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SECTION 1: GENERAL PROVISIONS

1.A. The Purpose of the Zoning Code of the Town of Middletown, Delaware

- (1) A code classifying, regulating and restricting the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of populations and the location, use and extent of buildings, structures and land for residence, trade, industry and other purposes; creating districts for said purposes and establishing a Board of Adjustment and imposing penalties for violations; so as to lessen congestion in the streets, secure safety from fire, panic and other dangers, provide adequate light and air, prevent undue concentration of population and overcrowding of land, facilitate the adequate provision of transportation, water, sewerage, school, park and other public requirements, conserve the value of buildings and encourage the most appropriate use of land and promote the health, safety, morals and general welfare of the Town of Middletown.

1.B. Titles, General Intent, Establishing of Controls

- (1) **Long Title.** A code to establish zoning regulations for the use of land and structures, area of lots, bulk density of buildings and other structures, the density of populations, the provision of off-street parking spaces and similar accessory regulations for the Town of Middletown, Delaware, and for such purpose to divide the Town into districts; and further, to provide for the administrative enforcement and amendment thereof, in accordance with the provisions of the Laws of the State of Delaware.
- (2) **Short Title.** This code shall be known and may be cited by the title as the "Zoning Code of the Town of Middletown, Delaware".

1.C. Zoning Map

- (1) The Zoning Map of the Town of Middletown is not set forth in this code, but has been saved from repeal and may be found on file in the Town Office, where it may be examined during normal business hours.

1.D. Effective Date

- (1) The Zoning Code of the Town of Middletown, Delaware shall become effective on January 5, 1997. Upon such date, these regulations shall replace the Zoning Code of the Town of Middletown, Delaware adopted January 5, 1987 and any amendments to said ordinance made after said date.

SECTION 2: DEFINITIONS

2.A. For the Purpose of the Code, Certain Words and Phrases Used Here Shall be Interpreted or Defined as Follows:

- (1) **Accessory building:** A detached or subordinate building, the use of which is incidental and subordinate to that of the main building on the same lot.
- (2) **Accessory use:** A use customarily incidental and subordinate to the principal use of building and located on the same lot with such principal use of building.
- (3) **Alley:** A supplementary thoroughfare which is less than thirty (30) feet wide, dedicated for the public use of vehicles and pedestrians and affording access to abutting property
- (4) **Alteration:** Alteration as applied to a building or structure is a change or rearrangement in the structural parts of an enlargement, whether by extending on a side or by increasing in height or moving from one location or position to another.
- (5) **Area:** The extent of surface contained within the boundaries or extremities of land or building or sign. In computing building area cornices, eaves, gutters, steps and balconies are excluded.
- (6) **Basement:** A story having a portion of its height below grade, but with more than one-half (1/2) the height above average ground level around the building. A basement is counted as a story if the ceiling is more than six (6) feet above the average grade, or if subdivided and used for dwelling purposes other than for a janitor employed on the premises.
- (7) **Bed and Breakfast:** A dwelling in which one or more persons are lodged on a temporary rent-paying basis with or without meals. This dwelling shall not constitute the legal residence of such person(s).
- (8) **Board of Adjustment:** A committee of five (5) residents of the Town of Middletown who are appointed by the Mayor and written consent of Council to hear and decide appeals concerning the administration of this code and to authorize variances and exceptions to the code under special circumstances.
- (9) **Boarding house:** A building or portion thereof arranged or used for sheltering and feeding for compensation of more than three (3) individuals.
- (10) **Building:** Any enclosed structure with a roof and four walls, occupying more than four (4) square feet within the permitted building area, including enclosed front porch.

- (a) *Detached*: A building which has no party wall.
 - (b) *Semi-detached*: A building which has only one party wall in common.
 - (c) *Attached*: A building which has two (2) party walls in common.
- (11) **Building, accessory**: A detached subordinate building, the use of which is customarily incidental and subordinate to that of the principal building and which is located on the same lot as that of the principal building and which is located on the same lot as that occupied by the principal building.
- (12) **Building area**: The horizontal area of a building.
- (13) **Building height**: The vertical distance as measured from the median level of the finished grade adjacent to the front exterior wall of a building to the midpoint of the building roof structure (i.e., the midpoint from the lowest part of the roof to the highest part).
- (14) **Building length**: The horizontal measurement of any continuous building wall.
- (15) **Building, principal**: A building in which the principal use of the property is conducted on the lot on which it is situated.
- (16) **Certificate of Occupancy**: A Resolution passed by the Town Council or approved by its designee which indicates that any building or premises to be occupied and the proposed use thereof are in conformity with provisions of the code. This certificate is required prior to occupancy.
- (17) **Condominium**: Shall be defined in the Unit Property Act, 25 Del. Code Chapter 22.
- (18) **Conditional use permit**: A permit granted by the Town Council to allow any of the conditional uses stipulated by this code, provided that the application for permit meets the requirements of the code, the conditions for a conditional use are fulfilled and a duly advertised public hearing is held.
- (19) **Daycare Home**: A home which provides care, protection, supervision and guidance in private homes for one to six children, excluding children of the operator, where service is provided for part of the 24-hour day, unattended by parent or guardian and for compensation.
- (20) **Daycare Center**: A facility for the provision of care, protection, supervision and guidance for six or more children, excluding children of the operator. Service at the facility is provided on a regular basis for periods of less than 24 hours per day, unattended by parent or guardian and for compensation.

- (21) **Distance between buildings:** The required distance between facings or building walls.
- (22) **Distribution:** A function involved in the division, dispensation or relocation of materials, goods or products.
- (23) **Driveway:** The vehicular method of entrance and egress to land use.
- (24) **Dwelling, One-Family Detached:** A detached dwelling designated for and occupied by a single family having no party wall and two (2) side yards, per permitted zoning lot.
- (25) **Dwelling, One-Family Semi-Detached:** A dwelling designated for and occupied by a single family having one (1) party wall and one (1) side yard, per permitted zoning lot.
- (26) **Dwelling, Duplex:** A detached dwelling designated for and occupied by two (2) families living together independently of each other.
- (27) **Dwelling, Multi-Family:** A building arranged, intended or designated to be occupied by three (3) or more families living independently of each other.
- (28) **Dwelling, Town House:** A building consisting of series of three (3) or more non-communicating, one-family sections having a common wall.
- (29) **Employees:** Whenever the word “employees” or the expression “number of employees” is herein referred to, it shall mean the greatest number of persons to be employed regularly in the building in question during any season of the year and at any time of the day or night.
- (30) **Family:** One or more related individuals customarily and permanently living together as a single house-keeping unit and using certain rooms and housekeeping facilities in common.
- (31) **Fast food service restaurant:** A restaurant in which the majority of customers order and are served their food at a counter and then take it to a table on the premises where it is consumed, or to an automobile parked or standing on the premises.
- (32) **Floor area:** (1) Residential use: The sum of the gross horizontal area of the several floors of a building and its accessory building, excluding cellar, basement and garage or carport floor areas not devoted to residence. (2) Office, commercial or manufacturing use: The sum of the gross horizontal area of the several floors of a building and its accessory buildings.
- (33) **Garage, private:** A garage accessory to a principal building used primarily for automobile storage purposes and in which no business service or industry, whether connected directly or indirectly with motor vehicles, is conducted.

- (34) **Garden apartments:** A group of multi-family dwellings on a single lot designed for rental of the individual housekeeping units; having common open spaces and designed, in accordance with the special requirements for such dwellings as set for in the code, to give the maximum amount of open space per family. Garden apartments shall include condominium units and projects, whether such units are intended to be rented out as apartments or are intended for private, residential use.
- (35) **Home occupation:** A use customarily carried on within a dwelling by the inhabitants which is incidental and subordinate to the residential use.
- (36) **Housing for shared residency living:** A residence for not more than eight (8) individuals, each of whom is sixty (60) years of age or older, under the sponsorship of a community-based non profit, tax-exempt organization, in which the residents participate in policy decisions concerning the management and functioning of the residence: provided that the residents are cooperatively living together in a family-style manner on a regular, non-transient basis; are all capable of basic self-care and self-preservation without assistance in the event of an emergency; and do not require the services or care provided by a personal care boarding home or skilled/intermediate nursing care facility regulated under the laws of the State of Delaware.
- (37) **Improvement:** Any type of structure, excavation or paved section, excluding driveway or curb.
- (38) **Instructional business or trade schools:** A duly organized school giving instruction in business or vocational trade subjects.
- (39) **Landscape screen:** Any planting, structure, device, wall, fence, or combination of materials which will create a visual barrier or improve or enhance the natural environment.
- (40) **Lot:** A parcel of land, separate and distinct, in common ownership and occupied or intended to be occupied by one principal building or by a group of principal buildings together with any accessory buildings, including such yards or open spaces as are arranged or designated to be used in connection with such building or buildings.
- (41) **Lot area:** The area of a lot taken at its perimeter exclusive of any portion within a public or private street right-of-way.
- (42) **Lot, corner:** A lot abutting on two (2) or more streets at their intersection, where the interior angle of the intersection does not exceed one hundred thirty-five (135) degrees.
- (43) **Lot coverage:** That portion of the lot area that is covered by buildings; the building area divided by the lot area; e.g., a lot containing ten thousand (10,000) square feet has principal and accessory buildings planned or existing whose area is twenty-five hundred (2,500) feet, thus the lot coverage is twenty-five (25) percent.

- (44) **Lot depth:** The average depth measure in the mean direction of the side lot lines from the front street line to the rear lot line. The rear lot line shall be deemed to be not farther back than a line drawn parallel with the front street line, entirely on the lot and not less than ten (10) feet long.
- (45) **Lot width:** The distance measured along the setback line between the side lot lines of the lot, provided that the width of the lot at the street right-of-way line shall be a minimum of seventy (70) percent of the lot width required for the zoning district. In applying this definition to a corner lot, the side street right-of-way line, as determined in accordance with the definition of a corner lot, shall be considered to be a side lot line.
- (a) **Low density:** Residential development in a zoning district wherein the minimum lot area is nine thousand seven hundred fifty (9,750) square feet.
- (b) **Lower density:** Residential development in a zoning district wherein the minimum lot area is twelve thousand five hundred (12,500) square feet.
- (46) **Manufacture:** A function involving either the processing or production of materials, goods, or products.
- (47) **Medium density:** Residential development in a zoning district wherein the minimum lot area is six thousand (6,000) square feet for single family detached residential units and four thousand five hundred (4,500) square feet for single family semi-detached residential units.
- (48) **Mobile homes:** A one-family dwelling designed for transportation after fabrication on streets and highways on its own wheels but which is not self-propelled; and arriving at the site where it to be occupied complete and ready for occupancy, except for minor and incidental unpacking and assembly operations, supported on jacks or other foundations and connected to utilities.
- (49) **Mobile home park:** A premises designed for and used as a parking place for more than one mobile home dwelling unit.
- (50) **Non-conforming building:** A building or parts of a building fully existing at the time these regulations, or subsequent amendment, became effective, which does not conform to the dimensional requirements of the district in which it is located.
- (51) **Non-conforming use:** A use of land or use of a building lawfully existing at the time these regulations, or subsequent amendment became effective, which does not conform to the use requirements of the district in which it is located.
- (52) **Open area:** That portion of a lot excluding area set aside or used for buildings, loading berths and streets. Land devoted to recreational

purposes to include land for swimming pools, tennis courts and similar recreation uses shall be considered open area for the purpose of this definition.

- (53) **Owner:** The term shall be construed to include the duly authorized agent, attorney, purchaser, devisee, fiduciary or any person having vested or contingent interest in the property in question.
- (54) **Parking space:** Accommodation for the parking of a motor vehicle on a lot provided for restricted use in connection with a residential, business, or private enterprise.
- (55) **Person:** Any individual, firm, partnership, agency or corporation.
- (56) **Personal service establishment:** A barber or beauty shop, shoe repair shop, tailor shop or similar uses.
- (57) **Restaurant:** A building whose primary function is the preparation and serving of food to patrons. This definition shall be construed to mean facilities that primarily serve on the premises with carry-out facilities as a subordinate function.
- (58) **Satellite antenna:** A parabolic dish antenna, including its structural supports, used by consumers for reception (television receivers only) of various satellite television programming signals.
- (59) **Setback:** An area extending the full width of the lot between the street right-of-way and the building setback line within which no building or parts of building may be erected.
- (60) **Setback line, or building setback line:** A line extending between the two side lot lines or parcel of land which is parallel to, and a stated distance from, a street line.
- (61) **Shall:** Mandatory.
- (62) **Sign:** Any letter, work, model, device or representation intended as an announcement, direction or advertisement.
- (63) **Street:** A strip of land, comprising the entire area within the right-of-way intended for possible use as a means of vehicular and pedestrian circulation to provide access to more than one lot. Street includes road, thoroughfare, parkway and avenue, boulevard, expressway, highway, land throughway, place, square, alley or however otherwise designated within the above-mentioned right-of-way.
- (64) **Street lines:** The dividing line between a lot and a street.
- (65) **Street, private:** Any street right-of-way not dedicated to the public use.

- (66) **Street, public:** Any street right-of-way dedicated to public use and/or maintained by the Delaware Department of Transportation or the Town of Middletown.
- (67) **Street, right-of-way:** An area set aside or used as a means of ingress, egress or approach. No parts of private group parking neither areas, nor the driveways that service said parking area, are to be classified as street right-of-way.
- (68) **Structure:** Any object constructed, erected or attached to a fixed ground location.
- (69) **Testing:** A function involved in the examination of the qualities, performances or capabilities of a product, good or material.
- (70) **Traditional Neighborhood Design:** A residential subdivision on at least 10 acres that incorporates various combinations of planning techniques providing for an integrated mix of housing types and sizes with a pedestrian-friendly layout, street trees, reduced setbacks, alleyways serving some of the lots, and other features consistent with such a community.
- (71) **Use:** The purpose for which land, a structure, a sign or building is arranged, designated or intended, or for which either land, a structure, a sign or a building is or may be used, occupied or maintained.
- (72) **Use, principal:** The main or primary purpose or purposes, for which land, a structure, a building and/or a sign or use is designed, arranged or intended, or for which they may be occupied or maintained under this zoning code. All other structures, buildings, signs or uses on the same lot and incidental or supplementary thereto are permitted under this zoning code and shall be considered accessory uses.
- (73) **Variance:** An activity which is prohibited by this code, but may be granted a special permit.
- (74) **Yard:** An unoccupied space open to the sky, on the same lot with a building or structure.
- (75) **Yard, front:** A yard extending the full width of the lot between the front street line and the parts of the principal building erected thereon which are set back from the nearest such street line.
- (76) **Yard, rear:** A yard across the full width of the lot extending from the rear line of the building to the rear line of the lot. In the case of a corner lot, the rear yard shall not exceed beyond the building setback line and the side street.
- (77) **Yard, side:** A yard between the building and the adjacent side line of the lot extending from the front yard to the rear yard.

2.B. Other Words Not Defined by the Zoning Code

- (1) Words not defined above shall have the meaning given in Webster's Unabridged Dictionary.

2.C. Additional Definitions

- (1) Words used in the present tense include the future, the singular number includes the plural and the plural the singular, the word "building" includes the word "structure", the word "occupied" includes the word "designed" or "intended to be occupied", the word "used" includes the words "arranged", "designed" or "intended to be used".

SECTION 3: DESIGNATION OF DISTRICTS

3.A. Types of Districts

- (1) For the purpose of this code, the portions of the Town of Middletown included within the zoning map adopted under this code are divided into ten (10) types of districts and one overlay historic district as follows:

Designation	Character Description
R-1B	Single family residential (lower density) 12,500 square feet min. lot size
R-1A	Single family residential (low density) 9,750 square feet min. lot size
R-2	Single family residential (medium density) 5,000 square feet min. lot size
R-3	Multi-family Residential
R-MH	Mobile Home Residential
C-2	Downtown Commercial
C-3	Employment/Regional Retail
MI	Manufacturing-Industrial
H	Historic
AP	Agricultural Preservation
OP	Office Park

3.B. Adoption of Zoning Map

- (1) The official zoning map shall consist of a scaled map of the Town, which may be prepared and adopted separately. The zoning map shall be filed in the Town Office and with the New Castle County Recorder of Deeds. The official zoning map and all explanatory information thereon are hereby made part of this code.

3.C. Application of Regulations

- (1) After the date of adoption of the zoning map and of this code, with any changes or amendments, no building in any section of the Town to which the zoning map shall apply shall be used or maintained for any purpose

other than a use permitted by this code, for the district in which the building or premises is located.

- (2) Existing non-conforming uses and non-conforming buildings are exempt from these provisions to the extent provided in this code.
- (3) Where an already improved lot is hereafter divided, the division must be effected in such a manner as not to violate the provisions of this code applicable to said lot.

3.D. District Boundary Lines

- (1) The zoning district shall be shown on the scale of the map and dimensions to serve as guides. In general, along any particular street, districts shall be of uniform depth and their boundaries shall parallel the street line at the distance shown on the zoning map. In other cases, they are intended to follow existing lot lines and street lines.
- (2) In case of doubt or disagreement concerning the exact location of zoning district boundary lines, the determination shall solely lie with the Town Council after consultation and review by the Planning Commission.
- (3) All public streets, not otherwise zoned, shall have the same zoning district to the center line of the street as the adjacent zoning district.

SECTION 4: USE AND AREA REGULATIONS AND REQUIREMENTS FOR ZONING DISTRICTS

4.A. Statement of Intent: Residential Generally

- (1) The Town's intent within the standard residential zoning (R-1A, R-1B, R-2, R-3) is to create a variety of residential environments that offer housing choices and that complement the Town's historic character and development patterns and promote the objectives of the Middletown Comprehensive Plan.
- (2) It is intended that residential neighborhoods be connected, by a network of roads, sidewalks, interior pedestrian way and bike facilities, to adjacent neighborhoods, commercial and retail uses and public facilities, such as schools and libraries.
- (3) The Town encourages the location of limited neighborhood retail and service establishments within residential developments through the conditional use process, in support of the mobility friendly policies of the Middletown Comprehensive Plan.

4.B. R-1B District: Single Family Residential (lower density)

In an R-1B district, no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used, except for one or more of the following uses and complying with the requirement so indicated.

(1) Permitted Uses:

- (a) A single family detached residential dwelling.
- (b) Public and private elementary, junior or senior high schools.
- (c) Park, playground, athletic field, recreation buildings, swimming pool and community center, operated on a non-commercial basis for recreation purposes.
- (d) Church and other places of worship, cemeteries.
- (e) Municipal and public services and facilities to include Town Hall, water storage tower, water reservoir, water pumping station, water treatment plant, sewage pumping station, sewers (storm and sanitary), street right-of-way, utility transmission and distribution lines, public transportation bus or transit stops, police and fire stations, substations for electric, gas and telephone facilities.
- (f) Cultural facilities including library, museum or art gallery.

- (g) Country club, regulation golf course, including customary accessory uses provided that all buildings have a minimum setback of one hundred twenty (120) feet from all street and property lines.
- (h) Temporary buildings, temporary real estate or construction office and temporary storage of materials provided that such use is located on the lot where construction is taking place or on a lot adjacent or part of a development site and that such temporary use is to be terminated upon completion of construction and not to exceed two (2) years.
- (i) Housing for shared residential living.
- (j) Daycare home.
- (k) Detached garages, as an accessory use. (See Exhibit 12)

(2) Conditional Uses Subject to Special Requirements:

- (a) The taking of non-transient boarders, maximum of three (3). Subject to conformance with the following requirements:

The granting of a conditional use permit by the Town Council as provided in Section 10.

- (b) Customary home occupation or a studio for artists, designers, photographers, musicians, sculptors and other similar persons that conform to the following requirements:

- (i) The granting of a conditional use permit by the Town Council as provided in Section 10.
- (ii) The area used for the practice of the home occupation or studio shall occupy no more than thirty (30) percent of the total floor area of the dwelling unit in which it is located.
- (iii) No storage of materials or products outside the dwelling shall be permitted unless completely housed.
- (iv) The home occupation or studio shall be clearly incidental to the residential use of the dwelling and shall not change the essential residential character of the dwelling.
- (v) No external alternations inconsistent with the primary residential use of the dwelling shall be allowed.
- (vi) No display of products shall be visible from outside the building.

- (vii) One display sign affixed to the building not exceeding a total area of two (2) square feet and not illuminated.
 - (viii) A maximum of two (2) employees shall be permitted in the operation of the home occupation or studio.
- (c) Professional occupation restricted to the owner/occupant subject to conformance with the following requirements:
- (i) The granting of a conditional use permit by the Town Council as provided in Section 10.
 - (ii) Three (3) off-street parking spaces in addition to those otherwise required.
 - (iii) No more than two (2) persons shall be employed by the practitioner of the professional occupation to provide secretarial, clerical, technical or similar assistance.
 - (iv) No storage of materials or products outside the dwelling shall be permitted unless completely housed.
 - (v) The area used for the practice of a professional occupation shall occupy no more than thirty (30) percent of the total floor area, including garages or other accessory buildings.
 - (vi) The professional use shall be incidental to the residential use of the dwelling and shall not change the essential residential character of the dwelling.
 - (vii) No external alterations inconsistent with the primary residential use of the dwelling shall be allowed.
 - (viii) No display of products shall be visible from outside the building.
 - (ix) No more than one (1) display sign affixed to the building shall not exceed two (2) square feet and not illuminated.
- (d) Neighborhood retail and services used to support the surrounding residential community. The site and architectural design shall be compatible with the residential scale, massing and architectural articulation of the surrounding community and shall be easily accessible by pedestrians, bicycles and transit.
- (i) Permitted Uses
 - (a) Offices for professional and administrative services
 - (b) Financial institutions and banks
 - (c) Barbershops and beauty shops
 - (d) Medical clinics

- (e) Studios for art, music and dance, workshop and sales
- (f) Retail food stores such as bakeries, candy and convenience stores, grocery and meat markets
- (g) Restaurants, excluding “drive thru” fast food service restaurants
- (h) Retail sales and specialty stores
- (i) Indoor repair and service, with no outdoor storage
- (j) Antique shop
- (k) Bookstore
- (l) Laundromats
- (m) Resident apartments located above any non-residential use

(ii) Area Regulations

- (a) Maximum lot size for the grouping of stores shall be one and one-half (1 1/2) acres.
- (b) Maximum floor area for any single permitted establishment within the neighborhood center shall be ten thousand (10,000) square feet.
- (c) Minimum lot width shall be at least sixty-five (65) feet.
- (d) Maximum percentage of impervious surface shall be seventy (70) percent.
- (e) Minimum distance between any access driveway (including ingress or egress points) and residential districts shall be twenty-five (25) feet.
- (f) Height of buildings shall not exceed three (3) stories or thirty-five (35) feet.
- (g) Minimum front yard building and parking setback shall be ten (10) feet.
- (h) Side yards shall be required equal to the minimum side yard required for the residential district and subject to the landscape screening provisions as specified in Section 6 of this code.
- (i) Parking shall comply with the requirements provided in Section 5 of this code.

(e) Bed and Breakfast establishments are permitted subject to the following conditions:

- (i) The granting of a conditional use permit by the Town Council as provided in Section 10 of this code.
- (ii) Bed and Breakfast establishments shall be owner-occupied and operated.
- (iii) No sleeping accommodations shall be provided other than in designated guest rooms. No more than four (4) guest rooms may be provided and no more than two (2) adults may occupy one guest room.

- (iv) No guest or family may stay longer than seven (7) consecutive nights.
- (v) There shall be no separate kitchen, cooking facilities or any cooking appliances used in guest rooms.
- (vi) Smoke detectors powered from house current shall be required in all guests' rooms and shall meet Delaware State Fire Marshal standards applicable to Bed and Breakfast establishments.
- (vii) A minimum of two (2) full bathrooms, including sink, toilet and bathtub and/or shower, shall be provided in each Bed and Breakfast establishment.
- (viii) A minimum of one (1) parking space must be conveniently available for each guest room either on-street or off-street.

(3) Area Regulations:

- (a) Minimum lot area shall be twelve thousand five hundred (12,500) square feet.
- (b) Maximum lot coverage shall be thirty (30) percent, exclusive of accessory buildings.
- (c) Minimum lot width shall be sixty-five (65) feet.
- (d) Height of building shall not exceed three (3) stories or thirty-five (35) feet, whichever is less.
- (e) Minimum building setback line shall be ten (10) feet for residential structures and twenty (20) feet for detached garages. (See Exhibit 13)
- (f) Minimum rear yard shall be twenty-five (25) feet for residential structures and five (5) feet for accessory structures and detached garages. For corner lots, the rear yard may be reduced twenty (20) percent in depth to allow the "skewing" of a residential dwelling on the lot.
- (g) Side yards shall be provided as follows: for residential structures, each lot shall have two (2) side yards a minimum of ten (10) feet wide with a minimum aggregate width of two (2) side yards of twenty-five (25) feet. The minimum side yard for accessory structures and detached garages shall be five (5) feet. (See Exhibit 12)
- (h) Parking shall comply with the requirements provided in Section 5 of this code.

- (i) Landscape screening shall comply with the requirements provided in Section 6 of this code.
- (j) Signs shall comply with the requirements provided in Section 7 of this code.
- (k) Open space set asides and dedications shall comply with Section 7.G. Open Space, Planting and Landscape Conservation of the Middletown Subdivision Ordinance.

4.C. R-1A District: Single Family Residential (low density)

In an R-1A district, no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used, except for one or more of the following uses and complying with the requirements so indicated.

(1) Permitted Uses:

- (a) A single family detached residential dwelling.
- (b) Public and private elementary, junior or senior high schools.
- (c) Park, playground, athletic field, recreation buildings, swimming pool and community center, operated on a non-commercial basis for recreational purposes.
- (d) Church and other places of worship, cemeteries.
- (e) Municipal and public services and facilities including Town Hall, water storage tower, water reservoir, water pumping station, water treatment plant, sewage pumping station, sewers (storm and sanitary), street right-of-way, utility transmission and distribution lines, public transportation bus or transit stops, police and fire stations, substations for electric gas and telephone facilities.
- (f) Cultural facilities, including library museums or art galleries.
- (g) Country club, regulation golf course, including customary accessory uses provided that all buildings have a minimum setback of one hundred twenty (120) feet from all street and property lines.
- (h) Temporary buildings, temporary real estate or construction office and temporary storage of materials provided that such use is located on the lot where construction is taking place or on a lot adjacent or part of a development site and that such temporary use is to be terminated upon completion of construction and not to exceed two (2) years.
- (i) Housing for shared residential living.
- (j) Daycare homes.
- (k) Detached garage, as an accessory use. (See Exhibit 12)

(2) Conditional Uses Subject to Special Requirements:

- (a) The taking of non-transient boarders (maximum of three (3)). Subject to conformance with the following requirements:

- (i) The granting of a conditional use permit by the Town Council as provided in Section 10 of this code.
- (b) Customary home occupation of a studio for artists, designers, photographers, musicians, sculptors and other similar persons subject to conformance with the following requirements:
 - (i) The granting of a conditional use permit by the Town Council as provided in Section 10.
 - (ii) The area used for the practice of the home occupation or studio shall occupy no more than thirty (30) percent of the total floor area of the dwelling unit in which it is located.
 - (iii) No storage of material or products outside the dwelling shall be permitted unless completely housed.
 - (iv) The home occupation or studio shall be clearly incidental to the residential use of the dwelling and shall not change the essential residential character of the dwelling.
 - (v) No external alterations inconsistent with the primary residential use of the dwelling shall be allowed.
 - (vi) No display of products shall be visible from outside the building.
 - (vii) One (1) display sign affixed to the building not exceeding a total area of two (2) square feet and not illuminated.
 - (viii) A maximum of two (2) employees shall be permitted in the operation of the home occupation or studio.
- (c) Professional occupation restricted to the owner/occupant subject to conformance with the following requirements:
 - (i) The granting of a conditional use permit by the Town Council as provided in Section 10.
 - (ii) Three (3) off-street parking spaces in addition to those otherwise required.
 - (iii) No more than two (2) persons shall be employed by the practitioner of the professional occupation to provide secretarial, clerical, technical or similar assistance.
 - (iv) No storage of materials or products outside the dwelling shall be permitted unless completely housed.

- (v) The area used for the practice of a professional occupation shall occupy no more than thirty (30) percent of the total floor area, including garages or other accessory buildings.
 - (vi) The professional use shall be clearly incidental to the residential use of the dwelling and shall not change the essential residential character of the dwelling.
 - (vii) No external alterations inconsistent with the primary residential use of the dwelling shall be allowed.
 - (viii) No display of products shall be visible from outside the building.
 - (ix) No more than one (1) display sign affixed to the building shall not exceed two (2) square feet and not illuminated
- (d) Neighborhood retail and services used to support the surrounding residential community. The site and architectural design shall be compatible with the residential scale, massing and architectural articulation of the surrounding community and shall be easily accessible by pedestrians, bicycles and transit.
- (i) Permitted Uses
 - (a) Offices for professional and administrative services
 - (b) Financial institutions and banks
 - (c) Barbershops and beauty shops
 - (d) Medical clinics
 - (e) Studios for art, music and dance, workshop and sales
 - (f) Retail food stores such as bakeries, candy and convenience stores, grocery and meat markets
 - (g) Restaurants, excluding “drive thru” fast food service restaurants
 - (h) Retail sales and specialty stores
 - (i) Indoor repair and services, with no outdoor storage
 - (j) Antique shop
 - (k) Bookstore
 - (l) Laundromats
 - (m) Resident apartments located above any non-residential use
 - (ii) Area Regulations
 - (a) Maximum lot size for the grouping of stores shall be one and one-half (1 1/2) acres.
 - (b) Maximum floor area for any single permitted establishment within the neighborhood center shall be ten thousand (10,000) square feet.
 - (c) Minimum lot width shall be at least sixty-five (65) feet.

- (d) Maximum percentage of impervious surface shall be seventy (70) percent.
 - (e) Minimum distance between any access driveways (including ingress or egress points) and residential district shall be thirty-five (35) feet.
 - (f) Height of buildings shall not exceed three (3) stories or thirty-five (35) feet.
 - (g) Minimum front yard building and parking setback shall be ten (10) feet.
 - (h) Side yards shall be required to equal the minimum side yard required for the residential district and subject to the landscaping screening provisions as specified in Section 6 of this ordinance.
 - (i) Parking shall comply with the requirements provided in Section 5 of this code.
- (e) Bed and Breakfast Establishments are permitted subject to the following conditions:
- (i) The granting of a conditional use permit by the Town Council in Section 10 of this code.
 - (ii) Bed and Breakfast establishments shall be owner occupied and operated.
 - (iii) No sleeping accommodations shall be provided other than in designated guest rooms. No more than four (4) guest rooms may be provided and no more than two (2) adults may occupy one guest room.
 - (iv) No guest or family may stay longer than seven (7) consecutive nights.
 - (v) There shall be no separate kitchen cooking facilities of any cooking appliances used in guests' rooms.
 - (vi) Smoke detectors powered from house current shall be required in all guests' rooms and shall meet Delaware State Fire Marshal standards applicable to Bed and Breakfast establishments.
 - (vii) A minimum of two (2) full bathrooms, including sink, toilet and bathtub and/or shower, shall be provided in each Bed and Breakfast establishment.
 - (viii) A minimum of one (1) parking space must be conveniently available for each guest room either on-street or off-street.

(3) Area Regulations:

- (a) Minimum lot area shall be nine thousand seven hundred fifty (9,750) square feet.
- (b) Maximum lot coverage shall be thirty (30) percent, exclusive of accessory buildings.
- (c) Minimum lot width shall be sixty-five (65) feet.
- (d) Height of buildings shall not exceed three (3) stories or thirty-five (35) feet, whichever is less.
- (e) Minimum building setback line shall be ten (10) feet for residential structures and twenty (20) feet for garages. (See Exhibit 13)
- (f) Minimum rear yard shall be twenty-five (25) feet for residential structures and five (5) feet for accessory structures and detached garages. For corner lots, the rear yard may be reduced twenty (20) percent in depth to allow the “skewing” of a residential dwelling on the lot.
- (g) Side yards shall be provided as follows: for residential structures, each lot shall have two (2) side yards a minimum of ten (10) feet wide with a minimum aggregate width of two (2) side yards of twenty-five (25) feet. The minimum side yard for accessory structures and detached garages shall be five (5) feet. (See Exhibit 12)
- (h) Parking shall comply with the requirements provided in Section 5 of this code.
- (i) Landscape screening shall comply with the requirements provided in Section 6 of this code.
- (j) Signs shall comply with requirements provided in Section 7 of this code.
- (k) Open space set asides and dedications shall comply with Section 7.G. Open Space, Planting and Landscape Conservation of the Middletown Subdivision Ordinance.

4.D. R-2 District: Single Family Residential (medium density)

In an R-2 district, no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used, except for one or more of the following uses and complying with the requirements so indicated.

(1) Permitted Uses:

- (a) All uses permitted in an R-1 district.
- (b) A single family semi-detached dwelling.
- (c) Social club, fraternal, social service, union or civic organization.

(2) Conditional Uses Subject to Special Requirements:

- (a) Conversion of a one family dwelling into multiple dwelling units, if such dwelling is structurally sound, but too large to be in demand for one family use and that conversion would not impair the character of the neighborhood, subject to conformance with the following requirements:
 - (i) There shall be a lot area of at least two thousand (2,000) square feet for each unit to be accommodated.
 - (ii) There shall be a gross leasable floor area, computed as the sum of the area enclosed by the outside faces of all exterior walls surrounding each story used for residence, exclusive of any area for an accessory private garage, of at least six hundred (600) square feet per family to be accommodated.
 - (iii) No dwelling shall be so converted unless it is placed in a reasonable state of repair and modernization.
 - (iv) No addition shall extend within the front yard, side yards or rear yard required for the district within which it is located.
 - (v) Fire escapes and outside stairways leading to a second or higher story shall, where practicable, be located on the rear of the buildings and shall not be located on any building wall facing a street.
 - (vi) Two (2) off-street parking spaces shall be provided for each additional dwelling unit created.
 - (vii) The granting of a conditional use permit by the Town Council.

- (b) Nursing homes, rest homes or home for the aged, subject to the following special requirements:
 - (i) The minimum lot area required for each four (4) or remainder over a multiple of four (4) resident patients or resident guests shall be the same as the minimum lot area required for each dwelling unit in this district provided, however, that no lot contains less than ten thousand (10,000) square feet.
 - (ii) The minimum lot width shall be one hundred (100) feet.
 - (iii) No more than fifty (50) patients or resident guests shall be accommodated at one time in any one building.
 - (iv) The granting of a conditional use permit by the Town Council.

- (c) Day care centers, kindergarten, preschools, day nursery schools and orphanages, subject to the following special requirements:
 - (i) At least one hundred (100) square feet of outdoor play space per child shall be provided.
 - (ii) Outdoor play space shall be fenced or otherwise enclosed on all sides and shall not include driveways, parking areas or land unsuited by other usage or natural features for the children's active play space. Fencing or other enclosures shall be a minimum of four (4) feet in height.
 - (iii) The minimum lot area for each six (6) or remainder over the multiple of six (6) children shall be the same as the minimum lot area requirements for each dwelling unit in this district provided, however, that not less than ten thousand (10,000) square feet in area shall be used for such purposes and provided further that not more than fifty (50) children shall be accommodated at any one time on a lot.
 - (iv) The granting of a conditional use permit by the Town Council.

- (d) Physicians, dentists and related medical offices subject to the following special requirements:
 - (i) The maximum allowable number of professional practitioners shall be four (4) with a minimum of four thousand five hundred (4,500) square feet of lot area per practitioner.
 - (ii) The granting of a conditional use permit by the Town Council.

- (e) Tourist home, rooming house and lodging house, a boarding house provided there be one bathroom facility for each living unit.
 - (i) The granting of a conditional use permit by the Town Council.
- (f) Bed and Breakfast establishments are permitted subject to the following conditions:
 - (i) The granting of a conditional use permit by the Town of Middletown Council as provided in Section 10 of this code.
 - (ii) Bed and Breakfast establishments shall be owner-occupied and operated.
 - (iii) No sleeping accommodations shall be provided other than in designated guest rooms. No more than four (4) guest rooms may be provided and no more than two (2) adults may occupy one guest room.
 - (iv) No guest or family may stay longer than seven (7) consecutive nights.
 - (v) There shall be no separate kitchen, cooking facility or any cooking appliances used in guest rooms.
 - (vi) Smoke detectors powered from house current shall be required in all guest rooms and shall meet Delaware State Fire Marshal standards applicable to Bed and Breakfast establishments.
 - (vii) A minimum of two (2) full bathrooms, including sink, toilet and bathtub and/or shower, shall be provided in each Bed and Breakfast establishment.
 - (viii) A minimum of one (1) parking space must be conveniently available for each guest room either on-street or off-street.

(3) Area Regulations:

- (a) The minimum lot area shall be as follows:
 - (i) Single family detached residential, five thousand (5,000) square feet.
 - (ii) Single family semi-detached residential, four thousand five hundred (4,500) square feet.
- (b) Maximum lot coverage shall be sixty (60) percent.
- (c) Minimum lot width shall be as follows:

- (i) Single family detached residential, fifty (50) feet.
 - (ii) Single family semi-detached residential, forty (40) feet.
- (d) Height of buildings shall not exceed three (3) stories or thirty-five (35) feet.
- (e) Minimum building setback line shall be ten (10) feet for residential structures and twenty (20) feet for detached garages (See Exhibit 13).
- (f) Minimum rear yard shall be twenty (20) feet for residential structures and five (5) feet for accessory structures and detached garages. For corner lots, the rear yard may be reduced twenty (20) percent in depth to allow the “skewing” of a residential dwelling on the lot.
- (g) Side yards shall be provided as follows: for residential structures, each lot shall have two (2) side yards a minimum of ten (10) feet on each side, except for a semi-detached residential dwelling, which shall have one side yard a minimum of ten (10) feet. The minimum side yard for accessory structures and detached garages shall be five (5) feet. (See Exhibit 12).

For residential subdivisions designed using a Traditional Neighborhood Design:

- (i) The side yards for single family homes that are not also served by an alley shall be a minimum of six (6) feet with an aggregate side yard of fourteen (14) feet.
 - (ii) For single family homes that are served by an alley, the minimum side yard shall be six (6) feet with an aggregate side yard of twelve (12) feet.
 - (iii) For semi-detached residential dwellings the minimum side yard shall be six (6) feet.
 - (iv) No permitted projection shall be closer than five (5) feet to a side yard property line.
- (h) Parking shall comply with the requirements provided in Section 5 of this code.
- (i) Landscape screening shall comply with the requirements provided in Section 6 of this code.
- (j) Signs shall comply with the requirements provided in Section 7 of this code.

- (k) Open space set asides and dedications shall comply with Section 7.G. Open Space, Planting and Landscape Conservation of the Middletown Subdivision Ordinance.
- (l) Notwithstanding the foregoing requirements in this Section 4 D(3), for residential subdivisions designed using a Traditional Neighborhood Design:
 - (i) The minimum lot area for single family detached residential and single family semi-detached residential shall be three thousand (3,000) square feet.
 - (ii) Section 4.D.(3)(b) above shall not apply.
 - (iii) The minimum lot width for single family detached residential and single family semi-detached residential shall be thirty (30) feet.

4.E. R-3 District: Multi-Family Residential

In an R-3 district, no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used, except for one or more of the following uses and complying with the requirements so indicated.

(1) Permitted Uses:

- (a) All uses permitted in an R-2 district.
- (b) Garden apartments subject to the following special requirements:
 - (i) The number of dwelling units per acre shall not exceed sixteen (16).
 - (ii) Lot coverage shall not exceed forty (40) percent for any lot developed for garden apartments.
 - (iii) The maximum number of dwelling units per building shall be twenty-four (24).
 - (iv) Distance between buildings or groups of buildings shall be as follows: each building or group of buildings shall be at least twenty-five (25) feet from any other building or group of buildings.
 - (v) Minimum lot width on any public street shall be at least fifty (50) feet.
 - (vi) Minimum lot size shall be one (1) acre for garden apartment properties or complexes with a minimum of two thousand five hundred (2,500) square feet of lot area for each dwelling unit.
 - (vii) A minimum of forty (40) percent of the total area developed for garden apartments shall be designed as open space. The Mayor and Council shall have the option to require all or a portion of the open space to be "public open space" or "dedicated open space", with appropriate conditions for maintenance and use.
 - (viii) Parking shall comply with the requirements provided in Section 5 of this code.
 - (ix) Landscape screening shall comply with the requirements provided in Section 6 of this code.
 - (x) Sidewalks and internal pedestrian ways shall conform to Section 7.B.(5) of the Middletown Subdivision Regulations.

- (xi) The building height of any building shall not exceed three (3) stories or forty (40) feet.
- (c) One family dwellings such as townhouses or row dwellings subject to the following special requirements:
- (i) The number of dwelling units per group shall not exceed eight (8).
 - (ii) The number of dwelling units per acre shall not exceed twelve (12).
 - (iii) Maximum lot coverage shall be forty (40) percent of the total area to be developed for townhouses, and sixty (60) percent of the individual lot area where each building is constructed.
 - (iv) Distance between buildings or groups of buildings shall be as follows: each building or group of buildings shall be at least twenty-five (25) feet from any other building or group of buildings. The developer may elect, upon approval from the Town of Middletown, to reduce the minimum distance between each building or group of buildings to eighteen (18) feet provided the following:
 - (a) Minimum building width of twenty-four (24) feet for all end units.
 - (b) Construction and drainage complies with all current BOCA code requirements and Delaware State Fire Marshal regulations.
 - (c) Building elevations shall include enhanced architectural features such as brick, stone, addition of garages, varying setbacks, etc. subject to review and approval by the Town of Middletown.

The intent of the reduced distance is to avoid monotony and add character to the design and construction of the townhouse units.

- (v) Minimum lot size shall be one (1) acre for townhouse projects or complexes with a minimum of two thousand (2,000) square feet of lot area for each dwelling unit.
- (vi) A minimum of forty (40) percent of the total area developed for townhouses shall be designated as open space. The Mayor and Council shall have the option to require all or a portion of the open space to be “public open space” or “dedicated open space”, with appropriate conditions for maintenance and use.

- (vii) Notwithstanding the foregoing, for townhouses which are part of a Traditional Neighborhood Design residential subdivision, the requirements of subsections (iii), (v) and (vi) above shall not apply, and, instead, the open space formula set forth in Section 8.G.(2)(a) (Middletown Subdivision Regulations) shall apply and the minimum lot size shall be 1,800 square feet.
- (viii) The building height of any building shall not exceed three (3) stories or forty (40) feet.

(2) Conditional Uses Subject to Special Requirements:

- (a) In order to encourage superior designed projects, and in order to better promote the goals of good planning, the Town Council may grant conditional use approval for a “Planned Neighborhood Design” of garden apartments, row dwellings, single-family dwellings, and/or townhouses subject to the following conditions:
 - (i) The minimum site area for the overall project shall not be less than ten (10) acres.
 - (ii) The maximum building height shall be four (4) stories or fifty (50) feet.
 - (iii) For projects which will be “age-restricted” by appropriate deed restrictions which comply with applicable federal law, a density bonus of up to twenty-five (25%) percent may be granted.
 - (iv) Other applicable setback requirements, area limitations, open space requirements, or other restrictions applicable to garden apartments, row dwellings, single-family dwellings and townhouses may be lessened or waived by Town Council as part of the conditional use approval, provided that Town Council determines that such lessening or waiver will result in a superior project, better aesthetics, or an overall enhanced project, all in accordance with the goals and policies of the Town’s comprehensive plan.

4.F. R-MH District: Mobile Home Residential

In an R-MH district, no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used, except of one or more of the following uses and complying with the requirements indicated.

(1) Permitted Uses:

- (a) Mobile home parks, subject to the following requirements:
 - (i) Mobile home parks shall be developed upon property served by water and sewer systems approved by the Town Engineer.
 - (ii) Mobile home parks shall be developed on a tract of land encompassing not less than ten (10) acres in area.
 - (iii) All mobile homes not on a permanent foundation shall be provided with skirting, which effectively encloses from view the space between the ground and the floor of the mobile home and also shall be provided with tie downs or anchors.
- (b) Park, playground, athletic field, recreation buildings, swimming pool and community center operated on a non-commercial basis for recreational purposes.
- (c) Municipal and public service facilities including water storage tower, water reservoir, water pumping station, water treatment plant, sewage pumping station, sewers (storm and sanitary), street right-of-way, utility transmission and distribution lines, public transportation bus or transit stops, police and fire stations, substations for electric, gas and telephone facilities.
- (d) Farming and agricultural activities.
- (e) Public and private elementary, junior or senior high schools.
- (f) Church and other places of worship, cemeteries.
- (g) Cultural facilities including library, museum or art gallery.
- (h) Temporary buildings, temporary real estate or construction office and temporary storage of materials provided that such use is located on the lot where construction is taking place or on a lot adjacent or part of a developed site and that such temporary use is to be terminated upon completion of construction.
- (i) Uses and structures, which are customarily accessory and clearly incidental and subordinate to principal uses and structures.

(2) Area Regulations:

- (a) Each mobile home site or lot shall not be less than four thousand (4,000) square feet in area. All other permitted uses shall have a minimum lot area of nine thousand (9,000) square feet.
- (b) At least fifteen (15) percent of the total area of a mobile home park shall be devoted to open space or recreation areas. Road right-of-way and park buffer strips required by the landscape screening provision in Section 6 (c) of this code may not be included in the calculation of the required open space and recreation areas.
- (c) Maximum density shall not exceed ten (10) mobile home units or sites per acre.
- (d) Minimum lot width shall be thirty (30) feet.
- (e) No mobile home and accessory building may occupy more than twenty-five (25) percent of the area on which the lot is situated.
- (f) Minimum setback line shall be fifteen (15) feet, except that no part of any mobile home or other structure shall be located within twenty-five (25) feet of any public road with a right-of-way width of ninety (90) feet or more.
- (g) No part of any mobile home stand shall be located within eight (8) feet of any common driveway, walk, parking area or other common area within the mobile home development.
- (h) Minimum rear yard shall be fifteen (15) feet.
- (i) Access shall be such as to permit fire protection apparatus to approach to within one hundred (100) feet of each mobile home.
- (j) Fences and walls located within five (5) feet of lot lines shall not exceed a height of six (6) feet, except that such fences or walls shall not exceed a height of four (4) feet when located in a required front yard.
- (k) Parking shall comply with the requirements provided in Section 5 of this code.
- (l) Landscape screening shall comply with the requirements provided in Section 6 of this code.
- (m) Signs shall comply with the requirements provided in Section 7 of this code.

4.G. Statement of Intent: Commercial Generally

- (1) The Town's intent within the standard commercial zoning districts (C-2 and C-3) is to create retail and employment environments that complement the Town's historic character and development patterns, and promote the goals and objectives of the Middletown Comprehensive Plan.
- (2) It is intended that commercial uses be connected by a network of roads, sidewalks, interior pedestrian ways and bike facilities, to adjacent neighborhoods, other commercial and retail uses and employment centers.
- (3) To create an opportunity to provide neighborhood-serving commercial/retail in or near residential communities. Neighborhood commercial uses are conditional uses within residential districts. This will allow for a mix of residential uses and neighborhoods serving commercial/retail uses in the neighborhood and within walking/biking distance. Using the conditional use process will allow the Town and the public some discretion in the type, location and appearance of the neighborhood serving commercial. Land zoned C-1 under the previous zoning code will be re-examined on a case by case basis.

4.H. C-2 District: Downtown Commercial

The purpose of the C-2 zoning district regulations is to promote a traditional downtown that reinforces the historic character and scale of Middletown and encourages a mixed use pedestrian environment.

Development in this zone should be pedestrian-friendly. This character can be achieved through the use of sidewalks, street trees, public spaces, building massing, articulation and orientation, signage, land uses, traffic calming and scale and location of parking. Land uses should be both residential and non-residential. Business should be both neighborhood, community and tourist-serving including specialty retail, personal and professional services.

Development applications for new uses and renovations in the C-2 zoning district must submit a site development plan as set forth in Section 11.D. of this ordinance.

In a C-2 district no building or premises shall be used and no building shall be erected or altered which is arranged, intended, or designed to be used, except for one or more of the following uses and complying with the requirements so indicated.

(1) Permitted Uses:

- (a) Single family detached residences (as permitted in R-2 zoning district), townhouses, or row dwellings (as permitted in the R-3 zoning district or, provided Town Council approval is obtained, as permitted as a conditional use in the R-3 zoning district), conversion

of existing single family residences to apartments, and residence apartments located above any non-residential use.

- (b) General merchandise stores including such uses as department stores, apparel and accessories, hardware, shoes, drugs, and variety stores.
- (c) Specialty retail stores including such uses as gifts, antiques, crafts, newspapers, tobacco, flowers, sporting goods, books, jewelry, leather goods, and stationery stores.
- (d) Personal service establishments including such uses as barbers, beauticians, shoe repair, and tailors.
- (e) Financial institutions, loan companies, and banks.
- (f) Restaurants, excluding fast food service restaurants.
- (g) Taverns and tap rooms.
- (h) Retail food stores including bakeries, confectionary, candy, or gourmet shops, small convenience grocery shops, meat, fish or produce stores.
- (i) Professional services and administrative activities including such uses as offices of agents, brokers, physicians, dentists, attorneys, architects, engineers, musicians, artists, and governmental offices serving the public.
- (j) Instructional, business, or trade schools.
- (k) Police and fire stations.
- (l) Libraries, museums, art galleries, and public information centers.
- (m) Churches, and other places of worship.
- (n) Social club, fraternal, social service, union or civic organization.
- (o) Studio for artists, designers, photographers, musicians, sculptors, and related uses.
- (p) Commercial parking lot or public garage and off-street parking.
- (q) Municipal and public services and facilities including Town Hall, water storage tower, water reservoir, water pumping station, water treatment plant, sewage pumping station, sewers (storm and sanitary), street right-of-way, utility transmission and distribution lines, public transportation bus or transit stops, police and fire stations, substations for electric, gas and telephone facilities.

- (r) Publishing, printing, and reproduction establishments.
- (s) Repair and servicing as an accessory activity of any article for sale in the same establishment.
- (t) Indoor storage facilities as an accessory use to any of the permitted uses in this district.

(2) Conditional Uses Subject to Special Requirements:

The following uses are permitted subject to receiving a conditional use permit by the Town Council as provided in Section 10 of this code.

- (a) Commercial indoor recreation activities including amusement arcades and indoor theaters.
- (b) Laundromats and dry cleaning establishments.
- (c) Motels and hotels.
- (d) Tourist home, rooming house and lodging house, a boarding house provided there shall be one (1) bathroom facility for each living unit.
- (e) Sale of goods from trailers, trucks, and other transient or temporary vehicles or structures, provided that, in addition to the requirements of Section 10 of this zoning code, the following conditions are met:
 - (i) The sale of goods from trailers, trucks and other transient or temporary vehicles or structures is conducted on private property, outside any Town of Middletown maintained public right-of-way, with written permission from the property owner.
 - (ii) Food vendors shall provide approved permit by the State of Delaware Division of Public Health, per Title 16 Delaware Code §122, Plan Review and Approval for Mobile Food Units.
 - (iii) All trash and grease is disposed of properly in accordance with the regulations of the Town of Middletown.

A conditional use permit will not be required for (i) the sale of food or goods from such vehicles or structures during festivals and celebrations approved by the Town of Middletown, and (ii) ice cream trucks which travel a daily route and shall not be subject to the requirements of this section. Except as permitted or exempted as a conditional use in C-2 and C-3 zoned areas, no other sale of goods or food from trailers, trucks, carts and other transient or temporary vehicles or structures shall otherwise be permitted.

(f) Garden apartments.

(3) Area Regulations:

- (a) Minimum lot area shall be three thousand (3,000) square feet for any permitted use, together with its accessory buildings, provided parking and loading spaces are provided in accordance with Section 5 of this code.
- (b) Maximum lot coverage shall be eighty (80) percent. However, for buildings used exclusively for business purposes lot coverage may be one hundred (100) percent provided that parking requirements as specified in Section 5 of this code can be met.
- (c) Minimum lot width shall be twenty (20) feet.
- (d) Height of buildings shall not exceed four (4) stories or fifty (50) feet.
- (e) Minimum rear yard shall be fifteen (15) feet and may be used to meet applicable parking requirements as specified in Section 5 of this code as well as applicable landscape screening requirements as specified in Section 6 of this code.
- (f) Minimum building and parking setback shall be ten (10) feet. (See Exhibits 14, 15 & 16)
- (g) Minimum side yards. No side yards shall be required, however, when a side lot is the boundary line with a residential district, side yards shall be required equal to the minimum side yard required for the residential district and subject to the landscape screening provisions as specified in Section 6 of this code.
- (h) Parking shall comply with the requirements provided in Section 5 of this code. Shared parking, off-site parking, and on-street parking is encouraged as outlined in the Parking Plan Option Section of Section 5.
- (i) Pedestrian walkways shall form an on-site circulation system that minimizes the conflict between pedestrians and traffic at all points of pedestrian access to on-site parking and building entrances. (See Exhibit 17)
- (j) To create a visual and economic link between pedestrians and businesses, the ground floor street frontage of each structure shall be pedestrian-oriented and windows shall be provided rather than blank walls. A minimum of sixty (60) percent of ground-floor facades facing streets shall be in non-reflective transparent glazing.

4.I. C-3 District: Employment/Regional Retail

The purpose of the C-3 district regulations is to create local, neighborhood, community and regional shopping and employment opportunities in an environment that provides internal and inter-parcel vehicular and pedestrian circulation, transit accessibility, and visually pleasing surroundings through the use of site design, architectural detail, form and massing, and landscaping. Development design within the C-3 district will provide service and retail environments and employment/office opportunities in a manner compatible with the historic character, scale, and architectural type of Middletown.

The C-3 district allows both retail and office uses and allows for office uses to locate on the second floor in combination with retail uses.

Development applications for new uses and renovations in the C-3 zoning district must submit a site development plan as set forth in Section 11.D. of this ordinance.

(1) Permitted Uses:

- (a) Any use permitted in a C-2 district subject to the area regulations of that district.
- (b) Service station, automobile sales agency, public garage, parking garage or lot, but not including storage of wrecked cars, subject to the following special requirements:
 - (i) All facilities shall be located and all services shall be conducted on the lot.
 - (ii) All repair work shall be conducted within an entirely enclosed building.
 - (iii) No equipment for the service of gasoline or oil shall be placed closer to any street line than twenty (20) feet.
 - (iv) No portion of such structure or its equipment shall be located within five hundred (500) feet of the premises of any school, hospital, church, or public recreation building.
 - (v) No service station shall be located within eight hundred (800) feet of another service station on the same side of the street within the same block.
 - (vi) Any such use shall be permitted only where it is determined that it will not materially interfere with the main pedestrian movement in conjunction with the commercial retail area.

- (c) Restaurants, except that “fast food” restaurants and drive-thru restaurants must be part of a comprehensively designed shopping center, as described in (e) below.
- (d) Offices for professional services and administrative activities both as employment centers or as second floor uses in conjunction with retail uses.
- (e) Shopping centers and employment centers subject to the following requirements:
 - (i) Total site shall not be less than one (1) acre.
 - (ii) The site must be served by public water, sewer, and electricity.
 - (iii) Stormwater drainage facilities shall be provided by the developer to handle the increase in stormwater runoff and the developer shall make contributions towards the cost of off-site facilities of the shopping center.
 - (iv) Traffic, Transit, Pedestrians and Parking:
 - (a) The internal circulation of traffic shall be similar to the external street system, where pedestrian and vehicular traffic shall be separated but meet at safe intersections through traffic control devices and appropriate site design. The site design and internal circulation pattern shall allow for the through movement of transit vehicles and short average walking trips (less than 300’) from transit stops to building portals. (See Exhibit 18)
 - (b) Pedestrian walkways shall form an on-site circulation system that minimizes the conflict between pedestrians and traffic at all points of pedestrian access to on-site parking and building entrances. Pedestrian walkways shall provide direct connections from building entrances to sidewalks along streets to existing or planned transit stops. Pedestrian walkways shall be provided when the pedestrian access point or any parking space is more than seventy-five (75) feet from the building entrance or principal on-site destination as follows:
 - (i) All developments which contain more than one (1) building shall provide walkways between the principal entrances of the buildings; and
 - (ii) All non-residential buildings set back one hundred (100) feet or more from the public

right-of-way shall provide for direct pedestrian access from the buildings to buildings on adjacent lots.

- (c) To enhance the pedestrian environment and create visual interest, long facades should be divided into shorter segments a maximum of forty (40) feet and preferably twenty-five (25) feet in width. Techniques to segment the facade can include varying setbacks of sections, varying architectural elements using windows, or varying the color of individual segments, using harmonious colors.
- (d) Access to state highways shall be controlled by the Delaware Department of Transportation.
- (e) The minimum distance between access-ways and a residential district shall be fifty (50) feet.
- (f) Spacing of accessway.
 - From adjoining property – Fifty (50) feet
 - From minor intersections – Fifty (50) feet
 - From major intersections – One hundred (100) to one hundred fifty (150) feet
- (g) A minimum of three (3) parking spaces shall be provided per one thousand (1,000) feet of leasable area plus one (1) parking space for each two (2) employees.
- (h) Parking lots shall be landscaped in accordance with Section 5.
- (v) Setbacks:
 - (a) From street right-of-way – Fifteen (15) feet
 - (b) From non-residential districts – Fifteen (15) feet
 - (c) From residential districts – One hundred (100) feet
- (vi) Buffering, Landscaping and Public Space:
 - (a) There shall be a minimum of a ten (10) feet wide landscaped buffer along all lot lines. The screening shall be six (6) feet high near residential districts.
 - (b) Vehicular and pedestrian access points at property edges and to adjacent lots shall be coordinated with existing development to provide circulation patterns between developments. Buildings, landscaping,

fences and other improvements shall be located so that adequate area shall be reserved for future connections to adjacent properties and as not to preclude future site-to-site connections.

- (c) Public space shall be provided as part of all new shopping center and office development in an amount that covers no less than five (5) percent of the total site area. Public space includes parks and plazas, pedestrian amenities such as seating, lighting, special paving, planting, artwork and special recreational features but excludes pedestrian walkways and required buffer areas. (See Exhibit 18)
- (vii) Transit Accessibility. All developments must coordinate with the Delaware Transit Corporation regarding existing and future transit routes and transit facility standards. Preferred design elements include expanded pads, benches, shelters and direct access for transit vehicles. (See Section 11.D.(3)(c))
- (f) Tower, broadcasting and telecommunications tower, subject, to the granting of a conditional use as set forth in Section 10.A.(2) of this code.
 - (i) Definition: An above-grade tower or similar structure more than thirty-five (35) feet in height for communications equipment principally intended for the transmittal or reception of commercial, governmental, and related radio, television, microwave, cellular phone, and similar telecommunications signals. Towers or similar structures installed on tops of or attached to buildings, water tanks, or similar facilities shall be included in this definition, if the total height of the tower/structure exceeds fifty-seven (57) feet above grade. This definition includes the accessory buildings, storage facilities, and related equipment required for broadcasting and telecommunications towers and any such equipment for telecommunications antennas that may be attached to or on the facades of buildings or structures.

(2) Conditional Uses Subject to Special Requirements:

The following uses are permitted subject to receiving a conditional use permit by the Town Council as provided in Section 10 of this code.

- (a) Daycare centers.
- (b) Sale of goods from trailers, trucks, and other transient or temporary vehicles or structures, provided that, in addition to the requirements of Section 10 of this zoning code, the following conditions are met:

- (i) The sale of goods from trailers, trucks and other transient or temporary vehicles or structures is conducted on private property, outside any Town of Middletown maintained public right-of-way, with written permission from the property owner.
- (ii) Food vendors shall provide approved permit by the State of Delaware Division of Public Health, per Title 16 Delaware Code §122, Plan Review and Approval for Mobile Food Units.
- (iii) All trash and grease is disposed of properly in accordance with the regulations of the Town of Middletown.

A conditional use permit will not be required for (i) the sale of food or goods from such vehicles or structures during festivals and celebrations approved by the Town of Middletown, and (ii) ice cream trucks, which travel a daily route and shall not be subject to the requirements of this section. Except as permitted or exempted as a conditional use in C-2 and C-3 zoned areas, no other sale of goods or food from trailers, trucks, carts and other transient or temporary vehicles or structures shall otherwise be permitted.

- (c) Garden apartments.

4.J. MI District: Manufacturing-Industrial

(1) Permitted Uses:

In an MI district, no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used, except for one or more of the following uses:

- (a) Administrative offices.
- (b) A plant for the assembly of household appliances.
- (c) Manufacture of the following: Clothing; electrical appliances; food products preparation; leather goods; machinery parts and accessories, such as bolts, nuts, screws, washers, gears, etc., provided power forges are not employed on the premises; small tools, provided power forges are not employed on the premises. In no case, however, shall basic materials be processed on the premises.
- (d) Bottling works.
- (e) Retail or wholesale sales or rentals of building materials, supplies, and contractors' equipment, with inside or outside storage, display and warehousing; but not including the open storage of junk, such as scrap metals or other scrap materials, automobiles or other vehicles or machinery intended for dismantling or demolition.
- (f) Sewage pumping station.
- (g) Police and fire stations.
- (h) Temporary building and temporary storage of materials in conjunction with construction of a building on a lot where construction is taking place or on adjacent lots; such temporary use is to be terminated upon completion of construction.
- (i) Automatic or self-service car wash establishment.
- (j) Veterinary hospital.
- (k) Agricultural uses, including but not limited to the planting, growing and harvesting of forages and sod crops; grains and feed crops; fruits of all kinds, including peaches, apples, grapes, nuts and berries; vegetables, nursery, floral ornamental and greenhouse products.
- (l) Semi-conductor industry.

- (m) Services and retail (e.g. delis, office products, day care, dry cleaning, and similar type uses) incidental to the primary permitted use not to exceed ten (10) percent of the total building area.
- (n) Tower, broadcasting and telecommunications tower, subject, to the granting of a conditional use as set forth in Section 10.A.(2) of this code.
 - (i) Definition: An above-grade tower or similar structure more than thirty-five (35) feet in height for communications equipment principally intended for the transmittal or reception of commercial, governmental, and related radio, television, microwave, cellular phone, and similar telecommunications signals. Towers or similar structures installed on tops of or attached to buildings, water tanks, or similar facilities shall be included in this definition, if the total height of the tower/structure exceeds fifty-seven (57) feet above grade. This definition includes the accessory buildings, storage facilities, and related equipment required for broadcasting and telecommunications towers and any such equipment for telecommunications antennas that may be attached to or on the facades of buildings or structures.

(2) Conditional Uses Subject to Special Requirements:

All other manufacturing and industrial uses may be permitted in an MI district subject to receiving a conditional use permit from the Town Council as provided in Section 10 of this code, except that the following uses are prohibited: Processes such as manufacture of concrete products and materials, concrete asphalt materials, corrosive acids, gelatin, paint, pigments, dyes, oils, fertilizer, linoleum, cork products, alcohol, bleaching compounds or soap; tanning or curing of hides, crude oil refining, rubber treatment or manufacture; ore smelting; blast furnace, garbage or offal reduction or dumping; asphalt manufacture or refining, abattoir, junk storage, automobile wrecking, animal rendering; storage of oil, fuel such as coke, coal or petroleum products, storage in bulk of illuminating or natural gas; freight terminal; radio or television broadcasting towers; ice manufacture or storage; raising of minks or foxes; airport facilities; automobile service station or public garage; auction.

The raising of livestock, including but not limited to cattle, horses, ponies, mules or goats, including the breeding and grazing of any or all such animals, may be permitted in an MI district subject to receiving a conditional use permit from the Town as provided in Section 10 of this code.

(3) Area Regulations:

- (a) Minimum lot area shall be one (1) acre.

- (b) Maximum lot coverage shall be fifty (50) percent including all principal and accessory buildings.
- (c) Minimum lot width shall be fifty (50) feet.
- (d) Minimum rear yards shall be twenty (20) feet.
- (e) Minimum front setback line shall be fifty (50) feet for sites containing five (5) or more acres of land, and twenty (20) feet for all other sites.
- (f) Minimum side yards shall be twenty (20) feet on each side.
- (g) Off-street parking shall be provided in accordance with the general provisions of this code as specified in Section 5. No parking spaces may be located within minimum yards except that an area equivalent to not more than twenty (20) percent of the total area of all required parking spaces may be located within the required yards for use as parking spaces for visitors, selected personnel, and minor deliveries. Off-street parking spaces may be grouped and facilities may serve more than one (1) lot or structure. For MI lots five (5) acres or less, parking spaces shall be permitted within the required side yard while maintaining a minimum parking setback of ten (10) feet from the property line.
 - (i) In off-street parking lots of one (1) acre or more, at least ten (10) percent of the area of the parking lot shall be devoted to landscaping within the interior of the parking lot.
 - (ii) Parking space and loading space shall be located at least seventy-five (75) feet from any street line or residential district boundary line. For MI lots five (5) acres or less, parking spaces shall be located at least twenty (20) from any street right-of-way and fifty (50) feet from any residential district boundary line.
- (h) Landscaping screening shall comply with the requirements provided in Section 6 of this code.
- (i) Signs shall comply with the requirements provided in Section 7 of this code.

4.K. H District: Historic

(1) Purpose:

The purpose of the Historic District is to preserve and enhance that unique character and value of the older portion of Middletown as an area of special charm and interest. It is also intended that these regulations prevent, in the Historic District, any disfigurement or significant alteration of historic architectural styles. The Historic District is also intended to insure the protection of historically and architecturally important buildings and sites.

(2) Boundaries:

The Historic District shall consist of the area which is listed on the National Register of Historic Places, known as the "Middletown Historic District," and depicted on the official zoning map.

(3) Uses and Interpretation:

Shall be used in accordance with the use and other requirements of the designated zoning district for each property, lot, or building, in accordance with the standards and Historic and Architectural Review Procedures as contained in this Section.

- (a) In case of conflict in interpreting the applicability of use, area regulations, and the general standards for historic preservation, the latter shall govern.

(4) Historic District Use Definitions:

- (a) **Protection:** Is defined as the act or process of applying measures designed to affect the physical condition of property by defending or guarding it from deterioration, loss or attack, or to cover or shield the property from danger or injury. In the case of buildings and structures, such treatment is generally of a temporary nature and anticipates future historic preservation treatment. In the case of archeological sites, the protective measures may be temporary or permanent.
- (b) **Stabilization:** Is defined as the act or process of applying measures designed to re-establish a weather resistant enclosure and the structural stability of an unsafe or deteriorated property while maintaining the essential form as it exists at present.
- (c) **Preservation:** Is defined as the act or process of applying measures to sustain the existing form, integrity, and material of a building or structure, and the existing form and vegetative cover of a site. It may include initial stabilization work, where necessary, as well as ongoing maintenance of the historic building materials.

- (d) Rehabilitation: Is defined as the act or process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historical, architectural, and cultural values.
- (e) Restoration: Is defined as the act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work.
- (f) Reconstruction: Is defined as the act or process of reproducing by new construction the exact form and detail of a vanished building, structure, or object, or a part thereof, as it appeared at a specific period of time.

(5) Historic and Architectural Review Required:

(a) Review Procedure.

(i) Applicant Request for Review:

A letter or request shall be filed with the Town Clerk by any person who desires to undertake any activity involving protection, stabilization, preservation, rehabilitation, restoration, or reconstruction of any building or site in the Historic District.

(ii) Planning Commission Review:

Within ten (10) working days from the receipt of the letter of request the Town Clerk shall schedule a public review before the Planning Commission. The Planning Commission shall meet and review the letter of request and shall base its recommendations on the applicability of the general and specific standards for historic preservation as provided in this section. The Planning Commission may seek the advice of experts in the fields of architecture, urban planning, or art history prior to making its final recommendation to Town Council. The Planning Commission shall recommend one of the following to the Town Council:

1. Approval of the letter of request
2. Approval with modifications of the letter of request
3. Disapproval of the letter of request

(iii) Town Council Approval:

Within ten (10) working days following the Planning Commission recommendation the Town Clerk shall schedule

a public hearing before Town Council. Town Council shall, after due consideration, approve, approve with modifications, or disapprove the letter of request.

(iv) Notification to Applicant:

Within five (5) working days of the action of Town Council, the Town Clerk shall notify the applicant of the decision of the Council on the letter of request.

(6) General Standards for Historic Preservation:

(a) General standards applicable to all activities undertaken on buildings or sites in the Historic District.

- (i) Every reasonable effort shall be made to provide a compatible use for a property that requires minimal alteration of the building structure, or site and its environment, or to use a property for its originally intended purpose.
- (ii) The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historical material or distinctive architectural features should be avoided when possible.
- (iii) All buildings, structures, and sites shall be recognized as products of their own time. Alterations which have no historical basis and which seek to create an earlier appearance shall be discouraged.
- (iv) Changes which may have taken place in the course of time are evidence of the history and development of a building, structure, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- (v) Distinctive stylistic features or examples of skilled craftsmanship which characterize a building structure, or site shall be treated with sensitivity.
- (vi) Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new materials should match the materials being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplication of features, substantiated by historical, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.

- (vii) The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
- (viii) Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any acquisition, protection, stabilization, preservation, rehabilitation, restoration, or reconstruction project.

(b) Specific Standards for Protection.

- (i) Before applying protective measures which are generally of a temporary nature and imply future historic preservation work, an analysis of the actual or anticipated threats to the property shall be made.
- (ii) Protection shall safeguard the physical condition or environment of a property or archeological site from further deterioration or damage caused by weather or other natural, animal, or human intrusions.
- (iii) If any historic material or architectural features are removed, they shall be properly recorded and, if possible, stored for future study or reuse.

(c) Specific Standards for Stabilization.

- (i) Stabilization shall reestablish the structural stability of a property through the reinforcement of load bearing members or by arresting material deterioration leading to structural failure. Stabilization shall also re-establish weather resistant conditions for a property.
- (ii) Stabilization shall be accomplished in such a manner that it detracts as little as possible from the property's appearance. When reinforcement is required to re-establish structural stability, such work shall be concealed wherever possible so as not to intrude upon or detract from the aesthetic and historical quality of the property, except where concealment would result in the alteration or destruction of historically significant material or spaces.

(d) Standards for Preservation.

- (i) Preservation shall maintain the existing form, integrity and materials of a building, structure, or site. Substantial reconstruction or restoration of lost features generally are not included in a preservation undertaking.

- (ii) Preservation shall include techniques of arresting or retarding the deterioration of a property through a program of ongoing maintenance.
- (e) Standards for Rehabilitation.
 - (i) Contemporary design for alteration and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historic, architectural, or cultural material and such design is compatible with size, scale, color, material, and character of the property, neighborhood, or environment.
 - (ii) Wherever possible, new additions or alterations to structures shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.
- (f) Standards for Restoration.
 - (i) Every reasonable effort shall be made to use a property for its originally intended purpose or to provide a compatible use that will require minimum alteration to the property and its environment.
 - (ii) Reinforcement required for structural stability or the installation of protective or code required mechanical systems shall be concealed whenever possible so as not to intrude or detract from the property's aesthetic and historical qualities, except where concealment would result in the alteration or destruction of historically significant materials or spaces.
 - (iii) When archeological resources must be disturbed by restoration work, recovery of archaeological material shall be undertaken in conformance with current professional practices.
- (g) Standards for Reconstruction.
 - (i) Reconstruction of a part or all of a property shall be undertaken only when such work is essential to reproduce a significant missing feature in a historic district or scene, and when a contemporary design solution is not acceptable.
 - (ii) Reconstruction of all or part of a historic property shall be appropriate when the reconstruction is essential for understanding and interpreting the value of a historic district, or when no other building structure, object, or landscape feature with the same associated value has survived and

sufficient historical documentation exists to insure an accurate reproduction of the original.

- (iii) The reproduction of missing elements accomplished with new materials shall duplicate the composition, design, color, texture, and other visual qualities of the missing element. Reconstruction of missing architectural features substantiated by historical, physical, or pictorial evidence rather than upon conjectural designs or the availability of different architectural features from other buildings.
- (iv) Reconstruction of a building or structure on an original site shall be preceded by a thorough archeological investigation to locate and identify all subsurface features and artifacts.
- (v) Reconstruction shall include measures to preserve any remaining original fabric, including foundations, subsurface, and ancillary elements. The reconstruction of missing elements and features shall be done in such a manner that the essential form and integrity of the original surviving features are unimpaired.

(7) Basis for Review:

- (a) In all cases where specific technical and design criteria are involved in determining the impact of a proposed action upon the historic and architectural character of the Historic District, recommendations and decisions shall be based upon the Secretary of the Interior's Standards for Historic Preservation Projects with Guidelines for Applying the Standards. (U.S. Department of the Interior, 1979).

4.L. AP District: Agricultural Preservation

In an AP district, no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used, except for one or more of the following uses and complying with the requirements so indicated.

(1) Permitted Uses:

- (a) All uses permitted in an R-1 district.
- (b) Agricultural uses as defined in Section 902(3) of Title 3 of the Delaware Code and related uses, including, without limitation, hunting, fishing, and spray irrigation of treated waste.

(2) Conditional Uses Subject to Special Requirements:

- (a) Agricultural support and other rural services, including farm supply services; equipment dealers; grain storage; farm product warehousing and storage; fishing, hunting, and trapping industries; kennels; veterinary services; commercial greenhouses; nursery and garden center; and cemeteries.

(3) Area Regulations:

- (a) Minimum lot area shall be five (5) acres, provided that residential lots may comply with the lot size and area regulations in R-1B districts so long as the overall density of residential development does not exceed one dwelling per five (5) acres.
- (b) Maximum lot coverage shall be thirty (30) percent, exclusive of accessory buildings.
- (c) Height of dwellings and buildings not related to agricultural uses shall not exceed three (3) stories or thirty-five (35) feet, whichever is less.

4.M. OP District: Office Park

The OP district was created by the Town of Middletown to establish an attractive and viable environment in which to locate business and conduct commerce. The purpose of the OP district is to create local, community and regional employment opportunities in an environment that provides internal and inter-parcel vehicular and pedestrian circulation, transit accessibility and visually pleasing surroundings through the use of site design, architectural detail, form and massing and landscaping. Development design within the OP district will provide employment/office opportunities in a manner compatible with the historic character, scale, and architectural type of Middletown. Developments in the OP district are intended to achieve the high quality site design and use flexibility inherent in office park design. This is accomplished through attention to a building's architectural compatibility with other buildings and the relationship of buildings to the public realm.

Development applications for new uses and renovations in the OP zoning district must submit a site development plan as set forth in Section 11.D. of this ordinance.

(1) Permitted Uses:

- (a) Employment centers, offices for professional services and administrative activities, research facilities, and warehousing.

(2) Conditional Uses:

Conditional uses shall be granted as secondary uses to the development of office parks and employment uses and therefore must be integral to the development and not add a significant commercial use to the development. Primarily commercial developments are to be developed in areas C-2 and C-3. Conditional uses may not be greater than thirty (30) percent of the overall gross square feet of the proposed development.

- (a) Restaurants, except for drive-thru restaurants.
- (b) Hotels, banks and convention facilities.

(3) Permitted and Conditional Uses are Subject to the Following Requirements:

- (a) Total site shall not be less than one (1) acre.
- (b) The site must be served by public water, sewer and electricity.
- (c) Stormwater drainage facilities shall be provided by the developer to handle the increase in stormwater runoff and the developer shall make contributions towards the cost of offsite facilities of the site.
- (d) Traffic, Transit, Pedestrians and Parking:

- (i) The internal circulation of traffic shall be similar to the external street system, where pedestrian and vehicular traffic shall be separated but meet at safe intersections through traffic control devices and appropriate site design. The site design shall be required where possible to interconnect with adjacent parcels that are zoned MI, C-2 or C-3 to create interconnected office, commercial and industrial areas. The site design and internal circulation pattern shall allow for the through movement of transit vehicles and short average walking trips (less than 300') from transit stops to building portals.
- (ii) Pedestrian walkways shall form an on-site circulation system that minimizes the conflict between pedestrians and traffic at all points of pedestrian access to on-site parking and building entrances. Pedestrian walkways shall provide direct connections from building entrances to sidewalks along streets to existing or planned transit stops. Pedestrian walkways shall be provided when the pedestrian access point or any parking space is more than seventy-five (75) feet from the building entrance or principal on-site destination as follows:
 - (a) All developments which contain more than one (1) building shall provide walkways between the principal entrances of the buildings; and
 - (b) All non-residential buildings set back one hundred (100) feet or more from the public right-of-way shall provide for direct pedestrian access from the buildings to buildings on adjacent lots.
- (iii) To enhance the pedestrian environment and create visual interest, long facades should be divided into shorter segments a maximum of forty (40) feet and preferably twenty-five (25) feet in width. Techniques to segment the façade can include varying setbacks of sections, varying architectural elements using windows, or varying the color of individual segments, using harmonious colors.
- (iv) Access to state highways shall be controlled by the Delaware Department of Transportation.
- (v) The minimum distance between access-ways and a residential district shall be fifty (50) feet.
- (vi) Spacing of accessway.
 - From adjoining property – Fifty (50) feet
 - From minor intersections – Fifty (50) feet

From major intersections – One hundred (100) to one hundred fifty (150) feet

(vii) A minimum of three (3) parking spaces shall be provided per one thousand (1,000) feet of leasable area plus one parking space for each two (2) employees.

(viii) Parking lots shall be landscaped in accordance with Section 5.

(e) Setbacks:

(i) From street right-of-way – Fifteen (15) feet

(ii) From non-residential districts – Fifteen (15) feet

(iii) From residential districts – One hundred (100) feet

(f) Buffering, Landscaping and Public Space:

(i) There shall be a minimum of a ten (10) feet wide landscaped buffer along all lot lines. The screening shall be six (6) feet high near residential districts.

(ii) Vehicular and pedestrian access points at property edges and to adjacent lots shall be coordinated with existing development to provide circulation patterns between developments. Buildings, landscaping, fences and other improvements shall be located so that adequate area shall be reserved for future connections to adjacent properties and as not to preclude future site-to-site connections.

(iii) Public space shall be provided as part of all new shopping center and office development in an amount that covers no less than five (5) percent of the total site area. Public space includes parks and plazas, pedestrian amenities such as seating, lighting, special paving, planting, artwork and special recreational features but excludes pedestrian walkways and required buffer areas.

(g) Transit Accessibility. All developments must coordinate with the Delaware Transit Corporation regarding existing and future transit routes and transit facility standards. Preferred design elements include expanded pads, benches, shelters and direct access for transit vehicles. (See Section 11.D.(3)(c))

SECTION 5: OFF-STREET PARKING

5.A. General Provisions

- (1) **Parking Space Size.** A parking space shall not be less than one hundred sixty two (162) square feet with a minimum of nine (9) feet wide for any use permitted in this code.
- (2) **Parking Spaces in Driveways.** Driveways shall be considered as constituting an off-street parking space for one-family detached, semi-detached or town house dwellings in residential districts, provided that sufficient space is available in such driveways to meet the requirements of this Section.
- (3) **Location of Parking Spaces.** Parking spaces shall be located so that no spaces are a greater distance than six hundred (600) feet from the buildings or use to which they are assigned; provided this requirement shall not apply to parking spaces for auditoriums, stadiums, assembly halls, gymnasiums and other places of assembly; industrial, wholesaling, and manufacturing establishments. To minimize the impact of large expanses of parking on the pedestrian environment, parking spaces shall be located to the rear and sides of buildings (**See Exhibits 14 & 15**). In the C-3 District limited parking shall be allowed in front of uses with a significant loading requirement such as grocery stores or home improvement centers (**See Exhibit 16 & 18**). Upon appeal, however, the Board of Adjustment may grant variances from these configurations if a particular hardship will occur.
- (4) **Parking Spaces Assigned to More Than One Use, Except in the C-2 District.** Parking spaces for separate buildings or uses in all zoning districts except the C-2 (Downtown Commercial) may be combined in a single lot provided the number of parking spaces in the lot shall equal the sum of the parking spaces required for each building and use; except that the parking spaces required for places of assembly may include parking spaces assigned to other uses provided that the place of assembly shall not be used at a time when the other uses are carried on.
- (5) **Parking Lot and Garage Maintenance.** Ground cover, shrubs, trees, and landscape screening shall be located and maintained so as not to interfere with vehicular and pedestrian traffic on the property or with sight clearance and exits.
- (6) **Fractional Spaces.** When the application of a unit of measurement for parking space or loading space to a particular use or structure results in a fractional space, any fraction under one-half (1/2) shall be disregarded and fractions of one-half (1/2) or over shall be counted as one parking space or loading space.
- (7) **Boat, Trailer, Bus, and Van Parking.** In a residential district, no house trailer, camper, boat trailer, bus or van, and no boat shall be parked in the

front yard. Parking is allowed in the side or rear yards five (5) feet from the property line provided it does not take up space normally occupied by an automobile.

- (8) **Parking Lots: Layout and Design.** Parking shall be set back at least 10' from the property lines and screened from the public street right-of-way with a wall, fence or landscaping that will provide a year-round visual buffer.
- (9) **Parking Lots: Interior Landscaping.** To reduce the visual impact of large expanses of parking and to create a more pedestrian-friendly environment, interior parking lot landscaping is required.

Green space in the form of landscape islands and/or peninsulas are required to break up rows of parking spaces as follows:

- (a) If the total number of parking spaces is less than 100, the minimum requirement is:
 - (i) Islands at both ends of each row of parking (minimum of 9' X 18').
 - (ii) One island or peninsula (minimum of 9' X 18') for every 10 contiguous spaces (average).
 - (iii) No more than two (2) contiguous bays (60' width) without a 9' wide island separating the two (2) bays from additional parking bays or drive aisles.
 - (iv) Minimum of one (1) 2-1/2" caliper shade tree 12' in height shall be provided per 200 square feet of interior green space.
- (b) If the total number of parking spaces is 100 or greater, the minimum requirement is:
 - (i) Islands at both ends of each row of parking (minimum of 9' X 18').
 - (ii) One island or peninsula (minimum 9' X 18') for every 12 contiguous spaces (average).
 - (iii) No more than three (3) contiguous bays (60' width) without a 9' wide island separating the two (2) bays from additional parking bays or drive aisles.
 - (iv) Minimum of one (1) 2-1/2" caliper shade tree 12' in height shall be provided per 200 square feet of interior green space. **(See Exhibit 19)**

- (10) **Parking Lot Buffers: Landscaping.** Landscape screening in required buffers shall consist of evergreen shrubs planted a maximum of three (3) feet on center, be installed at a minimum 18” height, and be capable of achieving and ultimate 36” height. Plantings at intersections and driveways shall not interfere with adequate sight distances as defined by the Delaware Department of Transportation.
- (11) **Bicycle Parking Facilities.** All parking facilities containing less than ten (10) parking spaces shall provide one bicycle rack with no less than five (5) spaces. For parking facilities with no less than five spaces plus one bicycle parking space for each additional ten parking spaces in the lot. No more than 20 bicycle parking spaces shall be required in any one parking facility. The Town shall provide bicycle parking facilities at public uses such as Town Hall and recreation facilities in accordance with the above standards.
- (12) **Parking on Multiple Zones.** Parking for uses on commercially zoned property may occur on property zoned for office or industrial uses, parking for uses on office zoned property may occur on commercially or industrially zoned property, and parking for industrial uses may occur on commercially or office zoned property.

5.B. Parking Standards

(1) Design Standards (General):

Parking spaces and aisle ways shall be designed in accordance with the following dimensional standards:

Parking Angle	Stall Width	Aisleway to Curb	Aisleway Width
90	9 feet	18 feet	20 feet (one-way)
			24 feet (two-way)
60	9 feet	21 feet	18 feet (one-way)
			22 feet (two-way)
45	9 feet	20 feet	14 feet (one-way)
			22 feet (two-way)
Parallel	8 feet	22 feet	14 feet (one-way)
			22 feet (two-way)

All paved parking spaces for use in conjunction with public parking lots, garages, storage area operated on a commercial basis and parking areas accessory to multi-family, commercial, industrial and office uses shall be appropriately striped.

(2) Design Standard Exceptions:

Exceptions to the design standards and parking space size as specified in this section are permitted as follows:

- (a) Approval of parking plan option in the C-2 (Downtown Commercial) District as provided in this Section.
- (b) For any land use requiring at least ten (10) off-street parking spaces as specified in this Section, provisions may be made for compact car spaces not less than one hundred twenty-eight (128) square feet in area, with a minimum width of eight (8) feet and a minimum length of sixteen (16) feet. No more than fifty (50) percent of the total off-street parking spaces required for each use may be designated for compact cars. All compact car spaces shall be appropriately marked or signed.

(3) Use Standards:

All uses permitted in this zoning code shall be subject to the following minimum off-street requirements in addition to any special requirements as indicated in each zoning district.

(a) Retail stores and shops, all types; supermarkets, retail food stores, and undertakers:

One (1) off-street parking space per two hundred (200) square feet of floor area used or designed for sales on ground floor plus one (1) off-street parking space per three hundred (300) square feet of floor area used or designed for sales on all other floors plus one (1) off-street parking space for each two (2) employees.

(b) New and used car and boat sales, mobile dwelling unit sales, truck and trailer sale, outdoor equipment and machinery sales, commercial nurseries and auctions:

Four (4) off-street parking spaces per salesperson, plus one (1) off-street parking space per two (2) employees during period of greatest employment.

(c) Personal service establishments; laundromats; dry cleaning:

One (1) off-street parking space per two hundred (200) square feet of gross floor area.

(d) Banks and other financial institutions:

One (1) off-street parking space per two hundred (200) square feet of gross floor area.

(e) Business, governmental, professional, medical and dental offices:

One (1) off-street parking space per three hundred (300) square feet of gross floor.

(f) Hospital, providing primarily for in-patient medical and surgical care of the sick and injured, including related facilities:

One (1) off-street parking space per three hundred (300) square feet of gross floor space.

- (g) Churches:**
One (1) off-street parking space per five (5) seats or one (1) off-street parking space per ninety (90) lineal inches of pew space.
- (h) Indoor and commercial outdoor recreation:**
One (1) off-street parking space for each three hundred (300) square feet of gross floor, building, or ground area devoted to such use or one (1) off-street parking space per four (4) seats of facilities available for patron use, whichever is applicable to the facility.
- (i) Restaurants, taverns, and similar uses:**
One (1) off-street parking space per three (3) seating accommodations, plus one (1) off-street parking space per two (2) employees on shift of greatest employment.
- (j) Dwelling, one-family detached or semi-detached:**
One (1) off-street parking space per dwelling unit.
- (k) Dwelling, townhouse, or garden apartment:**
Two (2) off-street parking spaces per dwelling unit.
- (l) Rooming and boarding house or converted unit:**
One (1) off-street parking space per rented unit.
- (m) Mobile home parks:**
Two (2) off-street parking spaces per mobile home unit.
- (n) Museum, art gallery and similar use:**
One (1) off-street parking space per four (4) seats in rooms for public assembly or for each one hundred fifty (150) square feet of gross floor area for use by the public, whichever is greater, plus one (1) off-street parking space for each two (2) employees on shift of greatest employment.
- (o) Public library:**
One (1) off-street parking space per four hundred (400) square feet of gross floor area for public use, plus one (1) off-street parking space per two (2) employees on shift of greatest employment.
- (p) Fire station:**
Twenty-five (25) off-street parking spaces.
- (q) Auditorium, stadium, assembly hall, gymnasium, theatre (excluding drive-in community recreation centers.):**
One (1) off-street parking space per four (4) fixed seats in largest assembly room area or for each forty (40) square feet of floor area available for the accommodation of movable seats in the largest assembly room, or one (1) off-street parking space per one hundred

fifty (150) square feet of gross floor area, whichever is applicable to the facility.

(r) Social club, fraternal, social service, union and civic organization building: One (1) off-street parking space per adult attendant, plus one (1) off-street parking space per five hundred (500) square feet gross floor area devoted to such uses.

(s) Public or private school:
Three (3) off-street parking spaces per room used for administrative offices, plus one (1) off-street parking space per room used for class instruction, plus one (1) off-street parking space for each five (5) seats in auditorium and other places of assembly or facility available to the public.

(t) Industrial, manufacturing, wholesaling establishment:
One (1) off-street parking space per two (2) employees on the shift of the greatest employment, plus one (1) off-street parking space per two hundred (200) square feet of floor area devoted to sales.

(u) Hotel and motel:
One (1) off-street parking space for each guest room plus one (1) off-street parking space for each three (3) employees.

(4) Parking plan option permitted in C-2 (Downtown Commercial) District:

(a) Parking Plan option. At the option of the property owner, land developer, or land user of any property or land in the C-2 (Downtown Commercial) zoning district, the minimum off-street parking requirements shall be waived for any land use upon submission to the Planning Commission and to the Town Council a parking plan which shall specifically coordinate and consolidate with adjacent private or public off-street parking spaces and facilities.

(b) Parking Plan requirements. The parking plan shall include and provide the following data and information:

- (i) Location and number of parking stalls.
- (ii) Size of the parking stalls in any combination of the following designations:
 - (a) Standard automobiles (not less than one hundred eighty (180) square feet);
 - (b) Compact automobiles (not less than one hundred twenty-eight (128) square feet);
 - (c) Motorcycles.

- (iii) Entrances and exits. Location and design of entrances and exits shall be in accordance with the requirements of applicable Town and State regulations and shall be provided along lot boundaries to control entrance and exist of vehicles or pedestrians.
 - (iv) Interior drives. Interior drives shall be of adequate width to serve a particular design arrangement of parking spaces.
 - (v) Signing, lighting, landscaping, and similar measures that are accessory elements to a functional parking area.
 - (vi) Pedestrian access points and how these coordinate with existing pedestrian circulation system.
 - (vii) Drainage and maintenance. Off-street parking facilities shall be drained to eliminate standing water and prevent damage to abutting property and/or public streets and alleys and surfaced with erosion-resistant material in accordance with applicable Town specifications. Off-street parking areas shall be maintained in a clean, orderly, and dust-free condition at the expense of the owner or lessee and not used for the sale, repair, or dismantling or servicing of any vehicles, equipment, materials or supplies.
 - (viii) Combined parking facilities. Facilities may be combined and/or coordinated with adjacent private or public facilities through a common accessory, alley, or roadway.
- (c) **Parking Plan option approval.** Any property owner or applicant who elects to comply with the parking plan shall submit a parking plan that meets the requirements as specified in this Section to the Planning Commission for review. The Planning Commission shall meet with the applicant and make a determination that the proposed parking plan will meet the general parking needs of the affected land uses and not be detrimental to downtown revitalization activities. The Planning Commission shall make a recommendation to Town Council to approve, approve with modifications or disapprove the parking plan. In the case of disapproval of a parking plan under these option provisions, the property owner or applicant shall be subject to meeting of the off-street parking provisions of this Section (B) (1) (2).

5.C. Loading Spaces

- (1) No building or structure shall be erected in any district for the uses listed below unless loading space for the accommodation of trucks is provided on the premises in accordance with the following recommendations:

- (a) For retail stores, markets, wholesale and jobbing establishments, and storage warehouses, the number of berths based on the gross floor area devoted to such use shall be as follows:

5,000 to 8,000 square feet of floor area 1 berth

8,000 to 20,000 square feet of floor space 2 berths

Each additional 20,000 square feet or major fraction thereof up to a maximum of 60,000 square feet of floor space 1 additional berth

- (b) For hotels, motels, the number of berths based on the gross floor area devoted to such uses shall be as follows:

8,000 to 20,000 square feet of floor space 1 berth

Each additional 50,000 square feet or major fraction thereof up to a maximum of 120,000 square feet of floor space 1 additional berth

- (c) Each manufacturing, office research and industrial establishment with a total of five thousand (5,000) square feet or more of gross floor area devoted to manufacturing, office research and/or industrial uses shall provide loading space adequate to accommodate the normal demands for loading and unloading incidental to the type of use proposed on the premises.

SECTION 6: LANDSCAPE SCREENING

For all land uses, access points at property edges and to adjacent lots shall be coordinated with existing development to promote vehicular and pedestrian circulation patterns between developments. Landscaping, walls and fences shall be located so as not to preclude future site-to-site connections.

6.A. Required Landscape Screening

(1) Residential Districts:

- (a) In any R-1A, R-1B, R-2 or R-3 District, a landscape screen and/or fence or wall a minimum of six (6) feet in height shall be planted and/or erected to separate any permitted non-residential use from any existing residential use on a contiguous lot. Such landscape screen and/or fence or wall may extend into the lot setback, side, and rear yards.
- (b) In any R-3 District, for any lot developed for garden apartments or townhouses, a landscape screen and/or fence or wall a minimum of six (6) feet in height shall be planted or erected to separate any contiguous lot developed as a single family detached or semi-detached residential dwelling, on any contiguous lot developed as a single family detached or semi-detached residential dwelling, on any contiguous lot zoned R-1A, R-1B or R-2. Such landscape screen and/or fence or wall may extend into the lot setback, side and rear yards.
- (c) In any R-MH District, mobile home parks shall be surrounded by buffer strips measuring not less than ten (10) feet in depth on the sides and not less than twenty-five (25) feet in depth on the front; such buffers shall be landscaped according to the following requirements:
 - (i) Minimum screening shall be a strip of evergreen planting of a type, height, spacing, and arrangement to screen the activities of the lot from the adjoining area.
 - (ii) Plantings consisting of shrubs and trees shall be a minimum of four (4) feet high at the time of planting.
 - (iii) Required planting shall be properly maintained throughout the continuance of the use of the property.
 - (iv) All required buffer strips shall be unoccupied except for utility facilities or rights-of-way, signs, or exits and entrances, and further, the interior fifteen (15) feet of the front buffer may be used for street right-of-way.

(2) Commercial Districts:

- (a) In any C-2 District, a landscape screen and/or fence or wall shall be planted or erected to separate any permitted use from any contiguous lot zoned R-1A, R-1B, R-2 or R-3, or any contiguous lot developed or approved for development for any residential use. Such landscape screen may extend into the lot setback, side or rear yards.

(3) Manufacturing-Industrial District:

- (a) At the boundary line between any MI District and any R-1A, R-1B, R-2 or R-3 District or any lot developed or approved for development for residential use, there shall be a fifty (50) foot buffer area which shall include a landscape screen and/or fence or wall a minimum of six (6) feet in height. Such landscape screen may extend into the lot setback, side, or rear yards.

6.B. Maintenance of Landscape Screen

- (1) It shall be the responsibility of the property owner of record or his delegated representative(s) to properly maintain and care for any landscape plan planted or erected in accordance with the standards set forth in the Delaware Home Gardener's Manual, Bulletin 112, Cooperative Extension Service, University of Delaware, (1978), or as revised.

SECTION 7: SIGNS

7.A. General Provisions

- (1) **Signs permitted without limitation in any zoning district:**
 - (a) Signs to regulate traffic when erected by or under control of duly constituted governmental authority.
 - (b) Signs indicating public transportation stops.
 - (c) Signs giving information strictly for the purpose of direction, safety or convenience of the general public such as signs which identify public rest areas, entrances or exits, loading and no loading and the like, not to exceed two and a half (2 ½) square feet in surface area and to be non-illuminated.
 - (d) Warning signs and no trespassing signs
 - (e) Memorial plaques, corner stones, historical tablets.
 - (f) Signs required to be posted by law.
 - (g) Signs established by duly constituted governmental authorities, including public notice signs and required to be maintained or posted by law or governmental order, rule, or regulations.
 - (h) Flags or emblems of governmental, education, or religious organizations.
 - (i) Signs posted in conjunction with doorbells or mailboxes, none exceeding seven square inches in surface area.
 - (j) Address signs, not more than one for each principal building or use on a premise and none exceeding one hundred sixty (160) square inches in surface area showing only the numerical address designations of the premises upon which they are maintained.
 - (k) Permanent subdivision identifying signs not to exceed twenty (20) square feet in area maintained on private property not to exceed one per each street frontage.
 - (l) Signs which are attached or which are an integral part of gasoline pumps or other dispensing or servicing devices; provided, that such signs do not exceed beyond the pump, dispensing or servicing device to which they are attached.
 - (m) A temporary sign indicating the sale, rental, or lease of the premises on which it is located, including a development sign.

(2) Signs prohibited in any zoning district:

- (a) Flashing signs
- (b) Animated signs
- (c) Signs which produce noise or sounds capable of being heard even though the sounds produced are not understandable.
- (d) Signs which emit visible smoke, vapor, particles, or odor.
- (e) Signs or other advertising matter as regulated by this article erected at the intersection of any street in such a manner as to obstruct free and clear vision; or at any location where, by reason of the position, shape or color, it may interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal or device; or which makes use of the words: "stop," "look," "drive-in," "danger," or any other word, phrase, symbol, or character in such manner as to interfere with, mislead, or confuse vehicular traffic.
- (f) Signs erected, constructed, or maintained so as to obstruct, or be attached to any fire fighting equipment, window, door, or opening used as a means of ingress or egress or for fire fighting purposes, or communication interference.
- (g) Signs with any lighting or control mechanism which causes radio or television or other communication interference.
- (h) Flags, banner, twirling, "A" type, sandwich type, sidewalk or curb signs and balloons or other air or gas-filled figures.

(3) Sign construction:

- (a) Every sign permitted in this zoning code must be constructed of durable materials and must be kept in good condition and repair, or may be ordered removed by the Town Council.

7.B. Sign Standards

(1) Standards for residential districts:

Only the following sign standards shall be permitted in any residential district.

Purpose: Nameplate, identification, instructional.

Location: Ground wall.

Standards: For professional, public, or institutional uses.
Maximum of one (1) per building.

Maximum area two (2) square feet.
Maximum setback ten (10) feet.
Maximum height for ground sign is four (4) feet.
Illuminated signs not permitted.

(2) Standards for commercial districts:

Only the following sign standards shall be permitted in any commercial district. One sign may be permitted for each business or use where more than one exists or operates within a single building.

Purpose: Advertising business.

Location: Ground wall.

Standards: Maximum number of one (1) per building.
Maximum area of ten (10) square feet.
Maximum height of ten (10) feet.
Minimum distance from a residential zoning district shall be seventy-five (75) feet.
Illuminated signs not permitted.

Purpose: Nameplate, identification, instructional.

Location: Ground wall.

Standards: Maximum of one (1) per building.
Maximum area two (2) square feet.
Minimum setback ten (10) feet
Maximum height ten (10) feet.

(3) Standards for the manufacturing industrial district:

Only the following sign standards will be permitted in the MI (Manufacturing-Industrial District).

Purpose: Nameplate, identification, instructional.

Location: Ground wall.

Standards: Maximum of one (1) per building.
Maximum area forty (40) square feet.
Maximum height for ground sign is twenty (20) feet.
Minimum setback ten (10) feet.
Minimum distance from a residential zoning district shall be one hundred (100) feet.

7.C. Additional Standards for the C-2 (Downtown Commercial) District

In order to add variety to the C-2 (Downtown Commercial) District and to preserve the historic quality of the downtown, any new wall, sign, window sign, awning, sign, or projecting sign which is to be added to any building or structure in the C-2 (Downtown Commercial) District must be approved by the Town Council.

The following guidelines are to govern the placement of the signs in the C-2 District:

- (1) Signs should reflect simplicity, using graphic symbols and a minimum of information.
- (2) Light letters on a dark matte background should be the dominant motif.
- (3) Signs should have a unified and consistent theme.
- (4) Signs should employ a type face style consistent with the age of the building.
- (5) A maximum of three colors may be used.
- (6) Signs must fit into the size and proportions of the storefront.
- (7) Wall signs should be placed in the sign zone of the façade which is directly above the storefront.
- (8) Wall signs should be made of natural materials.
- (9) Projecting signs may not extend more than forty-eight (48) inches or one third (1/3) sidewalk width from the face of the building, whichever is less.
- (10) Awning signs should be carefully placed and add variety and color to the streetscape.

SECTION 8: BOARD OF ADJUSTMENT

8.A. Powers of Board of Adjustment

The Board of Adjustment shall have the following powers:

- (1) To hear and decide appeals where it is alleged there is error in any order, requirements, decisions, or determination made in the administration of this code.
- (2) To authorize, upon appeal in specific cases, such variances from the terms of this code as will not be contrary to the public interest where, due to special conditions, a literal enforcement of the provisions of the code will result in unnecessary hardship and so that the spirit of the code shall be observed and substantial justice done.
- (3) To authorize such variances from the terms of this code as will not be contrary to public interest upon receipt of papers transmitted, by the Town Clerk pursuant to provisions of this code, without the formality of an appeal; provided, however, that notice to all parties in interest shall be given in the same manner as upon hearing of this appeal.
- (4) To authorize special exceptions for existing lots zoned residential as described in Section 11 of this code.

8.B. Authority of Board in Exercise of its Powers

- (1) In exercising its powers the Board may, in conformity with this code, reverse or affirm, wholly, or partly, or may modify the order, requirement, decision, or determination as ought to be made in the administration and enforcement of this zoning code. Any order, requirements, decisions, or determination of the Board which require or permits a specific act to be undertaken shall, as a condition, prescribe a reasonable time limit within such act shall be completed, if applicable.

8.C. Appeals to Board of Adjustment

- (1) Appeals to the Board may be taken by any person aggrieved or by any other officer, department, board or commission of the Town of Middletown affected by a decision of the Town Clerk of the Town of Middletown, in the administration of this zoning code. Such appeal shall be taken within thirty (30) days of the aggrieved decision by filing with the Chairman of the Board of Adjustments a letter of appeal specifying the reason for appeal. The Chairman shall transmit to the Board all the papers constituting the record upon which the action appeal was taken.

8.D. Filing Fee

- (1) A fee of one hundred dollars (\$100) shall accompany each appeal to help offset the cost of the hearing; provided, however, the filing fee may be refunded at the Board of Adjustment's discretion under the following conditions:
 - (a) The applicant must attend the meeting of the Board of Adjustment when his application is heard; and
 - (b) The applicant must show:
 - (i) The appeal was filed as a result of a valid order of the Town of Middletown requiring the applicant to reconstruct or repair a dwelling so as to comply with the minimum housing code; or
 - (ii) The applicant is a charitable organization qualified for tax-exempt status by the Internal Revenue Service; or
 - (iii) The Board of Adjustment determines that it does not have jurisdiction to decide the applicant's appeal.

8.E. Effect of Appeal Upon Proceedings

- (1) An appeal shall stay all proceeding in furtherance of the action appealed from, unless the Chairman of the Board after the notice of appeal is filed with him that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application on notice to the Town Clerk for due cause shown.

8.F. Hearings

- (1) The Board of Adjustment shall fix a reasonable time for the hearing of appeal, give public notice as well as due notice to the parties of interest, and by mail to the registered owners of the next five (5) properties adjoining or adjacent, in each direction, to property upon which the appeal centers. The appeal shall be decided within a reasonable time not to exceed sixty (60) days from the date of the filing of such appeal. Upon the hearing, any party may appear in person, by agent, or by attorney, provided that said agent or attorney produces authorization from his principal for acting in such a capacity.

8.G. Petition to Court for Review of Decision of Board

- (1) Any person(s), jointly or severally aggrieved by any decision of the Board, or any taxpayer, or any officer, department board or commission of the Town of Middletown, may present to a court of record a petition duly verified, setting forth that such decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision. The court may allow a writ of certiorari directed to the Board to review such decision of the Board and shall prescribe the time within which a return must be made and served upon the petitioner'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, upon application, on notice to the Board, and on due cause shown, grant a restraining order.

8.H. Duties of Board in Case of Writ of Certiorari

- (1) The Board shall not be required to return the original papers acted upon by it, but shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for 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.

8.I. Composition and Terms of Office of the Board

- (1) The Board of Adjustment shall consist of five (5) members who shall be residents of the Town of Middletown and who shall have knowledge of and experience in the problems of urban and rural development. No member shall be at the time of his/her appointment a candidate, candidate elect for or incumbent of any elective public office.
- (2) The Mayor, with the consent of Council, shall appoint four (4) members each for a term of four (4) years. Provided however the terms of the original members shall be such that one shall be appointed for one year, one for a term of two (2) years, one for a term of three (3) years and one for a term of four (4) years. Thereafter, the aforementioned four (4) members shall be appointed for a full term of four (4) years. In addition, the Mayor, with the consent of Council, shall appoint one member who shall be designated and who shall serve as chairman and whose term shall be at the pleasure of the Mayor.
- (3) Each member of the Board shall be entitled to compensation in consideration for his services as determined by Council.

8.J. Rules of Board of Adjustment

- (1) The Board of Adjustment shall make and adopt rules in accordance with the provisions of this code.

8.K. Meetings of the Board of Adjustment

- (1) Meetings of the Board shall be held at the call of Chairman and such other times as the Board may determine. The Chairman or in his/her absence, the acting chairman, may administer oaths and compel the attendance of witness. All meetings of the Board shall be open to the public and 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, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the Town Office and shall be a public record.

SECTION 9: GENERAL PROVISIONS

9.A. Non-conforming Uses, Structures, and Buildings

- (1) A building, structure, or use which is not in conformity with the provisions of this code at the effective date of its adoption may be continued in this present location provided that no subsequent alteration or addition is made which would extend said building, structure, or use for more than twenty (20) percent of the cubical content of the building or buildings or structure or structures existing and used for the nonconforming use, or for more than twenty (20) percent of the lot area existing and used for the nonconforming use. Any building or structure addition shall conform to the area and height regulations of the district where it is located.
- (2) Whenever a nonconforming use has been discontinued for a period of one (1) year such use shall not be re-established, and any further use shall be in conformity with the provisions of this code, except that when such discontinuance is on account of any cause beyond the control of the owner, or tenant, the period of abandonment shall, for the purpose of this code, date from the termination of such cause.
- (3) Nothing in this code shall require any change in the plans, construction or designated use of any building or part thereof, the construction of which shall be lawfully in progress at the time of adoption of this code, or for which a permit shall have been issued pursuant to law, provided construction shall be promptly and diligently prosecuted.
- (4) In any case where a district boundary line crosses a building which existed at the time such boundary was established, a use permitted in the less restricted of the two (2) districts may be extended, as a nonconforming use during the life of said building, into that part of the building situated within the more restricted district.
- (5) When in the public interest and where loss or damage has occurred to property, to include land and/or buildings, occupied by nonconforming uses, and where such loss or damage has occurred through the action of a governmental agency, the Board of Adjustment, as provided in Section 8 of this code, may grant as a special exception, after a public hearing, continuance of the nonconforming use to include the size and location on the land of any reconstructed buildings, the modification of existing buildings, and the use of the property, either on the same lot or on a contiguous lot under the same ownership at the time of enactment of the code.
- (6) A nonconforming use of a building or a nonconforming use of a nonconforming building may be extended either on the same lot to a contiguous lot under the same ownership at the time of enactment of this code if granted as a special exception by the Board of Adjustment, as provided in Section 8 of this code, subject to the following special requirements:

- (a) The extension is for a use which is necessarily incident to the existing use;
- (b) The estimated cost for any extension involved does not exceed fifty (50) percent of the replacement value, as appraised, by the New Castle County assessor, of the existing building to which it is incident;
- (c) Such extension shall have a floor area not to exceed twenty-five (25) percent of the floor area of the existing building to which it is incident;
- (d) It will not impair the value of the adjoining property of adversely affect the character of the neighborhoods; and
- (e) Provided only one extension shall be permitted by the Board of Adjustment during the life of a nonconforming use.

9.B. Restoration of Existing Buildings

Nothing in this code shall prevent the restoration of a building destroyed less than seventy-five (75) percent of its current sound value, exclusive of the foundations, by fire, explosion, act of God, or act of the public enemy, subsequent to the passage of the code, provided that the restoration shall begin with twelve (12) months from the time of such destruction.

9.C. Accessory Uses

Accessory uses shall be permitted only on the same lot with the building to which they are accessory. All accessory uses shall be such as do not alter the character of the premises on which they are located or impair the neighborhood.

9.D. Area Regulations Exceptions

- (1) **Minimum lot area; exceptions for existing lot.** In the case of a lot with a building on it at the date of adoption of this code, but with an area less than that prescribed for the district in which it is located, such building may be altered, or a new building erected, provided it complies with all other provisions of this code.

In case of a lot unimproved at the date of adoption of this code and not adjoining either an unimproved lot or an improved lot owned or controlled by the owner of the lot in question, a building may be erected if the area of the lot in question is at least seventy-five (75) percent the size of that prescribed for the district in which it is located, provided that the building complies with all other provisions of this chapter. In the case of any lot unimproved at the date of adoption of this code shown on a subdivision plot approved by the Middletown Council prior to the date of adoption of this code, a building may be erected irrespective of the lot area, provided said building complies with all other provisions of this code.

- (2) **Minimum lot widths; exceptions for existing lot.** In the case of a lot with a building on it at the date of adoption of this code, but with a width less than that prescribed for the district in which it is located, such building may be altered or a new building erected provided it complies with all other provisions of this code. In case of a lot unimproved at the date of adoption of the code and not adjoining either another unimproved lot owned or controlled by the owner of the lot in question, a building may be erected if the width of the lot in question is at least eighty (80) percent of that prescribed for the district in which it is located, provided that the building complies with all other provisions of this code.
- (3) **Height of buildings; exceptions to height limitations.** In any district the maximum height provisions shall not apply to spires, domes, cupolas, belfries, chimneys, smokestacks, flag poles, water tanks, or towers, observation towers, transmission towers, silos, antenna and the necessary supports, solar connectors, defined as any device, or combination of devices, structures, or part of a device or structure that transforms direct solar energy and that contributes to a structure's energy supply, or a parapet wall extending not more than four (4) feet above the limit of the height of the building on which it rests; nor shall these provisions apply to elevator enclosures, water tanks on roofs, or scenery lofts which occupy an aggregate of not over twenty-five (25) percent of the ground floor area of the building.
- (4) **Building setback lines.**
- (a) In any district, when the average setback of existing buildings within two hundred (200) feet of the side lot lines and within the same block front and zoning district, is less than such required distance, such building need not be set back from the front street line any further than such average setback provided that where any business or industrial building is erected within fifty (50) feet along the same street frontage of a residential district, such building shall be set back a distance of seventy-five (75) percent of the setback required for that residential district.
- (b) Corner lots. On a corner lot, each story or part of a building, exclusive of cornices and uncovered steps and uncovered porches shall be set back from the side street line the same distance as the required setback from the front street line as required in that district.
- (c) Visibility at corners. On any corner lot in a residence district, there shall be no building, structure, shrubbery, or planting such as will obstruct street traffic visibility within the triangular area formed by the intersection of the projection of any two (2) street lines and a line adjoining the respective points on each of these lines distance twenty (20) feet from their point or intersection.
- (d) Conformance with approved subdivision plats. If a building setback line shown on an approved subdivision plat prior to the date of

adoption of this code calls for a different setback than is prescribed by the preceding provisions of this Section, such building setback line shall control.

(5) Rear yards.

- (a) Exception for corner lots. On a corner lot, the minimum depth of such rear yard shall be the same as required for an interior lot in that district.
- (b) Exception for through lots. Where a lot running through the back from street to street is to be occupied by only one principal structure, no rear yard is required, but each street frontage shall be subject to the building setback lines required for the district in which it is located.
- (c) Exceptions for plats recorded prior to adoption code. In case of a lot on an approved subdivision plat, no rear yard need have a depth greater than twenty-five (25) percent of the depth of the lot.

(6) Projections into residential lot setbacks.

The following exceptions are permitted for residential dwellings:

- (a) Bay windows, oriels or balconies may project not more than three (3) feet into any required setback.
- (b) Chimneys, cornices and eaves may project not more than two (2) feet into any required setback.
- (c) Sills, leaders, belt courses and similar ornamental or structural features may project not more than six (6) inches into any required setback.
- (d) An open fire balcony, a fire escape or a fire tower may project not more than four (4) feet into a required side yard or rear yard.
- (e) An uncovered patio at ground level or uncovered driveway (except for shared driveways) may project into any yard, provided it is set back from any lot line a minimum of two (2) feet.
- (f) An uncovered porch or deck or any part thereof elevated above ground level may project half the distance of the minimum required yard but no more than eight (8) feet.
- (g) Uncovered stairs (including enclosures of basement stairs at or below ground level) including a landing of not more than twenty-five (25) square feet may project half the distance of the minimum required yard but not more than ten (10) feet.

9.E. Use of Satellite Antenna

- (1) No satellite antenna shall be installed, constructed or erected upon any property within any district located within the Town of Middletown, except in compliance with the provisions of this Section:

 - (a) A satellite antenna shall be permitted only as an accessory use on a lot that contains a principal structure. Prior to placement, a building permit must be issued by the Building Inspector designated by the Town.
 - (b) A satellite antenna shall be permitted only in the rear yard and no lot shall contain more than one (1) satellite antenna.
 - (c) A satellite antenna shall be permitted only as a free-standing structure.
 - (d) A satellite antenna shall be reasonably screened to minimize the view of the antenna from public thoroughfares and the ground level of adjacent properties. All screening shall be maintained as originally approved by the Building Inspector. If the screening is not so maintained, any permit granted in connection with the satellite antenna is subject to revocation by the Building Inspector.
 - (e) No satellite antenna shall be located closer to the rear property line than the height of said antenna, nor closer to any side property line than the height of said antenna or the side setback requirements for the principal structure on the lot, whichever results in the greatest setback, and shall not exceed the height of thirteen (13) feet.
 - (f) Any permitted satellite antenna shall not have a surface receiving area of a diameter greater than twelve (12) feet.
 - (g) Each satellite antenna shall be designated in compliance with the American National Standards Institute, Standard A58.1, American National Standard Building Code Requirements for Minimum Design Loads in Buildings and Other Structures, and the Electronics Industry Association, Standard RS-411, Electrical and Mechanical Characteristics of Antenna for Satellite Earth Stations or any modifications or successor to such Standards, as well as any other construction or performance standard, rule or regulation of any governmental entity having jurisdiction over such antenna including, without limitation, the Federal Communications Commission. A certificate of conformance with the aforesaid standards by the manufacturer's professional personnel or such other professional as shall be deemed appropriate by the Building Inspector shall be submitted to the Building Inspector as a condition for the issuance of the building permit required by this Subsection.

- (h) The provisions of this paragraph shall not be applicable to commercial uses of satellite dishes for reception of signals for distribution to the public at large.

9.F. Screening of Commercial Trash Receptacles

- (1) In all commercial and industrial zoning districts within the Town of Middletown, all trash receptacles, or garbage disposal units shall be situated at an appropriate location as not to constitute a nuisance for users of the property and adjoining property owners and shall be appropriately screened to improve the appearance of the area. The location of the units on the property and the type of screening necessary shall be approved by the Building Inspector.
- (2) After the effective date of this ordinance, no building permit, certificate of occupancy, special exception or subdivision approval shall be granted to any lot or parcel of land not complying with the provisions of this paragraph; provided, however, that the Board of Adjustment may grant a variance from such compliance.
- (3) It shall be unlawful for any person to maintain such a unit on his property unless approved by the Building Inspector where such approval is required. A fine of \$25 per day, after notification of a violation, shall be imposed.
- (4) Any such trash receptacle or garbage disposal units already in place, as of the effective date of this ordinance, shall be deemed non-conforming unless approved and screened as required by this paragraph, or Section 9(A) of this code.

SECTION 10: CONDITIONAL USE PERMITS

10.A. General Provisions

- (1) **The following procedures shall apply to the granting of conditional use permits as required in this code:**
 - (a) Conditional use permits may be issued for any of the conditional uses for which a use permit is required by the provisions of this code provided, that the Town Council shall find the application is in accordance with the provisions of this zoning code, and that, after duly advertised hearing, held in accordance with the provisions of Section 12, the use will not:
 - (i) Affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use;
 - (ii) Be detrimental to the public welfare or injurious to property or improvements in the neighborhood; and
 - (iii) Be in conflict with the general purposes of the Comprehensive Plan or related Town planning or development policies.
 - (b) Conditional use permits as specified in Section 4 of this code shall be issued after consultation and review by the Planning Commission.
 - (c) In granting any conditional use permit the Town Council may designate such conditions as will, in its opinion, assure that the use will conform to the foregoing requirements and that such use will continue to do so.
 - (d) Construction or operation shall be commenced within one year of date of issuance or the use permit becomes invalid.
 - (e) A re-application for a use permit for the same lot or use shall not be considered by the Town Council within a period of 360 days from its last consideration. This provision, however, shall not impair the right of the Council to propose a use permit on its own motion.
 - (f) Written request for a use permit shall be filed with the Town Clerk. Every request shall be accompanied by a fee of one hundred fifty dollars (\$150). The time of hearing before Town Council shall be scheduled within one month of the use permit request filing date.
 - (g) If a Conditional Use Permit is granted under the provisions of this Section, the Town Council shall direct the Town Clerk to officially notify the applicant in writing of all conditions approved by the Council.

(2) Tower, broadcasting and telecommunications, subject to the following special requirements:

- (a) Tower applications shall be accompanied by a professional engineer's report containing the following:
 - (i) A technical evaluation of the utilization of existing towers for telecommunications or other equipment intended for the installation on the proposed tower.
 - (ii) Written certification of compliance with Federal Communications Commission Safety Standards for exposure to nonionizing electromagnetic radiation.
 - (iii) Copies of all applicable state and federal permits.
- (b) Any principal part of the tower, excluding guy cables, shall be set back from the nearest property line or lot zoned residential not less than three times the height of the tower or 350 feet, whichever is greater. The setback shall be measured from the nearest point of the base of the tower to the nearest point of the property line of the protected use.
- (c) No artificial light shall be installed upon any such tower unless required by the Federal Aviation Administration. If such light is required, it shall be screened so as not to project its light below the horizontal plane in which it is located.
- (d) Towers over 200 feet in height shall be guyed and not self-supporting nor consisting of lattice type structures, unless the applicant demonstrates that a guyed tower shall have a greater negative visual impact than a self-supporting tower.
- (e) Towers located on existing buildings or structures shall not extend beyond 22 feet above the highest point of the building or structure. Accessory buildings or facilities for towers located on existing buildings or structures shall be located either in or on top of such buildings or structures.
- (f) Landscaping shall be provided around the base of the tower and adjacent to a required security fence that shall be at least 10 feet high. The landscaping shall consist of a minimum 25 foot wide planting strip with ground cover and/or grass, including at least one row of six foot high evergreen trees providing a solid screen adjacent or proximate to the fence, and 15 foot high, two-inch caliper deciduous trees, interspersed within the buffer area and no more than 20 feet apart. Applicants may substitute alternative landscape

plans that meet the purposes of this subsection to limit the visual impact of the lower portion of the tower and adjoining accessory facilities. Camouflaged towers designed to look like trees may be exempt from this subsection, subject to Council approval. Towers located on top of buildings three stories or more in height and telecommunication antennas located on existing buildings shall be exempt from this subsection, except that a six foot high solid evergreen screen, shall be required between any telecommunications antenna or tower accessory building and adjoining properties. A 10 foot high security fence and an adjoining six foot high solid evergreen screen adjacent or proximate to the fence shall be provided around the anchoring facilities for guy wires for guyed towers.

- (g) No outdoor storage shall be permitted at the tower site.
- (h) Unless otherwise required by the Federal Communications Commission or the Federal Aviation Administration, towers shall be light gray in color. Camouflaged towers designed to look like trees may be exempt from this subsection, subject to Council approval. Telecommunication antennas with colors designed to match buildings or structures to which they are attached shall be exempt from this subsection.
- (i) A tower shall be located so as not to encroach into any established public or private airport approach as established by the Federal Aviation Administration.
- (j) Towers higher than 100 feet must be a minimum of 2,000 feet from the nearest similar tower, measured from the base of the towers.
- (k) No interference with existing television, cable television, radio signals, or other electronic devices shall be permitted from the tower. If interference occurs, it shall be immediately remedied by the operators of the tower.
- (l) If a tower is abandoned, unused for two years, or no longer operable, it shall be removed within six months of its abandonment. If a tower is not dismantled as specified in this subsection, the Town shall arrange to have the facility dismantled and will assess the owner all costs associated with the removal of the tower. If the full amount due the Town is not paid by the owner, or person in control of the property, or his or her agent, within 90 days of receipt of a bill from the Town, the Town shall place a lien on the property and shall remain in full force and effect for the amount due in principal and interest until final payment has been made.

- (m) The owner of such tower shall provide proof to the Town that the tower has undergone a triennial inspection for structural integrity. Said inspection is to be performed by a certified engineer, or other qualified professional, at the expense of the owner of the tower. If structural deterioration affects the physical stability or aesthetic integrity of the tower, the owner shall be required to correct such deterioration within a time limit to be established by the building department.
- (n) The owner of such tower shall give proof to the Town that any damages which may occur to surrounding properties or injury which may occur to persons, which damages or injuries are caused by a failure of the tower and/or its associated structural supports, regardless of whether such failure is a result of human error or an act of God, shall be paid by the owner of the tower and/or insurers of the tower.
- (o) In addition, the operator of such tower shall provide annual proof to the Town that the tower has undergone field measurements to ensure compliance with all applicable Federal Communication Commission safety standards for exposure to nonionizing electromagnetic radiation. Such field measurements, and submission of the results to the city, shall be conducted upon start up of the facility and annually thereafter; except that every third year, such proof of compliance shall be submitted on behalf of the operator by an independent nonionizing electromagnetic radiation evaluator. All such field measurements, and submission of the results, are performed by a certified engineer, or other qualified professional, at the expense of the operator. If such field measurements demonstrate noncompliance with Federal Communication Commission safety standards specified in this section, transmission at the facility shall be suspended until such time as full Federal Communication Commission safety standards compliance is demonstrated to the satisfaction of the Town.

(For a copy of the Conditional Use Permit Application, please call (302) 378-2711. Conditional Use Permit Applications are reviewed by Planning and Zoning, then Mayor and Council.)

SECTION 11: INTERPRETATION AND ADMINISTRATION

11.A. Interpretation and Regulations

- (1) In their interpretation and application, the provisions of this code shall be held to be the minimum requirements adopted for the promotion of the public health, safety, morals, convenience, order, prosperity, or general welfare; for the lessening of congesting in the streets or roads or reducing the waste of excessive amounts of roads; for securing safety from fire and other danger, providing adequate light and air, preventing on the one hand excessive concentration of population and on the other hand, excessive and wasteful scattering of population for settlement; for promoting such distribution of land development and utilization as will tend to facilitate and provide adequate provisions for public requirements, transportation, water, and flowage, water supply, drainage, sanitation, educational opportunities, recreation, soil fertility, and food supply; and for protection of the tax base, securing economy in governmental expenditures, fostering the State's agricultural and other industries, and the protection of both urban and non-urban developments.
- (2) It is not intended by this code to repeal, abrogate, annul, or in any way to impair or interfere with any existing law or any rules or regulations regulating the use or construction of buildings, the provisions of yards, courts, other open spaces, or the provisions of sanitary facilities; provided, however, that where the provisions of this code require large yards or courts, lesser heights or bulk of buildings, or more excessive sanitary facilities than do the aforementioned laws, rules, or regulations, the provisions of this code shall govern.
- (3) Special exceptions from the requirements of this code shall be permitted only for lots zoned residential, provided, the Board of Adjustment grants a special exception and as further provided below;

In the case of any lot zoned residential with a building on it at the date of adoption of this code, but with a lot area, lot width, building setback, rear yard, or side yards less than that prescribed for the district in which it is located such building may be altered or a new building may be constructed provided it complies with all other provisions of this code.

11.B. Enforcement

This code shall be enforced by the Mayor and Council of the Town of Middletown.

11.C. Certificate of Occupancy by Resolution

It shall be unlawful to use or permit the use of any building, structure, or premises or part thereof, hereafter created, erected, changed, converted,

altered, or enlarged, wholly or partly, in use or structure, except for minor alterations involving no change in the floor area or use, until a certificate of occupancy by resolution of the Town Council shall show that the building structure, or premises or part thereof, and the proposed use thereof, are in conformity with the provisions of this code or an order of the Board of Adjustment.

11.D. Site Development Plans

The purpose of the site development plan is to show the proposed site design and the recommended design elements and to indicate the location of buildings, structures, paved areas, grading, drainage, on-site utilities, sidewalks, public spaces and trails, within a site proposed for development.

(1) When required.

- (a) A site development plan, approved by the Town of Middletown Town Engineer, is required prior to issuance of grading permits or building permits for new or expanded non-residential development including commercial, industrial, institutional and utility development, new or expanded residential that does not include a subdivision, plus public buildings, schools and other public facilities excluding road, water, sewer or drainage improvements.
- (b) Changes in use. A site development plan is required unless the Town of Middletown Town Engineer determines that there is less than 5,000 square feet of site disturbance and no significant alteration to access, parking, circulation, drainage, landscaping, structures, or other site features are required.

(2) Application, Review and Approval.

- (a) The applicant shall file twelve (12) copies of the official application form and twelve (12) copies of the proposed site development plan.
- (b) The proposed site development plan shall allow the same information as required for minor subdivisions under the procedures set forth in Section 4(B)(2)a-1 of the Middletown Subdivision Ordinance.
- (c) The proposed site development plan will be reviewed under the procedures set forth in Section 4(C)(1), (2) and (3) of the Middletown Subdivision Ordinance. In addition, all applicants shall coordinate with the Delaware Transit Corporation regarding placement of transit facilities for existing and future transit routes.
- (d) The proposed site development plan will be approved under the procedures set forth in Section 4(D)(1)(4) of the Middletown Subdivision Ordinance.

SECTION 12: AMENDMENT

12.A. Amendment Procedure

- (1) The Town Council may, from time to time, on its own motion, or the motion of the Planning Commission, or on petition by an owner, amend, supplement, change, modify, or repeal the zoning regulations, restrictions and boundaries in a manner in accordance with the procedure provided.
- (2) All proposals for amending, supplementing, changing, modifying, or repealing the zoning regulations, restrictions or boundaries, before being acted upon by the Town Council, except those originating on motion of the Planning Commission, shall be referred to the Planning Commission for consideration and recommendation. The Planning Commission shall study all proposals whether originating with the Commission or otherwise, conduct a public hearing after having given notice required for the agenda of the Commission, and report its findings and recommendations to the Town Council.
- (3) The Planning Commission is granted the authority to require, as a condition to consideration of any proposal, other than one originating with the Town Council, that a petition be submitted accompanied by such maps, charts, sketches, and other information as the Commission deems necessary for the proper and effective consideration of such proposal and refuse to consider any proposals not complying with such requirement.
- (4) No proposed amendment, change, modification, or repeal of any zoning regulation, restriction, or boundary shall become effective until after a public hearing shall have been held by the Town Council, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days notice of the time and place of such hearing shall be published in a newspaper of general circulation in the Town of Middletown.
- (5) In the event of a protest against such changes signed by the owners of twenty (20) percent or more, either of the area of the lots included in such proposed change, or of those immediately adjacent extending 100 feet back from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the Town Council.
- (6) If, after due consideration, a proposal is denied, such proposal shall not be eligible for reconsideration for a period of two (2) years after final action by the Town Council, except upon favorable vote of three-fourths of the Planning Commission or Town Council.

12.B. Hearing Notice Required

- (1) No change or amendment shall become effective until after a public hearing, at which parties in interest and citizens shall have had an opportunity to be heard. At least fifteen (15) days notice of the time and place of such hearing shall be published in an official paper or a paper of general circulation in the Town of Middletown. In all cases in which a proposed amendment would change the Zoning Map, notice of the amendment shall be sent by mail to all property owners of record whose property is proposed to be changed by the amendment, and to those immediately adjacent extending one hundred (100) feet and to those directly opposite, extending one hundred (100) feet back from the frontage of such opposite lots.

12.C. Application – Petition Fee

The following fees shall be required for Amendment to the Zoning Code and/or Zoning Map:

- (1) Initial Filing Fee

R-1A, R-1B, R2	\$50
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R-3, R-MH, C-2 C-3, MI, H	\$100
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- (2) Processing Fee

Rezoning Requests to:	First 5 Acres	Each Additional Acre
R-1A, R-1B, R-2	\$250	\$10
R-3, R-MH	\$250	\$20
C-2, C-3, MI	\$1,000	\$25
Historic District	No Fee	No Fee

Where the request includes more than one of the above, the fee will be cumulative.

The fee for applications for plan approval before the Planning Commission shall be \$100. When applications are filed, a check must be included and if the application is withdrawn, the money will not be returned.

12.D. Expiration of Rezoning Approval

- (1) Every application when approved by the Town Council either as submitted originally or as submitted or resubmitted in modified form, shall constitute an agreement by the applicant that such improvement shall be made, completed and operated as shown on the plan as part of the project in accordance with the provisions of the particular zoning district granted and that the area which has been rezoned by the Town Council shall lose that status and revert to its former zoning classification in the occurrence of any of the following events:
 - (a) If construction of approved buildings and improvements shall not be substantially undertaken within eight (8) months of the zoning change or within such addition time as may be authorized by the Town Council.
 - (b) If, as a result of voluntary sale or conveyance or any other transfer of ownership whatsoever the area shall cease to be held, in its entirety, in single or common ownership.
- (2) The Town Council may at their option, grant an extension of any approved zoning application that may have expired, provided the applicant can show good reason and justification for such an extension. Under any circumstances, Town Council may not grant any extension beyond three (3) months, unless a public hearing is held in accordance with Section 12(B) of this code.

SECTION 13: VALIDITY

13.A. Validity

- (1) Should any Section or provision of this code be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this code as a whole or any part other than the part so decided to be unconstitutional or invalid.

SECTION 14: EFFECTIVE DATE

14.A. Effective Date

- (1) This zoning code shall become effective immediately upon adoption by the Mayor and Council of the Town of Middletown.
- (2) This zoning code was adopted on January 5, 1998.

SECTION 15: HISTORY OF TOWN ZONING

15.A. History

- | | | |
|-----|---|-----------------|
| (1) | Original Zoning Ordinance | March 7, 1962 |
| (2) | Reformatted Zoning Ordinance
Adopted by Mayor and Town Council | January 5, 1987 |
| (3) | Revised Zoning Ordinance which
Includes Mobility Friendly Design
Standards Adopted by
Mayor and Town Council | January 5, 1998 |