building Code.

Dwelling, Attached. A dwelling having any portion of each of two walls in common with adjoining dwellings.

Dwelling, Detached. A dwelling which is entirely freestanding on the same lot.

Dwelling, Multi-Family. A structure originally arranged or designed to be composed of three or more dwelling units (an apartment house), with the number of families in residence not exceeding the number of dwelling units provided.

Dwelling, Semi-Detached. A dwelling having any portion of one wall in common with an adjoining dwelling.

Dwelling, Single-Family. A residential dwelling unit, other than a mobile home, designed for and occupied by one family.

Dwelling, Temporary. A portable dwelling not necessarily attached to a permanent foundation. These units shall be used only as specified in this chapter.

Dwelling, Two-Family. A residential building containing not more than two dwelling units within the single building, with such units arranged one above the other or side by side, and such structure designed for occupancy by not more than two families.

Dwelling, Unit. One room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly or longer basis, physically separated from any other rooms or dwelling units which may be in the same structure, containing independent cooking and sleeping facilities and containing not less than six hundred square feet of residential floor area. Each dwelling unit shall be constructed in accordance with the requirements of the State Building Code.

Easement. A grant by a property owner of the use of his land by another party for a specific purpose. The initial property owner in the agreement may be compensated for the use of his property.

Engineer, Registered. A licensed professional engineer, registered in the commonwealth by the Department of Professional and Occupational registrations as an “engineer.”

Family. One person, or a group of two or more persons, living together interrelated by bonds of consanguinity, marriage or legal adoption, occupying a dwelling unit, as a separate housekeeping unit with a common set of cooking facilities. The persons constituting a family may also include foster children and domestic servants.

Family Day Home Extended. Any child day program offered in the residence of the provider of the home of any of the children in care for 5 through 12 children in a twenty-four-hour period. Exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for whose care tuition fees or other forms of compensation is charged. Licensing by the Virginia Department of Social Services is required for any Family Day Home Extended. Family day homes with 1-4 children, exclusive of the provider's own children and any children who reside in the home shall be treated as a residential occupancy by a single family.

Farmers Market. A building, stalls, stands or place which is open to the general public for the sale of horticultural or agricultural products.

Fast Food Establishment. See "drive-in eating establishment.

Fence. A barrier, usually made of posts and wire, boards or masonry, intended to prevent escape or intrusion or to make a boundary. Trees, shrubbery or other foliage does not constitute "fence" under this definition.

Floodplain. Sections of land which are subject to periodic flooding and inundation, as defined or approved by the Department of Housing and Urban Development.

Floor Area. The "floor area" of a building is the sum of the gross horizontal areas of the floors of all buildings on the lot, such area to be measured from the interior faces of exterior walls. "Floor area" shall include the area of basements when used for residential, commercial or industrial purposes, but shall not include a basement or portion of a basement used for storage or housing of mechanical or central heating equipment.

Food Truck. A food truck is a mobile food establishment located in a motor vehicle or trailer licensed to operate by the Department of Motor Vehicles and the Virginia Health Department.

Frontage. Lot width at the setback line.

Funeral Parlor, Home or Mortuary. An establishment used for human funeral services, which includes facilities on the premises for embalming and may or may not include facilities for the performance of autopsies, other surgical procedures or cremation.

Garage, Communal. A garage used for the storage of vehicles for occupants of lots in the same block or adjacent blocks.

Garage, Private. An accessory building used for the storage of vehicles by the occupants of a lot on which such building is located.

Garage, Public. An accessory building, principal building or portion of principal building used only for the storage of four or more vehicles by others than only those occupants of a lot on which such building is located.

Garden Apartment House. A multi-family dwelling, not exceeding three stories in height, containing three or more separate dwelling units, having either common or separate entranceways on a lot held in single ownership, having yards in common, but which may also have other joint facilities and services. The term “garden apartment house” shall not be construed to include “row house” or “town house.”

Governing Body. The Town Council.

Hard Surface. Concrete, “black top” and macadam, or a similar surface.

Health Official (Officer). The director of the County Department of Health or his designated deputy, or a representative of the State Department of Health.

Height of Building. The vertical distance from the established grade of the center of the front of the building to the highest point of the roof surface of a flat roof, to the deck line for a mansard roof or to mean height level between the eaves and ridge for hip, gable and gambrel roofs.

Homeowners Association. A non-profit organization approved by the State Corporation Commission operating under recorded land agreements through which: (a) each lot/property and/or homeowner in a clustered or planned development is automatically a member, and (b) each lot is automatically subject to a charge for a proportionate share of the expenses for the organization’s activities, such as maintaining a common property, and (c) the charge if unpaid becomes a lien against the property.

Home Occupation. Any occupation, within a dwelling operating clearly as a secondary use, or within an accessory building carried on by members of the family residing on the premises; provided, that no person not a resident on the premises is employed.

- (a) No advertising sign shall be displayed. (08-11-99)
- (b) There shall be no exterior evidence that the building is being used for any purpose other than a dwelling.
- (c) There shall be no motor vehicle regularly operated from the premises that carries advertising relating to this home occupation larger than 2 sq. ft.
- (d) No traffic shall be generated by such home occupation in greater volume than would normally be expected in a residential neighborhood.

Hotel. A building designed or occupied as a temporary living place for fourteen or more individuals who are, for compensation, lodged, with or without meals, and in which no provision is made for cooking in individual rooms or suites.

Inoperable Motor Vehicle. Any motor vehicle which is not in operating condition, or any vehicle which for a period of 60 days or longer which has been partially or totally disassembled by the

removal of tires and wheels, the engine or other essential parts required for operation of the vehicle or any vehicle on which there are displayed neither valid license plates nor a valid inspection decal.

Junk. Old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris or waste; junked, dismantled or wrecked automobiles or parts thereof; and old or scrap iron, steel, or other ferrous or nonferrous material.

Junkyard. Any area, lot, land, parcel, building, or structure or part thereof used for the storage, collection, processing, purchase, sale or abandonment of junk, or the maintenance or operation of an automobile graveyard. "Junkyard" includes garbage dumps and sanitary landfills.

Landfill. A sanitary landfill site used for the disposal of solid wastes beneath layers of soil and other materials.

Land Use: Use of Land. The terms "land use" and "use of land" shall be deemed also to include "building use" and "use of building."

Laundromat. A building, or part thereof, where clothes or other house hold articles are washed or dry cleaned in self-service machines with a capacity for washing not exceeding twenty-five pounds dry weight, and where such washed clothes and articles may also be dried or ironed and no delivery service is provided in connection therewith.

Laundry. A building, or part thereof, other than a Laundromat, where clothes and other articles are washed, dried, ironed or dry cleaned.

Lot. A parcel of land occupied or to be occupied by a building and its accessory buildings, or by a use and its accessory uses, together with such open spaces as are required under the provisions of this chapter, having at least the minimum area required by this chapter for a lot in the zone in which such lot is situated and having its principal frontage on a street which has been approved by the town. The word "lot" includes the words "plot" and "parcel."

Lot, Corner. A lot abutting on two or more streets at their intersection.

Lot, Depth. The average of the horizontal distances between front and rear lines of a lot, measured perpendicular to the street line.

Lot, Interior. Any lot other than a corner lot.

Lot of Record. A lot which has been recorded in the office of the Clerk of the Circuit Court.

Lot, Through (double frontage). A lot, other than a corner lot, which has a frontage on two streets.

Lot, Width. The horizontal distance between the side lines of a lot, measured along the building setback line.

Junk. Old or scrap copper, brass, rope, batteries, paper, trash, rubber, debris or waste; junked, dismantled or wrecked automobiles or parts thereof; and old scrap iron, steel, or other ferrous or nonferrous material.

Junkyard. Any area, lot, land, parcel, building, or structure or part thereof used for the storage, collection, processing, purchase, sale or abandonment of junk, or the maintenance or operation of an automobile graveyard. “Junkyard” includes garbage dumps and sanitary landfills.

Manufacture and/or Manufacturing. The process and/or converting of raw, unfinished materials or products into articles or substances of different character, or for use for a different purpose.

Manufactured Home. Means a structure subject to Federal regulation which is transportable in one or more sections; is eight body feet or more in width and forty body feet or more in length in the traveling mode, or is 320 or more square feet when erected on site; is built on a permanent chassis; is designed to be used as a single family dwelling, with or without a permanent foundation, when connected to the required utilities; and includes the plumbing, heating, air conditioning and electrical systems contained in the structure. (4-8-99.)

Mentally or Physically Impaired Person – a person who is a resident of Virginia and who requires assistance with two or more activities of daily living, as defined in Virginia State Code §63.2-2200, as certified in writing provided by a physician licensed by the Commonwealth. (9-12-2011)

Mixed Use. A variety of complementary and integrated uses, including but not limited to residential, office, research & development, production, retail, public entertainment, conference and lodging uses arranged in a compact urban form.

Mobile Home. Means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or forty body feet or more in length or, when erected on site is 320 or more square feet, which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning and electrical systems contained therein. (4-8-99.)

Motel. An establishment consisting of a group of living or sleeping accommodations with bathroom and closet space located on a single zoning lot and designed for use by transient automobile tourists. Less than fifty percent of the living and sleeping accommodations are occupied or designed for occupancy by persons other than transient automobile tourists.

Nonconforming Activity (use). The otherwise legal use of a building, structure or tract of land that does not conform to the use regulations of this chapter for the district in which it is located either on September 26, 1978, or as a result of subsequent amendments to this chapter.

Nonconforming Lot. An otherwise legally platted lot that does not conform to the minimum area or width requirements of this chapter for the district in which it is located on September 26, 1978, or as a result of subsequent amendments to this chapter.

Nonconforming Structure. An otherwise legal building or structure that does not conform with the lot area, yard, height, lot coverage or other area regulations of this chapter, or is designed or intended for a use that does not conform to the use regulations of this chapter for the district in which it is located, either on September 26, 1978, or as a result of subsequent amendments to this chapter.

Nursing Home (Convalescent Home, Rest Home). A place containing beds for two or more patients, established to render live-in and/or nursing care for chronic or convalescent patients and which is properly licensed by the state, but not including child care homes or facilities for the care of drug addicts, alcoholics or other patients requiring more extensive and/or intensive care than is normally provided in a general hospital or other specialized hospitals. Such terms shall include group homes serving mentally retarded or other developmentally disabled persons.

Office. A use consisting of a building, room or group of rooms used for conducting the executive, management, or administrative affairs of a business, organization, institution, or government entity and/or for the provision of professional services.

Off-Street Parking Area. Space provided for vehicular parking outside of the dedicated street right-of-way.

Open Space, Usable Landscaped. That space on the same zoning lot and contiguous to the principal building, except as noted in this chapter, which is landscaped with shrubs, planted with grass or developed and maintained for recreation purposes, excluding that portion of the lot which is utilized for off-street parking.

Outside Storage. The keeping of goods, junk material, or merchandise outside of an enclosed building and in the same place.

Overhang. Any projection, whether roof, bay window or similar cantilevered construction, which extends beyond the foundation of a structure. No such construction shall project into any required yard more than three feet and no such projection shall have a vertical surface whose area is more than twenty-five percent of the area obtained by multiplying the main height of the structure by the length of the structure along the yard which is violated.

Parking Space. An area of not less than ten feet wide by twenty feet long, for each automobile or motor vehicle, such space being exclusive of necessary drives, aisles, entrances or exits, and being fully accessible for the storage or parking of vehicles.

Performance Bond. A bond of surety, cashier's check, line of credit, and/or cash deposit approved by the governing body equal to the full cost of improvements required by the this Zoning Ordinance and providing for completion of said improvements within a definite term.

Place of Worship. A structure or part thereof which is intended for organized religious services including but not limited to a church, synagogue or temple.

Planning Commission. The Town Planning Commission.

Porch. An open, unenclosed stoop or paved terrace which may project into a front or rear yard for a distance not exceeding eight feet and into a side yard for a distance not exceeding five feet; provided, that this shall not be interpreted to include porches which may be enclosed by removable windows, fixed canopies or screens. A porch or any portion thereof shall not occupy more than twenty-four square feet of any side yard. A one-story bay window or a chimney may project not more than three feet into any required yard area. A porch shall not be included in the calculation of lot coverage. (2-14-11)

Principal Use. The primary or predominant use of any lot.

Professional Office. A structure used by a person in offering a service which required specialized knowledge gained by intensive academic preparation, such as medicine, law, engineering, dentistry and other like endeavors.

Public Utility. Any person duly authorized to furnish and furnishing to the public under federal, state or municipal regulations, electricity, gas, steam, communications, telegraph, transportation, water or like utilities.

Restaurant. Any building other than a drive-in restaurant, in which, for compensation, food or beverages are dispensed for consumption on the premises, including, among other establishments, cafes, tea rooms, confectionery shops and refreshment stands.

Resubdivision. A change in a plat of an approved or recorded subdivision or resubdivision if such change: (a) Affects any street layout shown on such plat; (b) affects any area reserved thereon for the public use of (c) changes the size of any lot shown thereon if any of the lots have been conveyed after the approval or recording of such plat (see "subdivision.")

Retail Stores and Shops. Buildings for display and sale of merchandise at retail or for the rendering of personal services, but specifically exclusive of coal, wood, oil storage, lumberyards and contractors storage yards.

Rooming House (lodging house). A building other than a hotel where lodging is provided for three or more persons for compensation pursuant to previous arrangements, but not open to the public or transients.

School, General Education. A parochial or private school giving regular instruction during a normal school year.

School, Public. An educational institution operated by a duly constituted governmental entity.

School, Special Instruction. A school primarily devoted to giving instruction in professional, musical, dramatic, artistic, scientific or other special subjects, exclusive of a conventional primary or secondary curriculum and does not require licensure by the State as a Daycare Center use.

School, Technical. A school which primarily provides instruction in vocational skills.

Setback. The minimum distance by which any building or structure must be separated from the lot lines.

Shopping Center. Any conglomeration of commercial activities sharing a parcel of land which is held in single ownership and sharing parking facilities.

Sign. Any display of any letters, words, numerals, figures, devices, emblems or pictures, or any parts or combinations thereof, by anything known, whether such display is made on, attached to or is part of a structure, surface or any other thing.

Sign, Area. The entire area within a single continuous perimeter enclosing the external limits of a sign; provided that such perimeter shall not include any structural elements lying outside the limits of such a sign and not forming an integral part of the display. On double-faced signs, only one display face shall be measured in computing total sign area where sign faces are parallel and are at no point more than two feet from one another.

Sign, Business. A sign which directs attention to a business, commodity, service, activity or product sold, conducted or offered upon the premises where such sign is located.

Sign, Identification. A sign on the premises bearing the name of a subdivision, the name of a group housing project or the name of a school, college, park, church or other public or quasipublic facility, or a professional or firm nameplate, but bearing information, pertaining only to the premises on which sign is located.

Sign, Outdoor Advertising. Any sign of any material and any character whatsoever, which is placed (including erection, construction, posting, painting, printing, tacking, nailing, gluing, sticking, carving or other fastening, affixing or making visible in any manner) for outdoor advertising purposes in any way whatsoever.

Sign, Temporary. A sign applying to a seasonal or other brief activity such as, but not limited to, summer camps, horse shows, auctions or sale of land.

Single Family. A single person, or two or more persons related by blood or marriage occupying a dwelling, living together and maintaining a household, which may include not more than one unrelated person; however, not more than four unrelated persons occupying a dwelling, living together and maintaining a household shall be deemed to constitute a "single family," (03-10-08)

Special Use Permit. A permit granted by the Town Council, upon review and recommendation of the Planning Commission, for a use permitted by the council to occupy land and/or buildings erected thereon for a specific purpose not yet permitted by right, but in accordance with standards or conditions and procedures included in this Chapter or established by the Town Council.

Story. That portion of a building, other than a cellar or mezzanine, included between the surface of any floor and the surface of the floor next above it, or if there is no floor above it, the space

between the floor and the ceiling next above it; a mezzanine shall be deemed a full story when it covers more than thirty-three percent of the area of the story beneath the mezzanine, or if the vertical distance from the floor next below it to the floor next above it is twenty-four feet or more.

Story, half. A space under a sloping roof, which has the line of intersection of roof decking and wall face not more than three feet above the top floor level and in which space not more than two-thirds of the floor area is finished off for use.

Street or Road. A public thoroughfare, except an alley or driveway, which affords vehicular traffic circulation and principal means of access to abutting property.

Street Line. The dividing line between a street or road right-of-way and the contiguous property.

Strip Shopping Center. Two or more retail buildings or establishments located on the same lot or parcel of land, not to exceed two (2) acres.

Structural Alteration. Any change in the supporting members of a building or structure, such as bearing walls, partitions, columns, beams or girders, any change in the width or number of exits or any substantial change in the roof.

Structure. See “building.”

Structure, Outdoor Advertising. Any structure of any kind or character erected or maintained for outdoor advertising purposes, upon which any outdoor advertising sign may be placed, including also outdoor advertising statuary.

Subdivision. The division of a parcel of land into one or more lots or parcels of less than five acres each for the purpose of transfer of ownership or building development or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.

Surveyor, Professional. A licensed, professional surveyor, registered in the Commonwealth by the Department of Professional and Occupational registration as a “surveyor.” This term shall also include “land surveyors.”

Temporary Family Health Care Structure (TFHCS) – A transportable residential structure, providing an environment facilitating a caregiver’s provision of care for a mentally or physically impaired person, that (i) is primarily assembled at a location other than its site of installation, (ii) is limited to one occupant who shall be the mentally and physically impaired person, (iii) has no more than 300 gross square feet, and (iv) complies with applicable provisions of the Industrialized Building Safety Law (§36-97 et seq.) Placing the temporary family health care structure on a permanent foundation shall not be required or permitted. (09-12-2011)

Temporary Portable Storage Unit. A commercially constructed, purpose-built container designed for vehicular transport and the storage of equipment, building materials or household goods. For

purposes of this Zoning Ordinance, a temporary portable storage unit is neither an “accessory structure” nor a “trailer” as defined.

Temporary Use. A use established for a fixed period of time with the intent that such use will terminate automatically upon expiration of the fixed time period, unless permission to conduct the use is renewed pursuant to this Zoning Ordinance.

Theatre, Indoor. A building designed and/or used primarily for the commercial exhibition of motion pictures to the general public or used for performance of plays, acts or dramas by actors and/or actresses.

Tourist Home. A dwelling in which overnight accommodations are provided or offered for three or more transient guests.

Town House. At least three and not more than eight attached dwelling units forming a continuous structure, each unit being separated by common or party walls of masonry construction going through the roof of such unit, void of fenestration or means of ingress or egress from the basement through the roof, with individual exterior entrances at grade and with no more than four abutting town houses or dwelling units having the same front yard setback.

Travel Trailer. A vehicular, portable structure built on a chassis as a temporary dwelling for travel, recreation and vacation, having a body width not exceeding eight feet and being of any length; provided, that its gross weight does not exceed forty-five hundred pounds, or being of any weight, provided, further, that its body length does not exceed twenty-nine feet.

Truck Stop, Truck Terminal. Any establishment open to the public that has five or more diesel fuel pumps along with provisions for parking and/or servicing of five or more tractor trucks and tractor truck trailers.

Use. The purpose or activity for which land or buildings thereon are designed or arranged, or for which land or buildings are occupied or maintained, including any manner of performance of such activity with respect to the performance standards of this chapter.

Used. The word “used” shall be deemed also to include “erected,” “reconstructed,” “altered,” “placed or moved.”

Variance. A relaxation of the terms of this chapter where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the action of the applicant, a literal enforcement of this chapter will work undue hardships on the property owner. A variance is authorized only for height, area and size of structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning division or district, or adjoining divisions or districts, solely for the economic benefit of the person requesting such variance.

Yard. An open space of a generally uniform width or depth, on the same land with a building or group of buildings, which open space lies between the building or group of buildings or other specified points and the nearest lot line, and is unoccupied and unobstructed from the ground upward except as otherwise provided in this chapter.

Yard Front. A yard extending across the full width of the lot and lying between the adjacent street right-of-way and the building setback line.

Yard, Rear. A yard extending across the full width of the lot and lying between the rear property line of the lot and a line drawn generally parallel to the rear lot line at such distance as may be specified in this chapter for any district.

Yard, Side. A yard between the side lot line and a line drawn generally parallel thereto at such distance as may be specified in this chapter for any district and extending from the setback line to the rear yard line. On a corner lot the side yard adjacent to a street shall extend the full depth of every such lot.

Zoning Administrator. See “administrator.”

Zoning Map. The official zoning map of the town and all amendments hereto.

Zoning Permit. A permit issued by the Zoning Administrator to the applicant before the applicant may proceed with any work affected by any provision of this chapter or being any uses of land and/or structures as permitted by this chapter.

**Section 17-2. Zoning Fee Schedule**

|   |   |
|---|---|
| <u>Sketch Plat</u> .....                  | <u>\$100.</u>                                 |
| <u>Minor Subdivision</u> .....            | <u>\$250. (4 lots or less)</u>                |
| <u>Preliminary &amp; Final Plat</u> ..... | <u>\$1500. + \$100. /lot (4 or more lots)</u> |
|   | <u>\$250. (3 lots or less)</u>                |
|   | <u>\$2500. + \$100. /lot (Commercial)</u>     |
| <u>Lot Consolidation</u> .....            | <u>\$250.</u>                                 |
| <u>Plat Amendment</u> .....               | <u>\$100. + \$25. / lot</u>                   |
| <u>Boundary Line Adjustment</u> .....     | <u>\$150. / per lot effected</u>              |
| <u>Right-of-way Vacation</u> .....        | <u>\$250.</u>                                 |
| <u>General Implementation Plan</u> ...    | <u>\$750. + \$75. per acre</u>                |
|   | <u>Revision \$500.</u>                        |
| <u>Site Plan / Specific Imp Plan</u> ...  | <u>\$1500. + \$50. / unit</u>                 |
|   | <u>\$2500. + \$200. / acre (Commercial)</u>   |
| <u>Site Plan Amendment</u> .....          | <u>\$500.</u>                                 |
| <u>Rezoning</u> .....                     | <u>\$1500. + \$100. per acre</u>              |
|   | <u>\$500. Proffer Revision</u>                |

|                                       |                                       |
|---------------------------------------|---------------------------------------|
| <u>Comp Plan Amendment</u> .....      | \$1500.                               |
| <u>Zoning Permit</u> .....            | \$100. (New Residential & Commercial) |
|                                       | \$30. (Addition, Accessory, Other)    |
|                                       | \$50. + \$1. / sq. ft (Sign)          |
|                                       | \$25. (Temporary Sign)                |
|                                       | \$50. (Change of Use)                 |
| <u>Zoning Letter</u> .....            | \$150. (Certification)                |
|                                       | \$65. (Determination)                 |
| <u>Home Business License</u> .....    | \$75.                                 |
| <u>Commercial Business License</u> .. | \$75.                                 |
| <u>Zoning Text Amendment</u> .....    | \$500. per section                    |
| <u>Appeal</u> .....                   | \$325.                                |
| <u>Variance</u> .....                 | \$350.                                |
| <u>Special Use Permit</u> .....       | \$600.                                |
| <u>Zoning Violation Fees</u> .....    | \$200                                 |

**Section 17-3. Zoning Map**

The locations and boundaries of the zones shall be as shown upon a map entitled “Middletown, Virginia,” dated \_\_\_\_\_ as amended. This map is to be located in the town office and is designated as official map for the town. It shall be regularly updated by the Zoning Administrator at any such time as amendments are made to this chapter.

**Article II. District Regulations.**

**Section 17-4. Residential District R-1.**

- A. Statement of Intent. The R-1 district is composed of quiet, low density residential areas plus undeveloped areas where similar residential construction appears likely to occur. The standards for this district are designed to stabilize and protect the essential character of the areas so delineated, to promote and encourage a suitable environment for family life where there are children and to prohibit all commercial activities. Development is, therefore, limited to relatively low concentration. Permitted uses are limited to single unit dwellings, plus selected additional uses such as schools, parks, churches and certain public facilities that serve the residents of the district. Manufactured or mobile homes as defined are not permitted. No rooming houses or other group living quarters are permitted.
- B. Uses Permitted by Right. Only one use and its accessory buildings and/or uses may be erected on any lot or parcel of land in Residential District R-1. The following uses shall be permitted by right in such district:
  - 1. Single-family dwellings.
  - 2. Schools.
  - 3. Churches.

4. Parks and playgrounds.
5. Fire and rescue squad stations.
6. Off-street parking for permitted uses in the district as set forth in Section 17-14.
7. Accessory buildings as defined; however, garages, carports, porches and stoops attached to the main building shall be considered part of the main building. Accessory buildings that are normally or typically found in association with the allowed primary use shall be allowed on the same parcel or lot as the primary use. Up to three accessory buildings are allowed on the same parcel. An accessory building must be located in a rear yard area but shall not be located closer than five feet to any property line or to any other structure. Accessory buildings over one story in height shall be at least ten feet from any property line or to any other structure. The floor area of an accessory building cannot exceed 25% of the gross floor area of the primary residential structure except for garages which can be up to 100% of the gross floor area of the primary residential structure. No accessory buildings shall exceed the main building in height. In no case shall a mobile home or temporary trailer be allowed as an accessory building. (2-11-99)
8. Public utilities, poles, lines, distribution transformers, booster and relay stations, pipes, meters and other facilities necessary for the provision and maintenance of public utilities, including water and sewage systems.
9. Signs as set for the in Section 17-15.
10. Travel trailers; provided, that they shall be stored only within the minimum rear yard requirements and shall be prohibited from regular occupancy. Temporary occupancy up to a maximum of three days is permitted.
11. Fences as set forth in Section 17-11.

C. Uses Permitted by Special Permit. (9-14-95.)

1. Home Occupations

Purpose and intent: The purpose of this section is to allow residents to locate and operate small scale businesses in a neighborhood, while continuing to preserve the character to the neighborhood. It is the general intent of this ordinance that commercial uses locate within and around existing commercially zoned areas.

Home Occupations: A use within a residential dwelling shall meet the following criteria in order to qualify as a home occupation:

- a. Such use shall be conducted within a dwelling, must be clearly incidental and subordinate to the use of the dwelling for residential use.
- b. Not more than twenty-five percent of the floor area of the principal structure or twenty-five percent of any accessory structure shall be used in the conduct of the business.
- c. Such use shall be carried on by a member, or member, of the family residing on the premises, no person not a resident may be employed on the premises nor is there to be subcontracting of any work performed at the premises.
- d. There shall be no change in the outside appearance of the building or lot, nor other visible evidence that the building is being used for any purpose other than a dwelling.
- e. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood.
- f. No equipment or process used in such home occupation shall create noise, vibration, glare, fumes, odors or electrical interference detectable to the normal senses.
- g. All applicable license and permits shall be secured and other local, state and federal requirements must be satisfied. The uses approved under the provisions of the ordinance shall be considered temporary for the purpose of starting a new business. Once the business needs to expand its area, number of employees, or commercial/customer traffic beyond volume that would be normally expected in a residential neighborhood, the business should relocate to an appropriately zoned area.

2. Bed and Breakfast as set forth in Section 17-1 Definitions. (7-13-09; 8-10-09)

- D. Area regulations. The minimum lot area shall be ten thousand square feet.
- E. Setback regulations. Structures shall be located thirty-five feet or more from any street right-of-way which is fifty feet or greater in width, or sixty feet or more from the center of any street right-of-way less than fifty feet in width; however, no building need beset back more than the average of the setbacks of other adjacent structures on either side. A vacant lot fifty feet or more in width shall be assumed to be occupied by a building having a minimum setback. This shall be known as the “setback line.”
- F. Frontage regulations. The minimum lot width at the setback line shall be eighty feet.
- G. Yard regulations.
  - 1. Side. Each side yard shall be a minimum of ten feet.

2. Rear. Each rear yard shall be a minimum of twenty-five feet in depth.

H. Lot coverage. Structures shall not occupy more than twenty percent of the total area of the lot.

I. Height regulations.

1. Buildings may be erected up to two- and one-half stories but shall not exceed thirty-five feet in height.
2. A public or semipublic building such as a school, church or library may be erected to a height of sixth feet from grade; provided, that required front, side and rear yards shall be increase one foot for each foot in height over thirty-five feet.
3. Church Spires, belfries, cupolas, municipal water towers, chimneys, flues, flagpoles, television antennae and radio aerials are exempt. Parapet walls may be up to four feet above the height of the building on which the walls rest.
4. No accessory building which is within twenty feet of any lot line shall be more than one story high. No accessory building shall exceed the main building in height.

J. Special Provisions for Corner Lots.

1. Of the two sides of a corner lot fronting on streets, the front shall be deemed to be the shortest
2. The side yard on the side facing the side street shall be twenty feet or more for both main and accessory buildings.
3. Each corner lot shall have a minimum width at the setback line of one hundred feet. (9-25-78)

**Section 17-4-A. Rural Areas District (RA) (06-13-05)**

A. Purpose and Intent.

1. The purpose of the rural area regulations is to preserve large, open parcels of land, tree cover, scenic views, sensitive environmental areas and prime agricultural and locally significant environmental areas and prime agricultural and locally significant soils. The regulations provide for a variation in lot size, at a density not to exceed one unit per five acres. The varying lot size is permitted in order to facilitate designs that blend in with the existing landscape and preserve some larger tracts of undeveloped land in order to maintain the rural character of the town, as well as provide a choice to home buyers.

2. The rural Areas District also serves as the initial zoning classification for any undeveloped rural land in Frederick County which is incorporated into the Town of Middletown by either annexation or boundary adjustment. The purpose of this district is to provide for the reasonable and orderly interim regulation of the use and development of rural land within any annexation or boundary adjusted area consistent with the property rights of the owner of said land prior to annexation or boundary adjustment by the Town of Middletown.
3. The regulations are intended to reduce environmental impacts, such as soil erosion, by requiring development which is sensitive to the existing features of the natural terrain and by reducing the amount of clearing needed for roads. Diversity and originality in lot layout are encouraged in order to achieve the best possible relationship between the development and the land. Individual lots and streets should be designed to minimize alteration of the natural site features, relate positively to surrounding properties and protect the views from surrounding areas. It is intended that by allowing flexibility in the subdivision design, while at the same time requiring that environmental concerns be addressed, a more attractive, environmentally sound and economically viable development will result.

B. Permitted Uses. Structures and land shall be used for one of the following uses:

1. Agriculture, farming, dairies and forestry.
2. Orchards, horticulture and the production of nursery stock and products.
3. Single-family dwellings.
4. Schools.
5. Public parks and playgrounds.
6. Churches.
7. Home occupations.
8. Natural conservation areas.
9. Group homes.
10. Museums, parks or historic sites used for educational or historic preservation purposes.
11. Accessory uses.

C. Special Uses. The following uses of structures and land in the rural areas shall be allowed only if a special use permit has been granted for the use.

1. Country general stores.
2. Antique shops.
3. Campgrounds, tourist camps, recreation areas and resorts.
4. Commercial outdoor recreation, athletic or park facilities.
5. Retailing or wholesaling of nursery stock and related products.
6. Landscape contracting businesses.
7. Cottage occupations.
8. Day-care facilities.
9. Schools.

D. Permitted Residential Density: Exception

1. The maximum density permitted on any parcel or group of parcels shall not exceed the equivalent of one unit per five acres as determined by the size of the parent tract as it existed on the date of adoption of this section.
2. Exception to permitted density. On lots containing between six and thirteen acres which were lots of record prior to the adoption of this article, lots of two or more acres may be created despite the density limit of one unit per five acres, provided that they meet the requirements of this section. Within subdivisions utilizing rural preservation lots, the forty-percent parcel shall not count against the permitted density of the parent tract.

E. Minimum Lot Size. The minimum lot size for permitted uses shall be two acres.

F. Permitted lot sizes. The following types of lots shall be permitted;

1. Traditional five-acre lots. On any parcel, lots of five acres in size or greater shall be permitted.
2. Family division lots. On any parcel which contained seven acres or more prior to the adoption of this article, lots as small as two acres may be created, provided that the following conditions are met:
  - (a) Lots are conveyed to members of the immediate family of the owner of record of the parent tract.

- (b) Only one such lot shall be permitted per immediate family member.
- (c) One parcel of at least five acres in size shall remain intact following the division.

3. Rural preservation lots.

- a. Within the RA Rural Areas District, lots as small as two acres shall be permitted on tracts over 20 acres in size, subject to the following:
  - 1. Forty percent of the parent tract must remain intact as a contiguous parcel.
  - 2. This acreage must be designated prior to the division of the fourth lot.
  - 3. No future division of this portion of the parent tract will be permitted.
- b. Exception to single forty-percent parcel. In cases where excessive topography or other nature features of a site create a situation where a higher quality subdivision design, resulting in less physical and/or visual disruption could be achieved by allowing two permit the 40% to be made up of two parcels.

G. Setback Requirements. The following setback requirements shall apply to all parcels within the Rural Areas Zoning District. (RA)

- 1. Traditional five-acre lots and permitted two-acre lots. Setbacks from traditional five-acre lots and permitted two-acre lots shall be a set out below.
  - a. Front setbacks. The front setback for any principal or accessory use or structure located on a traditional five-acre lot shall be 60 feet from the property line or right-of-way of the street, road or ingress/egress easement.
  - b. Side or rear setbacks. The minimum side or rear setback for any principal use or structure shall be 50 feet.
- 2. Rural Preservation Lots. The following setbacks shall apply to rural preservation lots, which adjoin other rural preservation lots, but those lots which adjoin any lot or parcel other than a rural preservation lot shall be determined by 17-4-A (g) 1.
  - a. Front setback. The front setback for any principal or accessory use or structure shall be 60 feet from the right-of-way of any existing private ingress/egress easement or state-maintained road constructed to serve the subdivision.
  - b. Side setback. No principal use or structure shall be located closer than 15 feet from any side lot line.
  - c. Rear setback. No principal use or structure shall be located closer than 40 feet from any rear lot line.
- 3. Existing dwellings. The side or rear setbacks for any lot created around an existing dwelling or any family division lot shall be 50 feet from all lot lines.

4. Accessory uses. The minimum setback for any accessory use or structure shall be 15 feet from any side or rear property line of a traditional five-acre lot or any side or rear property line of a rural preservation lot.

H. Minimum width: maximum depth

1. Minimum width. The minimum width for rural preservation lots fronting on roads proposed for dedication shall be 200 feet at the front setback, with the exception of lots fronting on the turnaround of a cul-de-sac, which shall have a minimum width at setback of 100 feet. The minimum width for all other lots shall be 25 feet at the front setback line.
2. Maximum depth. The maximum depth of any lot shall not exceed four times its width at the front setback line.

I. Height restriction. No structure shall exceed 35 feet in height.

**Section 17-5 Middletown Traditional Neighborhood Design (R4) (MTND) (2006)**

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## **MIDDLETOWN TRADITIONAL NEIGHBORHOOD DESIGN (MTND)**

### **1. General Provisions**

**1.1 Purpose.** The purpose of this ordinance is to allow the optional development and redevelopment of land in Middletown consistent with the design principles of traditional neighborhoods. A traditional neighborhood:

- A. Is compact;
- B. Is designed for the human scale;
- C. Provides a mix of uses, including residential, commercial, civic and open space uses in close proximity to one another within the neighborhood;
- D. Provides a mix of housing styles, types and sizes to accommodate households of all ages, sizes and incomes;
- E. Incorporates a system of relatively narrow, interconnected streets with sidewalks, bikeways and transit that offer multiple routes for motorists, pedestrians, and bicyclists and provides for the connections of those streets to existing and future developments;
- F. Retains existing buildings with historical features or architectural features that enhance the visual character of the community;
- G. Incorporates significant environmental features into the design;
- H. Is consistent with Middletown's comprehensive plan.

**1.2 Applicability:** The traditional neighborhood development ordinance is an alternative set of standards for development within Middletown for new development of 5 acres or more contiguous to existing development, redevelopment or infill development of 5 acres or more.

**1.3 Fee:** The Town council may, by resolution, establish fees for the administration of this ordinance.

### **2. Definitions**

The following definitions shall be observed and applied, except where the context clearly indicates otherwise. Words used in the present tense shall include the future tense. Words used in the singular form shall include the plural form. Words used in the plural form shall include the singular. The word "shall" is mandatory and the word "may" is permissive.

Accessory Building – a detached subordinate structure, the use of which is incidental to that of the principal structure and located on the same lot.

Affordable housing – housing in which mortgage, amortization, taxes, insurance, and condominium and association fees, if any, constitute no more than 28 percent of gross household income for a household of the size which may occupy this unit. In the case of dwelling units for rent, housing that is affordable means housing for which the rent and utilities constitute no more than 30 percent of gross annual household income for a house hold of the size that may occupy the unit.

Alley – a public or private way permanently reserved as a secondary means of access to abutting property.

Arterial – a major street for carrying a large volume of through traffic in the area, normally controlled by traffic signs and signals.

Block – a unit of land bounded by streets or by a combination of streets and public land, railroad rights-of-way, waterways, or any other barrier to the continuity of development.

Building Height – the height limit to all buildings is 3 stories and 35 feet high from the lowest grade level to the eaves of the building. The height limit shall not apply to attics, chimneys, machine rooms, or similar structures.

Building Scale – the relationship between the mass of a building and its surroundings, including the width of street, open space, and mass of surrounding building. Mass is determined by the three-dimensional bulk of a structure; height, width, and depth.

Building Setback, Front – the distance from the street right-of-way line to the closest point of the foundation of a building or projection thereof.

Collector – a street designed to carry moderate volumes of traffic from local streets to arterial streets or from arterial to arterial.

Common Open Space – squares, greens, neighborhood parks, and linear environmental corridors owned and maintained by the (Homeowners Association).

Curb Radius – the curved edge of streets at an intersection measured at the outer edge of the street curb or of the parking lane.

Lot – a parcel of land occupied or intended for occupancy by a use permitted in this ordinance, including one main building, together with any accessory buildings, open spaces, and parking spaces required by this ordinance and having its principal frontage upon a street or upon an officially approve place.

Lot Line – the property lines bounding the lot.

Lot Width – the horizontal distance between side lot lines measured at the front setback.

Net Acre – an acre of land excluding street rights-of-way.

Principal Building – a building in which the primary use of the lot on which the building is located is conducted.

Queuing – the use of one travel lane on local streets with parking (usually an intermittent parking pattern) on both sides.

Secondary Dwelling Unit – an additional dwelling unit located with the principal dwelling on the lot in a freestanding building or above a residential garage.

Story – a space in a building between the surface of any floor and the surface of the next floor above, or if there is no such floor above, then the space between such floor and the ceiling or roof above.

Street – a strip of land, including the entire right-of-way, publicly or privately owned, serving as a means of vehicular travel, and furnishing access to abutting properties, which may also be used to provide space for sewers, public utilities, shade trees and sidewalks.

Traditional Neighborhood – a compact mixed-use neighborhood where residential, commercial and civic buildings are within close proximity to each other.

### **3. Application Procedure and Approval Process**

**3.1 Initial conference.** (Before submitting an application for a Traditional Neighborhood).

To begin a development project, the applicant shall schedule an appointment and meet with the Zoning Administrator to discuss the procedure for approval of a Traditional Neighborhood Development project, including submittal requirements and design standards.

#### **3.2 General Implementation Plan**

**1. General Implementation Plan Process:** Following the initial conference, the applicant shall submit a general implementation plan to the Zoning Administrator and the Middletown Planning commission. At its next scheduled meeting, the Planning commission shall consider a recommendation for approval or disapproval of the general implementation plan. Once approved, the Planning commission shall conduct a public hearing within thirty (30) days to consider the zoning map amendment request.

Within thirty (30) days the Planning Commission shall conduct a public hearing to consider the zoning map amendment request and to consider a recommendation for

approval or disapproval of a general implementation plan. At this public hearing, the Planning commission shall receive a report from the Middletown Zoning Administrator recommending approval, disapproval or approval with specified modifications. Within thirty (30) days, the Planning Commission shall recommend that the Town Council either:

- a. Approve the General Implementation Plan and zoning map amendment;
- b. Approve the General Implementation Plan and zoning map amendment with modifications; or
- c. Deny the General Implementation Plan and zoning map amendment.

**2. General Implementation, Plan Submittal Requirements:** The purpose of the General Implementation Plan is to establish the intent, density and intensity for a proposed development. The General Implementation Plan shall include the following:

- a. A general location map of suitable scale, but no less than one inch = 200 feet, which shows the location of the property within the community and adjacent parcels including locations of any public streets, railroads, major streams or rivers and other major features within 1000 feet of the site.
- b. A site inventory and analysis to identify site assets or resources, and constraints, including but not limited to floodplains, wetlands and soil classified as “poorly drained” or “very poorly drained” soils with bedrock at or within 42 inches of the surface, utility easements and steep slopes greater than 15%.
- c. A conceptual site plan, at a scale of no less than one inch = 100 feet, which indicates topography in 2-foot contours for sites with 15 feet or more of local relief, or 2-foot contours for local sites with less than 15 feet of local relief, consisting of a map with proposed features and existing site features and uses that will remain. These features should include building outlines, location of streets, drives and parking areas, pedestrian and bicycle paths, service access areas for receiving material and trash removal, and other impervious surfaces. The location of proposed and existing to remain trees and shrubs should also be included, along with any other significant features.
- d. A conceptual storm water management plan identifying the proposed patterns of major storm water run-off, locations of storm water infiltration areas, and other significant storm water best management practices.
- e. Identification of the architectural styles (s) of the Traditional Neighborhood Development and the accompanying site design style(s). The design style of the Traditional Neighborhood Development shall be conveyed with drawings or computer simulations of typical proposed building elevations (including dimensions of building height and width, and façade treatment).

- f. A written report that provides general information about the covenants, conservation easements, or agreements which will influence the use and maintenance of the proposed development. The report shall also describe the site conditions and the development objectives.
- g. Any other information deemed necessary by the Zoning Administrator in order to evaluate plans.
- h. Five copies of the above information shall be submitted plus one reduced set no larger than 8-1/2 inches by 11 inches.

**3.3 Specific Implementation Plan.** The purpose of the Specific Implementation Plan is to establish a detailed development proposal. The specific Implementation Plan can be proposed, reviewed, and acted upon as whole or in part of phases.

1. **Specific Implementation Plan Process.** Following approval of the General Implementation Plan: The applicant shall submit a Specific Implementation Plan to the Zoning Administrator. Within thirty (30) days following receipt of the Specific Implementation Plan, the Planning commission shall receive a report from the Zoning Administrator recommending approval, disapproval or approval with specified modifications. The Planning Commission shall determine that the proposed Specific Implementation Plan is in substantial conformance with the approved General Implementation Plan. Upon due consideration, the Planning Commission shall recommend that the Town Council either:
  - a. approve the Specific Implementation Plan as being in substantial conformance with the General Implementation Plan;
  - b. approve the Specific Implementation Plan as being in substantial conformance with the General Implementation Plan with specified modifications; or
  - c. deny the Specific Implementation Plan.
2. **Specific Implementation Plan Submittal Requirements:** The applicant shall submit plans, maps, and written materials which include the following information:
  - a. A general location map of suitable scale which shows the boundaries and dimensions of the property within the contest of the Town of Middletown and adjacent parcels including locations of streets, railroads, major streams or rivers and other major features within 1000 feet of the site, along with a legal description of the property.
  - b. A site inventory and analysis to identify site assets or resources, and constraints, including but not limited to floodplains, wetlands and soils classified as “poorly drained” or “very poorly drained,” soils with bedrock at or within 42 inches of the surface, utility easements for high-tension electrical transmission lines (>69KV), slopes greater than 15%.

- c. A site plan, including proposed topographic contours at two foot intervals, with the following information:
  - i. the location of proposed structures and existing structures that will remain, with height and gross floor area noted;
  - ii. the location of street and pedestrian lighting, including lamp intensity and height;
  - iii. the location of proposed open space;
  - iv. the circulation system indicating pedestrian, bicycle, and motor vehicle movement systems, including existing and proposed public streets or right-of-ways; alleys; transit stops; easements or other reservations of land on the site; the location and dimensions of existing and proposed curb cuts, off-street parking and loading spaces, including service access for receiving the trash removal; sidewalks and other walkways; and
  - v. location of all trees shrubs and ground cover (proposed of existing) to remain on the site.
  
- d. A storm water management plan for the site. The grading plan shall show existing and proposed ground elevations with contours (two-foot contour interval) and spot elevations at significant high points, low points, and transition points. The grading plan shall also note the finished ground floor elevations of all buildings. The plan shall also show the locations of all storm drainage sewers and structures, and infiltration or detention/retention structures; and all wetlands on the site, using the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, and copies of documents completed in making the wetlands identification.
  
- e. Detailed elevations of all proposed commercial buildings and typical elevations of residential buildings. Scaled elevations should identify all signs, building materials and percentage of ground floor commercial façade in windows; the location, height and material for screening walls and fences, including outdoor trash storage areas, electrical, mechanical and gas metering equipment, storage areas for trash and recyclable materials, and rooftop equipment.
  
- f. A utilities plan showing underground and above ground lines and structures for sanitary sewers, electricity, gas telecommunications, etc. which shall be placed underground to the extent feasible.
  
- g. A written report which completely describes the proposal and indicates covenants or agreements that will influence the use and maintenance of the proposed development. The report also shall describe the analysis of site conditions and the development objectives.

- h. Phasing plans, which allows for the phasing plan to include multiple, non-contiguous portions of the project site to be under development provided that there is a clear phasing plan for the primary street systems to ensure that access for government services, emergency services and end-users is provided.
- i. Any other information deemed necessary by the Planning Commission in order to evaluate plans.
- j. Five copies of the above information shall be submitted, plus one reduced set no larger than 8-1/2 inches by 11 inches.

**3.4 Amendments to the Specific Implementation Plan.** Minor changes to the Specific Implementation Plan adopted by the Middletown Town Council may be approved by the Zoning Administrator, provided that the changes do not involve:

- a. Increases or decreases of more than 10% in floor area of structures or number of dwelling units.
- b. Change in exterior building material.
- c. Alteration of any conditions attached or modification to the Specific Implementation Plan made by the Town Council and/or Planning Commission.

*Note: A major change to a Specific Implementation Plan which is less restrictive than any conditions of approval, for the initial Specific Implementation Plan, shall require approval by a majority vote of all members of the Town Council.*

**3.5. Subdivision of Land**

**3.6 Ownership and Maintenance of Public Space.** Provision shall be made for the ownership and maintenance of public streets by VDOT; squares, parks, open space, and other public spaces in a Traditional Neighborhood Development by dedication to the Homeowners Association. The HOA is to conform to state law. The developer shall convey all water/sewer facilities by bill of sale to the Town, but the Town reserves the right to refuse any such conveyance.

**3.6 Performance Bond or letter of credit.** Final approval of the Specific Implementation Plan is subject to the posting of a performance bond or letter of credit by the developer or his assigns as deemed necessary by the Middletown Town Council for public improvements.

**3.7 Recording of Documents.** The following documents need to be filed by the applicant in the Middletown Town Clerks Office within 10 days after approval of the document by the Town Council; a certified copy of the zoning ordinance amendment designating a tract of land as a Traditional Neighborhood Development; the general implementation plan; and the specific implementation plan.

#### 4. Traditional Neighborhood Development Design Standards

**4.1 Neighborhood Uses.** In order to achieve the proximity necessary to make neighborhoods walkable, it is important to mix land uses. A traditional neighborhood development should consist of a mix of residential uses, a mixed use area, and open space as provided below:

1. A mix of residential uses of the following types can occur anywhere in the traditional neighborhood development. For infill development, the mix of residential uses may be satisfied by existing residential uses adjacent to the Traditional Neighborhood Development.
  - a. Single-family detached dwellings;
  - b. Single-family attached dwellings, including duplexes, Townhouses, and row houses;
  - c. Multifamily dwellings, including senior housing;
  - d. Secondary dwelling units (granny flats)
  - e. Special needs housing, such as community living arrangements and assisted living facilities.
2. Mixed use area of commercial, residential, civic or institutional, and open space uses as identified below. All residents should be with approximately ¼ mile or a 5-minute walk from existing or proposed commercial, civic, and open space areas. Individual businesses should not exceed 6000 square feet in footprint.
  - a. Commercial uses.
    - i. Food services (neighborhood grocery stores; butcher shops; bakeries; restaurant, not including drive-through; cafes; coffee shops; neighborhood bars or pubs);
    - ii. Retail uses (florists or nurseries; hardware stores; stationery stores; bookstores; studios and shops of artists and artisans);
    - iii. Services (day care centers; music, dance or exercise studios; offices, including professional and medical offices; barber; hair salon; dry cleaning);
    - iv. Accommodations (bed and breakfast establishments, small hotels, or inns).
    - v. Other uses as determined by the Town Council.

**4.2 Development units;** Maximum units per net acre with a 66% minimum requirement for detached single family units and a maximum of 34% attached units.

1. In areas devoted to mixed residential uses: The maximum unit density per acre shall be:
  - a. The number of single family detached units (large lot) shall be no less than 2.
  - b. The number of single family detached units (medium lot) shall be no more than 4.

- c. The number of single family detached units (small lots) shall be no more than 6.
- d. The number of single family attached duplex units shall be no more than 6.
- e. The number of single family attached (townhouse) units shall be up to 8.
- f. The number of multifamily attached (condo units shall be up to 16.

2. Areas of Residential/Commercial mixed use:

- a. All dwelling units constructed above commercial uses shall be permissible in addition to the number of dwelling units authorized under this section. However, the total number of dwelling units shall not be increased by more than 10 dwelling units or 10% whichever is greater.
- b. The total ground floor area of non residential development uses, including off street parking areas, shall not exceed 10% of the Traditional Neighborhood Development.

**4.3 Open Space.** At least 30% of the gross acreage of the Traditional Neighborhood Development must be open space. Open space may include areas such as steep slopes, wetlands, and storm water retention basins, but also must include small public spaces such as pocket parks, plazas, squares, greens or playgrounds. Open space shall be integrated through the TND and as approved on a specific implementation plan.

**4.4 Storm Water Management.** The design and development of the traditional neighborhood development should minimize off-site storm water run-off, promote on-site filtration, and minimize the discharge of pollutants to ground and surface water. Natural topography and existing land cover should be maintained and protected to the maximum extent practicable. New development and redevelopment shall meet the following requirements:

1. Untreated, direct storm water discharges to wetlands or surface waters are not allowed.
2. Post development peak discharge rates should not exceed pre-development peak rates.
3. Erosion and Sediment controls must be implemented to remove 80% of the average annual load of total suspended solids.
4. Areas for snow storage should be provided unless the applicant provides an acceptable snow removal plan.
5. Redevelopment storm water management systems should improve existing conditions and meet standards to the extent practicable.
6. All treatment systems must have operation and maintenance plans to ensure that systems function as designed.

**4.5 Lot and Block Standards:**

1. Streets- Street layouts should provide for blocks that are consistent with the Comprehensive Plan. A variety of lot sizes should be provided to facilitate housing diversity and choice and meet the projected requirements of people with different housing needs.
2. Lot Widths – Lot widths should create a relative symmetrical street cross section that reinforces the public space of the street as a simple, unified public space.
3. Building Setback, Front – Mixed Use Area – Structures in the mixed-use area have no minimum setback. Commercial and civic or institutional buildings should abut the sidewalks in the mixed-use area.
4. Building Setback, Front Areas of Mixed Residential Uses – Single family detached residences shall have a building setback in the front between 0 and 25 feet. Single family attached residences and multi-family residences shall have a building setback in the front between 0 and 15 feet.
5. Building Setback, Rear Areas of Mixed-Use Residential Uses – The principal building on lots devoted to single family detached residences shall be setback no less than 10-30 feet from the rear lot line.
6. Side Setbacks – Provisions for zero lot line single family dwellings should be made, provided that a reciprocal access easement is recorded for both lots and townhouses or other attached dwellings, provided that all dwellings have pedestrian access to the rear yard through means other than the principal structure.  
Waiver may be given by Town Council to accommodate trees in the area between the sidewalk and curb, and/or large medium lot setbacks to allow flexibility should the setbacks need to be adjusted.

**4.6 Circulation Standards.** The circulation system shall allow for different modes of transportation. The circulation system shall provide functional and visual links within the residential areas, mixed use area, and open space of the traditional neighborhood development and shall be connected to existing and proposed external development. The circulation system shall provide adequate traffic capacity, provide connected pedestrian and bicycle routes (especially off-street bicycle or multi-use paths or bicycle lanes on the streets), control through traffic, limit lot access to streets of lower traffic volumes, and promote safe and efficient mobility throughout the traditional neighborhood development.

1. Pedestrian Circulation – Convenient pedestrian circulation systems that minimize pedestrian-motor vehicle conflicts shall be provided continuously throughout the Traditional Neighborhood Development. Where feasible, any existing pedestrian routes through the site shall be preserved and enhanced. All streets, except for alleys, shall be bordered by sidewalks on both sides.

The following provisions also apply:

- a. Sidewalks in residential areas. Clear and well-lit sidewalks, 4 feet in width, depending on projected pedestrian traffic, shall connect all dwelling entrances to the adjacent public sidewalk.
  - b. Sidewalks in mixed use areas. Clean and well-lit walkways shall connect building entrances to the adjacent public sidewalk and to associated parking areas. Such walkways shall be a minimum of 4 feet in width.
  - c. Sidewalk materials to be designated and approved as part of the specific implementation plan.
  - d. Disabled Accessibility. Sidewalks shall comply with the applicable requirements of the Americans with Disabilities Act.
  - e. Crosswalks, intersections of sidewalks with streets shall be designed with clearly defined edges. Crosswalks shall be well lit and clearly marked with contrasting paving materials at the edges or with striping.
2. Bicycle Circulation – Bicycle circulation shall be accommodated on streets and/or on dedicated bicycle paths. Where feasible, any existing bicycle routes through the site shall be preserved and enhanced. Facilities for bicycle travel may include off-street bicycle paths (generally shared with pedestrians and other non-motorized users) and separate, striped, 4-foot bicycle lanes on the streets. If a bicycle lane is combined with a lane for parking, the combined width should be 11 feet.
  3. Public Transit Access – Where public transit service is available or planned, convenient access to transit stops shall be provided. Where transit shelters are provided, they shall be placed in highly visible locations that promote security through surveillance and shall be well lit.
  4. Motor vehicle circulation shall be designed to minimize conflicts with pedestrians and bicycles. Traffic calming features such as queuing streets, curb extensions, traffic circles, and medians may be used to encourage slow traffic speeds.
    - a. Street Hierarchy: Each street within a traditional neighborhood development shall be classified according to the following (arterial streets should not bisect a traditional neighborhood development):
      - i. Collector. This street provides access to commercial or mixed-use buildings but it is also a part of Middletown’s major street network. On-street parking, whether diagonal or parallel, helps to slow traffic. Additional parking is provided in lots to the side or rear of buildings.
      - ii. Sub Collector. This street provides primary access to individual residential properties and connects streets of lower and higher function. Design speed is 25 mph.

- iii. Local Street. This street provides primary access to individual residential properties. Traffic volumes are relatively low, with a design speed of 20 mph.
  - iv. Alley. These streets provide secondary access to residential properties where street frontages are narrow, where the street is designed with a narrow width to provide limited on-street parking, or where alley access development is desired to increase residential densities. Alleys may also provide delivery access or alternate parking access to commercial properties. Alleys are encouraged in the TND.
- b. Street Layout: The traditional neighborhood development should maintain the existing street grid, where present, and restore any disrupted street grid where feasible, In addition:
- i. Intersections shall be at right angles whenever possible, but in no case less than 75 degrees. Low volume streets may form three-way intersections creating an inherent right-of-way assignment (the through street received precedence) which significantly reduces accidents without the use of traffic controls.
  - ii. Corner radii. The roadway edge at street intersections shall be rounded by a tangential arc with a maximum radius of 15 feet for local streets and 20 feet for intersections involving collector or arterial streets. The intersection of a local street and an access lane or alley shall be rounded by a tangential arc with a maximum radius of 10 feet.
  - iii. Curb cuts for driveways to individual residential lots may be prohibited along arterial streets. Curb cuts shall be limited to intersections with other streets or access drives to parking areas for commercial, civic or multifamily residential uses. Clear sight triangles shall be maintained at intersections, as specified below, unless controlled by traffic signal devices: intersection of:  
minimum clear distance: local street and collector 120 feet collector and collector 130 feet collector and arterial 50 feet.
  - iv. The orientation of streets should enhance the visual impact of common open spaces and prominent buildings create lots that facilitate passive solar design, and minimize street gradients. All streets shall terminate at other streets or at public land, except local streets may terminate in stub streets when such streets act as connections to future phases of the development. Local streets may terminate other than at other streets or public land when there is a connection to the pedestrian and bicycle path network at the terminus.

- c. Parking Requirements. Parking areas for shared or community use should be encouraged. In addition:
  - i. In the mixed-use area, any parking lot shall be located at the rear or side of a building. If located at the side, screening shall be provided as specified in section 4.8.
  - ii. A parking lot or garage may not be adjacent to or opposite a street intersection.
  - iii. In the mixed-use area, a commercial use must provide one parking space for every 400 square feet of gross building areas.
  - iv. Parking lots or garages must provide not less than one bicycle parking space for every 10 motor vehicle parking spaces.
  - v. Adjacent on-street parking may apply toward the minimum parking requirements.
  - vi. In all residential areas, 2.5 parking spaces will be provided per dwelling unit. One off-street parking space with unrestricted ingress and egress shall be provided for each secondary dwelling unit.
  - vii. Multi-family uses must provide one parking space for every dwelling unit and 0.5 parking spaces for each additional bedroom.
- d. Service Access. Access for service vehicles should provide a direct route to service and loading dock area, while avoiding movement through parking areas.
- e. Paving. Reduction of impervious surfaces through the use of interlocking pavers is strongly encouraged for areas such as remote parking lots and parking areas for periodic uses.

**4.7 Architectural Standards.** A variety of architectural features and building materials is encouraged to give each building or group of buildings a distinct character.

1. Guidelines for Existing Structures

- a. Existing structures, if determined by the Middletown Town Council to be historic or architecturally significant, shall be encouraged to be preserved.

2. Guidelines for New Structures

- a. Height. New structures within a Traditional Neighborhood Development shall be no more than three story single family residential, for commercial, multifamily, residential or mixed use.
- b. Entries and Facades

- i. The architectural features, materials, and the articulation of a facade of a building shall be continued on all sides visible from a public street.
  - ii. The front facade of the principal building on any lot in a Traditional Neighborhood Development shall face onto a public street or open space.
  - iii. The front facade shall not be oriented to face directly toward a parking lot.
  - iv. Porches, pent roofs, roof overhangs, hooded front doors or other similar architectural elements shall define the front entrance to all residences.
  - v. For commercial buildings, a minimum of 25 percent of the front facade on the ground floor shall be transparent, consisting of window or door openings allowing views into and out of the interior.
3. Guidelines for garages and secondary dwelling units.  
Garages and secondary dwelling units may be placed on a single family detached residential lot within the principal building or an accessory building provided that the secondary dwelling unit shall not exceed 800 square feet.
4. Guidelines for exterior signage.  
A comprehensive sign program is required for the entire Traditional Neighborhood Development which establishes a uniform sign for them. Signs shall share a common style (e.g. size, shape, material). In the mixed-use area, all signs shall be all signs or cantilever signs. Cantilever signs shall be mounted perpendicular to the building face and shall not exceed 8 square feet.
5. Guidelines for lighting
  - a. Street lighting shall be provided along all streets. Generally, smaller lights, as opposed to fewer, high-intensity lights, should be used. Streetlights shall be installed on both sides of the street at intervals of no greater than 75 feet. Street lighting design shall meet the minimum standards developed by the Illumination Engineering Society.
  - b. Exterior lighting shall be directed downward in order to reduce glare onto adjacent properties.

**4.8 Landscaping and Screening Standards.** Overall composition and location of landscaping shall complement the scale of the development and its surroundings. In general, larger, well-placed contiguous planting areas shall be preferred to smaller, disconnected areas. Where screening is required by this ordinance, it shall be at least 3 feet in height, unless otherwise specified. Required screening shall be at least 50 percent opaque throughout the year. Required screening shall be

satisfied by one or some combination of: a decorative fence not less than 50 percent opaque behind a continuous landscaped area, a masonry wall or a hedge.

1. Street trees. A minimum of one deciduous canopy tree per 40 feet of street frontage, or fraction thereof, shall be required. Trees can be clustered and do not need to be evenly spaced. Trees should preferably be located between the sidewalk and the curb, within the landscaped areas of a boulevard, or in tree wells installed in pavement or concrete. If placement of street trees within the right-of-way will interfere with utility lines, trees may be planted within the front yard setback adjacent to the sidewalk.

2. Parking Area Landscaping and Screening

- a. All parking and loading areas fronting public streets or sidewalks, and all parking and loading areas abutting residential districts or uses shall provide:
  - i. A landscaped area at least 5 feet wide along the public street or sidewalk.
  - ii. Screening at least 3 feet in height and not less than 50 percent opaque.
  - iii. One tree for each 25 linear feet of parking lot frontage.
- b. Parking area interior landscaping. The corners of parking lots, “islands” and all other areas not used for parking or vehicular circulation shall be landscaped.
- c. Vegetation can include turf grass, native grasses or other perennial flowering plants, vines, shrubs or trees. Such spaces may include architectural features such as benches, kiosks or bicycle parking.

3. Installation and Maintenance of Landscaping Materials

- a. All landscape materials shall be installed to current industry standards.
- b. Maintenance and replacement of landscape materials shall be the responsibility of the property owner. Landscape maintenance should incorporate environmentally sound management practices, including the use of water – and energy efficient irrigation systems such as drip irrigation, and pruning primarily for plant health and public safety, replacing dead materials annually, and removal of invasive species.
- c. In large parking lots containing more than 200 spaces, an additional landscaped area of at least 30 square feet shall be provided for each 25 spaces or fraction thereof, containing one canopy tree. The remainder shall

be covered with turf grass, native grasses or other perennial flowering plants, vines or shrubs.

- d. Materials. All plant materials must meet the minimum standards set by the American National Standards Institute in ANSI Z60.1 American Standard Nursery Stock.

4. Plant Type Minimum Size

- a. Minimum plant size shall be as specified as follows: (for the purpose of determining tree trunk size, the diameter shall be measured 6 inches above ground level):
  - i. Evergreen tree 6 feet in height.
  - ii. Deciduous canopy tree 2.2 inches caliper at dbh\*
  - iii. Small deciduous tree 1.2 inches caliper at dbh\*
  - iv. Evergreen or deciduous shrubs 18-24 inches in height.

*\*dbh – diameter at breast height*

- b. Landscape materials shall be tolerant of specific site conditions, including but not limited to: heat, drought and salt.
- c. Existing healthy plant material may be utilized to satisfy landscaping requirements, provided it meets the minimum plant size specified above.
- d. Landscape materials that are used for screening shall be of a size that allows growth to the desired height and capacity within 2 years. Landscape species shall be indigenous or proven adaptable to the climate.

**Section 17-6 Central Business District B-1**

A. Statement of Intent. Generally, the B-1 District covers that portion of the community intended for the conduct of general business to which the public requires direct and frequent access, but which is not characterized wither by constant heavy trucking, other than stocking and delivery of light retail goods, or by any nuisance factors other than occasioned by incidental light and noise of congregation of stores, banks, theaters, business offices, newspaper offices, restaurants, taverns, multi-family dwellings and single family dwellings. Manufacturer or mobile homes as defined are not permitted. (03-12-92; 04-89-99)

B. Uses Permitted by Right. In Central Business District B-1, structures to be erected or land to be used shall be for one or more of the following uses:

- 1. Animal hospitals or clinics.

2. Assembly Halls
3. Auto and home appliance services.
4. Bakeries
5. Banks and financial institutions.
6. Barber and beauty shops.
7. Boardinghouses, rooming houses and nursing homes.
8. Churches
9. Drugstores
10. Dry Cleaners
11. Fire and Rescue Squad Stations.
12. Fraternal and auxiliary organizations.
13. Funeral Homes
14. Furniture stores (sales or repair)
15. Hardware Stores
16. Hospitals
17. Hotels, motels, and inns.
18. Laundries and Laundromats.
19. Libraries
20. Newspaper Office buildings
21. Office Buildings
22. Personal and professional services.
23. Pet shops, excluding boarding kennels.
24. Printing shops and sign shops.

25. Radio and television broadcasting stations, studio and offices.
26. Restaurants, excluding drive-in and fast-food restaurants.
27. Retail stores.
28. Service stations, gasoline, with major repair under cover.
29. Theaters, indoor
30. Wearing apparel stores
31. Public utilities, poles, lines, booster and relay stations, distribution transformers, pipes, meters and other facilities necessary for the provision and maintenance of public utilities, including water and sewerage facilities.
32. Off-street parking for permitted uses in the district as set forth in Section 17-13.
33. Signs as set forth in Section 17-15.
34. Fences as set forth in Section 17-11.
35. Accessory buildings as defined; however, garages, carports, porches and stoops attached to the main building shall be considered part of the main building. Accessory buildings that are normally or typically found in association with the allowed primary use shall be allowed on the same parcel or lot as the primary use. Up to three accessory buildings are allowed on the same parcel. An accessory building must be located in a rear yard area but shall not be located closer than five feet to any property line or to any other structure. Accessory buildings over one story in height shall be at least ten feet from any property line or to any other structure. The floor area of an accessory building cannot exceed 25% of the gross floor area of the primary residential structure except for garages which can be up to 100% of the gross floor area of the primary building in height. In no case shall a mobile home or temporary trailer be allowed as an accessory building. (2-11-99)
36. Single family dwellings. (1-09-92)
37. Child Day Center
38. Family Day Home

C. Uses Permitted by Special Permit. The following uses shall be permitted by special permit:

1. Apartment buildings as set forth in Section 17-18.

2. Conversion of residential and/or commercial structures into buildings with a greater number of dwelling units.
  3. Public billiard parlors and poolrooms, bowling alleys, dance halls, health spas and clubs and similar forms of public amusement, only after a public hearing shall have been held by the Town Council may request that the Planning Commission submit a recommendation to them concerning such use applications. In approving any such applications, the Town Council may establish such special requirements and regulations for the protection of adjacent property, set such hours of operation and make such requirements as they may deem necessary in the public interest before granting approval to such application.
  4. Strip Shopping Center. Such special permit granted by the Town Council may require more restrictive covenants considering matters such as traffic congestion, noise, lights, dust, odor, fumes, vibration, timing or operation, screening and other matters which might be regulated to mitigate adverse impact to adjoining property owners and the neighborhood. (3-31-88).
  5. Townhouses as set forth in Section 17-18A. (12-14-89)
  6. Duplex dwelling. All provisions as set forth in Section 17-6-A Special Regulations and Provisions as to Single Family Dwellings, adopted May 12, 1992, shall be mutually applied to Duplex Dwellings. (6-12-97)
- D. Area Regulations. The minimum lot area shall be seventy-five hundred (7500) square feet. For apartments, area requirements shall be as stated in Section 17-17. For townhouses, area requirements shall be as stated in Section 17-17-A. For single family dwellings, area requirements shall be as stated in Section 17-6-A.
1. Lot size shall be 50 feet by 150 feet.
- E. Setback Regulations. Structures shall be located thirty-five feet or more from any street right-of-way which is fifty feet or greater in width, or sixty feet or more from the center of any street right-of-way less than fifty feet in width; however, no building needs to be set back more than the average of the setbacks of other adjacent structures on either side. A vacant lot fifty feet or more in width shall be assumed to be occupied by a building having a minimum setback. For apartments, setback regulations shall be as stated in section 17-17. For townhouses, setback regulations shall be as stated in section 17-17-A. For single family dwellings, setback regulations shall be as stated in section 17-6-A.
- F. Frontage and Yard Regulations. The minimum lot width at the setback line shall be fifty feet. If the property is adjacent to a residential district, the side yard adjoining the residence shall be a minimum of ten feet, and the rear yard shall be a minimum of twenty feet.
- For apartments, the regulations contained in Section 17-17 shall apply.

For townhouses, the regulations contained in Section 17-17-A shall apply.  
For single family dwellings, the regulations contained in Section 17-6-A shall apply.

1. Side – Each side yard shall be a minimum of five (5) feet.
2. Rear – Each rear yard shall be a minimum of fifteen (15) feet.
3. Lot Coverage – Structures shall not occupy more than 50 percent (50%) of the total area of the lot.

G. Height Regulations. Buildings may be erected up to thirty-five (35) feet from grade; except that:

1. A public or semipublic building such as a church, library or general hospital may be erected to a height of sixty feet (60) from grade; provided, that the required front, side and rear yards shall be increased one foot for each foot in height over thirty-five (35) feet.
2. Church spires, belfries, cupolas, monuments, water towers, chimneys, flues, flag poles, television antennae and radio aerials are exempt. Parapet walls may be up to four feet above the height of the building on which the walls rest.
3. Accessory buildings over one story in height shall be at least ten feet from any lot line. No accessory buildings shall exceed the main building in height.

H. Buffer Area

1. Maintenance of Buffers. All barriers or buffers required pursuant to the Zoning Ordinance to separate commercial and residential properties or otherwise required shall be maintained in good condition by the owner.
  - a. If natural vegetation barriers or buffers are required, they shall be kept rimmed and if any such vegetation shall die, it shall be replaced by vegetation of the similar kind, shape and size.
  - b. If constructed man-made barriers or buffers are required, said barriers or buffers shall be maintained in good condition, repaired as needed, and if replaced, shall be replaced by buffers or barriers of the same type.
  - c. Upon written notice of violation of this Ordinance to the owner of such property by the Zoning Administrator, said owner shall thereafter within 30 days take all necessary action to place said barrier or buffer (whether of natural vegetation or man-made) in the same condition as required when the barrier or buffer was originally created.

- d. After said 30-day period, failure by the owner to act shall constitute a continuing violation. (5-14-92)

**Section 17-6-A – Special Regulations and Provisions as to Single Family Dwellings**

- A. Area Regulations. The minimum lot area shall be ten thousand (10,000) square feet. (09-09-02)
- B. Setback Regulations. Structures shall be located thirty-five (35) feet or more from any street right-of-way which is fifty feet to greater in width, or sixty feet or more from the center of any street right-of-way less than fifty feet in width; however, no building needs to be set back more than the average of the setbacks of other adjacent structures on either side. A vacant lot fifty feet or more in width shall be assumed to be occupied by a building having a minimum setback.
- C. Frontage Regulations. The minimum lot width at the setback line shall be one hundred (100) feet. (09-09-02)
- D. Yard Regulations
  1. Side – Each side yard shall be a minimum of five (5) feet.
  2. Rear – Each rear yard shall be a minimum of twenty-five (25) feet.
- E. Lot Coverage. Structures shall not occupy more than twenty (20%) percent of the total area of the lot.
- F. Height Regulations
  1. Buildings may be erected up to two- and one-half stories but shall not exceed thirty-five (35) feet in height.
  2. No accessory building which is within twenty-five (25) feet of any lot line shall be more than one story high. No accessory building shall exceed the main building in height. (3-12-92)

**Section 17-7 Highway Business District B-2**

- A. Statement of Intent. Highway Business District (B-2) is intended to accommodate general business areas, highway oriented commercial uses, wholesaling operations, fast food establishments and similar uses that generate a great volume of traffic. Manufactured or mobile homes as defined are not permitted. (4-8-99)
- B. Permitted Uses. In Highway Business District (B-2), structures to be erected or land to be used shall be for one or more of the following uses:
  1. Animal hospitals or Clinics

2. Auction Houses
3. Automotive and truck sales, service and repairs.
4. Bakeries
5. Barber and beauty shops
6. Branch banks
7. Commercial greenhouses, nurseries.
8. Contractor's offices, display rooms, storage.
9. Department stores
10. Drugstores
11. Dry cleaners
12. Farm machinery sales and services; provided that servicing is under cover.
13. Farm supplies with storage under cover.
14. Furniture stores.
15. Gasoline service stations, with major repair under cover.
16. Grocery stores
17. Hardware store
18. Laundries or Laundromats
19. Lumber and building supply, with storage under cover.
20. Machinery sales and services.
21. Motels and Inns
22. Pet shops
23. Plumbing and electrical supply, with storage under cover.
24. Printing and sign shops.

25. Professional and public offices.
26. Restaurants, including drive-in and fast-food restaurants.
27. Retail stores
28. Theaters, indoor
29. Tire recapping and vulcanizing.
30. Transportation terminals
31. Wholesale establishments with storage and processing; provided that the processing is not objectionable because of dirt, noise or odors.
32. Public utilities, poles, lines, booster and relay stations, distribution transformers, pipes, meters and other facilities necessary for the provision and maintenance of public utilities, including water and sewerage facilities.
33. Off-street parking for permitted uses in the district as set forth in Section 17-13.
34. Signs as set forth in Section 17-15.
35. Fences as set forth in Section 17-11.
36. Accessory buildings as defined; however, garages, carports, porches and stoops attached to the main building shall be considered part of the main building. Accessory buildings that are normally or typically found in association with the allowed primary use shall be allowed on the same parcel or lot as the primary use. Up to three accessory buildings are allowed on the same parcel. An accessory building must be located in a rear yard area but shall not be located closer than five (5) feet to any property line or to any other structure. Accessory buildings over one story in height shall be at least ten feet from any property line or to any other structure. The floor area of an accessory building cannot exceed 25% of the gross floor area of the primary residential structure except for garages which can be up to 100% of the gross floor area of the primary residential structure. No accessory building shall exceed the main building in height. In no case shall a mobile home or temporary trailer be allowed as an accessory building. (2-11-99)

C. Use Permitted by Special Permit. The following uses shall be permitted by special permit.

1. Shopping centers as set forth in Section 17-16.
2. Public billiard parlors and poolrooms, bowling alleys, dance halls, health spas and clubs and similar forms of public amusement, only after a public hearing shall have been held by the Town Council on an application submitted to the Council for such

use. The Town Council may request that the Planning Commission submit a recommendation to them concerning such use applications. In approving any such applications, the Town Council may establish such special requirements and regulations for the protection of adjacent property, set such hours of operation and make such requirements as they may deem necessary in the public interest, before granting approval to such application.

3. Strip Shopping Center. Such special permit granted by the Town Council may require more restrictive covenants considering matters such as traffic congestion, noise, lights, dust, odor, fumes, vibration, timing of operation, screening and other matters which might be regulated to mitigate adverse impact to adjoining property owners and the neighborhood. (03-31-88)

- D. Area Regulations. There shall be a minimum lot size of ten thousand square feet.
- E. Setback Regulations. The minimum setback shall be forty feet from any street right-of-way which is fifty feet or greater in width and sixty-five feet from the centerline of any street right-of-way less than fifty feet in width. Off-street parking may be permitted within the setback area in the highway business district; provided, that there is a driveway into the parking area from the street and no parking space or driveway is closer than ten feet to the front property line.
- F. Frontage Regulations. The minimum width of any lot at the setback line shall be seventy-five feet.
- G. Yard Regulations
1. Side Yard - Each side yard shall be a minimum of fifteen (15) feet.
  2. Rear Yard - The rear yard shall be a minimum of twenty (20) feet.
  3. Parking – Parking may be permitted in the side and rear yard areas; provided that no driveway or parking space is closer than five (5) feet from any side of rear property line.
- H. Height and Coverage Regulations. Maximum building height from the average grade shall be thirty-five (35) feet. Maximum combined building coverage and paved area shall be eighty percent (80%).
- I. Buffer Area
1. Buffer Area - All property lines abutting a residential district shall be appropriately fenced, walled, or enclosed with a suitable, solid barrier to a minimum height of eight (8) feet, with a minimum additional buffer of eight (8) feet of natural vegetation. All vegetation buffer strips shall be adjoining on the residential side of barrier.

2. Maintenance of Buffers. All barriers/buffers required pursuant to the Zoning Ordinance to separate commercial and residential properties or otherwise required, shall be maintained in good condition by the owner.
  - i. The natural vegetation buffer that is required shall be kept trimmed and if any shall die, it shall be replaced by vegetation of similar kind, shape and size.
  - ii. The constructed man-made solid barrier that is required shall be kept in good condition and repaired as needed.
  - iii. Upon written notice of violation of this Ordinance to the owner of such property by the Zoning Administrator, said owner shall thereafter within thirty (30) days take all necessary action to place said barrier/buffer (whether natural vegetation or solid barrier) in the same condition as required when the barrier-buffer was originally created.
  - iv. After said thirty (30) day period, failure by the owner to act shall constitute a continuing violation.

J. Site Plan Review and Approval

A site plan drawn in accordance with Section 17-21 shall be submitted by the applicant, reviewed by the Planning Commission and approved or rejected by the Town Council, for all proposed structures or uses of land in the highway business district. (09-25-78)

**Section 17-7-A Historic District**

1. Purpose and Intent: In order to promote the education, prosperity, cultural, tourism, economic and general welfare of the Town of Middletown, the Town Council deems it essential that the qualities relating to this Town's history be identified, enhanced and preserved as appropriate.
2. Boundaries: The boundaries of the Historic District shall be as marked as an overlay zoning designation on the official zoning map. This repeals and re-enacts the Town's official zoning map. A copy of the overlay map is also attached as a part of this Historic District ordinance. The established district may be amended by the Town Council upon the consultation or recommendation by the Planning Commission, using the procedures in place for amending a Middletown Zoning Ordinance.

The initial boundaries are within that already recognized and placed upon the National Register. However, where the boundaries of individual lots of record conflict with those of the National Register, the boundaries of the individual lots shall prevail; any parcel not wholly within the National Register in the initial boundary determination shall not be within the historic district. where a street is shown as the historic district boundary, the edge right of way adjoining the district shall be the actual district boundary.

3. Classification of Buildings and Structures: Within the Historic District, all buildings and structures shall be classified and designated on the historic building map adopted and approved by the Mayor and Town Council and made a part of the overlay zoning map initially following the National Register filings of the Middletown Heritage Society. Such buildings and structures shall be divided into two classes:

A. Historic. Those buildings classified as historic shall possess identified historical, architectural or landscape merit of a degree warranting their preservation.

To be so classified the building or structure shall meet one or more of the following criteria:

- a. It is associated with a particular person, event, activity or institution of local, State or National historical significance;
- b. The exterior design or features embody or exemplify the distinctive design characteristics of one or more historic areas, styles, materials, or construction methods, or exemplify the work of an acknowledged master or master or has environmental or geographical features that merit preservation;
- c. The building or structure contains qualities and/or artifacts which significantly contribute to present day knowledge and understanding of lifestyles, activities, events, or experiences of a previous era;
- d. The building or structure contains qualities and/or artifacts which significantly contribute to present day knowledge and understanding of lifestyles, activities events, or experiences of a previous era;
- e. The building or structure has a unique physical characteristic which represents an established and familiar pattern or unique visual feature of the Town.

B. Non-contributing. Those buildings and structures not classified on the historic building map as historic.

### **Section 17-8. Floodplain Zones – General Provisions**

A. Purpose.

The purpose of these provisions is to prevent the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public fund for flood protection and relief, and the impairment of the tax base by:

1. regulating uses, activities and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies.
2. Restricting or prohibiting certain uses, activities, and development from locating within areas subject to flooding.

3. Requiring all those uses, activities, and developments that do occur in flood-prone areas to be protected and/or flood proofed against flooding and flood damage.
4. Protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

B. Statutory Authorization

Va. **Code** § 15.2-2283 specifies that zoning ordinances shall be for the general purpose of promoting the health, safety, or general welfare of the public and of further accomplishing the objectives of § 15.2-2200 which encourages localities to improve the public health, safety, convenience, and welfare of their citizens. To these ends, flood ordinances shall be designed to provide for safety from flood, to facilitate the provision of flood protection, and to protect against loss of life, health, or property from flood.

In accordance with these directed provisions, this ordinance is specifically adopted pursuant to the authority granted to localities by Va. **Code** § 15.2 - 2280.

C. Applicability.

These provisions shall apply to all lands within the jurisdiction of the Town of Middletown, Virginia, and identified as being in the 1% annual chance floodplain.

D. Compliance and liability

1. No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this Ordinance and any other applicable ordinance and regulations which apply to uses within the jurisdiction of this Ordinance.
2. The degree of flood protection sought by the provisions of this Ordinance is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that areas outside the floodplain district or land uses permitted within such district will be free from flooding or flood damages.
3. This ordinance shall not create liability on the part of the Town of Middletown or any officer or employee thereof for any flood damages that results from reliance on this ordinance or any administrative decision lawfully made hereunder.

E. Records

Records of actions associated with administering this ordinance shall be kept on file and maintained by or under the direction of the Zoning Officer in perpetuity.

F. Abrogation and Great Restrictions

This ordinance supersedes any ordinance in effect in flood-prone areas. However, any underlying ordinance shall remain in full force and effect to the extent that its provisions are more restrictive than this ordinance.

These regulations are not intended to repeal or abrogate any existing ordinances including subdivision regulations, zoning ordinances, or building codes. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall govern.

G. Severability

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

H. Penalties

Any person who fails to comply with any of the requirements or provision of this ordinance or directions of the Zoning Officer or any other authorized employee of the Town of Middletown shall be guilty of a misdemeanor and subject to the penalties as set forth in this chapter. In addition to the above penalties, all other actions are hereby reserved, including an action in equity for the proper enforcement of this ordinance. The imposition of a fine or penalty for any violation of, or noncompliance with this ordinance shall not excuse the violation or noncompliance to permit to continue; and all such violations or non-compliances within a reasonable time. Any structure constructed, reconstructed, enlarged, altered, or relocated in non-compliance with this ordinance may be declared by the Town council to be a public nuisance and abatable as such. Flood insurance may be withheld from structures constructed in violation of this Ordinance.

**Section 17-8 (A) Definitions**

- A. Appurtenant or accessory structure - A non-residential structure which is on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures are not to exceed 600 square feet.
- B. Base Flood - A flood that, on the average, has a one (1%) chance of being equaled or exceeded in any given year.
- C. Base flood elevation - The water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year. The water surface elevation of the base flood in relation to the datum specified on the community's Flood Insurance Rate Map. For the purposes of this ordinance, the base flood is the 1% annual chance flood.
- D. Basement - Any area of the building having its floor sub-grade (below ground level) on all sides.
- E. Board of Zoning Appeals. The board appointed to review appeals made by individuals with regard to decisions of the Zoning Administrator in the interpretation of this Ordinance.

- F. Development. Any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, the placement of manufactured homes, streets, and other paving, utilities, filling, grading, excavation, mining, dredging, drilling operations, or storage of equipment or materials.
- G. Encroachment - The advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.
- H. Existing construction - For the purposes of the insurance program, structures for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975 for FIRMs effective before that date. “Existing construction” may also be referred to as “existing structures” and “pre-FIRM.”
- I. Existing Manufactured Home Park/Subdivision. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads is completed before initial effective date of these regulations.
- J. Expansion to an Existing Manufactured Home Park/Subdivision. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads).
- K. Flood. A general and temporary inundation of normally dry land areas from:
1. The unusual and rapid accumulation or runoff of surface waters from any source.
  2. Mudflows which are proximately caused by flooding as defined in (1.) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
- L. Flood Insurance Rate Map (FIRM) - an official map of a community, on which the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).
- M. Flood Insurance Study (FIS) - a report by FEMA that examines, evaluates and determines flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudflow and/or flood-related erosion hazards.
- N. Flood-Prone Area. Any land areas susceptible to being inundated by water from any source.

- O. Floodplain
1. A relatively flat or low land area adjoining a river, stream or watercourse which is subject to partial or complete inundation.
  2. An area subject to the unusual and rapid accumulation or run-off of surface water from any source.
- P. Floodproofing - any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.
- Q. Floodway. The designated area of the floodplain required to carry and discharge flood waters of a given magnitude. For the purposes of this Ordinance, the floodway shall be capable of accommodating a flood of the 1% annual chance magnitude.
- R. Highest adjacent grade - the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
- S. Historic Structure. Any structure that is:
1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for the individual listing on the National Register;
  2. Certified or preliminarily determined by the Secretary of the Interior as contributing the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
  3. Individually listed on a local inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
  4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either;
    - a. By an approved state program as determined by the Secretary of the Interior, or
    - b. Directly by the Secretary of Interior in states without approved programs.
- T. Hydrologic and Hydraulic Engineering Analysis - Analyses performed by a licensed professional engineer, in accordance with standard engineering practices that are accepted by the Virginia Department of Conservation and Recreation and FEMA, used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.
- U. Lowest Adjacent Grade - the lowest natural elevation of the ground surface next to the walls of a structure.

- V. Lowest Floor - The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Federal Code 44CFR §60.3.
- W. Manufactured Home. A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities.
- X. Manufactured Home Park/Subdivision. A parcel (or contiguous parcels) of land divided into two or more lots for rent or sale.
- Y. New Construction date. For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after August 3<sup>rd</sup>, 1984, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.
- Z. New Manufactured Home Park/ Subdivision. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pas) is completed on or after the initial effective date of these regulations.
- AA. Post-FIRM structures - A structure for which construction or substantial improvement occurred on or after August 3<sup>rd</sup>, 1984.
- BB. Pre-FIRM structures - A structure for which construction or substantial improvement occurred before August 3<sup>rd</sup>, 1984
- CC. Recreational Vehicle. A vehicle which is:
1. Built on a single chassis;
  2. 400 square feet or less when measured at the largest horizontal projection;
  3. Designed to be self-propelled or permanently towable by a light duty truck; and
  4. Designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational camping, travel, or seasonable use.
- DD. Repetitive Loss Structure - A building covered by a contract for flood insurance that has incurred flood-related damages on two occasions in a 10-year period, in which the cost of the repair, on the average, equaled or exceeded 25 percent of the market value of the structure at the time of each such flood event; and at the time of the second incidence of

flood-related damage, the contract for flood insurance contains increased cost of compliance coverage.

- EE. Severe repetitive loss structure - a structure that: (a) Is covered under a contract for flood insurance made available under the NFIP; and (b) Has incurred flood related damage - (i) For which 4 or more separate claims payments have been made under flood insurance coverage with the amount of each such claim exceeding \$5,000, and with the cumulative amount of such claims payments exceeding \$20,000; or (ii) For which at least 2 separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the market value of the insured structure.
- FF. Special flood hazard area - The land in the floodplain subject to a one (1%) percent or greater chance of being flooded in any given year as determined in Section 17-8 (B)-B.
- GG. Start of Construction. The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site such as the pouring of slab or footings; the installation of piles, the construction of columns, or any work beyond the state of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways; nor does it include excavation of a basement, footings, piers or foundation or the erection of temporary forms; nor does it include installation on the property of accessory buildings, such as garages or shed not occupied as dwelling units or no part of the main structure. For a substantial improvement, the actual start of construction means the first alteration on any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of the building.
- HH. Structure - for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.
- II. Substantial Damage. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. It also means flood-related damages sustained by a structure on two occasions in a 10-year period, in which the cost of the repair, on the average, equals or exceeds 25 percent of the market value of the structure at the time of each such flood event.
- JJ. Substantial Improvement. Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage” regardless of the actual repair work performed. The term does not, however, include either:
  1. Any project for the improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by

the local code enforcement official and which are the minimum necessary to assure safe living conditions, or

2. Any alteration of a “historic structure”, provided that the alteration will not preclude the structures continued designation as a “historic structure.”
3. Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined above, must comply with all ordinance requirements that do not preclude the structure’s continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

KK. Violation - the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

LL. Watercourse - A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

**Section 17-8 (B) Establishment of Zoning District.**

A. Description of District

1. Basis of District – the floodplain district shall include areas subject to inundation by water of the one (1%) annual chance flood (the Special Flood Hazard Areas). The basis for the Floodplain District shall be the Flood Insurance Rate Map/Flood Insurance Study for the Town of Middletown, prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated January 29, 2021, and any subsequent revisions or amendments thereto.  
The Floodplain Area shall be that floodplain area for which no delineated flood profiles or elevations are provided, but where a 1% annual chance floodplain boundary has been approximated. Such areas are shown as Zone A on the maps. For these areas, 1% annual chance flood elevations and floodway information from other federal, state, or other acceptable source shall be used, when available, the elevation shall be determined by using the elevation of a point on the boundary of the identified floodplain area which is nearest the construction site.
2. Overlay Concept
  - a. The Floodplain District described above shall be overlays to the existing underlying districts as shown on the Official Zoning Map, and as such, the provisions for the floodplain district shall apply.

- b. Any conflict between the provisions or requirements of the Floodplain District and those of any underlying district, the more restrictive provisions and/or those pertaining to the floodplain district shall apply.
  - c. In the event any provision concerning a Floodplain District is declared inapplicable as a result of any legislative or administrative actions or judicial decisions, the basic underlying provisions shall remain inapplicable.
- B. Official Zoning Map. The boundaries of the Floodplain District are established as shown on the Flood Insurance Rate Map which is declared to be a part of this Ordinance and which shall be kept on file at the Town Office.
- C. Floodplain Administrator. The Planning and Zoning Administrator, referred to as the Zoning Officer, is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator.
- D. Duties and Responsibilities of the Floodplain Administrator

The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:

- i. Review applications for permits to determine whether proposed activities will be located in the Special Flood Hazard Area (SFHA).
- ii. Interpret floodplain boundaries and provide available base flood elevation and flood hazard information.
- iii. Review applications to determine whether proposed activities will be reasonably safe from flooding and require new construction and substantial improvements to meet the requirements of these regulations.
- iv. Review applications to determine whether all necessary permits have been obtained from the Federal, State, or local agencies from which prior or concurrent approval is required; in particular, permits from state agencies for any construction, reconstruction, repair, or alteration of a dam, reservoir, or waterway obstruction (including bridges, culverts, structures), any alteration of a watercourse, or any change of the course, current, or cross section of a stream or body of water, including any change to the 100-year frequency floodplain of free-flowing non-tidal waters of the State.
- v. Verify that applicants proposing an alteration of a watercourse have notified adjacent communities, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management), and other appropriate agencies (VADEQ, USACE), and have submitted copies of such notifications to FEMA.
- vi. Advise applicants for new construction or substantial improvement of structures that

are located within an area of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act that Federal flood insurance is not available on such structures; areas subject to this limitation are shown on Flood Insurance Rate Maps as Coastal Barrier Resource System Areas (CBRS) or Otherwise Protected Areas (OPA).

- vii. Approve applications and issue permits to develop in flood hazard areas if the provisions of these regulations have been met, or disapprove applications if the provisions of these regulations have not been met.
- viii. Inspect or cause to be inspected, buildings, structures, and other development for which permits have been issued to determine compliance with these regulations or to determine if non-compliance has occurred or violations have been committed.
- ix. Review Elevation Certificates and require incomplete or deficient certificates to be corrected.
- x. Submit to FEMA, or require applicants to submit to FEMA, data and information necessary to maintain FIRMs, including hydrologic and hydraulic engineering analyses prepared by or for Middletown within six months after such data and information becomes available if the analyses indicate changes in base flood elevations.
- xi. Maintain and permanently keep records that are necessary for the administration of these regulations, including:
  - 1. Flood Insurance Studies, Flood Insurance Rate Maps (including historic studies and maps and current effective studies and maps), and Letters of Map Change; and
  - 2. Documentation supporting issuance and denial of permits, Elevation Certificates, documentation of the elevation (in relation to the datum on the FIRM) to which structures have been floodproofed, inspection records, other required design certifications, variances, and records of enforcement actions taken to correct violations of these regulations.
- xii. Enforce the provisions of these regulations, investigate violations, issue notices of violations or stop work orders, and require permit holders to take corrective action.
- xiii. Advise the Board of Zoning Appeals regarding the intent of these regulations and, for each application for a variance, prepare a staff report and recommendation.
- xiv. Administer the requirements related to proposed work on existing buildings:
  - 1. Make determinations as to whether buildings and structures that are located in flood hazard areas and that are damaged by any cause have been substantially damaged.

2. Make reasonable efforts to notify owners of substantially damaged structures of the need to obtain a permit to repair, rehabilitate, or reconstruct. Prohibit the non-compliant repair of substantially damaged buildings except for temporary emergency protective measures necessary to secure a property or stabilize a building or structure to prevent additional damage.
- xv. Undertake, as determined appropriate by the Zoning Officer due to the circumstances, other actions which may include but are not limited to: issuing press releases, public service announcements, and other public information materials related to permit requests and repair of damaged structures; coordinating with other Federal, State, and local agencies to assist with substantial damage determinations; providing owners of damaged structures information related to the proper repair of damaged structures in special flood hazard areas; and assisting property owners with documentation necessary to file claims for Increased Cost of Compliance coverage under NFIP flood insurance policies.
  - xvi. Notify the Federal Emergency Management Agency when the corporate boundaries of Middletown have been modified and:
    1. Provide a map that clearly delineates the new corporate boundaries or the new area for which the authority to regulate pursuant to these regulations has either been assumed or relinquished through annexation; and
    2. If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended regulations shall be provided to Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and FEMA.
  - xvii. Upon the request of FEMA, complete and submit a report concerning participation in the NFIP which may request information regarding the number of buildings in the SFHA, number of permits issued for development in the SFHA, and number of variances issued for development in the SFHA.
  - xviii. It is the duty of the Community Floodplain Administrator to take into account flood, mudslide and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land management and use throughout the entire jurisdictional area of the Community, whether or not those hazards have been specifically delineated geographically (e.g. via mapping or surveying).

E. Use and Interpretation of FIRMs

The Zoning Officer shall make interpretations, where needed, as to the exact location of special flood hazard areas, floodplain boundaries, and floodway boundaries. The following shall apply to the use and interpretation of FIRMs and data:

1. Where field surveyed topography indicates that adjacent ground elevations:
  - i. Are below the base flood elevation in riverine SFHAs, or below the 1% storm surge elevation in coastal SFHAs, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as special flood hazard area and subject to the requirements of these regulations;
  - ii. Are above the base flood elevation and the area is labelled as a SFHA on the FIRM, the area shall be regulated as special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the SFHA.
2. In FEMA-identified special flood hazard areas where base flood elevation and floodway data have not been identified and in areas where FEMA has not identified SFHAs, any other flood hazard data available from a Federal, State, or other source shall be reviewed and reasonably used.
3. Base flood elevations and designated floodway boundaries on FIRMs and in FISs shall take precedence over base flood elevations and floodway boundaries by any other sources if such sources show reduced floodway widths and/or lower base flood elevations.
4. Other sources of data shall be reasonably used if such sources show increased base flood elevations and/or larger floodway areas than are shown on FIRMs and in FISs.
5. If a Preliminary Flood Insurance Rate Map and/or a Preliminary Flood Insurance Study has been provided by FEMA:
  - i. Upon the issuance of a Letter of Final Determination by FEMA, the preliminary flood hazard data shall be used and shall replace the flood hazard data previously provided from FEMA for the purposes of administering these regulations.
  - ii. Prior to the issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data shall be deemed the best available data pursuant to Article III, Section 3.1.A.3 and used where no base flood elevations and/or floodway areas are provided on the effective FIRM.
  - iii. Prior to issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data is permitted where the preliminary base flood elevations or floodway areas exceed the base flood elevations and/or designated floodway widths in existing flood hazard data provided by FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.

F. A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six

months after the date such information becomes available, a community shall notify the Federal Emergency Management Agency of the changes by submitting technical or scientific data. The community may submit data via a LOMR. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.

- G. **District Boundary Changes.** The delineation of any of the Floodplain District may be revised by the Town Council where natural or man-made changes have occurred and/or where more detail studies have been conducted or undertaken by the U.S. Army Corps of Engineers or their qualified agency, or on individual documents the need for such change. However, prior to any such change, approval must be obtained from the Federal Insurance Administration.
- H. **Interpretation of District Boundaries.** Initial interpretations of the boundaries of the Floodplain District shall be made by the Zoning Officer. Should a dispute arise concerning the boundaries of any of the District, the Board of Zoning Appeals shall make the necessary determination. The person questioning or contesting the location of the District boundary shall be given a reasonable opportunity to present his case to the Board and to submit his/her own technical evidence if he/she so desires.

### **Section 17-8 (C) District Provisions**

#### **A. General Provisions**

- a. **Permit Requirements.** All uses, activities, and development occurring within any floodplain district shall be taken be undertaken only upon the issuance of a permit. Such development shall be undertaken only in strict compliance with the provisions of the Ordinance and with all other applicable codes and ordinances, such as the Virginia Uniform Statewide Building Code and the Town of Middletown Subdivision Regulations. Prior to the issuance of any such permit, the Zoning Officer shall require all applications to include compliance with all applicable state and federal laws. Under no circumstances shall any use, activity, and/or development adversely affect the capacity of the channels or floodways or any watercourse, draining ditch, or any other drainage facility or system.
- b. **Alteration or relocation of watercourse.** Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction, a permit from the U.S. Corps of Engineers, the Virginia State Water Control Board may be necessary (a joint permit application is available from anyone of these organizations). Further notification of the proposal shall be given to all affected adjacent jurisdictions, the Division of Soil and Water Conservation (Department of Conservation and Recreation), and the Federal Insurance Administration.  
The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.

- c. Site Plans and Permit Applications. All applications for development in the floodplain district and all building permits issued for the floodplain shall incorporate the following information:
  - a. For structures to be elevated, the elevation of the lowest floor(including basement).
  - b. For structures to be flood-proofed (nonresidential only), the elevation to which the structure will be flood-proofed.
  - c. The elevation of the 1% annual chance flood.
  - d. Topographic information showing existing and proposed ground elevations.
- d. Manufactured Homes
  - a. Manufactured homes that are placed or substantially improved on sites;
    - i. Outside of a manufactured home park or subdivision;
    - ii. In a new manufactured home park or subdivision;
    - iii. In an expansion to an existing manufactured home park or subdivision; or
    - iv. In an existing manufactured home park or subdivision on which a manufactured home has incurred “substantial damage” as a result of a flood: Shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and is securely anchored to an adequately anchored foundation system to resists flotation, collapse and lateral movement.
  - b. Manufactured home to place or substantially improved on sites in an existing manufactured home park or subdivision section shall be elevated so that either
    - i. The lowest floor of the manufactured home is at or above the base flood elevation; or
    - ii. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less then 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- e. Recreational Vehicles
  - a. Recreation vehicles shall either:
    - i. Be on site for fewer than 180 consecutive days; and
    - ii. Be fully licensed and ready for highway use; or

- iii. Meet the permit requirements for placement and anchoring requirements for manufactured homes in paragraph (a)(4) above
  - b. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only to by quick disconnect type utilities and security devices, and has no permanently attached additions
- B. Floodplain District. In the Floodplain District, the development and/or use of land shall be permitted in accordance with the regulations of the underlying district provided that all such uses, activities, and/or development shall be undertaken in strict compliance with the flood proofing and related provisions contained in the Virginia Uniform Statewide Building Code and all other applicable codes and ordinances.
- C. New Construction- New construction and substantial improvements shall be built according to this ordinance and the VA USBC, and anchored to prevent flotation, collapse, or lateral movement of the structure. Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state anchoring requirements for resisting flood damages. New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
- D. Standards for Subdivision Proposals
  - a. All subdivision proposals shall be consistent with the need to minimize flood damage;
  - b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
  - c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards, and
  - d. Base flood elevation data shall be obtained from other sources or developed using detailed methodologies, hydraulic and hydrologic analysis, and other proposed development proposals (including manufactured home parks and subdivisions) that exceed five lots or five acres, whichever is lesser.
- E. Design Criteria for Utilities and Facilities
  - a. Sanitary Sewer Facilities. All new or replacement sanitary sewer facilities and private package sewage treatment plants (including all pumping stations and collector systems) shall be designed to minimize or eliminate flood damage and impairment. Waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

- b. Water Facilities. All new or replacement water facilities shall be designed to minimize or eliminate infiltration of flood waters into the system and be located and constructed to minimize or eliminate flood damages.
- c. Drainage Facilities. All storm drainage facilities shall be designed to convey the flow of surface waters without damage to persons or property. The systems shall ensure drainage away from buildings and on-site waster disposal sites. The Town Council may require a primarily underground system to accommodate with local and regional drainage plans. The facilities shall be designed to prevent the discharge of excess run-off onto adjacent properties.
- d. Service Facilities- electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- e. Utilities All utilities, such as gas lines, electrical and telephone systems being placed in flood-prone areas should be located, elevated (where possible) and constructed to minimize the chance of impairment during a flooding occurrence.
- f. Streets and sidewalks. Streets and sidewalks should be designed to minimize their potential for increasing and aggravating the levels of flood flow. Drainage openings shall be required to sufficiently discharge flood flows without unduly increasing flood heights.

**Section 17-8 (D) – Variances: Factors to be Considered**

- A. Variances shall be issued only upon
  - i. a showing of good and sufficient cause,
  - ii. after the Board of Zoning Appeals has determined that failure to grant the variance\ would result in exceptional hardship to the applicant; and
  - iii. after the Board of Zoning Appeals has determined that the granting of such variance will not result in (a) unacceptable or prohibited increases in flood heights, (b) additional threats to public safety, (c) extraordinary public expense; and will not (d) create nuisances, (e) cause fraud or victimization of the public, or (f) conflict with local laws or ordinances.

In passing upon application for Variances, the Board of Zoning Appeals shall satisfy all relevant factors and procedures specified in other sections of the Zoning Ordinance and consider the following additional factors:

- 1. The danger to life and property due to increased flood heights or velocities caused by encroachments. No variance shall be granted for any proposed use, development, or activity within any floodway area that will cause any increase in flood levels during the 1% annual chance flood.

2. The danger that materials may be swept on to other lands or downstream to the injury of others.
  3. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
  4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
  5. The importance of the service provided by the proposed facility to the community
  6. The requirements of the facility for a waterfront location.
  7. The availability of alternative locations not subject to flooding for the proposed use.
  8. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
  9. The relationship of the proposed use to the Comprehensive plan and Floodplain Management Program for the area.
  10. The safety of access by ordinary and emergency vehicles to the property in time of flood.
  11. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at this site.
  12. The repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continue designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
  13. No variance shall be granted for an accessory structure exceeding 600 square feet.
  14. Such other factors which are relevant to the purposes of this ordinance.
- B. Variances shall be issued only after the Board of Zoning Appeals has determined that the granting of such will not result in:
1. Unacceptable or prohibited increases in flood heights;
  2. Additional threats to public safety;
  3. Extraordinary public expense;

4. Will not create nuisances;
  5. Cause fraud or victimization of the public; or
  6. Conflict with local laws or ordinances.
- C. The Board of Zoning Appeals shall notify the applicant for a variance, in writing, that the issuance of a variance to construct a structure below the 1% annual chance flood elevation:
1. Increases the risks to life and property; and
  2. Will result in increased premium rates for flood insurance.
- D. A record shall be maintained of the above notification as well as all variance actions, including justification for the issuance of the variances. Any variances which are issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator.

**Section 17-8 (E) Existing Structures in Floodplain District**

- A. A structure or use of a structure or premises which lawfully existed before the enactment of these provisions may be continued subject to the following condition:
1. Any modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use located in any floodplain district to an extent or amount of less than fifty (50) percent of its market value shall be elevated and/or flood proofed to the greatest extent possible.
  2. The modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use, regardless of its location in a floodplain district, to an extent or amount of fifty (50) percent or more of its market value shall be undertaken only in full compliance with this Ordinance and the provision of the Virginia Uniform Statewide Building Code. (09-30-90).

**Article III. Supplementary Regulations**

**Section 17-9. Widening of Highways and Streets**

Whenever there shall be plans in existence, approved by wither the State Department of Highways and Transportation or by the Town Council, for the widening of any street or highway, the Commission may recommend additional front yard setbacks for any new construction or for any structures altered or remodeled adjacent to the future planned right-of-way for such proposed street or highway widening. (09-25-78)

**Section 17-10. Visual Obstruction on Corner Lots or Alleys**

In case of corner lots in residential districts, there shall be no planting, fence or obstruction to vision more than three (3) feet high less than twenty (20) feet from the intersection of two street right-of-way lines. (09-25-78)

### **Section 17-11 Fences**

- A. No fragile, readily flammable material such as paper, cloth or canvas shall constitute a part of any fence, nor shall any such material be employed as an adjunct or supplement to any fence.
- B. No fence shall be constructed within two (2) feet of any street line, except on corner lots as set forth in Section 17-10.
- C. Fences shall not exceed a height of six feet as measured from the topmost point thereof to the ground or surface, along the centerline of the fence, in a commercial or residential zone, except on corner lots as set forth in Section 17-10.
- D. Fences surrounding industrial sites, public playgrounds, institutions or schools may not exceed a height of fourteen (14) feet. (09-25-78)

### **Section 17-12. Street Access to Buildings**

Every building hereafter erected or moved shall be on a lot adjacent to a public street, or has access to a public street, and all buildings shall be so located on lots as to provide safe and convenient access for servicing, fire protection and required off-street parking. (09-25-78)

### **Section 17-13. Off-Street Parking**

- A. Generally
  - 1. There shall be provided, at the time of erection of any main building, at the time any main building is enlarged or at the institution or enlargement of any use, minimum off-street parking space with adequate provisions for entrance and exit. Two hundred (200) square feet (ten feet by twenty feet) of lot or floor area shall be deemed a parking space for one vehicle. All parking spaces and access driveways shall be covered with at least an all-weather surface, unless as otherwise provided in this Chapter, and shall be graded and drained to dispose of surface water. However, no surface water from any parking area shall be permitted to drain onto adjoining property. All commercial and industrial uses shall have a hard surfaced parking area and access driveways.
  - 2. Should a nonconforming structure or use be enlarged or extended or should a use or structure be nonconforming because of parking requirements, additional parking requirements need only be based on the requirements for the enlarged or expanded portion.
- B. Residential

1. A driveway or parking space shall be at least three feet from a property line, and all parking spaces for a multiple-family dwelling shall be at least ten feet from a residential structure on the lot, unless as otherwise provided in this Chapter for apartments.
2. The parking spaces required for one and two-family dwellings shall be located on the same lot as the dwelling. The parking spaces required for other land uses shall be located on the same lot as the principal use or on a lot which is within three hundred (300) feet of the principal use, such distance to be measured along lines of public access to the property.
3. For all residential dwelling units, there shall be provided either in a private garage or on the lot, space for the parking of two automobiles for each dwelling unit in a new building or each dwelling unit added in the case of the enlargement of an existing building. All single and two-family dwelling units shall have parking areas and access drives with an all-weather surface. All other uses shall have a hard surfaced parking area and access driveways.

C. Other Uses.

1. Tourist homes, rooming houses, boarding houses, hotels and motels shall provide on the lot parking space for one automobile for each guest room or residence unit, plus on additional space for each ten guest rooms or residence units, plus required parking for any restaurant and/or assembly place as required in this section.
2. Collective provisions of off-street parking facilities for two or more structures or uses is permissible; provided that the total number of parking spaces is at least equal to the sum of the minimum number of required spaces computed separately for each use. Collective parking is subject to all previously stated parking requirements.
3. For church and school auditoriums, and for theaters, general auditoriums, stadiums and other similar places of assembly, there shall be provided at least one off-street parking space for every four fixed seats, based on the maximum seating capacity in the main place of assembly for the building. For assembly halls without fixed seats, there shall be provided one parking space for each one hundred (100) square feet of usable floor area.
4. For public or private nursery, day care, kindergarten, elementary, intermediate or high schools there shall be provided one parking space for each teacher, employee or administrator, whether full or part-time, whose activities are conducted between the hours of 8:00 a.m. and 4:00 p.m., in addition to the requirements of the auditoriums. In addition, high schools shall provided one parking space for every ten students for the maximum rated capacity of the school, as determined by the School Board. Parking spaces already provided to meet off-street parking requirements for stores, office buildings and industrial establishments lying within three hundred (300) feet of the place of public assembly as measured along lines of public access, and which are

not normally in use on Sundays or between the hours of 6:00 p.m. and midnight on other days, may be used to meet not more than seventy-five (75%) percent of the off-street parking requirements of a church or other similar place of public assembly.

5. In business districts, commercial structures existing at the time of adoption of this Chapter which contain, or may be changed at any future time to contain, any nonresidential use permitted in the business district, will not be required to have additional parking spaces above those provided when this Chapter is adopted. This applies to the reconstruction of nonconforming commercial uses or structures. All new commercial construction on vacant land, or commercial uses begun where no commercial use existed at the time of adoption of this Chapter, whether or not such property was previously zoned business, shall provide the number of spaces required by other sections of this Chapter.
6. For hospitals, there shall be provided at least one parking space for each two beds, based on the maximum capacity in terms of beds, including those of infants and children, plus one space for each employee or staff member on maximum shift, excluding doctors.
7. For nursing and convalescent homes, there shall be provided at least one parking space for each six beds or fraction thereof.
8. For retail and wholesale stores selling directly to the public, there shall be provided one parking space for each one hundred (100) square feet of retail or wholesale floor space in the building, unless otherwise specified in this Chapter.
9. For shopping centers, see Section 17-16.
10. For funeral homes and mortuaries, there shall be one parking space for each four seats in chapels or parlors with fixed seats and one parking space for each one hundred (100) square feet of floor area for assembly rooms without fixed seats for services, plus five parking spaces for employees in both instances noted above.
11. For restaurants, other than drive-in restaurants, here shall be provided at least one parking space for each four seats or one space for each fifty (50) square feet of gross floor area, whichever is greater. In addition, one parking space shall be provided for each employee on maximum shift.
12. For drive-in restaurants, there shall be provided at least one parking space for each four seats in the building. In addition, there shall be provided thirty (30) spaces for each one thousand (1000) square feet of gross floor area of the structure, plus one parking space for each employee on maximum shift.
13. For office buildings, offices or professional and personal services establishments, or medical and dental clinics, there shall be provided one parking space for each two

hundred (200) square feet of floor space occupied by the office or personal service or clinic.

14. For industrial establishments or wholesale establishments, not selling directly to the public, there shall be provided one parking space for each employee, computed on the basis of maximum number of individuals employed within an eight-hour shift, plus space to accommodate all trucks and other vehicles used in connection therewith.
15. Any commercial building not listed above and hereafter erected, converted or structurally altered shall provide one parking space for each one hundred (100) square feet of business floor space in the building.
16. Every parcel of land hereafter used as a public parking area shall have a hard surface. It shall have appropriate guard rails or stops where needed as determined by the administrator. Any lights used to illuminate such parking area shall be so arranged as to reflect the light away from adjoining residential uses. (9-25-78)

#### **Section 17-14. Off-Street Loading**

On the same premises with every building, structure or part thereof, erected and occupied for uses involving the receipt or distribution of vehicles, materials or merchandise, there shall be provided and maintained on the lot, adequate space for standing, turning, loading and unloading services in order to avoid interference with public use of the streets and alleys.

Such space shall be a minimum of fifteen (15) feet wide and thirty-five (35) feet in length, with a minimum clear height of fifteen (15) feet. Off-street truck loading space shall be provided at a rate of one space for the first ten thousand (10,000) square feet or less of gross floor area, plus a minimum of one additional space for each additional forty thousand (40,000) square feet of gross floor area or part thereof. For the purpose of this section, "gross floor area" shall also include gross outdoor storage area, whether covered or uncovered. (9-25-78).

#### **Section 17-15. Signs**

The maximum permitted size of signs and the types of permitted signs shall be in accordance with the following regulations:

##### **A. All Zoning Districts**

1. Official traffic or directional signs and other official federal, state, county or town government signs.
2. Temporary signs announcing a campaign, drive or event of a civic philanthropic, educational or religious organization; provided, that such sign shall not exceed twelve (12) square feet in area and shall be removed seven days after the completion of the campaign, drive or event.

3. Signs offering the sale, rental or future use of the premises upon which such signs are erected, provided that the combined area of such signs shall not exceed twelve (12) square feet. No more than one such sign shall be placed on the property.
4. One temporary sign of each contractor or developer, and one sign for all combined subcontractors, erected and maintained on the premises where the work is being performed; provided that the area of each sign shall be removed upon completion of the work.
5. Trespassing signs, signs indicating the private nature of a road, driveway or premises and signs controlling fishing or hunting on the premises; provided that the area of any such sign shall not exceed four square feet.

B. Residential Districts

1. Home Occupation – Signs allowed on vehicles only, not to exceed 2 square feet. (8-11-99; 2-11-02)
2. Sign, bulletin, announcement board or identification sign for schools, parks or playgrounds, churches, hospitals, clubs, multi-family dwellings or other principal uses and buildings other than dwellings on the same lot therewith for the purpose of displaying the name of the institution and its activities or services; provided, that the area of any such sign shall not exceed twenty-four (24) square feet and that not more than one such sign shall be erected or displayed on each street frontage.
3. Subdivision signs, not exceeding eighteen (18) square feet in area, for the purpose of advertising or identifying a housing development or subdivision, when erected or displayed on the property so advertised or identified at least ten feet from the front lot line; provided, that only one such sign shall be erected or displayed facing any one street on the perimeter of such development or subdivision.

C. Multi-Family Dwellings. The following signs shall be permitted for multi-family dwellings:

1. Freestanding real estate signs for advertising the sale or rental of the premises upon which any such sign is erected; provided, that the total area of the sign does not exceed twenty-four (24) square feet, that there shall be no more than one such sign on any one lot on the same street frontage and that no sign shall be erected so as to stand higher than one of the buildings it advertises.
2. Directional signs, not to exceed two square feet each, erected within the project itself to direct persons to a rental office or sample unit.
3. Permanent identifying signs for the purpose of indicating the name of the multi-family project and for the purpose of identifying the individual buildings within the project. Not more than one sign for each entrance to the project from a public street to identify the name of the project shall be permitted, and no such sign shall exceed

ten (10) square feet in size. Signs to identify the individual buildings within the project shall not exceed six (6) square feet.

- D. Business Districts. The following signs shall be permitted in all business districts, except as specified in sub-paragraph (i.) of paragraph (3) of this section:
1. Any sign permitted in a residential zone, with the setback requirement waived where applicable.
  2. Signs advertising only the general business conducted within the premises upon which such signs are erected or displayed.
  3. Signs permitted within a business district shall be erected or displayed only on such walls of a building as face a street, ally or parking area, or as freestanding signs upon the lot, subject to the following provision as to size and location.
    - a. One-Story Building. The total area of all signs facing a street, alley or parking area shall not exceed one square foot for each foot of building width facing such street, alley or parking area, but in no case shall the aggregate of all such signs exceed one hundred (100) square feet. This applies to signs which are only affixed to the building, not freestanding signs.
    - b. First floor business in multi-story buildings. The total area of all signs facing a street, alley or parking area shall not exceed one square foot for each foot of building width facing such street, alley or parking area, and in no case shall the aggregate of such signs exceed one hundred (100) square feet. All such signs shall be kept within a height of twenty (20) feet above the sidewalk.
    - c. Above first floor of multi-story buildings containing one or more businesses above first floor. The total area of all signs facing a street, alley or parking area on any wall above the twenty (20) foot height specified in subparagraph (b.) of this paragraph shall not exceed forty (40) square feet or one-fortieth of the area of that wall above such twenty (20) foot height, whichever is greater.
    - d. Multi-story buildings occupied by one business only. Where entire buildings over one story in height are occupied by one business, a total sign area of one hundred (100) square feet facing any street, alley or parking area, whichever is greater. The sign may be located without regard to the twenty (20) foot height provision contained above.
    - e. Signs hung on marquees. No sign shall be hung on a marquee, canopy or portico if such sign shall extend beyond the established setback line. The area of any such sign shall be included in determining the total area of signs erected or displayed.

- f. Signs on windows advertising occupants, etc. Signs advertising only the name of the occupant of a store, office or building, the business or occupation conducted or the products sold therein may be placed on show windows; provided, that not more than twenty (20) percent of the area of such windows shall be covered. The area of such signs shall be included in determining the total area of signs erected or displayed.
- g. Projection and Height of Signs. A sign may be erected or displayed flat against a wall or at an angle thereto, but no sign shall project beyond the established setback line unless as otherwise provided in this Chapter. The bottom of a sign, the area which exceeds six (6) square feet, erected flat against a wall, shall be at least eight (8) feet above the sidewalk, alley or parking area. The bottom of a sign projecting from a wall shall be at least ten (10) feet above a walkway or parking area, and at least fourteen (14) feet above an alley.
- h. Roof Signs. No roof signs shall be permitted.
- i. Freestanding Signs. Freestanding signs upon a lot may be erected only where drive-in service or parking is provided. However, no freestanding sign shall be located closer than ten (10) feet to a side lot line. No freestanding sign shall project beyond the established setback line. For the purposes of this section all lot lines facing streets shall be considered front lot lines.
  - 1. B-1 Central Business District. No more than two such freestanding signs shall be permitted for any building or building unit. Freestanding signs shall not be erected more than thirty (30) feet above the grade, and the combined area of all signs shall not exceed one hundred (100) square feet.
  - 2. B-2 Highway Business District.
    - a. Any permitted primary use may erect two commercial freestanding business signs. When two or more primary uses are located on the same parcel, each use may erect two freestanding commercial business signs.
    - b. Beyond eight hundred (800) feet from the nearest edge of the right-of-way of any federal interstate highway, one freestanding sign may be erected so as not to exceed fifty (50) feet above the grade and not to exceed two hundred (200) square feet in area. A second freestanding sign may be erected not to exceed thirty (30) feet in height above the grade and not exceed one hundred (100) square feet in area.
    - c. Within eight hundred (800) feet of the nearest edge of the right-of-way of any federal interstate highway, and in the “B-2” Zone only, each permitted primary use will be permitted one freestanding sign not to exceed thirty-five (35) feet in height above the grade and not to exceed a total of two hundred (200) square feet in area, and a second freestanding sign that meets the following criteria:

1. Height Requirements. The total height, including message portion shall not exceed one hundred twenty-five (125) feet above the grade.
  2. Size Requirements. The message portion shall not exceed a total of three hundred (300) square feet in area, and shall not be located less than twenty-five (25) feet in height from the base of the sign support pole.
  3. Multiple Signs per Support Pole. More than one freestanding commercial business sign shall be allowed to share a common support pole. The combined message portion of freestanding commercial business signs that meet this requirement shall not exceed a total of five hundred (500) square feet in area, and shall not be located less than twenty-five (25) feet in height from the base of the sign support pole.
- d. Neither the direct nor reflected light from any illuminated business sign shall create glare into or upon any building or property other than the building or property to which the business sign is permitted to be located. Neither the direct nor reflected light from any illuminated business sign shall create a traffic hazard to operators of motor vehicles on public thoroughfares.
  - e. No sign shall be erected in any manner that would be in violation of any State of Virginia and/or Federal regulations.
- j. Identification Signs. Identification signs for shopping centers consisting of five or more separate businesses and having a continuous street frontage of at least two hundred (200) feet shall be permitted, and the area of such signs shall not be included in the total area of signs otherwise permitted in this section for the separate businesses. The total area of such identification signs for any shopping center shall not exceed one square foot for each foot of street frontage, nor shall the total area of such signs facing any street, alley or parking area exceed one hundred fifty (150) square feet.
  - k. Advertising theater acts, etc. Signs advertising the acts or features to be given in movie theaters may be displayed on permanent cases or frames erected on theater buildings. The bottom of any such case or frame erected flat against a wall may be less than eight (8) feet above the sidewalk, alley or parking area. When the area of any such case or frame facing a street, alley or parking area does not exceed twenty-four (24) square feet and the area of all such cases or frames facing such street, alley or parking area does not exceed forty-eight (48) square feet, the area of the signs displayed thereon shall not be included in determining the total area of signs erected or displayed.
- E. Industrial District. Any such sign permitted in the Business District.
- F. Other General Sign Regulations.

1. Signs may be lighted with non-glaring lights or may be illuminated by shielded floodlights provided that, no red, green or amber lights shall be permitted; provided further, that lighting is screened from adjacent properties. No lights of intermittent, flashing or animated types shall be permitted.
2. No signs, temporary or permanent, shall be permitted which are posted, stapled or otherwise permanently attached to trees or utility poles within the street line.
3. All signs, except temporary signs, shall be constructed of durable material and kept in good condition and repair.
4. Nonconforming signs, one removed, shall be replaced only with conforming signs; provided, that non-conforming signs may be repainted or repaired; provided further, that such repainting or repairing does not exceed the dimensions of the existing sign.

G. Billboards. Billboards are prohibited in all districts.

H. Permit. A sign permit shall be required before a sign is erected, altered or relocated, except as otherwise provided in this Chapter.

1. Application. Each application for such permit shall be accompanied by plans showing the area of the sign; the size, character and design proposed; the method of illumination, if any; the exact location proposed for such sign; the method of fastening such sign; and the name and address of the sign owner and the sign erector.
2. Fees. Fees for sign permits shall be as determined by the Town Council.
3. Nullification. A sign permit shall become null and void if the work for which the permit was issued has not been completed within a period of six months after the date of issuance of the permit.
4. Permit Exceptions. A permit shall not be required for the following: provided that such signs shall be subject to all applicable provisions of this Chapter: (10-14-99)
  - a. Repainting without changing wording, composition or color, or minor nonstructural repairs.
  - b. The changing of the advertising copy or message on an approved painted or repaired sign or on a theater marquee and similarly approved signs which are specifically designed for the use of replaceable copy. (9-25-78; 4-8-82; 10-14-99)

### **Section 17-16 Shopping Centers**

Shopping centers shall be in single ownership or under a guaranteed unified management control. Shopping centers shall consist of harmonious selection of uses and groupings of buildings, service and parking areas, circulation and open space and shall be subject to the provisions of the State Condominium Act, in addition to the following provisions:

A. Permitted Principal Uses. The following principal uses shall be permitted:

1. Stores for the sale of goods at retail or the performance of customary personal services or services clearly incidental to retail sales.
2. Business, professional or banking offices.
3. Restaurants, cafes or similar places serving food and/or beverages.
4. Parking areas for transient motor vehicles, but not for the storage of new or used motor vehicles for sale.
5. Gasoline service stations.
6. Drive-in establishments, except drive-in theaters.
7. Indoor theaters.

B. Permitted Accessory Uses Located on Same Lot with Permitted Principal Uses. Only the customary accessory uses associated with a commercial district shall be permitted; provided that they are limited to the same lot as the principal uses.

C. Area and Bulk Regulations.

1. Lot size. The area for development shall be a minimum of three acres.
2. Lot Coverage. Thirty percent (30%) maximum.
3. Building Height. Two stories or thirty-five (35) feet maximum.
4. Front Yard. One hundred (100) feet maximum.
5. Side Yards. One hundred (100) feet minimum each side.
6. Rear Yard. Eighty (80) feet minimum.

D. Supplementary Regulations.

1. Off-Street Parking and Loading. Off-street parking shall be provided on the premises at a rate of one off-street parking space for every one hundred (100) square feet of gross floor area. Parking shall be permitted in the areas required for front, side and rear yard setbacks up to a point of twenty-five (25) feet from any front, side or rear lot line of the shopping center. All parking areas shall be suitably paved with permanent hard surface coverings. Off-street loading spaces shall be provided in accordance with Section 17-14.

2. Access and Traffic Controls. All means of ingress or egress from the shopping center to any public street or state highway street and shall be designed to conduct traffic in a safe manner. The developer shall be responsible for the purchase and erection of any necessary traffic control devices and the construction of additional acceleration or deceleration lanes or service walks as may be required by the state department of highways and transportation or by the town.
3. Interior Circulation. Interior accessways shall be designed so as to prevent the blocking of vehicles entering or leaving the site. Areas provided for loading or unloading of trucks and/or other vehicles or for servicing of shops for rubbish collection or other services shall be adequate in size and shall be so arranged that they may be used without blocking or interfering with interior circulation and parking facilities.
4. Lighting. Lighting for buildings, signs, accessways and parking areas shall be so arranged as not to reflect toward public streets or cause any annoyance to surrounding property owners or residents.
5. Shopping Cart Storage. Establishments furnishing carts or mobile baskets shall provide definite areas on the site for the storage of such carts. Storage areas shall be clearly marked and designated for the storage of shopping carts and/or mobile baskets.
6. Screening.
  - a. All lot lines abutting residential districts, along the side yard or rear yard, shall be appropriately screened by fences, walls or year-round planting and/or suitable enclosures of a minimum height of six feet and a maximum height of eight feet.
  - b. If trees, evergreen hedges or other types of year-round plants are used, a landscaped area shall be provided at least five feet in width along the entire interior lot lines.
7. Storage of Trash or Rubbish. Storage areas for trash and rubbish shall be completely screened, and all organic rubbish shall be contained in containers with tightly fitting lids. No such storage area shall be permitted within any required yard space.
8. Signs. Signs shall conform to Section 17-15 (d).
9. Development Plan.
  - a. Prior to the issuance of a special permit, ten copies of a development plan shall be submitted to the Zoning Administrator for review by the Administrator, Planning Commission and Town Council. Such plan shall comply with the provisions of this Section and Section 17-22.

- b. The development plan shall contain the following data, together with supplementary data for a particular development, as deemed necessary by the Planning Commission or Town Council:
- (i) Title Insurance policy or attorney's certificate showing the owner of the subject property, marketable title to the subject property and the place of record of the latest instrument in the chain of title for each parcel constituting the tract.
  - (ii) Total area of the tract.
  - (iii) Abutting street names, widths and route numbers.
  - (iv) Owners, zoning districts and uses of each adjoining tract.
  - (v) Topographic map with minimum contour intervals and scale acceptable to the administrator.
  - (vi) Development design information.
  - (vii) A concept plan, illustrating the location and functional relationship between all proposed land uses.
  - (viii) Land use plans showing the location and arrangement of all proposed land uses, including the height and number of floors of all buildings both above and below finished grade; the building setbacks and yard areas from the development boundaries and adjacent streets, road alleys and ways; the proposed traffic circulation pattern, including the location and width of all streets, driveways, walkways and entrances to parking area; all off-street parking and loading areas; all proposed open space area, including common space, dedicated open space and developed recreational open space; the approximate location of existing and proposed utility systems of sanitary sewer, storm sewer, water, electric, telephone and gas lines, along with any necessary easements.
  - (ix) A plan or statement showing the location and design of all screening and indicating the type and height of such screening.
  - (x) Statements or plans relating to all covenants, restrictions and conditions pertaining to the use, maintenance and operation of common spaces and the percentage of the tract to be used as open space.
  - (xi) A statement in tabular form of the anticipated commercial floor area.
  - (xii) When the development is to be constructed in stages or units, a sequence of development schedule showing the order of construction of each

principal functional element of such stages or units, the approximate completion date for each stage or unit and a cost estimate of all improvements within each stage or unit.

- (xiii) A plan or report indicating the extent, timing and estimated cost of all off-site improvements, such as road, sewer and drainage facilities, necessary to construct the proposed development, which plan or report shall relate to the sequence of the development schedule if the development is to be constructed in stages or units.
- (xiv) Where required by the Planning Commission, a traffic impact analysis showing the effect of traffic generated by the project on surrounding roads.
- (xv) Where required by the Planning Commission, a fiscal impact analysis listing town revenue generated by the project and town expenditures resulting from the construction of the project. (9-25-78)

### **Section 17-17. Apartments**

The following regulations shall apply to apartments:

- A. Area Regulations. The minimum lot size for apartment development is ten thousand (10,000) square feet for an apartment structure having two units, with an additional four thousand (4,000) square feet of lot area for each additional unit above two. There shall be no more than twelve units contained in any one structure. (1-11-90)
- B. Minimum Lot Width. The minimum lot width shall be one hundred (100) feet at the setback line.
- C. Minimum Yard Requirements. No structure shall be located closer than twenty (20) feet to any lot line.
- D. Maximum Building Height. The maximum building height shall be three stories, not to exceed thirty-five (35) feet.
- E. Building Coverage. Structures shall not occupy more than forty (40%) percent of the total tract area.
- F. Management of Open Space
  - 1. Should the units be for rental purposes, the developer or rental agent shall be responsible for maintenance and management of open space.
  - 2. Should the units be for sale, a nonprofit association, corporation, trust or foundation of all individuals or corporations owning residential property within the planned development shall be established to insure the maintenance, management and/or

operation of open spaces and/or recreation parks in accordance with the Condominium Act, Code of Virginia, as amended.

3. The developer must establish the organization prior to the sale of any lots.
4. Membership in the organization shall be mandatory for all residential property owners, present or future, within the planned community.

G. Distance between Structures. The horizontal distance between groups of apartment structures shall be:

1. Two times the average height of the two groups of apartments for front and rear walls facing front or rear walls.
2. One and one-half times the average height of the building for front or rear walls facing side walls.
3. Equal to the height of the highest building for side walls facing side walls.

At no point shall any buildings be closer to another than the average height of both buildings.

Screening shall be provided of sufficient height and density to screen the site from adjoining residential or commercial properties. A planting plan specifying type, size and location of existing and proposed planting material shall be submitted with the application for the permit.

H. Parking Facilities

1. Off-Street parking, whether in a garage or on-lot, shall be provided on the premises at the rate of two spaces for each apartment unit.
2. Required parking spaces shall be provided on the same lot as the building served and shall be reviewed by the Planning Commission and approved by the Town Council.
3. All access drives shall be at least fifteen (15) feet from any building on the lot and from exterior lot lines.
4. Parking areas shall not be designed or located so as to require or encourage cars to back into a public street in order to leave the lot.
5. Entrance and exit ways to parking areas shall have a minimum width of twelve (12) feet for each land or traffic entering or leaving the site but shall at no time exceed thirty (30) feet in width at the street line.

I. Drainage

1. A storm run-off and drainage system shall be installed by the developer in accordance with sound engineering practice so as to adequately drain the project site, so as to adequately dispose of all run-off and drainage away from the project site and so as not to permit excess flow of water across streets or adjoining properties. Plans for such drainage system shall be submitted and approved with the application for the permit.
  2. All provisions of the Code and other town ordinances and regulations regarding storm drainage shall be complied with.
- J. Lighting. Street lighting shall be provided on all public roads and shall be approved by the Town Council.
- K. Storage of Trash and Rubbish. Exterior storage areas for trash and rubbish shall be well screened on three sides and contain vermin-proof containers. For apartment buildings containing four or more dwelling units, dumpster containers and private pickup must be provided.
- L. Site Plan Review and Approval. A site plan drawn in accordance with Section 17-22 shall be reviewed by the Planning Commission and approved by the Town Council.
- M. Other Regulations for all Apartment Construction
1. Each apartment structure and/or apartment parking area has access on a dedicated public street.
  2. All streets, cul-de-sacs, parking areas and parking area drives shall be suitably paved with permanent hard surface coverings.
  3. Concrete curb and gutters shall be installed along both sides of all streets within the development. However, should a street serve as a boundary for an apartment development, curb and gutter need only be installed on the side of the street adjacent to the development.
  4. Sidewalks of a minimum of four feet in width, constructed of concrete or brick shall be installed from parking areas to all apartment structures served by such parking area.
  5. The radius of cul-de-sacs shall be at least fifty (50) feet. No more than twenty-five (25) dwelling units shall be served by any cul-de-sac.
  6. All apartments must be connected to a public water and public sewer system. (9-25-78; 4-12-79)

### **Section 17-A. Townhouses**

The following regulations shall apply to townhouses.

- A. Townhouses are allowed in the B-1 District under a Special Use Permit only on lots of one acre or more. The maximum density shall be eight units per acre. No more than six units shall be in one row. Townhouses must be developed along existing state-maintained streets, or on new streets developed to state standards. Townhouses can face the street if it has curb and guttering, and no less than two exits. The open space requirement is fifty (50%) percent.
- B. Lot Size Regulations: The minimum lot size for each unit shall be three thousand (3,000) square feet.
- C. Dwelling Size Regulations:
  - 1. The minimum size of each dwelling shall be fifteen hundred (1500) square feet. (09-09-02).
  - 2. The minimum size of the ground floor shall be not less than seven hundred and fifty (750) square feet.
- D. Height Regulations. Building may be erected up to two and one-half stories, but not to exceed a height of thirty-five (35) feet.
- E. Setback Regulations
  - 1. Structures shall be located fifty (50) feet or more from any street right-of-way.
  - 2. The minimum frontage of each lot to be developed shall be not less than two hundred (200) feet. The width of each unit at the setback line will be not less than twenty-four (24) feet.
  - 3. In case of a corner lot at the ends of groups of townhouses, the minimum width at the setback line shall be fifty (50) feet.
  - 4. Structures shall be set back at least one hundred and twenty-five (125) feet from any R-1 zoning.
- F. Yard Regulations
  - 1. Front: The minimum front yard shall be not less than forty (40) feet from the road right-of-way line. Required parking may be located in a front yard, but not closer than ten feet to the ultimate street right-of-way and no closer than ten feet to any townhouse unit.
  - 2. Rear: The minimum rear yard shall not be less than thirty-five (35) feet.
  - 3. Side: Side yards are required only for end units. Each side yard shall be not less than thirty-five (35) feet.

- G. Alley Requirements. Alleys shall be required at the discretion of the Town. Said alleys shall be constructed in accordance with the Subdivision Ordinance.
- H. Curb, Gutter and Sidewalk Requirements: Concrete curb and guttering shall be installed along both sides of all streets, parking areas, driveways and entranceways within the development. However, should an existing public street act as a boundary for townhouse developments, curb and guttering need only be installed on the side of the street adjacent to the development. Walkways of four feet in width, constructed of concrete or brick, shall be installed from parking areas to each individual townhouse structure served by such parking area.
- I. Design Requirements: The facades of dwelling units in a townhouse structure shall be varied by changed front yards of not less than two feet and variation in design so that not more than two abutting units will have the same front yard depth and the same or essentially the same architectural treatment of facades and roof lines. Balconies and roofed porches may encroach up to five feet within the setback area.
- J. Parking Facilities
1. Off-Street parking shall be provided on the premises at the rate of two- and one-half spaces for each townhouse unit. Each space shall be a minimum of ten feet by twenty feet.
  2. All dead-end parking lots shall be designed to provide sufficient back-up area for the end stalls of the parking area.
  3. All access ways and parking area shall be suitably paved with permanent hard-surface coverings.
  4. Section 4-6 of the Town Code will be complied with.
- K. Patio Requirements
1. Each townhouse shall have a ground level patio (cement) in the rear yard that shall be a minimum of eight feet by ten feet.
- L. Screening Requirements
1. A buffer screen shall be established and maintained in the rear yards between different clusters of townhouses, and maintained in the rear yards between different clusters of townhouses, in accordance with Section 17-6(h) of this Ordinance.
- M. Storage Shed Requirements
4. Accessory buildings are not permitted except that each unit shall be provided with an enclosed storage shed located in the rear yard on a concrete foundation.

N. Water and Sewage. Each townhouse shall be hooked up to the Town's water and sewage lines and metered separately.

O. Management of Open Space

1. All open space shall be preserved for its intended purpose as expressed in the site plan.
2. Should the units be for rental purposes, the developer or rental agent shall be responsible for maintenance and management of the property.
3. Should the units be for sale, a nonprofit association, corporation, trust, or foundation of all individuals or corporations owning property within the townhouse development shall be established to insure the maintenance, management and operation of all common areas in accordance with the Condominium Act, Code of Virginia, 1950, as amended.
4. The developer must establish the organization prior to the sale of any lots.
5. Membership in the organization shall be mandatory for all property owners, present and future, within the townhouse development.

P. Distance Between Structures. The horizontal distance between groups of townhouses shall be:

1. Two times the average height of the two groups of townhouses for front or rear walls facing front or rear walls.
2. One- and one-half times the average height for front and rear walls facing side walls.
3. Equal to the height of the highest building for side walls facing side walls.
4. At no point shall any building be closer to another building than the average height of both buildings.

Q. Drainage

1. All storm run-off and drainage systems shall be installed by the developer in accordance with sound engineering practices so as to adequately drain the project site, to adequately dispose of all run-off and drainage away from the project site, and so as not to permit excess flow of water across street or onto adjoining properties. Plans for such drainage systems shall be submitted and approved with the application for the Special Use and Zoning Permits.
2. All provisions of Town Ordinances and regulations regarding storm drainage shall be complied with.

- R. Lighting Requirements. Lighting for buildings, accessways and parking areas shall be so arranged as to not reflect toward public streets or cause any annoyance to building occupants or surrounding property owners or residents.
- S. Storage of Trash and Rubbish. Should the units be established for rental purposes, exterior storage areas for trash and rubbish shall be provided. Such areas shall be well screened on three sides and contain vermin-proof containers. Interior storage areas for trash and rubbish shall at all times be kept in an orderly and sanitary fashion. (12-14-89)

**Section 17-18 Nursing, Convalescent and Rest Homes**

In addition to the requirements of the district in which a nursing, convalescent or rest home is located, such uses shall meet the following requirements:

- A. All state rules and regulations for the licensing of such uses.
- B. All requirements of the State Health Department and Fire Marshall's office regarding such uses.
- C. Architectural barriers, such as stairs, for residents of such establishments shall be overcome to the greatest extent possible. Additional safety features, such as handrails in various areas, shall be installed. (9-25-78)

**Section 17-19 Professional Offices**

Professional offices are subject to the following requirements:

- A. All activity and equipment other than parking, must be housed in a fully enclosed building.
- B. No noise or odor produced as a result of activity in such offices shall be discernible beyond the boundaries of the lot.
- C. All vehicular access to the site shall be from a street which meets town standards for streets.
- D. No display in the building shall be visible from outside of the building. (9-25-78)

**Section 17-20 Temporary Trailers**

Zoning Permits for temporary trailers may be issued for any district by the Zoning Administrator, subject to the following conditions:

- A. That the location of temporary trailers is necessary for the housing of construction workers employed on a construction project.

- B. That the request is filed or certified by the contractor as being essential to the construction.
- C. That the minimum area of two thousand (2000) square feet is provided for each space.
- D. That sanitary facilities conform to the State Health Department's "Trailer Camp Sanitation" requirements.
- E. That the period of operating such temporary trailers shall concur with the anticipated period of the construction. Applications for renewal may be submitted if more time is required to complete the project. However, such renewal applications must be filed at least ninety days prior to the expiration of the original temporary use permit.
- F. The Town Council, in granting such a zoning permit, may require the posting of a bond to assure that the temporary trailers will be removed and the site left in good order at the expiration of the permit.
- G. The Town Council shall establish such additional requirements as are in the best interest of the public. (9-25-78)

### **17-20A Temporary Family Health Care Structures**

#### 1. Statement of Intent

A Temporary Family Health Care Structure (TFHCS) is an accessory residential structure that is located on a single family residential lot, and that is used for the temporary housing and care of an impaired family member, consistent with Virginia State law. The TFHCS shall be (i) for use by a caregiver in providing care for a mentally or physically impaired person and (ii) located on property owned or occupied by the caregiver as his residence and (iii) classified as a permitted accessory use in all residential zoning districts on lots that are used for single family detached dwellings. Such structures shall not be require a special use permit or be subjected to any other local requirements beyond those imposed upon other authorized accessory structures, except as otherwise provided in this section. Such structures shall comply with all setback requirements that apply to the primary structure and with any maximum floor area ratio limitations that may apply to the primary structure. Only one family health care structure shall be allowed on a lot or parcel of land. (09-12-11)

#### 2. Definitions

Caregiver, Mentally or Physically Impaired Person and Temporary Family Health Care Structure (TFHCS): Refer to definitions located in 17-1. (09-12-11)

#### 3. Requirements

- A. Any person proposing to install a TFHCS shall first submit a permit application providing proof of compliance with this section to the Town Zoning Administrator, along with an application fee of \$100. The applicant may be required to provide evidence of compliance with this section on an annual basis as long as the TFHCS remains on the property. Such evidence may involve the inspection by the Zoning Administrator of the TFHCS at reasonable times convenient to the caregiver, not limited to any annual compliance confirmation.
- B. Any TFHCS installed pursuant to this section shall be required to connect to the water, sewer, and electric utilities that are serving the primary residence on the property and shall comply with all applicable requirements of the Virginia Department of Health.
- C. No signage, advertising or otherwise promoting the existence of the TFHCS shall be permitted either on the exterior of the structure or elsewhere on the property.
- D. Any TFHCS installed pursuant to this section shall be removed within thirty (30) days from the time at which the mentally or physically impaired person is no longer receiving or is no longer in need of the assistance provided in this section.
- E. The Zoning Administrator may revoke the permit granted pursuant to subsection A, if the permit holder violates any provision of this section. Additionally, the Zoning Administrator and/or Town Council may seek injunctive relief or other appropriate actions or proceedings in the Circuit Court of Frederick County to ensure compliance with this section. The Zoning Administrator is vested with all necessary authority on behalf of the Town Council to ensure compliance with this section. (9-12-11)

### **Section 17-21 Site Plan**

#### **A. Purpose of Section**

The purpose of this section is to promote the orderly development of certain activities in the town and to ensure that such activities are developed in a manner harmonious with surrounding properties and in the interest of the general public welfare. More specifically, the site plan shall be used to review the project's compatibility with its environment; to review the ability of the project's traffic circulation system to provide for the convenient and safe internal and external movement of vehicles and pedestrians; to review the quantity, quality, utility and type of the project's required community facilities; and to review the location and adequacy of the project's provision for drainage and utilities.

#### **B. Applicability of Section; When Site Plan Required**

1. The provisions of this section shall apply to all buildings, structures or uses as noted in this Chapter.
2. Where a change of use of an existing structure requires additional parking or other requirements applicable to a new use, a site plan shall be submitted for review to insure that the change of use can be accomplished within the purpose and intent of this Chapter.

C. Waiver of Requirements

1. Any requirement of this section may be waived by the administrator where the waiver is not adverse to the purpose of this section and the applicant establishes that in the specific case an undue hardship would result from a strict enforcement of this Section, or that the requirement is unreasonable.
2. The administrator may waive the requirements for site plan review for additions to buildings, structures and uses if, in his/her opinion, any such addition does not substantially affect the purpose and intent of this section.

D. Form and Specifications. Every site plan shall be prepared in accordance with the following specifications:

1. The scale shall not be less than fifty (50) feet to one inch.
2. All site plans shall be submitted on twenty-four inch by thirty-six inch (24"x36") sheets.
3. If the site plan is prepared on more than one sheet, match lines shall clearly indicate where the several sheets join.
4. Horizontal dimensions shall be in feet and decimals of feet to the closest one hundredth of a foot.

E. Preparation; Certification; Contents. The site plan, or any portion thereof involving engineering, urban planning, landscape architecture or land surveying, shall be prepared by qualified persons. Site plans shall be certified by an architect, engineer or land surveyor licensed to practice by the commonwealth within the limits of their respective licenses. The site plan shall provide the following:

1. The proposed title of the project and the name of the engineer, architect, landscape architect, surveyor and/or developer, and a signature panel for the Administrator's approval.
2. The North point, scale and date.
3. A vicinity map at a scale of between one-inch equals one foot to one inch equals two thousand feet. Such map shall show the location of the project in relation to corporation limits and streets in the town.
4. Existing zoning and zoning district boundaries on the property in question and on immediately surrounding properties.
5. The present use of all contiguous or abutting property.
6. The boundaries of the property involved by bearings and distances, certified by a land surveyor licensed to practice in the Commonwealth.

7. All existing property lines, existing streets, buildings, water courses, waterways or lakes and other existing physical features in or adjoining the project. Those physical features such as water courses, waterways or lakes or adjoining properties need only be shown in approximate scale and proportion.
  8. Topography of the project area with contour intervals of two feet or less.
  9. The location and sizes of sanitary and storm sewers, gas lines, water mains, culverts and other underground structures in or affecting the project, including existing and proposed facilities and easements for these facilities.
  10. The location, dimensions and character of construction of proposed streets, alleys and driveways and the location, type and size of ingress and egress to the site.
  11. The location of all off-street parking, loading spaces and walkways, indicating types of surfacing, size and angle of stalls, width of aisles and a specific schedule showing the number of parking spaces.
  12. The location, height, type and material of all fences, walls, screen planting and landscaping details of all buildings and grounds and the location, height and character of all outdoor lighting systems.
  13. The location of all proposed buildings and structures, accessory and main; number of stories and height; proposed general use for each building; and the number, size and type of dwelling units where applicable.
  14. Provisions for the adequate disposition of natural and storm water, indicating location, size, types and grades of ditches, catch basins and pipes and connection to existing drainage system.
  15. Provisions and schedule for the adequate control of erosion and sedimentation, in accordance with Chapter 4.1 of this Code.
  16. Proposed finished grading by contour, supplemented where necessary by spot elevations.
  17. The location, character, size, height and orientation of proposed signs.
  18. The location and dimensions of proposed recreation, open space and required amenities and improvements, including details of disposition.
  19. Any necessary notes required by the Administrator to explain the purpose of specific items on the plan.
- F. Improvements and Standards. The following improvements and minimum standards, as applicable, shall be required and provided for a site development plan.

1. All street and highway construction standards shall be in accordance with those specified in Chapter 14.1 of this Code.
2. The pavement of vehicular travel lanes, driveways, or alleys designed to permit vehicular travel on the site and to and from adjacent property.
3. Cul-de-sacs shall be designed and constructed in accordance with the street standards specified in Chapter 14.1 of this Code and may not be construed or employed as a parking bay.
4. Minimum utility easement width shall be twenty feet.
5. All required screening shall be sufficiently dense or opaque to screen the development effectively from the adjacent properties.

G. Procedures

1. Request for Review by Planning Commission. The Administrator shall request a review by the Planning Commission prior to his decision on the site plan.
2. Review and Approval Generally
  - a. Five copies of the plan shall be submitted to the Administrator. The Administrator shall circulate the plan to the relevant departments, boards and Planning Commission for written comments and shall notify the applicant of the action taken, which may be approved, approval subject to conditions or disapproval.
  - b. Site plans for the Planning Commission shall be submitted to the Administrator at least seven (7) days prior to the next regularly or specially scheduled Planning Commission meeting. The site plan shall be considered approved unless the Planning Commission acts within six days from the date of submission of the final site plan.

H. Termination. An approved site plan shall expire and become null and void if no building permit has been obtained for the site within twelve (12) months after the approval.

I. Amendments to Approved Site Plan. If it becomes necessary for an approved site plan to be changed, the Administrator shall, at the applicant's request, either administratively approve an amendment to the site plan or, if the change is major, require that a new site plan be drawn and submitted for review and action in accordance with this section.

J. Site Plan Prerequisites to Issuance of Permits. No building permit shall be issued to construct, erect or alter any building or structure or any permit or authorization granted to improve or develop land subject to the provisions of this section, unless a site development plan has been submitted and approved. (9-25-78)

**17-22. Landfills, Junkyards, Trash Disposal and Inoperable Vehicles**

**17-22.01 Landfills, Junkyards, Automobile Graveyards and Trash Heaps**

Landfills, junkyards, automobile graveyards, dumping and trash heaps shall be permitted only where specifically allowed by the zoning district regulations of this chapter. Where allowed, such uses shall meet all requirements of the Town of Middletown Zoning Ordinance and applicable state and federal regulations.

1. Where allowed landfills, junkyards, automobile graveyards, dumping and trash heaps shall be completely screened from the view of surrounding properties by fences, walls or other methods.
2. It shall be unlawful for any person to permit, deposit, store or hold any junk or matter which is noxious or offensive, either to health or to comfort on any premises or place or in any building or structure, unless such matter is so treated, screened, covered or placed as not to create a nuisance. It shall also be unlawful to throw, deposit or dump any paper, trash, rubbish, ashes, garbage, junk or offensive matter on any public highway or right-of-way or on any public property not otherwise operated as an approved collection point for disposal in a sanitary landfill.

**17-22.02 Inoperable Vehicles**

1. Inoperable motor vehicles shall not be stored outside of a completely enclosed building in the following zoning districts:

|      |   |
|------|---|
| R-1  | Residential District                                |
| RA   | Rural Areas   |
| MTND | Middletown Traditional Neighborhood Design District |
| B-1  | Central Business                                    |
| B-2  | Highway Business                                    |
2. Inoperable motor vehicles permitted to be stored outside of a totally enclosed building shall be completely screened from public roads or surrounding properties. Permitted screening shall include opaque fences, opaque landscaping or opaque natural vegetation.

**17-22.03 Trash Storage**

1. When stored outdoors, outside of a legal landfill or trash heap, all trash, rubbish or garbage shall be stored in watertight, verminproof containers.
2. All multifamily residential developments where more than one shares a parking lot, commercial and industrial developments shall be provided with outdoor trash containers or other means of trash disposal. Means shall be provided to ensure that all trash generated by the development is properly disposed of to avoid litter, odor or other nuisances.

3. Such trash containers shall be contained within a completely enclosed facility. The enclosure shall consist of a six-foot opaque fence or wall and an opaque gate.

### **Section 17-23 Outside Storage Prohibited**

There shall be no outside storage in any Commercial and Industrial districts except as follows:

1. Retail Stores – Goods, advertising and displays may not interfere with traffic flow of streets or pedestrian foot traffic on sidewalks. Goods, advertising and displays may only be exhibited outside of the structure during normal retail hours. At all other times goods, advertising and displays must be contained in a structure.
2. Commercial and Industrial Districts – Outside storage shall be completely screened from the view of any street, right-of-way, road, or alley and from adjacent properties by a solid fence, wall or vegetative barrier not less than six (6) feet in height. Such storage shall not be permitted in any front yard setback area.
3. The Zoning Administrator may require that the storage of hazardous materials or any materials which contribute to contaminated runoff be fully enclosed. Where such materials are stored outside, they shall be contained within an impervious structure designed to contain spillage or contaminated runoff.
4. The display of motor vehicles for sale by a motor vehicle dealer or nursery stock by a commercial nursery along with other products for sale that are normally displayed outside shall be exempt from the above-stated requirements.

## **Article IV. Nonconforming Uses**

### **17-24 Nonconforming Uses, Structures and Signs**

#### **17-24.01. Continuation of preexisting uses, structures and signs**

1. Any lawful land, buildings, and structures and the uses thereof existing at the time of the enactment or subsequent amendment of this chapter which do not conform to the zoning prescribed for the district in which they are situated shall be considered nonconforming.
2. Nonconforming land, buildings, signs and structures and the uses thereof may be continued only so long as:
  - a. The then-existing or a more restricted use continues;
  - b. Such use is not discontinued for more than two (2) years; and,
  - c. The buildings or structures are maintained in their then structural condition.

3. The burden of establishing nonconforming status shall be that of the owner of the property.
4. If any change of ownership, possession or lease of any legally nonconforming use, structure or sign occurs, the use, structure or sign may continue according to the requirements of this Part 17-24.
5. When the boundaries of a district are changed, any uses, structures or signs which become nonconforming as a result of such change shall be subject to the provisions of this Part 17-24.

#### **17-24.02. Discontinuance.**

1. If any legally nonconforming use is discontinued for a period exceeding two (2) years after the enactment of this chapter, it shall be deemed to be abandoned, and any use thereafter shall conform to the requirements of this chapter.
2. Seasonal legally nonconforming uses that have been in continuous operation for a period of two (2) years or more prior to the adoption of this chapter may be continued.
3. A nonconforming sign shall be considered abandoned if the business for which the sign was erected has not been in operation for a period of at least two (2) years.
4. Following the expiration of the two-year period any abandoned nonconforming sign shall be removed by the owner of the property on which the sign is located upon notice by the Zoning Administrator. After reasonable notice has been given, the Zoning Administrator, or his agents, may enter the property upon which the sign is located and remove any such sign whenever the owner has refused to do so. The cost of such removal shall be chargeable to the owner of the property.

#### **17-24.03. Reestablishing a discontinued nonconforming use.**

Any use that was legally nonconforming under the provisions of this Part 17-24 and that was discontinued due to abandonment may be reestablished by obtaining a special use permit. Such special use permits shall be granted only for a use that is of equal or lesser nonconformity than the original use in relation to intensity, type of use, dimensional requirements or other requirements. Such requests to reestablish an abandoned use shall be considered following the procedures for special use permits in the chapter.

#### **17-24.04. Nonconforming Uses.**

1. Whenever a nonconforming use is enlarged or extended beyond the size, character, or intensity of the use as it existed at the time that it became nonconforming, the nonconforming status of such use shall terminate and become unlawful. Any subsequent

use shall conform to the regulations applicable in the district in which it is located. When a use is regulated by this chapter in a quantifiable manner, including but not limited to regulations limiting the number of unrelated occupants permitted in a dwelling unit and limiting the density of dwelling units, any quantifiable increase shall constitute an enlargement or extension beyond the size, character, or intensity of the use.

2. If a nonconforming use is changed to a more restricted nonconforming use for a period of more than two (2) years, the original nonconforming use shall be deemed abandoned and the use shall not thereafter be changed back to the original nonconforming use.
3. No building or structure associated with a nonconforming use shall be structurally altered, as provided in the Uniform Statewide Building Code unless:
  - a. A zoning verification letter has been received documenting the existence and extent of the nonconforming use; and
  - b. The structural alteration to the building or structure does not increase or extend the square footage dedicated to the nonconforming use. Any use of new square footage added to the building or structure must be a use otherwise permitted in the zoning district.
4. If a building or structure occupied by a nonconforming use is damaged or destroyed by a natural disaster or an act of God, then the building or structure may be restored and nonconforming use continued so long as the use is not discontinued for more than two (2) years.

#### **17-25.05. Nonconforming structures.**

1. The owner of any building or structure damaged or destroyed by a natural disaster or other act of God may repair, rebuild, or replace such building or structure to eliminate or reduce the nonconforming features to the extent possible, without the need to obtain a variance.
  - a. If such building or structure is damaged greater than fifty (50) percent of the present assessed value of the building or structure and cannot be repaired, rebuilt or replaced except to restore it to its original nonconforming condition, the owner shall have the right to do so. Any work done under this subsection to repair, rebuild or replace such building or structure shall be in compliance with the provisions of the Uniform Statewide Building Code and the provisions of applicable local floodplain regulations.
  - b. Unless such building or structure is repaired, rebuilt or replaced within two (2) years of the date of the natural disaster or other act of God, such building or structure shall only be repaired, rebuilt or replaced in accordance with the provisions of the zoning ordinance, except if such building or structure is in an area under a federal disaster declaration and the building or structure has been damaged or destroyed as a direct result of conditions that gave rise to the declaration, in

which case the owner shall have an additional two (2) years to repair, rebuild or replace such building or structure.

2. An existing porch or carport with a roof that is nonconforming as to height or setback regulations but devoted to a conforming use may be enclosed, provided that such addition does not compound the existing nonconformity as to setback and height regulations. In the event that enclosing of the porch or carport creates a public safety problem, such enclosure shall not be allowed.

#### **17-24.06. Modifications.**

1. Whenever a nonconforming use is changed to another use, it shall only be changed to a use that is of equal or less nonconformity in terms of the type or intensity of the use.
2. A nonconforming activity may be extended throughout any part of a structure which was arranged or designed for such activity at the time of passage or amendment of this chapter.

#### **17-24.07. Legally nonconforming lots of record.**

Any lot of record at the time of the adoption of this chapter, which is less in area or frontage than the minimum requirements of this chapter, may be used for uses allowed by this chapter when yard and setback requirements are met. The current setbacks for the particular Zoning District in question are to be applied for all lots, unless the most recent legally approved and recorded plat of the property clearly depicts all appropriate terminology and numeric information for different setback.

### **Article V. Administration and Enforcement**

#### **Section 17-32 Zoning Permits**

- A. No buildings or structures shall be constructed, repaired, reconstructed, enlarged or altered, nor shall any uses of land be established, until after a zoning permit has been obtained from the Administrator.
- B. Each application for a zoning permit shall be accompanied by three copies of an adequately dimensioned drawing, unless as otherwise specified by the Administrator. The drawing shall show the size and shape of the parcel of land on which the proposed building is to be constructed, the nature of the proposed use of the building or land, such building or use with respect to the property line of such parcel of land and to the right-of-way of any street or highway adjoining such parcel of land, the developer's drainage plan for properly distributing surface water and additional information as required by this chapter. Any other information which the Administrator may deem necessary for the consideration of the applicant may be required. If the proposed building or use is in conformity with the provisions of this chapter, a permit shall be issued to the applicant by the Administrator. One copy of the drawing shall be returned to the applicant with the permit.

- C. Nothing contained in this section shall require any change in the plans or construction of any building or structure for which a construction must commence within thirty days after this chapter becomes effective and be completed within a period of one year after construction is initiated. If construction is discontinued for a period of six months or more, further construction shall be in conformity with the provisions of this chapter for the district in which the operation is located. (9-25-78)

**Section 17-33 Certificate of Occupancy**

Land may be used or occupied, and building which have been structurally altered or erected may be used or changed in use, only after a certificate of occupancy has been issue by the Administrator. Such a permit shall state that the building or the proposed use, or the use of the land, complies with the provisions of this chapter. A similar certificate shall be issued for the purpose of maintaining, renewing, changing or extending a nonconforming use. A certificate of occupancy either for the whole or a part of a building shall be applied for simultaneously with the application for a zoning permit. The certificate of occupancy shall be issued within ten days after the erected building or structural alteration of such building or part has conformed to the provisions of this Chapter. (09-25-78)

**Section 17-34 Special Use Permit**

Where uses are permitted by special permit, the location and beginning of such uses shall require, in addition to the zoning permit and certificate of occupancy, a special use permit. Such permit shall be subject to review and recommendation of the Town Planning Commission and approval of the Town Council. These permits shall be subject to such conditions as required in this Chapter and those that the Town Council upon recommendation of the Planning Commission deems necessary to carry out the intent of this Chapter. Application for such permit shall be made to the Administrator, who shall issue such permit only after approval by Council. A public hearing in accordance with Section 15.1-431 of the Code of Virginia shall be held for all uses permitted by Special Permit. Such permits shall be issued in accordance with the following regulations.

- A. Such use shall be one which is specifically authorized as a special permit in the zoning district wherein the applicant seeks such permit.
- B. Such permits shall only be granted subject to any applicable condition and safeguard as required by this Chapter.
- C. Such permit may be granted subject to additional reasonable conditions and safeguards as may be deemed by the Town Council to be advisable, appropriate or necessary in the public interest. Such additional conditions may be recommended by the Planning Commission.
- D. Such use shall be found by the Town Council to be in harmony with the general purposes and intent of this Chapter.

- E. Such use shall not adversely affect the character of the zoning district, the conservation of property values or the health and safety of residents or workers on adjacent properties and in the general neighborhood.
- F. Such uses shall be of such size and so located and laid out in relation to access streets that a vehicular and pedestrian traffic to and from such use will not create undue congestion or hazards prejudicial to the general neighborhood.
- G. Such use shall not conflict with development in accordance with any comprehensive plan or portion thereof which has been adopted by the Town Council. (9-25-78)

**Section 17-35 Schedule of Fees, Charges and Expenses**

- A. The Town Council shall establish, by resolution, a schedule of fees, charges and expenses and collection procedures for zoning permits, certificates of use and occupancy, special permits, variances, appeals, amendments and other matters pertaining to this Chapter.
- B. The schedule of fees shall be available for inspection in the office of the Zoning Administrator and may be altered or amended by the Town Council by resolution. Until all application fees, charges and expenses have been paid in full, no action shall be taken on any application or appeal. (09-25-78)

**Section 17-36 Board of Zoning Appeals**

- A. Appointment; Composition; Compensation; Vacancies. A Board of Zoning Appeals consisting of five members shall be appointed by the Circuit Court of the County. The Board shall serve without pay, other than for traveling expenses, and members shall be removable for cause upon written charges and after a public hearing. Appointments for vacancies occurring otherwise than by expiration of term shall in all cases be for the unexpired term.
- B. Terms; One Member to be Member of Planning Commission. The term of office shall be for five years; except, that of the first five members appointed, one shall serve for five years, one for four years, one for three years, one for two years and one for one year. One of the five appointed members shall be an active member of the Planning Commission.
- C. Removal of Members. Members may be removed for cause by the appointing authority upon written charges and after a public hearing.
- D. Conflicts of Interest. Any member of the Board shall be disqualified to act upon a matter before the Board with respect to property in which the member has an interest.
- E. Officers. The Board shall choose annually its own Chairman and Vice-Chairman, who shall act in the absence of the Chairman.

F. Powers and Duties Generally; Variances. The Board of Zoning Appeals shall have the following powers and duties:

1. To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this Chapter or of any Ordinance adopted pursuant thereto.
2. To authorize, upon appeal in specific cases, such variances from the terms of this Chapter as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions of this Chapter will result in unnecessary hardship; provided, that the spirit of this Chapter shall be observed and substantial justice done as follows:
  - a. When a property owner can show that his property was acquired in good faith and where, by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property on September 26, 1978, or where, by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the use or development of property immediately adjacent thereto, the strict application of the terms of this Chapter would effectively prohibit or unreasonably restrict the use of the property, or where the Board is satisfied, upon the evidence heard by demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant; provide, that all variances shall be in harmony with the intended spirit and purpose of this Chapter.
  - b. No such variance shall be authorized by the Board unless it finds:
    - i. That the strict application of this Chapter would produce undue hardship;
    - ii. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
    - iii. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
  - c. No such variance shall be authorized except after notice and hearing as required by Section 15.2-2204 – 2206 of the Code of Virginia as amended.
  - d. No variance shall be authorized unless the Board finds that the conditions or situation of the property concerned or the intended use of the property is not of so general or recurring nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to this Chapter.

- e. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with.
3. To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. Public hearings after appropriate notice must be held prior to such adjustments. The Board shall not have the power to change substantially the locations of district boundaries as established by this Chapter. The Board shall not have the power to rezone property.

G. Rules and Regulations; Meetings

1. The Board of Zoning Appeals shall adopt such rules and regulations as it may consider necessary.
2. The meeting of the Board shall be held at the call of its Chairman or not such times as a quorum of the Board may determine.
3. The Chairman or in his absence, the acting Chairman may administer oaths and compel the attendance of witnesses.
4. The Board shall keep minutes of its proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact. It shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.
5. All meetings of the Board shall be open to the public.
6. A quorum shall be at least three (3) members.
7. A favorable vote of three members of the Board shall be necessary to reverse any order, requirement, decision or determination of any administrative official or to decide in favor of the applicant on any matter upon which the Board is required to pass.

H. Right of Appeals: Filing of Appeal Generally. An appeal to the Board of Zoning Appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the county or municipality affected by any decision of the Zoning Administrator. Such appeal shall be taken within thirty (30) days after the decision appealed from by filing with the Zoning Administrator and with the Board a notice of appeal, specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board that, by reason of facts stated in the certificate, a stay

would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the Board or by a court of record, on application and on notice to the Zoning Administrator and for good cause show.

I. Mailing of Copies of Appeal; Fee for Public Hearings

1. Appeals shall be mailed to the Board of Zoning Appeals in care of the Zoning Administrator, and a copy of the appeal shall be mailed to the Secretary of the Planning Commission. A third copy should be mailed to the individual, official, department or agency concerned, if any.
2. Appeals requiring an advertised public hearing shall be accompanied by the payment of a fee in the amount specified by the town in its official schedule of fees.

J. Conduct of Public Hearing. The Board of Zoning Appeals shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within six days. In exercising its powers, the board may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination of an administrative officer, or to decide in favor of the applicant on any matter upon which it is required to pass under this Chapter, or to effect any variance from this Chapter. The Board shall keep minutes of its proceedings and other official actions, which shall be filed in the office of the Board and shall be public records. The Chairman of the Board, or in his/her absence the acting Chairman, may administer oaths and compel the attendance of witnesses.

K. Appeals to Circuit Court of Board Decisions

1. Any person aggrieved by any decision of the Board of Zoning Appeals, or any taxpayer, or any officer, department, board or bureau may present to the Circuit Court of the County a petition specifying the grounds on which aggrieved within thirty (30) days after the filing of the decision in the office of the Board.
2. Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the Board of Zoning Appeals and shall prescribe therein the time within which a return thereto must be made and served upon the realtor's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.
3. The Board of Zoning Appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

4. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.
5. Cost shall not be allowed against the board, unless it shall appear to the court that it acted in bad faith or with malice in making the decision appeals from. (9-25-78)

### **Section 17-37 Violations and Penalties**

- A. All departments, officials and public employees of the town who or which are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Chapter. They shall issue permits for uses, buildings or purposes only when they are in harmony with the provisions of this Chapter. Any such permit, if issued in conflict with the provisions of this Chapter, shall be null and void.
- B. Any person, whether as principal, agent, employee or otherwise, violating, causing or permitting the violation of any of the provisions of this Chapter shall be guilty of a misdemeanor and, upon conviction thereof, may be fined up to one thousand dollars (\$1000.00). Such person shall be deemed to be guilty of a separate offense for each day during which any portion of any violation of this Chapter it committed, continued or permitted by such person and shall be punishable as herein provided. (9-25-78)

### **Section 17-38 Amendments**

Use or any other regulations, restrictions and boundaries established in this Chapter may, from time to time, be amended, supplemented, changed, modified or repealed by a favorable majority of votes of the Town Council; provided that:

- A. A public hearing shall be held in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notices shall be given of the time and place of hearings to be heard. Notices shall be given of the time and place of hearings to be published in at least two issues of a newspaper having a general circulation in the jurisdiction, as set forth in Section 15.2-2204 of the Code of Virginia, as amended. Not less than six (6) days shall elapse between the first and second publication. Such notice shall specify the time and place of such hearing, at which persons affected, may appear and present their views. After enactment of any such plans, ordinance or amendment, further publication thereof shall not be required.
- B. When a proposed amendment of this Chapter involves a change in the zoning classification of twenty-five or less parcels of land, in addition to the advertising as above required, written notice shall be given by the Commission at least five (5) days before the hearing to the owner, his agent or the occupant of each parcel involved, and to the owners, their

agents or the occupants of all abutting property and property immediately across the street or road from the property affected.

- C. Notice shall also be given to the owner, his agent or the occupant of all abutting property and property immediately across the street from the property affected which lies in adjoining county. Notice sent by registered or certified mail to the last known address shall be deemed adequate compliance with this requirement. If the required hereby are sent by an agency, department or division of the local governing body, such notices may be sent by first class mail; provided that a representative of such agency, department or division shall make affidavit that such mailings have been made and file such affidavit with the papers in the case. Cost of any notice required under this Chapter shall be taxed to the applicant.
- D. Changes in this Chapter or the zoning map shall be made by the Town Council only after such changes have been referred to the Planning Commission for its recommendation. Action shall be taken by the Town Council only after a report has been received from the Planning Commission, unless a period of ninety (90) days has elapsed after date of referral to the Commission, after which time it may be assumed the Commission has approved the change or amendment. No land may be zoned to a more intensive use classification than was contained in the public notice without additional public hearing after notice as required herein.
- E. Individual property owners may petition the Town Council to have their property rezoned by submitting their request in writing to the Town. The fee imposed shall be used to defray the cost of advertising and administration. After proper public hearing, the Planning Commission shall make its recommendation to the Town Council, who will then act upon the applicant's request. (09-25-78)

**Section 17-39 Administrator to Enforce Chapter; Appointment, Terms and Compensation of Administrator**

This Chapter shall be enforced by the Administrator, who shall be appointed by the Town Council. The Administrator shall serve at the pleasure of Town Council. Compensation for the Administrator shall be fixed by resolution of the Town Council. (09-25-78)

**Section 17-40 Interpretation of District Boundaries**

Unless district boundary lines are fixed by dimensions or otherwise clearly shown or described, and where uncertainty exists with respect to the boundaries of any of the aforesaid district as shown on the zoning map, the following rules shall apply:

- A. Where district boundaries are indicated as approximately following or being at right angles to the centerlines of streets, highways, alleys or railroad main tracts, such centerlines or lines at right angles to such centerlines shall be construed to be such boundaries, as the case may be.

- B. Where a district boundary is indicated to follow a river, creek or branch or other body of water, such boundary shall be construed to follow the centerline at low water or at the limits of the jurisdiction, and in the event of change in the shoreline, such boundary shall be construed as moving with the actual shoreline.
- C. If no distance, angle, curvature, description or other means is given to determine a boundary line accurately and the foregoing provisions do not apply, the same shall be determined by the use of the scale shown on such zoning map. In case of subsequent dispute, the matter shall be referred to the Board of Zoning Appeals, which shall determine the boundary. (09-25-78)

**Section 17-41 Time Limitation for Reapplication**

When a request for rezoning or a special use permit is denied or disapproved by the Town Council, at least twelve (12) months shall expire from such denial or disapproval before another application for rezoning or special use permit of the same land to the same rezoning or special use permit shall be considered. (07-14-88)

**Section 17-42 Posting of Property Being Considered for Rezoning or Special Use for Construction**

When a public hearing for a request for rezoning or special use permit for construction is being considered through the prescribed process by the Planning Commission and/or the Town Council, such property shall be properly posted by the applicant so as to notify the public of such intent. Such sign shall be placed at the front property line and be maintained so as to be legible from adjoining roads and properties until the date of the hearing. Applicant shall pay a set deposit fee to the Town and the Town shall provide a sign for applicant's use. Deposit shall be refunded upon return of the sign in good condition. (09-10-97)

**Section 17-43 Conditions as Part of a Rezoning or Amendment to Zoning Map**

- A. An owner may voluntarily proffer in writing, reasonable conditions, prior to a public hearing before the Town Council, in addition to the regulations provided for the zoning district or zone by this Chapter, as a part of a rezoning or amendment to a zoning map, provided:
  - 1. The rezoning itself must give rise for the need for the conditions;
  - 2. The conditions shall have a reasonable relation to the rezoning;
  - 3. The conditions shall not include a cash contribution to the town.
  - 4. The conditions shall not include mandatory dedication of real or personal property for open space, parks, schools, fire departments, or other public facilities not otherwise provided for in the Code of Virginia, § 15.2-2241 & 2241.1 as amended.

5. The conditions shall not include payment for or construction of off-site improvements except those provided for in Code of Virginia, §15.2-2241.
  6. No condition shall be proffered that is not related to the physical development or physical operation of the property; and
  7. All such conditions shall be in conformity with the Comprehensive Plan as defined in the Code of Virginia, § 15.2-2223.
- B. Once proffered and accepted as part of an amendment to this section, the conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by the conditions. However, the conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.
- C. The Zoning Administrator shall administer and enforce the conditions attached to a rezoning or amendment to the zoning map, including:
1. Ordering by written notice the remedy of any noncompliance with the conditions.
  2. Bringing legal action to ensure compliance with such conditions, including injunction, abatement or other appropriate action or proceeding.
  3. Requiring a guaranty, satisfactory to the governing body, in improvements required by the conditions, or a contract for the construction of such improvements and the contractor's guaranty shall be reduced or released by the governing body or agent thereof, upon the submission of satisfactory evidence that the construction of such improvements has been completed in whole or in part.
- D. Failure to meet all of the conditions shall constitute cause to deny the issuance of any of the required use, occupancy, or building permits as may be appropriate.
- E. The zoning map shall show by an appropriate symbol on the map the existence of conditions attaching to the zoning on the map. The administrator shall keep in his office and make available for public inspections a conditional zoning index. The index shall provide ready access to the ordinance creating conditions in addition to the regulations provided for in a particular zoning district or zone.

**Section 17-44 Additional Conditions as a Part of Rezoning or Zoning Map Amendment: High-Growth Periods**

- A. Except when Code of Virginia, S 15.2-2209.1 is applicable to the town, this section shall apply when the town or the county has had population growth of ten percent (10%) or more from the next-to-latest to latest decennial census year, based on population reported by the United States Bureau of the Census; or when the county is contiguous with at least three counties with such population growth.

- B. Notwithstanding any contrary provisions of Code of Virginia, S 15.2-2297, an owner may voluntarily proffer in writing, reasonable conditions, prior to a public hearing before the governing body, in addition to the regulations provided for the zoning district or zone by this ordinance, as a part of a rezoning or amendment to a zoning map, provided that: (i) the rezoning itself gives rise to the need for the conditions; (ii) the conditions have a reasonable relation to the rezoning; and (iii) all conditions are in conformity with the Comprehensive Plan as defined in the Code of Virginia, S 15.2-2223. Once proffered and accepted as part of an amendment to this Ordinance, the conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by the conditions; however, the conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.
- C. No proffer shall be accepted by Middletown unless it has adopted a capital improvement program pursuant to Code of Virginia, S 15.2-2239 or local charter. In the event proffered conditions include the dedication of real property or payment of cash, the property shall not transfer and the payment of cash shall not be made until the facilities for which the property is dedicated or cash is tendered are included in the capital improvement program, provided that nothing herein shall prevent the town from accepting proffered conditions which are not normally included in a capital improvement program. If proffered conditions include the dedication of real property or the payment of cash, the proffered conditions shall provide for the disposition of the property or cash payment in the event the property or cash payment is not used for the purpose for which proffered.
- D. In the event proffered conditions include a requirement for the dedication of real property of substantial value, or substantial cash payments for or construction of substantial public improvements, then no amendment to the zoning map for the property subject to such conditions, nor the conditions themselves, nor any amendments to the thereto initiated by the Town Council, which eliminate, or materially restrict, reduce, or modify the uses, the floor area ration, or the density of use permitted in the zoning district applicable to the property, shall be effective with respect to the property unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare.
- E. Any landowner who has prior to July 1, 2004, proffered the dedication of real property of substantial value, or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the rezoning itself, but who has not substantially implemented such proffers prior to July 1, 2004, shall advise the governing body by certified mail prior to July 1, 2005, that he intends to proceed with the implementation of such proffers. The notice shall identify the property to be developed, the zoning district, and the proffers applicable thereto. Thereafter, any landowner giving such notice shall have until July 1, 2009, substantially to implement the proffers, or such later time as the governing body may allow. Thereafter, the landowner in good faith, shall diligently pursue the completion of the development of the property. Any landowner who complies with the requirements of this subsection shall be entitled to the protection against action initiated by the Town Council affecting use, floor area ratio, and density set

out in this Chapter, unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare, but any landowner failing to comply with the requirements of this subsection shall acquire no rights pursuant to this section.

- F. The provisions of this section shall be effective prospectively only, and not retroactively, and shall not apply to any zoning ordinance text amendments which may have been enacted prior to March 1, 2005. Nothing contained herein shall be construed to affect any litigation pending prior to July 1, 2005, or any such litigation nonsuited and thereafter refilled.
- G. Nothing in this section shall be construed to affect or impair the authority of the Town Council to:
  - 1. Accept proffered conditions which include provisions for timing or phasing of dedications, payments, or improvements; or
  - 2. Accept or impose valid conditions pursuant to Code of Virginia, S 15.2-2286 (A) (3) or other provisions of law.
- H. The Zoning Administrator shall administer and enforce the conditions attached to a rezoning or amendment to the zoning map, including:
  - 1. Ordering by written notice the remedy of any noncompliance with the conditions.
  - 2. Bringing legal action to ensure compliance with such conditions, including injunction, abatement or other appropriate action or proceeding.
  - 3. Requiring a guaranty, satisfactory to the governing body, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the zoning conditions, or a contract for the construction of such improvements and the contractor's guaranty, in like amount and so conditioned, which guaranty shall be reduced or released by the governing body, or agent thereof, upon the submission of satisfactory evidence that the construction of such improvements has been completed, in whole or in part.
- I. Failure to meet any or all of the conditions shall constitute cause to deny the issuance of any of the required use, occupancy, or building permits as may be appropriate.
- J. The zoning map shall show by an appropriate symbol on the map the existence of conditions attached to zoning. The zoning administrator shall keep in his office and make available for public inspection a conditional zoning index. The index shall provide ready access to the ordinance creating conditions in additions to the regulations provided for in a particular zoning district or zone.

- K. The Zoning Administrator shall record in the deed book records of the office of the Clerk of the Circuit Court of Frederick County a certificate with the name of the property owner and a description of the property and indicating as shown on the Town of Middletown zoning map.
  
- L. With respect to any land annexed or boundary adjusted into the Town of Middletown after July 1, 2005, the Town Council pursuant to S 15.2-1300 of the Code of Virginia, 1950, as amended, accept on behalf of Frederick County as cash proffers any impact a development within the Town has on the Frederick County Public School system pursuant to the existing Frederick County Impact Model or any amendments thereto. The Middletown Council may accept, pursuant to S15.2-1300 of the Code of Virginia, 1950, as amended, in their sole discretion, cash proffers for Frederick County with respect to land incorporated into the Town of Middletown prior to July 1, 2005 pursuant to the Frederick County Impact Model or any amendments thereto.