# ZONING ORDINANCE

## TOWN OF MIDDLEBURG

## LOUDOUN COUNTY, VIRGINIA

## 1995

**Adopted February 10, 1995**

**Amendments through January 9, 2025**

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# MIDDLEBURG ZONING ORDINANCE TEXT AMENDMENTS
## (1995 ORDINANCE; AMENDMENTS THROUGH JANUARY 2025)

| Adoption Date | Subject | Text References |
|---|---|---|
| 11/9/95 | Community Utility Facilities – R-4 | Sects. 135 & 172(a)(1) |
| 2/13/97 | Terms of Commission/Committee Members | Sects. 21(b) & 33(b) |
| 5/8/97 | Permitted Extensions into Req. Yards | Sects. 181 & 182 |
| 5/14/98 | Correct Title 15.1 ref. to 15.2 | Miscellaneous |
| 6/11/98 | Historic District Regulations | Articles III and XVII |
| 2/11/99 | Recycling Car Wash in C-3 District | Art. II; Sect. 116, 170, 222 |
| 2/11/99 | HDRC Membership Requirements | Sect. 33(a) |
| 12/9/99 | Political Campaign Signs | Sects. 198, 199, 206 |
| 12/9/99 | Height of Structures and Fences | Art. II and Sect. 182 |
| 5/15/00 | Parking | Art. XVI |
| 10/12/00 | Self-Storage Facilities | Art. II, Sect. 166-167, 222 |
| 6/14/01 | Floodplain Overlay District | Art. VII |
| 9/13/01 | R-A to A-C: Agricultural Conservancy | Art. XI and XII |
| 1/1/02 | Repagination of Text | |
| 2/14/02 | Maintenance of Historic Structures | Art. XVII, Part 1 |
| 6/13/02 | Off-Street Parking for Places of Worship and Parking Lot Landscaping Waivers | Art. XVI, Section 222(a) Art. XVI, Section 216(d) |
| 10/10/02 | HDRC Exclusions, Minor Actions, Repainting of Structures | Sects. 243(a), 243(b), 239(c) |
| 1/1/03 | HDRC Membership Requirements | Sects. 33, 33.1, 33.2, 35, 36, 37 |
| 4/10/03 | HDRC Membership Expansion | Sects. 33, 33.1, 33.2, 35, 36 |
| 10/9/03 | Building Height, Lot Coverage, Commercial Uses, Commercial Parking Requirements, and Parking Lot Surfacing Requirements | Art. XI, Sects. 155, 156, 161, 162, 168; Art. XVI, Sects. 222; Art. II, Definitions; Art. XI, Sects. 153, 159, 160, 165, 166; Art. XVI, Sect. 231 |
| 3/11/04 | Special Use Permit for Height Exceeding 25 Feet in C-1 District | Sect. 156 |
| 6/10/04 | Parking Lot Landscaping Standards | Art. XV, Sect. 216 |
| 6/10/04 | Special Exception Use for Caretakers Dwelling in AC District | Art. II, Sect. 17<br>Art. IX, Sect. 104 |
| 6/10/04 | Tree/Shrub Materials | Art. XV, Sect. 217 |
| 2/10/05 | COA Application Requirements | Art. XVII, Sect. 239 |
| 2/10/05 | Parking Lot Facility | Art. II, Definitions |
| 2/10/05 | Special Exception Use: Parking Lot Facility | Art. XI, Sect. 166 |
| 2/10/05 | Parking Lot Facility: Use and Design Standards | Art. XI, Sect. 170.1 |
| 2/10/05 | Buffering, Screening, and Trees | Art. XV, Sect. 208 |
| 2/10/05 | Buffering and Screening | Art. XV, Sect. 211 |
| 2/10/05 | Parking Lot Landscaping | Art. XV, Sect. 216 |
| 2/10/05 | Off-Street Parking General Design Requirements | Art. XVI, Sect. 228 |
| 5/12/06* | Basic Definitions (Rural Resorts) | Article II |
| 5/12/06* | A-C Zoning District (Rural Resorts) | Article IX |
| 5/12/06* | Supplementary Use Regulations (Rural Resorts) | Article XII |
| 5/12/06* | Buffering, Screening & Trees (Rural Resorts) | Article XV |
| 5/12/06* | Off-Street Parking & Loading Requirements (Rural Resorts) | Article XVI |
| 5/12/06* | Floodplain Overlay District Regulations (Rural Resorts) | Article XVII, Part II |
| 7/13/06** | Personal Services in C-1 as Special Exception | Article XI |
| 8/9/07 | Mixed Use Village | Art. XI(A), Sect. 170.11-170.25 |
| 8/9/07 | Rural Resort | Art. IX, Sect. 107.2 |

# MIDDLEBURG ZONING ORDINANCE TEXT AMENDMENTS
## (1995 ORDINANCE; AMENDMENTS THROUGH JANUARY 2025)

| Adoption Date | Subject | Text References |
|---|---|---|
| 9/13/07 | Increase maximum front yard permitted to greater than 30 feet w/ special use permit | Art. XI, Part II, Section 161 |
| 11/8/07 | Public Uses and Facilities | Art. I, Sect. 14 |
| 11/8/07 | Commission Permits | Art. V., Section 61 |
| 11/8/07 | Special Exception Uses | Art. X, Section 126 |
| 5/22/09 | Special Exception Uses | Article II, Section 119 |
| 4/9/09 | Temporary Uses/Zoning Permits | Article V, Section 64 |
| 6/9/11 | Definition: Financial Institution | Article II, Section 17 (39a) |
| 6/23/11 | Outdoor Lighting Standards | Article XVIV |
| 9/22/11 | Issuance of Zoning Occupancy Permits | Article V, Section 55(g) |
| 9/22/11 | Issuance of Zoning Permits | Article V, Section 55(e) |
| 2/14/13 | Basic Terms – Fitness Centers/Studios | Article II, Sections 17(44) & (44a) |
| 2/14/13 | Commercial Zoning Districts – Fitness Centers/Studios | Article XI, Sections 159(q), 165(j) & 170.1(d) |
| 2/14/13 | Off-Street Parking & Loading Requirements – Fitness Centers/Studios | Article XVI, Section 222(a) |
| 2/14/13 | Outdoor Lighting Standards | Article XIX, Sections 264(6) & 265(g) |
| 3/13/14 | Helistop definition | Article II, Section 17, Item 53a |
| 3/13/14 | Agricultural Conservancy Zoning District: Helistop | Article IX, Section 104(v) |
| 5/8/14 | Basic Definitions: Active Application, Inactive Applications | Article II, (5a) and (5b) |
| 5/8/14 | Inactive Applications | Article V, Section 66 |
| 11/13/14 | Libraries and Museums | Article II, X, XI and XVI |
| 12/10/15 | Floodplain Overlay District | Article II and XVII, Part II |
| 6/9/16 | Yard Definitions and Regulations | Article II, X and XII, Part III |
| 10/13/16 | Limited Residential Lodging | Article II, V, X and XVI |
| 2/9/17 | Floodplain Overlay District | Article XVII, Part II |
| 6/8/17 | Personal Services definition | Article II |
| 1/10/19 | Repeal section - maint. of historic structures | Article XVII, Part I, Sec 245a |
| 8/28/19 | Repagination of Text | |
| 12/10/20 | Penalties and remedies for violations | Article VII, Sec 81 |
| 12/10/20 | Signs | Article XIV |
| 5/27/21 | Building Height in R-2 | Article X, Part II, Sec 121 |
| 7/28/22 | Building Lot Coverage & Impervious Lot Coverage | Articles II, IX, X and XI |
| 12/8/22 | Short-Term Rentals | Articles II, V, X and XVI |
| 7/27/23 | Professional Office definition and regulations | Articles II, XI and XVI |
| 11/9/23 | Advertisement and Notices of Hearings | Article VI |
| 9/26/24 | Definitions; Uses, Lot requirements, Bldg Height in R-2; nonconforming lots; permitted extensions into yards | Articles II, VIII, X and XII |
| 10/30/24 | Definitions - B&B, Domestic Employee, Family; Uses regs - B&B, Rooming & Boarding Houses; Dwellings in Comm. Districts | Articles II, X and XI |
| 1/9/25 | Definitions - Financial Institution and Professional Office | Article II |

* While adopted in May 2006, these ordinances were not codified until January 2012.
** While adopted in July 2006, this ordinance was not codified until September 2016.

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# ARTICLE I. GENERAL PROVISIONS

## Section 1: Title

This ordinance shall be known and may be cited as the Town of Middleburg Zoning Ordinance.

## Section 2: Purpose and Intent

This ordinance, as adopted and amended, is for the general purpose of promoting the health, safety, and general welfare of the public; recognizing and providing for the needs of business; providing that the growth of the community be consonant with the efficient and economical use of public funds; and implementing the intent, goals, policies and action strategies of the adopted comprehensive plan. To these ends, it is the intent of this chapter to:

A. Provide for adequate light, air, convenience of access, and safety from fire, flood and other dangers;

B. Reduce or prevent congestion in the public streets;

C. Facilitate the creation of a convenient, attractive and harmonious community;

D. Facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements;

E. Protect against destruction of or encroachment upon historic areas;

F. Protect against overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation, and loss of life, health, or property from fire, flood, panic or other dangers;

G. Encourage economic development activities that provide desirable employment and enlarge the tax base;

H. Provide for the preservation of agricultural and forestal lands and other lands of significance for the protection of the natural environment;

I. Promote affordable housing; and

J. Protect surface water and groundwater, as defined in Title 62.1-44.85(8), Va. Code. Ann.

## Section 3: Authority

A. This ordinance is adopted pursuant to the authority contained in Article 7, Chapter 22 of Title 15.2 of the 1950 Code of Virginia, as amended. (Amended 5/14/98)

B. Whenever any provision of this ordinance refers to or cites a section of the 1950 Code of Virginia, as amended, and that section is later amended or superseded, this ordinance shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

## Section 4: Jurisdiction

A. This ordinance shall be effective within the corporate boundaries of the Town of Middleburg, Loudoun County, Virginia.

B. Whenever property shall be added to the town by adjustment of town boundaries, such property automatically shall be zoned A-C, Agricultural Conservancy, without any further action, effective upon the date the boundary adjustment shall have been finally approved by a court of competent jurisdiction. Subsequent rezoning of the property may be made in accordance with the provisions of Article XVIII, Amendments. (Amended 9/13/01)

**Section 5: Effective Date**

The provisions of this ordinance were originally adopted and became effective at 12:00 am on February 10, 1995.

**Section 6: Exclusive Nature**

Except as otherwise expressly provided herein, this ordinance shall be deemed exclusive in nature, and only those uses specified shall be permitted in the various zoning districts. If a use is not specified in a zoning district, it shall be prohibited in that district. In the event that a use is not permitted in any zoning district, it may only be permitted after appropriate amendment to the text of this ordinance.

**Section 7: Conformity**

No person may use, occupy, or sell any land or buildings or authorize or permit the use, occupancy, or sale of land or buildings under his control except in accordance with all applicable provisions of this ordinance, subject to the provisions of Article VIII of this ordinance (Non-conforming Situations).

**Section 8: Interpretation When More than One Standard Applies**

Whenever more than one regulation or standard applies to any use, structure, activity or undertaking subject to any provision of this ordinance, the most restrictive or stringent shall govern.

**Section 9: Fees**

A. Reasonable fees sufficient to cover the costs of administration, inspection, publication of notice and similar matters may be charged to applicants for zoning permits, sign permits, conditional use permits, zoning amendments, variances and other administrative relief. The amount of the fees charged shall be established by ordinance of the town council filed in the office of the town clerk.

B. Fees shall be tendered with submission of a signed application or notice of appeal.

**Section 10: Severability**

The sections, paragraphs, sentences, clauses and phrases of this ordinance are severable. If any section, paragraph, sentence, clause, or phrase is declared unconstitutional or otherwise invalid by any court of competent jurisdiction in a valid judgment or decree, such unconstitutionality or invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses or phrases of this ordinance.

**Section 11: Computation of Time**

The time within which an act is to be done after any event shall be computed by excluding the day on which the event occurred, unless otherwise specifically provided. If the last day is a Saturday, Sunday or legal holiday, the act shall be required to be done on the next day that is not a Saturday, Sunday or legal holiday.

**Section 12: Miscellaneous**

Except when the context clearly indicates otherwise:

A. Words using the masculine gender in this ordinance include the feminine and neuter.

B. Words used in the singular in this ordinance include the plural and words used in the plural include the singular.

**Section 13: Lot Access Requirements**

No structure shall be erected upon any lot which does not have frontage on a public street except as provided in the Town of Middleburg Street and Parking Ordinance.

**Section 14: Public Uses and Facilities**

A. Public facilities, structures, and uses, as those terms are used herein, shall include but not be limited to streets, connections to existing streets, parks or other public areas, public buildings or public structures, public utility facilities, or public service corporation facilities, whether publicly or privately owned, but shall not include railroad facilities, high power electrical transmission lines in excess of one hundred and fifty (150) kilovolts which are subject to review and approval by the Virginia State Corporation Commission, or a public telecommunications facility (not including television and radio towers or structures not necessary to house electronic apparatus) that has received approval and funding by the Virginia Public Broadcasting Board pursuant to Section 2.2-2426, VA Code Ann. For purposes of this section, the foregoing facilities, structures, and uses shall be referred to as public facilities. The term “public facility” or “public use” shall not, however, include the business office of any of the foregoing unless owned and operated by a governmental body.

B. When located on land within an historic overlay district, public buildings shall be subject to the provisions of Section 62.

**Sections 15 through 16: Reserved**

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# ARTICLE II. BASIC DEFINITIONS

## Section 17: Definitions of Basic Terms

The words and phrases defined in this section shall have the meaning indicated when used in this ordinance, unless otherwise specifically provided, or unless clearly required by the context.

1. *Adult Assisted Living*. A facility for six or fewer persons over the age of 62 who cannot live independently and who need assistance with daily chores and housekeeping.

2. *Adult Care Center*. A licensed facility for four or more aged, infirmed, or disabled adults which is operated during a part of the day only, which provides supplementary care and protection of individuals who reside elsewhere.

3. *Alley*. A right-of-way less than 30 feet in width designated as an alley on the plat recorded in the land records of Loudoun County or dedicated as such in a deed.

4. Repealed. (12/10/15)

5. *Animal Hospital*. A facility rendering surgical and medical treatment to animals and providing overnight accommodations for such animals, but not including crematory facilities. (Added 9/13/01)

5a. *Application, Active.* Any zoning map amendment, zoning text amendment, site plan application, subdivision application, or other approval request provided by this ordinance that has been officially accepted by the Zoning Administrator as a complete application and is not considered inactive, has not been withdrawn by the applicant or has not received a final decision. (Added 5/8/14)

5b. *Application, Inactive.* Any site plan application, subdivision application, or other approval request provided by this ordinance that has been officially accepted by the Zoning Administrator as a complete application but has been deemed inactive by the Middleburg Planning Commission under Article 5, Section 66 of the Middleburg Zoning Ordinance. (Added 5/8/14)

5c. *Areaway.* A subsurface space adjacent to a building that is open at the top, or protected by grating or a guard, and provides passageway to a basement/cellar door. (Added 9/26/24)

6. *Auto Repair Garage*. A building designed and used for the storage, care, repair, or refinishing of motor vehicles including both minor and major mechanical overhauling, paint and body work.

7. Repealed. (12/10/15)

8. Repealed. (12/10/15)

9. *Basement or Cellar*. That portion of a building that is partly or completely below grade. A basement or cellar shall be counted as a story if the vertical distance from the average adjoining grade to the ceiling is over five feet.

10. *Bed and Breakfast*. An owner- or manager-occupied dwelling unit containing no more than five guest rooms where lodging, with or without meals, is provided for compensation. (Amended 10/30/24)

11. *Boarding House*. A dwelling in which, as a home occupation and for compensation, lodging, meals, or both are furnished to no more than nine guests. Such dwelling shall contain no more than five guest rooms.

12. *Building*. A structure designed to be used as a place of occupancy, storage or shelter.

13. *Building, Accessory*. A building that is located on the same lot as a principal building and is used incidentally to a principal building or that houses an accessory use.

14. *Building, Principal*. The primary building on a lot or a building that houses a principal use.

15. *Building Height*. The vertical distance measured from the average elevation of the finished grade adjoining the building at all exterior walls or surfaces to the highest point of the building. Where the finished ground level slopes away from the exterior walls, the average finished grade shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than six feet from the building, between the building and a point six feet from the building. (Amended 12/9/99)

16. *Building Line (or Set Back Building Line)*. Line beyond which the foundation wall and/or any enclosed porch, vestibule, or other such portion of a building shall not project.

17. *Building Supply*. A roofed structure permanently open on at least two sides, either attached or detached from a dwelling to which it is accessory, designed to provide shelter for a passenger vehicle. (Added 9/26/24)

17a. *Carport.* A subsurface space adjacent to a building that is open at the top, or protected by grating or a guard, and provides passageway to a basement/cellar door. (Added 9/26/24)

18. *Car Wash, Recycling*. A structure or portion thereof with machine- or employee hand-operated facilities for washing, cleaning, polishing or waxing motor vehicles, which employs state-of-the-art water reclamation and conservation technology that may include, but not be limited to one or more underground water reclamation tanks, re-pressurization pump and filtering system. (Added 2/11/99)

19. *Caretaker's Dwelling*. A secondary dwelling unit or apartment contained within, or detached from, a principal non-residential structure which is 1) used as a residence by a caretaker or watchman, or 2) inhabited to provide added security to the premises. The caretaker's dwelling shall be accessory to the principal structure. (Added 6/10/04)

20. *Child Care Center*. A building where care, protection and supervision of more than five children are provided, on a regular schedule, during any part of the day but not for an entire 24-hour period.

21. *College, University*. An institute of higher education authorized by the Commonwealth of Virginia to award baccalaureate or higher degrees, which may include on-site student, faculty and employee housing facilities. (Added 9/13/01)

22. *Commercial Greenhouse Operations*. A building and/or land for the growing for sale of flowers, fruits, vegetables, plants, shrubs, trees, and/or similar vegetation, with or without on-site sales. (Added 10/09/03)

23. *Conference Center*. A facility used for non-profit, business or professional conferences, seminars and training programs with accommodations limited to conference attendees. Accommodations may be included for sleeping, eating and recreation. (Added 9/13/01)

24. *Conservancy Lot*. A privately-owned, single-family residential lot in a conservancy subdivision, which will remain as a large parcel, the bulk of which is in permanent open space easement and a portion of which is designated a building area for the dwelling. (Added 9/13/01)

25. *Corporate Office*. A single-tenant office building(s) that houses the corporate or regional offices of a group or organization wherein the primary use is the conduct of business and which may include meeting rooms, data processing, training facilities and other office service functions for employees such as a cafeteria for use by employees and visitors, but not open to the general public. (Added 9/13/01)

26. *Corporate Retreat*. A facility owned and operated by a private or non-profit corporation for the purpose of providing a rural training center and retreat for its employees and which may include conference and meeting facilities, eating facilities, and recreational amenities of a rural nature, none of which shall be open to the general public. (Added 9/13/01)

27. *Country Club*. Land area and buildings containing recreational facilities such as a swimming pool and tennis courts, a clubhouse (which may include a restaurant), and customary accessory uses, either private or open to the public. (Added 9/13/01; Amended 5/12/06)

28. *Country Inn*. A business offering overnight accommodations and dining in a rural setting, preferably in an historic structure, with between 4 and 20 guest rooms and a full-service restaurant providing meals to guests and the general public. (Added 9/13/01)

29. Repealed. (12/10/15)

30. *Developer*. A person who is responsible for any undertaking that requires a zoning permit, special use permit or sign permit.

31. *Development*. A use or activity which is to be done pursuant to a zoning permit, special use permit or sign permit.

32. *Domestic Employee*. A person hired to perform general household services such as cleaning, cooking, laundering, maintenance, gardening, yard work, caregiving and other duties commonly associated with the meaning of domestic servant. (Added 10/30/24)

33. *Dwelling*. A building or portion thereof arranged or designed to provide living facilities for one or more families.

34. *Dwelling, Multi-Family*. A building containing three or more dwelling units (an apartment house), but not including townhouses.

35. *Dwelling, Single-Family Attached (Townhouse)*. One of three or more dwelling units having a common or party wall separating dwelling units, each with direct access to the outside.

36. *Dwelling, Single-Family Detached*. A building containing not more than one dwelling unit entirely surrounded by open space on the same lot.

37. *Dwelling, Two-Family (Duplex)*. Building containing two dwelling units, arranged one above the other or side by side, or some combination of the two.

38. *Dwelling Unit*. One or more rooms containing sleeping, kitchen and bathroom facilities for and used or held for use as a permanent residence by a single family. (Amended 10/30/24)

39. *Easement, Utility*. The right of a person, government agency, or public utility company to use public or private land owned by another for the specific purpose of providing utility services or locating utility service facilities thereon.

40. *Equestrian Facilities*. The use of land, buildings, or structures for the training of horses and riders, the boarding of horses and/or the staging of equestrian events. (Added 9/13/01)

41. *Family*. One or more persons living and cooking together as a single housekeeping unit and consisting of any one of the following, plus any minor children living in the home with written permission of their parent or guardian and up to two bona fide domestic employees:

    A. An individual; or
    B. Two or more persons related by blood, marriage, adoption or legal guardianship; or
    C. Two unrelated adults and any persons related to either or both by blood, marriage, adoption or legal guardianship; or
    D. Up to 4 persons unrelated by blood, marriage, adoption or legal guardianship; or
    E. Any group identified in Code of Virginia § 15.2-2291.

42. *Family Day Home*. A residence in which no more than five children, excluding the provider's own children and any children living in the home, receive care, protection and supervision for compensation on a regular schedule, during any part of the day but not for an entire 24-hour period. A family day home shall be deemed a single-family occupancy for purposes of this ordinance.

43. *Financial Institution*. An establishment such as a commercial bank, non-profit bank, or credit union which is primarily focused on in-person, on-demand retail banking services such as checking and savings accounts, personal loans, business banking and debit/credit card services. The term “financial institution” shall not be deemed to include establishments such as pawn shops where goods are bailed for security for loan redemptions, places where goods are consigned for sale, establishments that make small, short term consumer loans secured by a title to a motor vehicle, or establishments that provide check cashing, payday cash advance, payroll advance, short-term cash loans, short term cash advance, instant payday cash advance, short term money loan services, or similar services to individuals for a specific fee. (Added 10/9/03; Amended 6/9/11; Amended 1/9/25)

44. *Fitness Center*. A health, athletic, or recreational club, or private gymnasium that does not fall within the definition of a fitness studio. A fitness center may include use of aerobic training equipment, weight training equipment, saunas, whirlpools, locker rooms and shower facilities. (Amended 10/9/03; Amended 2/14/13)

44a. *Fitness Studio*. A commercial establishment of no more than 300 square feet that provides instruction in physical fitness on a personal or group basis. (Added 2/14/13)

45. Repealed. (12/10/15)

46. Repealed. (12/10/15)

47. Repealed. (12/10/15)

48. Repealed. (12/10/15)

49. *Floor to Area Ratio (FAR)*. A number or percentage, derived by dividing the gross floor area of the buildings on any lot by the lot area. The floor to area ratio multiplied by the lot area produces the maximum amount of floor area that may be constructed on such lot. For single-family detached dwellings, floor area in detached accessory structures shall not be included in the FAR. (Added 5/12/06; amended 9/26/24)

49a. *Garage*. A building or structure, or part thereof, used or designed to be used for the parking and storage of vehicles. (Added 9/26/24)

49b. *Garage, Attached*. A garage which is physically connected to the foundation, wall, roof or other part of the primary structure. (Added 9/26/24)

49c. *Garage, Detached*. A garage which is not physically connected to the foundation, wall, roof or other part of the primary structure. (Added 9/26/24)

49d. *Garage, Front-load*. An attached garage with the garage doors oriented toward the front yard or toward a side yard adjacent to a street. (Added 9/26/24)

49e. *Garage, Side- or Rear-load*. An attached garage with the garage doors oriented toward a side yard (not adjacent to a street) or toward the rear yard. (Added 9/26/24)

50. *Greenbelt Open Space*. Open space designed to provide buffers and to protect scenic views as seen from existing roadways and from public spaces. (Added 9/13/01)

51. *Group Home*. A residential facility in which more than eight mentally ill, mentally retarded, or developmentally disabled persons reside, with one or more resident counselors or other staff persons. Mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in Section 54.1-3401 of the State Code. A residential facility shall be deemed to be any group home or other residential facility for which the Department of Mental Health, Mental Retardation and Substance Abuse Services is the licensing authority pursuant to the State Code.

52. *Gross Floor Area*. The total floor area of a building measured by adding the outside dimensions of the building at each floor level intended for occupancy or storage.

53. *Height (Other than Building Height)*. The vertical distance on the side of the structure facing an adjacent street or adjacent lot measured from the lowest exposed point of the structure being measured to the highest point of the structure. Except as provided elsewhere in this ordinance, elements attached to or incorporated into a structure, including, but not limited to columns, finials, pillars, and pilasters, shall be deemed a part of the structure and shall be considered in measuring height. Grades shall not be adjusted under or around a structure if it has the effect of circumventing the maximum height allowances set forth in this ordinance (also see Building Height). (Amended 12/9/99)

53a. *Helistop*. A temporary or permanent helicopter landing area either at ground level or elevated on a structure, for the sole purpose of pickup and discharge of passengers and cargo from non-commercial helicopters for personal use and not including facilities for maintenance and overhaul, fueling service, storage space or hangers. Such an area shall contain no operation facilities other than one (1) tie-down space and such additional facilities as are required by law, ordinance or resolution. No landings of commercial helicopters shall be allowed under this definition. (Added 3/13/14)

54. *Home Occupation*. An occupation, profession, activity or use that is clearly a customary, incidental and secondary use conducted entirely within a dwelling and does not change the exterior of the property or affect the residential character of the neighborhood.

55. *Indoor Theatre*. A building designed for the enactment of dramatic performances and/or showing of motion pictures. (Added 10/09/03)

56. *Inn*. A professionally-run business that offers overnight accommodations and may include a full-service restaurant providing breakfast, lunch and dinner to guests and the general public. The number of guest rooms may range from 4 to no more than 20.

56a. *Library*. A facility for the custody, circulation and administration of a collection of books, manuscripts, and reference materials, but generally not for the sale of such, and designed to be open to the public. (Added 11/13/14)

57. *Lodging Unit*. A room or group of rooms not including independent kitchen facilities, forming a single habitable unit, used or intended to be used for living and sleeping by transient occupants; provided, however, that lodging units may be configured to share kitchen facilities. (Added 5/12/06)

58. *Lot*. A parcel of land whose boundaries have been established by some legal instrument such as a recorded deed or a recorded map and which is recognized as a separate legal entity for purposes of transfer of title.

59. *Lot Area*. The total horizontal area included within the rear, side, and front lot lines or proposed street lines. No alley, public way, public land, or area proposed for future street purposes either public or private shall be included in the calculation of lot area.

60. *Lot, Corner*. A lot abutting on and at the intersection of two or more streets.

61. *Lot Coverage, Building*. The percentage of a lot area occupied or covered by the ground area of principal and accessory buildings or other roofed areas on such lot. (Amended 7/28/22)

61a. *Lot Coverage, Impervious*. The percentage of a lot area composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious Lot Coverage includes, but is not limited to: (a) Building Lot Coverage, as defined; (b) unroofed porches, decks, patios and the like; (c) driveways and parking areas; (d) sidewalks and other walkways; (e) any concrete, asphalt, or compacted gravel surface; and (f) other surfaces not composed of living ground cover or live planting areas. Patios, driveways, parking areas, and walkways constructed of pervious pavers, void structured concrete/plastic grid reinforced paving systems or other similar materials may be calculated at 50% of the actual area of coverage when, at the discretion of the Administrator, the materials are properly designed and installed to allow for infiltration of water. (Added 7/28/22)

62. *Lot Depth*. The horizontal distance between the front and rear lot lines measured from the midpoint of the front lot line to the midpoint of the rear lot line.

63. *Lot, Interior*. Any lot other than a corner lot; including a through lot.

64. *Lot Line*. A line dividing one lot from another lot or from a street or alley.

65. *Lot Line, Front*. The lot line abutting a street on an interior lot, the shortest lot line abutting a street on a corner lot, or the interior lot line most parallel to and nearest the street from which access is obtained for a flag lot.

66. *Lot Line, Rear*. The lot line generally opposite or parallel to the front lot line, except in a through lot. If a rear lot line is less than ten feet long or the lot is pointed at the rear, the rear lot line is assumed to be a line at least ten feet long, lying wholly within the lot, parallel to the front lot line, or if the front lot line is curved, parallel to the chord of the arc of the front lot line.

67. *Lot Line, Side*. Any lot line not a front or rear lot line.

68. *Lot, Through*. A lot having its front and rear yards each abutting on a street.

69. *Lot Width*. The horizontal distance between side lot lines measured at the front property line and at the required front setback.

70. *Lowest Floor*. The lowest floor of the lowest enclosed area (including basement). (Added 6/14/01)

71. *Mechanical unit*. Equipment associated with building operations and/or the delivery or measurement of utilities, such as heating, ventilation and air conditioning (HVAC) systems, meter banks, cooling units, LP gas tanks, etc. (Added 9/26/24)

71a. *Museum*. A facility operated by a nonprofit organization for the primary purpose of the acquisition, preservation, study and exhibition of works of artistic, historical or scientific interest or value and designed to be open to the public. (Added 11/13/14)

72. *Nonconforming Lot*. A lot existing at the effective date of this ordinance that does not meet the minimum area requirements of the district in which the lot is located.

73. *Nonconforming Project*. Any structure, development, or undertaking that is incomplete at the effective date of this ordinance and would be inconsistent with any regulation applicable to the district in which it is located if completed as proposed or planned.

74. *Nonconforming Situation*. A situation that occurs when, on the effective date of this ordinance, any existing lot or structure or use of an existing lot or structure does not conform to one or more of the regulations applicable to the district in which the lot or structure is located.

75. *Nonconforming Use*. A nonconforming situation that occurs when property is used for a purpose or in a manner made unlawful by the use regulations applicable to the district in which the property is located. The term also refers to the activity that constitutes the use made of the property.

76. *Nursery School*. A facility that provides a curriculum of pre-school education, including kindergartens. (Added 10/09/03)

77. *Nursing Home*. An institutional facility which provides skilled and intermediate nursing care and medical supervision at a lower level than that provided in a hospital.

78. Repealed. (12/10/15)

79. *Open Air Market*. A principal use which includes the sale of horticultural or agricultural products, including nursery stock, Christmas trees, fresh produce, honey, cider and similar products.

80. *Open Space*. Areas of trees, shrubs, lawns, grass, pathways and other natural and man-made amenities not within individual building lots, set aside of the use and enjoyment of residents, visitors and other persons, unoccupied by buildings or facilities unless related to recreational activities. (Added 5/12/06)

81. *Parcel*. See Lot.

82. *Parking Lot Facility*. A site for surface parking which provides one or more parking spaces together with driveways, aisles, turning, and maneuvering areas, incorporated landscaped areas, and features meeting the requirements established by this ordinance. These facilities shall be used to accommodate clients, customers, or employees during the property owner's business hours and may be made available to the public with or without compensation after the normal business hours of the property owner. (Added 2/10/05)

83. *Personal Service Business*. An establishment primarily engaged in providing services involving the care of a person or apparel, including, but not limited to, barber shops, beauty shops, dry cleaning drop off and pickup (but not including onsite dry cleaning), laundromats, shoe repair shops, tailor shops, photographic studios and shipping services. (Added 6/8/17)

84. *Professional Office*. A building or portion of a building where services are performed involving predominately professional persons such as doctors, dentists, therapists, lawyers, architects,

artists, real estate brokers, real estate agents, insurance agents, accountants, wealth managers, private bankers (without on-demand retail banking services and without automated teller machines), engineers, urban planners, land surveyors, researchers and editors. (Amended 10/09/03; Amended 7/27/23; Amended 1/9/25)

85. Repealed. (7/27/23)

86. *Recreational Uses, Active*. Recreational uses requiring constructed facilities for organized activities, such as playing fields, ball courts and playgrounds. (Added 5/12/06)

87. *Recreational Uses, Passive*. Recreational uses (such as hiking, natural observation, and picnicking) not requiring constructed facilities, but making use of areas which are largely left in their natural state except for basic facilities such as benches, picnic tables and trails. (Added 5/12/2006)

88. *Recreational Vehicle*. A vehicle which is: (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use. (Added 6/14/01)

89. *Rental, Short-Term*. The secondary use of a residential dwelling or a portion thereof to provide room or space that is suitable for occupancy for dwelling, sleeping, or lodging purposes, for a period of fewer than 30 consecutive days, in exchange for a charge for the occupancy, provided only that 1) the primary use of the dwelling shall remain residential, 2) any applicable taxes required to be collected and remitted by state and local law for each booking transaction are collected and remitted, and 3) such secondary use does not include simultaneous occupancy by more than one party under separate contracts. (Amended 12/8/22)

90. *Rooming House*. See Boarding House.

91. *Rural Resort*. A private establishment consisting of a detached structure or structures located in a rural setting in which lodging units are offered to transients for compensation as the principal use, along with conference and meeting facilities, restaurant and banquet facilities, and recreational amenities of a rural nature. (Added 5/12/06)

92. *School, Private*. A private or parochial school for the purpose of providing primary and/or secondary education for children, which may include on-site student, faculty and employee housing facilities. (Added 9/13/01)

93. *School, Public*. A public school for the purpose of providing primary and/or secondary education for children. (Added 9/13/01)

94. *Self-Storage Facility*. A structure or group of structures containing individual, self-contained units leased to individuals, organizations, or businesses for self-storage of personal property, with no commercial transactions permitted other than the rental of the storage units.

95. *Service Station*. A building and/or lot where the primary use is the supply and dispensing of motor fuels, oils, batteries, tires or motor vehicle accessories.

96. *Social and Fraternal Club or Lodge*. A private, non- profit establishment which provides social, physical, recreational or benevolent services to its members and their guests. Such establishment shall not be used to operate a trade or business.

97. *Spa*. A facility offering personalized beautification and relaxation treatment and health and well-being programs. Examples of treatment offered may include: body packs and wraps, exfoliation, heat treatments, body toning, waxing, aromatherapy, cleansing facial, non-surgical face-lift, electrolysis, hydrotherapy, steam and sauna treatment, exercise, manicures and pedicures, and make-up consultation and application. (Added 5/12/06)

98. *Story*. That portion of a building included between the surface of any floor and the surface of the floor next above or, if there is no floor above, the space between such floor and the ceiling next above. No story shall be deemed to be a first story, if its floor level is more than five feet above the average level of the finished ground surface adjacent to the exterior walls of such story. A basement shall be counted as a story, if its ceiling is over five feet above the average level of the finished ground surface adjacent to the exterior walls of such story or, if it is intended to be used for business or dwelling purposes. A mezzanine floor shall be counted as a story, if it covers over one-third of the area of the floor next below or if the vertical distance between the floor next below and the floor next above is 20 feet or more.

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

100. *Street*. A public or private thoroughfare used or intended to be used, for passage or travel by motor vehicles.

101. *Street, Center Line of*. A line established as a center line of a street by any state, county, town or other official agency or governing body having jurisdiction thereof and shown as such on an officially adopted or legally recorded map or, if there be no center line established or if there exists conflict among several maps, the center line of a street shall be a line lying midway between the street or right-of-way lines thereof. When the street lines are indeterminate and pavement or a well defined traveled way exists, the center line is assumed to be a line midway between the edges of such pavement or traveled way.

102. *Street, Proposed*. Any proposed right-of-way or proposed widening or extension of any existing street or public way shown as a highway or street on the transportation plan of the Comprehensive Plan of the Town of Middleburg, Virginia, and Zoning Map of the Town of Middleburg or shall hereafter be adopted, amended, or extended, or on any preliminary subdivision plan or on any other plan approved by the planning commission and/or the mayor and council.

103. *Street Width*. The shortest distance between street lines, measured across the street right-of-way.

104. *Structure*. Anything constructed or erected for use, occupancy or ornamentation.

105. Repealed. (12/10/15)

106. Repealed. (12/10/15)

107. *Trail*. A path typically devoted to pedestrians and non-motorized vehicles. (Added 5/12/06)

108. *Use*. The activity or function that actually takes place or is intended to take place on a lot.

109. *Use, Accessory*. A use which is customarily incidental and subordinate to, and on the same lot as, the principal use.

110. *Use, Principal*. The primary use and chief purpose of a lot or structure.

111. *Utility Facility, Community or Regional*. All utility facilities other than neighborhood facilities.

112. *Utility Facility, Neighborhood*. A utility facility that is designed to serve the immediately surrounding neighborhood and that must, for reasons associated with the purpose of the utility in question, be located in or near the neighborhood where such facility is proposed to be located.

113. *Very Steep Slope Area*. Land areas with slopes greater than 25%. (Added 5/12/06)

113a. *Window Well*. A subsurface space adjacent to a building that is open at the top, or protected by grating or guard, and provides access, air, light, or emergency egress to a window. (Added 9/26/24)

114. *Yard*. An area on the same lot with a building or group of buildings, lying between the building or building group and the nearest lot line, unobstructed from the ground upward and unoccupied except by specific uses and structures permitted by this ordinance.

115. *Yard, Front*. A yard, extending across the full width of a front lot line between side lot lines and from the front lot line to the front building line in depth.

116. *Yard, Rear*. A yard extending across the full width of the lot, except on corner lots where the yard shall extend to the side yard adjacent to a street, and lying between the rear lot line and the nearest line of the building. The depth of the rear yard shall be measured at right angles to the rear line of the lot. (Amended 6/9/16)

117. *Yard, Side*. A yard extending from the front yard to the rear yard measured from and perpendicular to the side lot line, except that a side yard adjacent to a street shall extend from the front yard to the rear lot line. (Amended 6/9/16)

118. *Zoning Permit*. A permit issued by the zoning administrator which authorizes the recipient to make use of property in accordance with the requirements of this ordinance.

**Sections 18 through 20: Reserved**

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# ARTICLE III. ADMINISTRATION

## PART I. PLANNING COMMISSION

### Section 21: Appointment and Terms of Planning Commissioners

A. There shall be a Town of Middleburg Planning Commission consisting of no less than five or more than fifteen members appointed in accordance with the provisions of Section 15.2-2212 of the Code of Virginia, 1950, as amended. (Amended 5/14/98)

B. Planning commissioners shall be appointed by the town council for four-year staggered terms, but members may continue to serve until their successors have been appointed. Appointments shall be made so that all terms expire on the 31st day of December and commence on January 1, unless appointments are made for the unexpired portion of a term. (Amended 2/13/97)

C. Planning commissioners may be removed by the town council at any time for malfeasance in office. The town council shall hold a hearing on the removal if requested by the member proposed for removal.

### Section 22: Meetings of the Planning Commission

A. The planning commission shall establish a regular meeting schedule and shall meet frequently enough to take action in conformity with Section 64 (Applications to be Processed Expeditiously). The commission shall meet at least once annually.

B. Special meetings of the commission may be called by the chairman or by two members upon written request to the chairman. The chairman shall mail to all members, at least five days in advance of a special meeting, a written notice fixing the time and place of the meeting and the purpose thereof. Written notice of a special meeting is not required if the time of the special meeting was fixed at a regular meeting or if all members are present at the special meeting or file a written waiver of notice.

C. The commission shall adopt rules for the transaction of business and shall keep minutes of all commission proceedings.

### Section 23: Quorum and Voting

A majority of the commissioners shall comprise a quorum of the planning commission and no action of the commission shall be valid unless authorized by a majority vote of those present and voting.

### Section 24: Planning Commission Officers

A. The planning commission shall, at its first meeting in January of each year, elect one of its members to serve as chairman and preside over the commission's meetings and one member to serve as vice-chairman. Election of officers shall require a majority vote of those present and voting. The chairman and vice-chairman shall serve one-year terms. Vacancies in these offices may be filled for the unexpired terms by majority vote of those present and voting.

B. The chairman and vice-chairman may take part in all deliberations and vote on all issues.

C. The commission may create and fill such other offices as it deems necessary.

**Section 25: Powers and Duties of the Planning Commission**

The planning commission shall:

A. Prepare and recommend to the town council a comprehensive plan for the growth, development and redevelopment of the town and surrounding extraterritorial subdivision area;

B. Prepare and recommend to the town council amendments to the subdivision regulations;

C. Prepare and recommend to the town council policies, ordinances, administrative procedures, and other methods for achieving plans in a coordinated and efficient manner;

D. Initiate or make recommendations to the town council concerning proposed special use permit applications and zoning map and text changes, as required by Sections 57 and 253;

E. Make recommendations and an annual report to the town council concerning the operation of the commission and the status of planning within the town;

F. Exercise general supervision of, and make regulations for, the administration of its affairs;

G. Prescribe rules pertaining to its investigations and hearings;

H. Supervise its fiscal affairs and responsibilities, under rules and regulations as prescribed by the town council;

I. Keep a complete record of its proceedings and be responsible for the custody and preservation of its papers and documents;

J. Prepare, publish and distribute reports, ordinances and other material relating to its activities;

K. Prepare and submit an annual budget in the manner prescribed by the town council; and,

L. Establish advisory committees from time to time to help carry out its planning responsibilities in a particular subject area.

## PART II. BOARD OF ZONING APPEALS

**Section 26: Appointment and Terms of Board of Zoning Appeals**

A. A board of zoning appeals (hereinafter referred to as the board) consisting of five members shall be appointed by the Circuit Court of Loudoun County. The secretary of the board shall notify the circuit court at least 30 days prior to the expiration of any term of office and promptly when vacancies occur. The secretary shall submit names from the mayor and town council for the court's consideration. The board shall serve without compensation. One of the five appointed members may be an active member of the planning commission.

B. The present board shall continue as the board of zoning appeals under the provisions of this ordinance and pursuant to authority and provisions of Section 15.2-2308 of the Code of Virginia, 1950. (Amended 5/14/98)

C. The term of office of each member of the board shall be for five years, except that original appointments shall be made so that the term of one member shall expire each year. Board vacancies shall be filled for the unexpired term only.

D. Any member may be removed for malfeasance, misfeasance or non-feasance in office, or for other just cause by the appointing authority upon written charges and after a hearing, held at least 15 days after notice is given.

**Section 27: Meetings of the Board**

A. The board of zoning appeals shall meet at least once annually and shall meet frequently enough so that it can take action in conformity with Section 64 (Applications to be Processed Expeditiously).

B. The board shall conduct its meetings in accordance with the procedures set forth in Article IV.

C. All board meetings shall be open to the public and, whenever feasible, the agenda for each board meeting shall be made available in advance of the meeting.

**Section 28: Quorum and Voting**

A. A quorum for the board of zoning appeals shall consist of three members. A quorum is necessary for the board to take official action.

B. In addition to the requirements of subsection A., a concurring vote of a majority of the membership of the board shall be necessary to reverse any order, requirement, decision or determination of an administrative officer, or to decide in favor of the applicant on any matter upon which it is required to pass under the ordinance or to effect any variance from the ordinance.

C. A roll call vote shall be taken upon the request of any member.

**Section 29: Board of Zoning Appeals Officers**

A. The board of zoning appeals shall elect one of its members to serve as chairman and preside over the board's meetings and one member to serve as vice-chairman. The election shall be held at the first meeting in January of each year. The chairman and vice-chairman shall serve one-year terms. Vacancies in these offices may be filled for the unexpired terms only.

B. The chairman or any member temporarily acting as chairman may administer oaths to witnesses coming before the board.

C. The chairman and vice-chairman may take part in all deliberations and vote on all issues.

D. The board shall appoint a secretary to prepare minutes of meetings, keep all records and conduct official correspondence. When authorized by the town council, a court stenographer shall be employed to record such proceedings as the town council may direct.

**Section 30: Powers and Duties of the Board of Zoning Appeals**

A. The board shall hear and decide:

1. Appeals from any order, requirement, decision, determination or interpretation made by the zoning administrator or other administrative officer in the administration or enforcement of this ordinance.

2. Applications for variances, as provided in Section 44.

3. Applications for interpretation of the zoning map, including disputed district boundaries, as provided in Section 45.

B. The board shall adopt such rules and regulations as it may deem appropriate for the proper conduct of its business, and to carry into effect the provisions of this ordinance, subject to provisions of this ordinance and the general laws of the Commonwealth of Virginia.

C. No provision of this ordinance shall be construed as granting the board the power to rezone property.

## PART III. ZONING ADMINISTRATOR

### Section 31: Appointment and Duties of Zoning Administrator

A. This ordinance shall be administered and enforced by the zoning administrator (administrator) who shall be appointed by the town council.

B. The administrator shall have all necessary authority on behalf of the governing body to administer and enforce the zoning ordinance, including the following:

1. Interpret the provisions of this ordinance, including the authority to make conclusions of law and findings of fact, with concurrence of the attorney for the governing body, in connection with administration, application and enforcement of the ordinance in specific cases, including determinations of rights accruing under Title 15.2-2307, Code of Virginia, 1950 (as amended). (Amended 5/14/98)

2. Conduct inspections of buildings, structures, and uses of land to determine compliance with this ordinance, and, in the case of any violation, to notify in writing the person or persons responsible specifying the nature of the violation and ordering appropriate corrective action. Any written notice of a zoning violation or a written order of the zoning administrator shall include a statement informing the recipient that he may have a right to appeal the same within 30 days in accordance with the provisions of Title 15.2-2311, Code of Virginia, 1950, (as amended) and that the decision shall be final and unappealable if not appealed within thirty days. (Amended 5/14/98)

3. Maintain the zoning map in current status, including appropriate symbols showing the existence of proffered conditions.

4. Maintain permanent and current records required by this ordinance, including but not limited to zoning permits, occupancy certificates, and all official actions on administrative appeals, variances, special exceptions, conditional uses, amendments, changes of zoning district boundaries, reclassification of property and conditional zoning index.

5. Prepare and submit an annual report to the town council on the administration of this ordinance, setting forth such statistical data and information as may be of interest and value in advancing and furthering the purpose of this ordinance.

6. Maintain a true copy of this ordinance in current status and file the same in the office of the Clerk of the Circuit Court of Loudoun County, Virginia.

7. Bring legal action to ensure compliance with the ordinance, including injunction, abatement, or other appropriate action or proceeding.

8. Administer and enforce proffered conditions attached to a rezoning or amendment to a zoning map.

## PART IV. TOWN COUNCIL

### Section 32: The Town Council

A. The town council shall consider special use permit applications in accordance with Articles V and VI of this ordinance.

B. The town council shall consider changes in the text of this ordinance or in the zoning district map in accordance with Article XVIII of this ordinance.

C. The town council shall hear all appeals from the decision of the zoning administrator relating to proffered conditions in accordance with Section 50 of this ordinance.

D. The town council shall follow regular voting, and other requirements of the town code, town charter or general law when acting upon special use permit applications or considering amendments to this ordinance or the zoning district map.

## PART V. HISTORIC DISTRICT REVIEW COMMITTEE

### Section 33: Purpose

The purpose of the Historic District Review Committee shall be to administer the provisions of Part 1 of Article XVII and to advise and assist the Town Council in its efforts to preserve and protect historic, architectural, and archaeological resources in the Town. (Added 1/9/03)

### Section 33.1: Authority and Establishment

The Historic District Review Committee established heretofore pursuant to Section 15.2-2306 of the Code of Virginia shall continue as the Historic District Review Committee for the purposes of this Ordinance. Such body shall also be known by the abbreviation of "HDRC." (Added 1/9/03)

### Section 33.2: Appointment and Terms of Committee Members

A. An historic district review committee, comprised of eight members, shall be appointed by the town council. A majority of the members shall be town residents or owners of both real property and a business within the Historic Middleburg District, and all shall have a demonstrated interest, competence or knowledge of historic preservation within the town. At least one member shall be an architect or architectural historian, and at least two additional members shall have professional training or equivalent experience in architecture, landscape architecture, history, architectural history, archaeology or planning. One member may also be a member of the Planning Commission. (Amended 2/11/99, 1/9/03)

B. The term of office of each member of the committee shall be for three years, and the terms shall be staggered. Appointments shall be made so that all terms expire on the 31st day of December and commence on January 1, unless appointments are made for the unexpired portion of a term. Committee vacancies shall be filled for the unexpired term only within 60 days of their occurrence. A member whose term has expired shall continue to serve until a successor is appointed. (Amended 2/13/97, 1/9/03)

C. Any member may be removed for malfeasance, misfeasance or non-feasance in office, or for other just cause by the appointing authority upon written charges and after a hearing, held at least 15 days after notice is given.

**Section 34: Meetings of the Committee**

A. The committee shall meet at least once a month or frequently enough so that it can take action in conformity with Section 64 (Applications to be Processed Expeditiously). Special meetings may be called by the chairman upon 24 hours notice to each member. (Amended 6/11/98)

B. The committee shall conduct its meetings in accordance with the procedures set forth in Article XVII.

C. All committee meetings shall be open to the public and, whenever feasible, the agenda for each committee meeting shall be made available in advance of the meeting.

**Section 35: Historic District Review Committee Officers**

A. The historic district review committee shall elect one of its members to serve as chairman and preside over committee meetings and one member to serve as vice-chairman. The election shall be held at the first meeting in January of each year. The chairman and vice-chairman shall serve one-year terms and may succeed themselves. Vacancies in these offices may be filled for the unexpired terms only. (Amended 1/9/03)

B. The chairman shall conduct the meeting of the committee, may take part in all deliberations, but shall only vote in cases required to break a tie unless his presence is required in order to achieve a quorum. In an instance in which the chairman's presence is required to achieve a quorum, the chairman shall be a voting member of the committee. (Amended 1/9/03, 4/10/03, 11/18/10)

C. The vice-chairman shall possess the powers and discharge the duties of the chairman when serving as chairman. The vice-chairman may take part in all deliberations and vote on all issues. (Amended 1/9/03, 11/18/10)

D. The committee shall appoint a secretary to prepare minutes of meetings, keep all records and conduct official correspondence.

**Section 36: Quorum and Voting**

A. Four voting members of the committee shall constitute a quorum for the transaction of business at any meeting. A quorum is necessary for the committee to take official action. (Amended 1/9/03, 4/10/03, 11/18/10)

B. All actions of the committee shall require a majority vote of the membership, a quorum being present.

C. A roll call vote shall be taken upon the request of any member.

D. Members shall exempt themselves from voting on any action in which their financial interests or those of their immediate family or employer are directly involved. (Amended 1/9/03)

**Section 37: Powers and Duties of the Historic District Review Committee**

The historic district review committee shall:

A. Assist and advise the town council and planning commission in matters involving historically-significant sites and buildings.

B. Conduct studies deemed necessary by the town council and planning commission concerning means of preservation and utilization of historic assets in the town.

C. Formulate recommendations to the town council concerning the establishment of an appropriate system of markers for selected historic sites and buildings, including proposals for the installation and care of such historic markers.

D. Cooperate with and enlist assistance from the Virginia Department of Historic Resources, the National Trust for Historic Preservation, and other interested parties, both public and private, in its efforts to preserve, restore, and conserve historic landmarks, buildings, sites or areas within the town.

E. Act on applications for certificates of appropriateness, in accordance with the provisions of Article XVII. (Amended 6/11/98)

F. Initiate proposals for additions to or changes in historic district boundaries or creation of new historic districts. (Added 6/11/98)

G. Adopt and maintain written bylaws and any other rules the committee deems necessary for the proper conduct of committee business. (Added 6/11/98)

**Sections 38 through 42: Reserved**

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# ARTICLE IV. APPEALS, VARIANCES AND INTERPRETATIONS

## Section 43: Appeals

A. An appeal to the board of zoning appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the town affected by any decision of the zoning administrator or any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this ordinance. The appellant shall file with the administrator and the board a written notice of appeal specifying the grounds therefor. A notice of appeal shall be considered filed with the administrator and the board when delivered to the town office, and the date and time of filing shall be entered on the notice by the town.

B. An appeal shall be taken within 30 days after the date of the decision or order appealed from.

C. Whenever an appeal is filed, the administrator shall transmit to the board all papers constituting the record upon which the action appealed from was taken.

D. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrator certifies to the board that (by reason of facts stated in the certificate) a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed except by order of the board or a court of record, issued on application of the party seeking the stay, for due cause shown, after notice to the administrator.

E. The board of zoning appeals may reverse or affirm (wholly or partly) or may modify the order, requirement, decision or determination appealed from.

## Section 44: Variances

A. An application for a variance shall be submitted to the board by filing a copy of the application with the administrator. A copy of such application shall be transmitted to the planning commission, which may send a recommendation to the board or appear as a party at the hearing.

B. A variance may be granted by the board if it concludes that the literal enforcement of the ordinance would result in unnecessary hardship for the applicant and that, by granting the variance, the spirit of the ordinance will be observed, public safety and welfare secured, and substantial justice done. No variance shall be authorized by the board unless it finds that:

   1. A property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of this ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the condition, situation or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the use of the property or where the board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of this ordinance;

   2. The strict application of the ordinance would produce undue hardship to the applicant;

   3. The hardship relates to the applicant's land, rather than personal circumstances;

4. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
5. The hardship is not the result of the applicant's own actions;
6. The authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance; and
7. The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

C. In granting a variance the board may impose such reasonable conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

D. The nature of the variance and any conditions attached to it shall be entered on the zoning permit (or the zoning permit may simply note the issuance of the variance and refer to the written record of the variance for further information). All such conditions shall be enforceable in the same manner as any other applicable requirement of this ordinance.

**Section 45: Interpretations of Zoning Map**

A. The board is authorized to hear and decide applications for interpretations of the Zoning District Map where there is any uncertainty as to the location of a district boundary. Other disputed questions of district boundary lines and similar questions may be determined by the board as provided in Section 43, if such questions arise in the context of an appeal from a decision of the administrator.

B. An application for a map interpretation shall be submitted to the board by filing a copy of the application with the administrator. The application shall contain sufficient information to enable the board to make the necessary interpretation.

C. Where a dispute exists as to the boundaries of districts as shown on the Zoning District Map, the following rules shall apply:

1. Boundaries indicated as approximately following or being at right angles to the centerlines of alleys, streets, highways or streams shall be construed to follow such center lines;
2. Boundaries indicated as approximately following lot lines, town limits or extraterritorial boundary lines, shall be construed as following such lines, limits or boundaries;
3. Boundaries indicated as following rivers, creeks and streams or other body of water shall be construed to follow the centerline at low water or at the limit of the jurisdiction, and, in the event of change in the shoreline, such boundary shall be construed as moving with the actual shoreline;
4. Where a district boundary divides a lot or where distances are not specifically indicated on the Zoning District Map, the boundary shall be determined by measurement, using the scale of the Zoning District Map; and
5. Where any street or alley is hereafter officially vacated or abandoned, the regulation applicable to each parcel of abutting property shall apply to that portion of such street or alley added thereto by virtue of such vacation or abandonment.

D. In exercising its authority, the board shall interpret the map in such way as to carry out the intent and purpose of this ordinance for the particular section or district in question. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.

**Section 46: Board Action on Appeals and Variances**

A. With respect to appeals, a motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reason or findings of fact that support the motion.

B. A motion to grant a variance shall make findings as required by this ordinance and shall state with specificity the facts pertaining to the application on which it is founded.

C. A motion to deny a variance may be made on the basis that any one or more of the criteria set forth in Section 44 is not satisfied or that the application is incomplete. Such a motion shall include a statement of the specific reasons or findings of fact that support it.

**Section 47: Board of Zoning Appeals Hearing Required, Notice**

A. No appeal, variance or interpretation shall be decided until a public hearing has been held on such request.

B. The administrator shall schedule a public hearing by the board of zoning appeals upon receipt of a properly filed application for appeal, variance or interpretation. Notice of the public hearing shall be given as required by Title 15.2-2204, Code of Virginia, 1950 (as amended). Due notice shall be given to the parties in interest. (Amended 5/14/98)

**Section 48: Requests to be Heard Expeditiously**

The board shall hear and decide all appeals, variance requests, and requests for interpretations as expeditiously as practicable, but not later than 90 days after a complete application is filed, consistent with the need to follow regularly established agenda procedures, provide notice in accordance with Section 47, and obtain necessary information to make sound decisions.

**Section 49: Decision of Board of Zoning Appeals**

A. Any person or persons jointly or severally aggrieved by any decision of the board of zoning appeals, or any taxpayer or any officer, department, board, or bureau of the town, may present to the circuit court of Loudoun County a petition specifying the grounds on which aggrieved within 30 days after the filing of the decision in the office of the board.

B. Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the board of zoning appeals and shall prescribe therein the time within which a return thereto must be made and served upon the petitioner's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

C. The board of zoning appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as

may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

D. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a commissioner to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

E. Costs shall not be allowed against the board unless it shall appear to the Court that it acted in bad faith or with malice in making the decision appealed from. In the event the decision of the board is affirmed and the court finds that the appeal was frivolous, the court may order the person or persons who requested the issuance of the writ of certiorari to pay the costs incurred in making a return of the record pursuant to the writ of certiorari.

**Section 50: Proffer Appeals to be Heard by Council**

As provided in Section 32.C. of this ordinance, appeals from a decision of the zoning administrator regarding interpretations of proffered conditions shall be decided by the town council in accordance with the requirements of Title 15.2-2301, Code of Virginia, 1950 (as amended). (Amended 5/14/98)

**Sections 51 through 54: Reserved**

# ARTICLE V. ZONING, SPECIAL USE, COMMISSION AND TEMPORARY USE PERMITS

## Section 55: Zoning Permits

A. A zoning permit shall be required before any use may be substantially changed; substantial clearing, grading, or excavation may be commenced; and buildings or other substantial structures may be constructed, erected, moved or substantially altered.

B. Zoning permits shall be issued only when a review of the application submitted, including any plans required, indicates that the development will comply with the provisions of this ordinance. Such plans and applications as finally approved shall be incorporated into any permit issued and all development shall occur strictly in accordance with such approved plans and applications.

C. A zoning permit shall be issued in the name of the applicant, shall identify the property involved and the proposed use, shall incorporate by reference any plans submitted and shall contain any special conditions or requirements lawfully imposed.

D. A completed application for a zoning permit shall be submitted to the administrator.

E. The zoning permit for all uses and the occupancy of structures shall be issued by the administrator. (Amended 9/22/11)

F. The council or administrator shall issue the zoning permit unless finding, after review of the application, that:

   1. The application is incomplete; or,
   2. The development will not comply with one or more requirements of this ordinance if completed as proposed in the application.

G. The administrator may issue a zoning permit authorizing commencement of the intended use or occupancy of buildings prior to the fulfillment of all the requirements of this ordinance, if weather conditions or other factors beyond the control of the zoning permit recipient (exclusive of financial hardship) make it unreasonable to require the recipient to comply with all of the requirements. The permit recipient shall provide a performance bond or other security satisfactory to the administrator to ensure that all requirements of this ordinance will be fulfilled within six months after issuance of the zoning permit. (Amended 9/22/11)

H. A zoning permit shall expire automatically within one year of the date of issuance if the use authorized or work required has not commenced. If, after work is begun, such work is suspended for a period of one year, the zoning permit shall automatically expire. The administrator may extend a permit without charge for additional periods not to exceed six months, if:

   1. The permit has not yet expired;
   2. The permit recipient has proceeded with due diligence and in good faith; and,
   3. Conditions have not substantially changed.

## Section 56: Special Use Permits

An application for a special use permit shall be submitted to the administrator on a form provided by the administrator. The application shall include all information required to allow the commission and council to fully consider the request.

**Section 57: Special Use Permits; Recommendation by Planning Commission**

The application, when complete, shall be forwarded to the commission for its review and recommendation. The commission shall hold a public hearing in conformity with Title 15.2-2204, Code of Virginia, 1950 (as amended) and Article VI, and submit its recommendation to the council within 30 days of the public hearing. (Amended 5/14/98)

**Section 58: Special Use Permits; Council Action**

The council shall hold a public hearing in conformity with Title 15.2-2204, Code of Virginia, 1950 (as amended) and Article VI, and shall approve the special use permit within 60 days if it concludes that: (Amended 5/14/98)

A. The requested use is permitted by special use permit in the zoning district where proposed.

B. The development will comply with all requirements of this ordinance.

C. The development, if completed, will:

   1. not materially endanger the public health or safety;
   2. not substantially injure the value of adjoining or abutting property;
   3. be in harmony with the area in which it is to be located; and
   4. be in general conformity with the Middleburg Comprehensive Plan or other plans adopted by the council.

**Section 59: Special Use Permits; Conditions of Approval**

A. The council may, when approving a special use permit, impose reasonable conditions to ensure that the development in its proposed location will:

   1. not endanger the public health or safety;
   2. not injure the value of adjoining or abutting property;
   3. be in harmony with the area in which it is located; and,
   4. be in conformity with the Middleburg Comprehensive Plan or other plans adopted by the council.

B. Conditions may apply, inter alia, to the method and hours of operation of the proposed use and may include provisions for fencing, planting or landscaping and other reasonable requirements necessary to protect public health and safety. In addition, the council may limit a special use permit to a specified duration.

C. All conditions imposed by the council shall be listed on the special use permit.

D. All additional conditions or requirements authorized by this section shall be enforceable in the same manner and to the same extent as any other applicable requirements of this ordinance.

**Section 60: Special Use Permits; Special Uses of Older Structures**

In addition to the criteria above, special uses of older structures shall meet the following requirements:

A. Any such use shall be established only in a dwelling unit that:
   1. was in existence before 1875;
   2. is located on Washington Street; and
   3. is the principal residence of the proprietor.
B. No structural alteration shall be made in connection with such special use unless the change does not exceed 25 percent of the total floor area of the building and will produce an exterior appearance that is residential in character.
C. No more than one-third of the total floor area shall be used for the special use.
D. No goods shall be displayed outdoors.
E. No sign shall be displayed in connection with any such use other than one identification sign not exceeding six square feet in area.
F. No automobile parking space shall be located in any required setback area.
G. No more than two employees (other than the proprietor) shall be engaged in the special use.
H. Automobile parking spaces shall be provided on the site in sufficient number to accommodate all employees and persons who may be expected to visit the establishment.
I. The town council shall not issue a special use permit if the special use proposed will create a vehicular or pedestrian traffic hazard in the opinion of the town council.

**Section 61: Special Use Permits; Short-Term Rentals** (Added 10/13/16; Amended 12/8/22)

In addition to the criteria above, the additional, minimum standards set forth below shall apply to all applications for Short-Term Rentals. These are intended to serve as minimum standards for consideration of such uses and are not intended to substitute for other applicable provisions of this Ordinance or for additional and/or more stringent conditions that may be imposed in connection with specific special use permit approvals.

A. Any such use shall only be established in a single family detached dwelling used primarily for residential use (used for residential occupancy 183 days or more per calendar year).
B. No accessory dwelling unit, whether within the primary residence or in an accessory structure, shall be used for, or created for use as, a short-term rental.
C. Each occurrence of such use shall be for a minimum two-night stay; single night rentals are prohibited.
D. Minimum lot size: 10,000 square feet.
E. Minimum separation of 25’ from the dwelling in which such use is located to any neighboring residential dwelling.
F. Maximum number of guests allowed: 2, plus 2 per guest bedroom.
G. All parking for such use shall be located off-street and in designated, improved areas only. The minimum number of spaces must be provided in accordance with Section 222.
H. The maximum number of nights (cumulative) allowable for consideration of such use during any calendar year shall be 180 nights.

I. There shall be no signage or any other indication from exterior of property that it is being used other than as a residential dwelling.

J. The dwelling shall be connected to public water and sewer.

K. The property owner shall maintain a minimum of $500,000 liability insurance.

L. Working fire extinguishers, smoke detectors and carbon monoxide detectors shall be provided and accessible to guests at all times.

M. A property management plan shall be included as part of the application and kept current (verified/renewed annually at a minimum). Such plan will include, at a minimum: 24 hour contact information for a responsible party (owner on premise or a management entity within 20 miles of Town); method(s) by which bookings will be facilitated; procedures by which guests will check-in (such check-in shall be in-person with the responsible party); procedures for collection of fees and taxes; floor plan and site sketch; provisions for buffering and/or screening from neighboring residential properties; plans for addressing routine and emergency maintenance (in-house maintenance by management entity, list of contractors on-call, etc).

N. The property owner shall sign and provide a declaration to the effect that the dwelling meets all applicable building codes.

O. An information package shall be provided to guests upon check-in and include, as a minimum: responsible party contact information for maintenance or other issues; emergency/public safety contact information; an evacuation plan; provisions for solid waste disposal (trash and recycling); and, information on the Town noise ordinance.

P. The property shall be made available for entry and inspection upon request by the Zoning Administrator, and other officials the Zoning Administrator may deem necessary, to verify that the use is being maintained in accordance with the Special Use Permit. Such inspection shall take place at least one time per calendar year or more frequently as deemed necessary by the Zoning Administrator.

Q. The owner shall apply for and actively maintain a Town Business and Occupational License and shall collect and remit transient occupancy taxes and any other applicable state and local taxes as required.

**Section 62: Commission Permits**

A. Unless the administrator determines that they are features shown on the comprehensive plan or part thereof or are deemed so under subsection D., no street or connection to an existing street, park or other public area, public building or public structure, public utility facility or public service corporation facility other than railroad facility, or an underground natural gas or underground electric distribution facility of a public utility as defined in § 56-265.1(b), Code of Virginia, 1950 (as amended) within its certified service territory, whether publicly or privately owned, shall be constructed, established or authorized, unless and until the general location or approximate location, character, and extent thereof has been submitted to and approved by the planning commission as being substantially in accord with the adopted comprehensive plan or part thereof. In connection with any such determination the commission may, and at the direction of the council shall, hold a public hearing, after notice as required by § 15.2-2204, Code of Virginia, 1950 (as amended). (Amended 5/14/98; 11/08/07)

B. The commission shall communicate its findings to the council, indicating its approval or disapproval with written reasons therefor. The council may overrule the action of the

commission by a vote of a majority of its membership. Failure of the commission to act within 60 days of such submission, unless such time shall be extended by the council, shall be deemed approval. In case of disapproval, the owners or their agents may appeal the decision of the commission to the council within ten days after the decision of the commission. The appeal shall be by written petition to the council setting forth the reasons for the appeal. The appeal shall be heard and determined within 60 days from its filing. A majority vote of the council shall overrule the commission.

C. Widening, narrowing, extension, enlargement, vacation or change of use of streets or public areas shall likewise be submitted for approval, but paving, repair, reconstruction, improvement, drainage or similar work and normal service extensions of public utilities or public service corporations shall not require approval unless such work involves a change in location or extent of a street or public area. (Amended 11/08/07)

D. Any public area, facility or use as set forth in subsection A. which is identified within, but not the entire subject of, a subdivision or site plan application or both may be deemed a feature already shown on the adopted comprehensive plan, and, therefore, excepted from the requirement for submission to and approval by the commission or council; provided that the council has by ordinance or resolution defined standards governing the construction, establishment or authorization of such public area, facility or use or has approved it through the acceptance of a proffer made pursuant to Section 257.

E. Approval and funding of a public telecommunications facility by the Virginia Public Telecommunications Board pursuant to Article 6 of Chapter 35.2 of Title 2.1, Code of Virginia, 1950 (as amended) shall be deemed to satisfy the requirements of this section with the exception of television and radio towers and structures not necessary to house electronic apparatus, provided the provisions of § 15.2-2232E., Code of Virginia, 1950 (as amended) have been met. The exemption provided in this paragraph shall not apply to facilities existing or approved by the Telecommunications Board prior to July 1, 1990. (Amended 5/14/98)

F. The administrator shall issue a commission permit following approval by the commission or council.

**Section 63: Certificate of Appropriateness Required in Certain Instances.**

In addition to any other permit or approval required by this ordinance, no building or structure, including signs, within the historic district may be demolished, erected, reconstructed, altered, relocated or restored except in conformity with the provisions of a certificate of appropriateness issued in accordance with the provisions of Article XVII.

**Section 64: Applications to be Processed Expeditiously**

Recognizing that inordinate delays in acting upon appeals or applications may impose unnecessary costs on the appellant or applicant, the town shall make every reasonable effort to process appeals and permit applications as expeditiously as practicable, consistent with the need to ensure that all development conforms to the requirements of this ordinance.

**Section 65: Temporary Uses/Zoning Permits [added 4-9-09]**

These uses are permitted in all zoning districts, subject to the following.

A. Construction Related Temporary Uses

1. Construction and Sales Trailers: Temporary buildings, including but not limited to, construction and sales trailers, and storage of materials are permitted in conjunction with the construction of a building, buildings, subdivision, infrastructure, or development when limited to the duration of the construction. Temporary buildings may be erected after preliminary subdivision plat or site plan approval so long as zoning requirements are met for the lot on which the temporary buildings are placed. All trailers must obtain an annual zoning permit valid for a period of one year from the administrator and all appropriate permits from the county must be obtained. Upon reapplication for continuance of a zoning permit, the administrator shall perform an inspection of the progress of the project associated with the temporary building(s) for evidence of sufficient progress. If the administrator finds that the project has not made sufficient progress towards completion, the applicant shall be required to obtain a new zoning permit from the Middleburg Town Council. Such temporary construction trailers for new construction shall be allowed for as long as construction is taking place and shall be removed as a condition of final occupancy.
2. Portable Restrooms: One portable or temporary restroom facility is allowed on an approved construction site for duration of the project. The placement of this type of structure is limited to the lot on which the actual construction was occurring and must be properly screened as to not impact the surrounding neighborhood.
3. Model Homes: Single family detached model homes are permitted in all districts where residential uses are allowed. Single family detached model homes may be constructed prior to record plat approval so long as zoning requirements are met for the lot on which the home is constructed and appropriate building permits have been obtained. If a model home has been constructed prior to record plat approval, it shall be depicted on the record plat. Single family attached model homes, multifamily model units, and model home courts are permitted subject to first obtaining record plat or site plan approval. In addition, if any model home incorporates features that are atypical to the ultimate residential use of the home, such as, but not limited to, utilization of the garage for a sales office without the provision of adequate on-site parking, or provision of a centralized parking area for a model court, then the use is also subject to review and approval through a site plan amendment process. Alternatively, the model unit or model court may be incorporated in the construction plans and profiles of the applicable development subdivision or site plan. The town may require a bond as appropriate to ensure that the atypical features including temporary parking lots will be removed or brought into conformance prior to conversion of the unit for residential occupancy. Notwithstanding, nothing herein shall be construed so as to require a garage in a model home to be utilized for parking, if the unit or lot otherwise meets the parking requirements of this ordinance. A model home shall obtain an occupancy permit prior to residential occupancy. Model homes are required to renew their permit every 24 months and convert the structure to a single family detached home once all of the homes on the site have been sold.

B. Temporary Sales: Temporary sales of food, produce, Christmas trees, and regional goods, may be permitted on application for a temporary zoning permit to the Middleburg Town Council. Such permit may impose conditions necessary to alleviate any adverse impacts such as provisions for hours of operation, adequate parking, traffic safety, fire safety, hours of operation, provision for sewage disposal, and other health and safety concerns the Zoning Administrator may deem necessary, and the posting of a bond to ensure timely removal of structures and materials and restoration of the area. A sketch plan shall be required to be submitted to the Zoning Administrator identifying what the vendor would offer, the equipment that would be placed on the temporary sales site, the access and site clearances. A temporary

zoning permit for temporary sales shall be valid for a period not to exceed 15 days, unless extended, and shall require that all structures and materials be removed within such time period. At a minimum:

1. Structures for temporary sales shall not exceed 400 square feet in floor area nor be located in a right of way or prescriptive easement of a road.
2. Entrances and exits to roads shall be clearly marked.
3. Entrances and exits shall be so located as to provide safe ingress and egress from roads and shall be channeled to prevent unrestricted access to and from the premises.
4. No more than two (2) signs consistent with this ordinance shall be permitted.

C. Itinerant Vendors: Itinerant vendors may be permitted on commercially zoned lots on application for a temporary zoning permit to the Zoning Administrator. Such permit may impose conditions necessary to alleviate any adverse impacts such as provisions for hours of operation, adequate parking, traffic safety, fire safety, hours of operation, provision for sewage disposal, and other health and safety concerns the Zoning Administrator may deem necessary, and the posting of a bond to ensure timely removal of structures and materials and restoration of the area. Any temporary permit issued for an itinerant vendor must conform to the following:

1. The vendor must be an owner of a business within the corporate limits of the Town of Middleburg.
2. The vendor must obtain any and all licenses from the Town of Middleburg, the Virginia Health Department and the County of Loudoun and any other agency deemed necessary by the zoning administrator and present those permits as a part of the initial zoning permit application.
3. Permission from the property owner must be obtained, in writing, prior to any temporary permits being issued.
4. Any itinerant vendor wishing to operate within the Town of Middleburg on a lot that is not zoned commercial must apply and be granted a special exception.

D. Portable On Demand Storage: Portable on demand storage (PODS) units shall be allowed on-site for up to 30 days, unless otherwise approved by the administrator. A property owner or tenant may rent and use a portable storage unit on residential property in accordance with provisions in this section when the following conditions are met:

1. The unit is no larger than eight feet by eight feet by sixteen feet.
2. There are no more than one portable storage units for any address at any one time and shall not be located in the front setback unless approved by the administrator.
3. The portable storage unit is used only for the temporary storage of household goods and related items. The portable storage unit may not be used for construction materials or waste.
4. The portable storage is not placed on the property as an accessory structure.
5. The portable storage unit is placed on an impervious surface.
6. On duplex, townhouse, or multi-family properties, placement of the unit must be approved by an appropriate management or ownership entity to ensure safe and convenient access to required parking spaces, driveways, and pedestrian pathways and to ensure that the unit does not obstruct emergency access or infringe on required landscaped areas.

7. The Zoning Administrator is notified at least three business days prior to placing the unit on the site.

E. Dumpsters: Roll-off dumpster on residential property are allowed on-site for up to 30 days, unless otherwise approved by the administrator. A property owner or tenant may rent and use a roll-off dumpster on the property in accordance with provisions of this section when the following conditions are met:

1. The Zoning Administrator is notified at least three business day prior to placing the unit on the site.
2. The unit has a maximum capacity of 30 cubic yards, or is no larger than eight feet by eight feet by sixteen feet and shall not be located in the front setback unless approved by the administrator.
3. The dumpster is used only for disposal of acceptable waste and shall not become a nuisance, attract vermin or produce offensive odors.
4. On duplex, townhouse, or multi-family properties, placement of the unit must be approved by an appropriate management or ownership entity to ensure safe and convenient access to required parking spaces, driveways, and pedestrian pathways and to ensure that the unit does not obstruct emergency access or infringe on required landscaped areas.

F. Right-of-Way Prohibition: Temporary uses in public rights-of-way and on other town property are prohibited. Retail sales or display of goods, products, or services and any associated signage not specifically authorized by this ordinance, within the public right-of-way or on other town property is prohibited except as part of a town-recognized event or as authorized by the Zoning Administrator. See also the Middleburg Town Code Section 91-3, Disturbance or interfering with public right-of-way.

**Section 66: Inactive Applications** (added 5/8/2014)

A. Any site plan application, subdivision application, or other approval request provided by this ordinance that has been officially accepted by the Zoning Administrator as a complete application shall be deemed inactive by the Middleburg Planning Commission based on a finding that:

1. The application has been suspended by written request of the applicant for a period exceeding six months; or
2. There has been no substantial advancement of the application by the applicant for a period exceeding six months; (i.e., cases where the applicant is required to re-submit application materials to address referral comments from staff or other agencies but has failed to do so within six months following the receipt of the comments) or
3. Within six months after obtaining a Certificate of Appropriateness (COA) approval through the Historic District Review Committee, there has been no substantial advancement of the application by the applicant, (i.e., cases where the applicant is required to re-submit application materials after obtaining a COA, but has failed to do so within six months following the receipt of the COA) if applicable.

B. The Zoning Administrator shall notify the applicant in writing that an application has been deemed inactive by the Middleburg Planning Commission and will be automatically withdrawn unless the applicant takes action to revive the application according to the Zoning Administrator's discretion within thirty (30) days. Any re-submittal of the application thereafter

by the applicant will be treated as a new application for purposes of review, scheduling, and payment of application processing fees.

**Section 67 through 69: Reserved**

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# ARTICLE VI. ADVERTISEMENT AND NOTICES OF HEARINGS FOR PLANS, ORDINANCES, AMENDMENTS, APPEALS AND APPLICATIONS

(Article VI repealed in its entirety and reenacted 11/9/23)

## Section 70: Hearings Required

Public hearings for consideration of Plans, Ordinances, amendments, appeals and other specified applications shall be held by the Town Council, Planning Commission and Board of Zoning Appeals as required by Title 15.2, Chapter 22, Code of Virginia, 1950 (as amended).

## Section 71: Advertisement and Notices of Hearings

A. Advertisement and notices of hearings for Plans or Ordinances, or amendments thereto, and other notices as may be stipulated therein, shall be provided in accordance with § 15.2-2204, Code of Virginia, 1950 (as amended).

B. For any application for a Zoning Map Amendment, Special Use Permit, Appeal or Variance for a single parcel of land, the Administrator or his authorized representative shall post a sign or signs on the property involved at least 14 days prior to the hearing indicating the type of application and the date and place of the public hearing. The sign(s) shall be placed so as to be clearly visible from each public street abutting the property. If no public street abuts the property, the sign(s) shall be placed at an access point to the property or otherwise located at the discretion of the Administrator.

C. For any such applications in subsection B. above involving multiple parcels of land, signs shall be placed at intervals within the affected area as determined by the Administrator.

## Section 72: Maintenance and Removal of Signs

A. Any sign posted in accordance with Section 71 shall be maintained at all times by the applicant up to the time of the hearing.

B. No person, except the Administrator or his authorized representative, shall remove or tamper with any sign posted in accordance with Section 71.

## Sections 73 through 76: Reserved

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# ARTICLE VII. ENFORCEMENT AND REVIEW

## Section 77: General Provisions

Any building erected or improvements constructed contrary to any provision of this ordinance or any use of any building or land which is conducted, operated or maintained contrary to any provision of this ordinance or plan approved under the provisions of this ordinance shall be unlawful.

## Section 78: Complaints Regarding Violations

Whenever the administrator receives a written, signed complaint alleging a violation of this ordinance, he shall investigate the complaint, take action as he deems warranted, and inform the complainant in writing what, if any, action has been or will be taken.

## Section 79: Persons Liable

The owner, tenant, or occupant of any building or land or part thereof or other person who participates in, assists, directs, creates, or maintains a violation of this ordinance shall be subject to the penalties and remedies contained in this ordinance.

## Section 80: Procedures Upon Discovery of Violations

A. If the administrator finds that any provision of this ordinance is being violated, he shall send a written notice to the person responsible for the violation, indicating the nature of the violation and ordering the action necessary to correct it. Additional written notices may be sent at the administrator's discretion.

B. The notice may state what action the administrator intends to take if the violation is not corrected and shall advise the violator that the administrator's decision may be appealed to the board of zoning appeals in accordance with Section 43.

C. The administrator may seek enforcement by invoking any of the penalties or remedies authorized in Section 81 without prior written notice notwithstanding the provisions of subsections A. and B. above.

## Section 81: Penalties and Remedies for Violations (Amended 12/10/20)

A. Criminal penalties

1. The violation of any provision of this ordinance or failure to comply with any of its requirements, including violations of any conditions enacted with grants of variances, special use permits or proffers, shall constitute a misdemeanor punishable by a fine of not more than $1,000.00.

2. If the violation is uncorrected at the time of conviction, the court shall order the violator to abate or remedy the violation in compliance with the zoning ordinance, within a time period established by the court.

   a. Failure to remove or abate a zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by a fine of not more than $1,000;

b. any such failure during a succeeding 10-day period shall constitute a separate misdemeanor offense punishable by a fine of not more than $1,500; and,

c. any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offense for each 10-day period punishable by a fine of not more than $2,000.

B. Civil Penalties

1. Any violation of the following provisions of this ordinance shall be punishable by a civil penalty as provided in this section:

   a. Article XIV: Signs

   b. Uses not permitted in district

   c. Article V, Section 55: Zoning Permits

   d. Non-conformance with approved plans

   e. Violation of permit conditions

2. Except for any violation resulting in injury to any persons, the penalty for any one violation of any of the provisions scheduled in subsection 1. above shall be a civil penalty of $200 for the initial summons and $500 for each additional summons.

3. Each day during which the violation is found to have existed shall constitute a separate offense. However, specified violations arising from the same operative set of facts shall not be charged more frequently than once in any 10-day period, and a series of specified violations arising from the same operative set of facts shall not result in civil penalties which exceed a total of $5,000.

4. Designation of a particular zoning ordinance violation for a civil penalty pursuant to this section shall be in lieu of criminal sanctions, and except for any violation resulting in injury to persons, such designation shall preclude the prosecution of a violation as a criminal misdemeanor, provided, however, that when such civil penalties total $5,000 or more, the violation may be prosecuted as a criminal misdemeanor.

5. The zoning administrator or his deputy may issue a civil summons as provided by law for a scheduled violation after serving notice of violation in accordance with Section 80 and if such violation has not ceased within the time specified in such notice. Any person summoned or issued a ticket for a scheduled violation may make an appearance in person or in writing by mail to the Town treasurer prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such persons shall be informed of their right to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of court.

6. If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided for by law. In any trial for a scheduled violation authorized by this section, it shall be the burden of the Town to show the liability of the violator by a preponderance of the evidence. If the violation remains uncorrected at the time of the admission of liability or finding of liability, the court may order the violator to abate or remedy the violation in order to comply with the zoning ordinance. Except as otherwise provided by the court for good cause shown, any such violator shall abate or remedy the violation within a period of time as determined by the court, but not later than

six months of the date of admission of liability or finding of liability. Each day during which the violation continues after the court-ordered abatement period has ended shall constitute a separate offense. An admission of liability or finding of liability shall not be a criminal conviction for any purpose.

C. This ordinance may also be enforced by any appropriate equitable or legal action.

**Section 82: Permit Revocation**

A. A zoning, sign or special use permit may be revoked by the permit-issuing authority (in accordance with the provisions of this section) if the permit recipient fails to develop or maintain the property in accordance with the plans approved, the requirements of this ordinance, or any additional requirements lawfully imposed by the permit-issuing authority.

B. All notice and hearing requirements of Article VI applicable to granting a special use permit shall be complied with before the special use permit may be revoked. The notice shall inform the permit recipient of the alleged grounds for the revocation.

   1. The burden of presenting evidence sufficient to authorize the revocation of the permit shall be upon the party advocating revocation.

   2. A motion to revoke a permit shall include a statement of the specific reasons or findings of fact that support the motion.

C. Before a zoning or sign permit may be revoked, the administrator shall give the permit recipient 10 days notice of intent to revoke the permit and shall inform the recipient of the alleged reasons for the revocation and of his right to obtain an informal hearing on the allegations. The administrator shall provide a written statement of the decision and the reasons therefore to the permittee if the permit is revoked.

D. No person may continue to use land or buildings in the manner authorized by any zoning, sign, or special use permit after the permit has been revoked in accordance with this Section.

**Sections 83 through 86: Reserved**

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# ARTICLE VIII. NONCONFORMING SITUATIONS

## Section 87: Application and Intent

This Article applies to existing lots, structures, or uses of land or structures which were legal prior to the effective date or amendment of this ordinance but which do not or would not conform to regulations and restrictions under the terms of this ordinance or future ordinance amendments. Except as expressly permitted by this article, nonconformities shall not be enlarged, expanded or extended, or be used as the basis for adding other structures or uses prohibited elsewhere in the same district.

## Section 88: Completion of Nonconforming Projects

All nonconforming projects for which a permit was issued legally, and actual construction was begun before the effective date or amendment of this ordinance, and upon which actual building construction is carried on diligently until completion, may be completed in accordance with the terms of their permits, so long as the permits were validly issued and remain unrevoked and unexpired. Actual construction is defined as the placing of construction materials in permanent position, fastened in a permanent manner. Where excavation, demolition or removal of an existing building has been substantially begun prior to rebuilding, such excavation, demolition or removal shall be deemed to be actual construction, provided that the work shall be carried on diligently.

## Section 89: Nonconforming Lots of Record

In any district, permitted structures may be constructed or enlarged on any single nonconforming lot of record, notwithstanding limitations imposed by other provisions of this ordinance. Such nonconforming lot shall have lot access as required by Section 13. The lot may be used for a single-family detached dwelling in any residential district and any permitted use within any non-residential district provided front, side and rear yard requirements are met. (Amended 9/26/24)

## Section 90: Prohibition Against Creation of Other Lots Below Width and Area Requirements for District

No lot, parcel or portion thereof shall be used or sold in a manner which decreases compliance with lot width and area requirements established by this ordinance, nor shall any division be made which creates lot area or width below the minimum requirements imposed by this ordinance.

## Section 91: Highway Realignment or Condemnation

Any lot which, because of the realignment of a Federal or State highway or because of condemnation proceedings, has been reduced in size to an area less than that required by this ordinance, shall be considered a nonconforming lot of record subject to the provisions of Section 89; and any legal use or structure existing at the time of such highway realignment or condemnation proceedings which would no longer be permitted by this ordinance shall be considered a nonconforming use or structure.

**Section 92: Nonconforming Uses of Land and/or Structures**

Nonconforming situations that were otherwise legal on the effective date of this ordinance may be continued provided:

A. No nonconforming use (structure and/or activity) shall be enlarged, increased, or extended to occupy a greater area of land than was occupied on the effective date or amendment of this ordinance unless the enlargement, increase or extension does not result in an increase in nonconformity.

B. No nonconforming use and/or structure shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use and/or structure on the effective date or amendment of this ordinance unless the move results in decreasing the degree of nonconformity or results in conformity with the requirements for the district.

C. No additional nonconforming structures shall be constructed in connection with any nonconforming use of land. No additional uses which would be prohibited generally in the zoning district involved shall be permitted.

D. A use that is accessory or incidental to a permitted principal use cannot be made the basis for a nonconforming principal use.

E. A nonconforming use may be extended throughout any portion of a building that was manifestly arranged or designed to accommodate such use at the time of adoption or amendment of this ordinance. However, no such use shall be extended to additional buildings or to land outside the original building.

F. If no structural alterations are made, any nonconforming use of a structure, or structure and land, may, as a special exception, be changed to another, more restricted nonconforming use provided that the planning commission, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. The planning commission may require appropriate conditions and safeguards in accord with the provisions of this ordinance when permitting such change.

G. When any nonconforming use, lot, or structure and use in any combination, is replaced by a permitted use or structure, the use shall thereafter conform to the regulations for the zoning district, and no nonconforming use and/or structure shall be reestablished.

H. A nonconforming use may continue regardless of any change in title or possession or renewal of any lease for the lot or structure. Subject to the provisions of Section 93 below, nonconforming structures may be restored if damaged or destroyed; however, any expansion of the original structure must conform to the requirements of this ordinance.

I. If any nonconforming use (structure or activity) is discontinued for more than two years after the effective date of this ordinance it shall be deemed abandoned and any subsequent use of such land, building or structure shall conform to the regulations contained in this ordinance for the zoning district in which the land is located.

**Section 93: Repairs and Maintenance**

A. On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done on ordinary repairs, or on repair or replacement of walls, fixtures, wiring, or plumbing, provided that the square footage existing when it became nonconforming shall not be increased. If a nonconforming structure or portion of a structure, or a structure or portion of a structure containing a non-conforming use, becomes physically unsafe or illegal due to lack of repair and maintenance, and is declared by any duly authorized official to be unsafe or illegal by reason of physical condition, it may thereafter be restored, repaired, rebuilt or used in accordance with the prior nonconformity provided that the square footage existing when it became nonconforming shall not be increased.

B. Nothing in this ordinance shall be deemed to prevent strengthening or restoring to a safe condition any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

**Section 94: Uses Under Special Exception Provisions not Nonconforming Uses**

Any use which is permissible as a special exception in the applicable zoning district under the terms of this ordinance (other than a change from one nonconforming use to another approved by the planning commission) shall be considered a conforming use if lawfully commenced and continued on the effective date of this ordinance.

**Section 95: Verification of Nonconforming Uses**

A. The lawful status of a nonconforming use shall be verified by the zoning administrator prior to any change in the use. The administrator may also verify the lawful status of a nonconforming use not proposed to change, upon request of the owner of the property on which the use is located, or upon the request of a neighboring property owner.

B. The administrator shall determine the following when verifying the lawful status of a nonconforming use:

   1. Whether the use is in fact a lawful nonconforming use as defined by this ordinance; and, if so, then

   2. The location and gross floor area (in square feet) of all buildings associated with the nonconforming use; and

   3. The location, use and size of all structures other than buildings associated with the nonconforming use; and

   4. The land area (in square feet) devoted to all aspects of the nonconforming use (including, but not limited to, buildings, parking, outside storage, travelways, and open spaces); and

   5. A description of the principal use(s) and all accessory uses that make up the lawful nonconforming use as a whole.

C. The zoning administrator shall classify the overall nonconforming use based on the zoning district in which the use would be a permitted use if the administrator verifies that the use of any portion is a lawful nonconforming use. The assigned classification shall be based on the zoning district that is the least intense of all districts where the use would be permitted if the use would be permitted in more than one district. The assignment of such a zoning classification shall not operate to change the zoning of the property on which the

nonconforming uses is located, but shall be used only in determining the applicable criteria for change of the nonconforming use under Section 92 of this ordinance.

D. The decision of the administrator under subsections A. and B. shall be final after 30 days, unless an appeal is filed to the board of zoning appeals in accordance with Section 43 of this ordinance.

E. The decision of the administrator shall be based on information provided by the owner of the property on which the nonconforming use is located, information provided by other persons with knowledge of the property, and any other information available to the administrator as public record. Such information may include, but shall not be limited to, permits, licenses, tax records, receipts, business records, photographs, plats, plans, bills, utility information, assessment information, and sworn affidavits from individuals with personal knowledge of the use and/or the property on which the use is located.

F. The administrator shall keep a record of all verified nonconforming uses. The owner or operator of a verified nonconforming use shall file a report with the administrator not less than two years after the original date of verification, on forms available from the town office, showing that the nonconforming use has not ceased for a two-year period, or been abandoned, and that the use is being operated in accordance with the decision rendered as part of the nonconforming use verification process, and any subsequent changes approved.

**Sections 96 through 100: Reserved**

# ARTICLE IX. A-C AGRICULTURAL CONSERVANCY ZONING DISTRICT

## Section 101: Purpose

This district is designed to accommodate and encourage the continuation of agricultural uses within the town and to maximize and preserve areas of open space. The district also permits clustered single-family residential development and certain low-intensity non-residential uses that would maintain the majority of open space in these areas, while accommodating uses that would complement and enhance the historic character of the town. It is intended that uses in this district will be designed in a manner that:

A. Conserves open land around the town's periphery, including those areas containing historic resources or sensitive natural features such as woodlands, steep slopes, streams, floodplains and wetlands, by setting them aside from development;

B. Promotes rural agricultural and equestrian uses;

C. Protects productive agricultural soils for continued or future agricultural use and conserves blocks of land large enough to allow for efficient farm operations;

D. Reduces erosion and sedimentation by the retention of existing vegetation;

E. Provides for the maintenance of open land within the town which can help to provide opportunities for recreation, protect scenic and historic views, minimize the visual impact of new development from existing roads, and preserve the historic rural setting surrounding the town that is vital to the town's tourism industry;

F. Promotes a traditional development pattern that is compatible with the existing historic character of the town and which is connected to the existing fabric of the town, while minimizing adverse impacts on existing neighborhoods; and

G. Provides greater design flexibility and efficiency in the siting of infrastructure, including the opportunity to reduce street lengths, utility runs, and the amount of paving.

## Section 102: Permitted Uses

The following uses are permitted in this district:

A. Agriculture, including crop farms, horse farms, livestock farms, but excluding hog and poultry farms, commercial stockyards and feed lots, and commercial greenhouses; Horticulture, including the growing of fruits, vegetables, flowers, or ornamental plants; vineyards.

B. Conservancy subdivision.

C. Equestrian facilities, indoor or unlighted outdoor, non-spectator.

D. Single-family detached farmhouse with no more than one tenant house located on a parcel of at least twenty (20) acres with an active, permitted agricultural, horticultural or vineyard use.

E. Public parks and public recreational facilities, unlighted.

F. Public Uses, such as governmental or public utility buildings or uses.

G. Winery, without retail sales or special events.

**Section 103: Accessory Uses and Structures**

The following accessory uses and structures are permitted in this district:

A. Home Occupations

B. Accessory uses and structures customarily appurtenant to a permitted or approved special exception use, including barns and bona fide farm buildings, private and farm garages, and greenhouses without on-site sales. Except for wayside stands, accessory structures shall only be located in the side or rear yards.

C. Wayside stands, subject to the following limitations:

1. The stand shall be operated only during crop-growing season and during daylight hours, with no exterior lighting, and shall be for the express purpose of sale of agricultural products grown on the same property.
2. Minimum lot size: 80,000 square feet.
3. Any structure shall not exceed 400 square feet in gross floor area and shall be compatible in architectural style and building materials with the historic character of Middleburg.
4. The stand shall be located no closer than thirty (30) feet from any property line.
5. The stand shall be located to ensure adequate off-street parking and safe access to the adjacent street as determined by the Administrator.

**Section 104: Special Exception Uses**

The following uses are permitted in this district subject to securing a special use permit as provided in Article V and subject to the standards of Section 107:

A. Animal hospital

B. Bed and breakfast

C. Cemetery

D. Colleges or Universities

E. Community utility facility, provided any such facility is located on public property

F. Conference Center (Amended 5/12/06)

G. Corporate Office

H. Corporate Retreat (Amended 5/12/06)

I. Country Club (Amended 5/12/06)

J. Country Inn

K. Cultural Center, Non-profit, including only museums, art galleries, and botanical gardens of historic, cultural or educational interest

L. Equestrian facilities, lighted outdoor and/or spectator

M. Library

N. Nature Preserve, such as wildlife sanctuary or conservation area, but not a petting zoo or game hunting preserve

O. Neighborhood utility facility

P. Places of worship

Q. Privately-owned recreation conducted primarily outside enclosed structures such as swimming, tennis and country clubs (Amended 5/12/06)

R. Public and private schools

S. Rural resort (Amended 5/12/06)

T. Winery, with related retail sales and/or special events

U. Caretaker's Dwelling (Added 6/10/04)

V. Helistop (Added 3/13/14)

**Section 105: Lot, Bulk and Open Space Requirements**

**Section 105.1: Height Requirements - All Uses**

Building Height (except as otherwise provided in Section 107.2): (Amended 5/12/06)

A. Principal building: 35 feet, except no restriction for buildings used exclusively for agriculture.

B. Accessory structures: 15 feet.

**Section 105.2: Conservancy Subdivision: Lot, Bulk and Open Space Requirements**

A. Purpose and Intent: The intent of this section is to ensure that a conservancy subdivision is consistent with the town's traditional development style, does not contribute to land-consumptive sprawl, and creates significant open space of benefit to residents of both the new subdivision and the town.

B. Conservancy Subdivision Defined. A conservancy subdivision is a single-family residential development in which the residential lots are clustered together on a portion of the tract, leaving the largest portion of the tract in permanent open space. A conservancy subdivision may include the following categories of land:

   1. Single-Family Lots: Smaller residential lots located in a contiguous grouping oriented along a street or a green.

   2. Conservancy Lots: Larger residential lots containing a designated building area with the remainder designated as permanent open space.

   3. Open Space: Land permanently preserved through an open space easement designated as Greenbelt Open Space, Conservancy Open Space and Usable Open Space, as defined in this ordinance.

C. Minimum Parcel Size. The minimum parcel size for a conservancy subdivision shall be ten (10) acres.

D. Maximum Density. The maximum residential density within a conservancy subdivision shall not exceed one dwelling unit per three (3) net acres, including dwelling units on conservancy lots. The net acreage of the tract shall exclude areas within the 100-year floodplain and slopes of 25% or greater.

E. Uses Permitted. Land within a conservancy subdivision may be used for any of the following principal uses: single-family detached dwellings, conservancy lots, or permitted greenbelt or usable open space uses as provided below.

F. Single-family detached dwellings (other than conservancy lots):

1. Lot Sizes.

   Minimum Lot Size: 12,500 square feet

   Maximum Lot size: 40,000 square feet

   Average Lot Size: less than 25,000 square feet

2. Minimum Lot Width:

   Lots up to 20,000 square feet: 60 feet at the minimum front yard and at the property line

   Lots over 20,000 square feet: 75 feet at the minimum front yard.

3. Yard Depth Requirements:

   a. Front: 20 feet minimum and 35 feet maximum for lots up to 20,000 sq. ft; 30 feet minimum for lots over 20,000 square feet

   b. Side: 10 feet minimum; 25 feet when adjacent to a street and for lots greater than 20,000 square feet

   c. Rear: 30 feet minimum for lots up to 20,000 square feet; 50 feet minimum for lots greater than 20,000 square feet

   d. Exceptions: Accessory buildings may be located no closer than five (5) feet to any side or rear lot line

   4. Building Lot Coverage: 35 percent maximum

G. Conservancy Lots.

1. Minimum Lot Size: Ten (10) acres. Not more than one (1) single-family detached dwelling unit shall be located on any conservancy lot.

2. Minimum Lot Width: 300 feet

3. Maximum Building Area: 40,000 square feet

4. Building Lot Coverage: 35 percent maximum

5. Open Space Easement Required: Any land area above the 12,500 square-foot maximum building area shall be subject to a permanent open space easement. Such easement shall be in a form approved by the Town and shall provide, inter alia, notwithstanding such easement, that the eased portion of such conservancy lot shall be maintained by the property owner and that the Town shall bear no responsibility or liability for such maintenance.

6. Yards. No building shall be located within twenty-five (25) feet of any property line; provided, however, that if such building is located as a logical extension of the clustered dwelling pattern on smaller lots within the subdivision, the minimum yard requirements of Section 105.2 F. shall be permitted.

H. Required Open Space.

All land area within a conservancy subdivision not devoted to single-family detached lots, the maximum building area of conservancy lots and street rights-of-way shall be permanently preserved as open space and shall be designated as Conservancy Open Space, as defined herein, Greenbelt Open Space, as defined by this ordinance, or Usable Open Space, as defined in Article XIII. Such open space shall constitute in the aggregate not less than 70% of the total land area within the conservancy subdivision and shall be provided in accordance with this subsection H. and the following subsection I.:

1. Conservancy open space shall be the eased portion of any conservancy lots within the conservancy subdivision. Not more than 45% of the required open space shall be conservancy open space. Uses permitted in the conservancy open space shall be as specified in the open space easement required in G.5. above and may include agriculture, horticulture or private, noncommercial equestrian facilities.

2. Greenbelt open space as defined by this ordinance equal to or exceeding 45% of the required open space shall be provided. No portion of any conservancy lot shall be deemed to be greenbelt open space. Every greenbelt open space parcel shall not be less than 100 feet deep. Uses permitted within greenbelt open space areas shall only include agriculture, horticulture, equestrian facilities, public parks, and associated accessory uses (but not including residential uses accessory to agricultural or horticultural uses), as permitted in Sections 102 and 103. Nature preserves and privately-owned recreational facilities (other than country clubs) are also permissible as provided in Section 104.

3. Usable open space equal to not less than 10% of the required open space shall be provided in accordance with the provisions of Article XIII (excepting the provisions of Section 187) and the following additional provisions:

   a. Neighborhood Green. Usable open space shall be located to create at least one focal neighborhood green that is specifically designed to benefit both existing adjacent developed areas and the proposed new subdivision. The minimum size of the green shall be 20,000 square feet, with a length to width ratio not exceeding six to one (6:1). The green shall adjoin residential lots or streets on at least three (3) sides and shall be centrally located to be within 1,500 feet of all dwellings in the subdivision other than dwellings on conservancy lots. The green shall be connected to both the conservancy open space and existing town street right-of-way by open space links of at least 15 feet in width that include a sidewalk or trail.

   b. Unlighted playing fields, walking trails, a neighborhood park or any combination of the above may be included as part of the usable open space.

I. Additional Standards for Open Space:

1. All open space shall be subjected to a permanent open space easement in a form approved by the Town.

2. Open space shall be located and designed to add to the visual amenities of the neighborhood and surrounding area by maximizing the visibility of both internal and external open space. Open space shall be located to provide “terminal vistas” (the landscape seen at the end of a street, or along the outside edges of street curves) and perimeter greenbelt land (the undeveloped and permanently protected acreage around the town).

3. Conservancy and greenbelt open space shall incorporate historic resources, prime agricultural soils, floodplain areas, wetlands, steep slopes, existing tree cover and other environmentally sensitive resources to the greatest extent possible.

**Section 105.3: Uses Other Than Conservancy Subdivision: Lot, Bulk and Open Space Requirements**

A. Purpose and Intent: The intent of this section is that the development of uses other than single-family residential within this district shall be compatible with the adjacent development pattern. In locations where agriculture and open space predominate, development shall be designed and located to complement and enhance the traditional estate and agricultural uses. Where immediately adjacent to existing developed areas, such development shall be compatible in scale, lot size, lot design and streetscape to the existing development pattern.

B. Minimum Lot Size:

   Agriculture: 10 acres

   All other uses, other than conservancy subdivision: Three (3) acres, unless otherwise specified under individual use standards in Section 107.2.

C. Minimum Lot Width: 200 feet (interior); 225 feet (corner)

D. Minimum Yard Depth Requirements (Unless otherwise specified under individual use standards in Section 107.2):

   1. Front: 40 feet
   2. Side: 40 feet
   3. Rear: 40 feet
   4. Exceptions:
      a. Barns or structures used for the housing or shelter of animals and equestrian rings (indoor or outdoor) shall not be located within 100 feet of any side or rear lot line.
      b. Accessory buildings or uses may be located no closer than five feet to any side or rear lot line, except as provided in subsection a. above.

E. Maximum Building Lot Coverage: Agricultural, horticultural and winery uses: 30 percent; all other uses: 10 percent, except as otherwise specified in this ordinance.

F. Minimum Open Space (Unless otherwise specified under individual use standards in Section 107.2): 70%, except for agricultural, horticultural, winery, recreational and equestrian uses conducted outside of structures, and residential uses in conservancy subdivisions, the latter of which are governed by Section 105.2. (Amended 5/12/06)

**Section 106: Off-Street Parking - All Uses**

Off-street parking shall be provided as required in Article XVI. All off-street parking shall be located on driveways or in the side or rear yard for single-family residential uses and in the side or rear yard only for all other uses.

**Section 107: Design Standards - All Uses**

A. Overall Form. Buildings shall be clustered along existing or proposed roads. Open space shall be used to preserve natural and environmental resources identified in the comprehensive plan. New construction shall be sited so as to best preserve natural and historic resources, natural vistas and existing topography. Greenbelt open space shall be designed to follow natural features whenever possible and to maintain an agricultural, woodland or countryside character. New development shall be distinguished from the peripheral, greenbelt open space by a well-defined edge in keeping with the traditional development pattern of the town.

B. Block Design. New lots shall be designed in a grid or modified grid pattern of blocks and interconnecting streets and alleys, defined by buildings, landscaping, pedestrian ways and sidewalks, and adapted to the topography and unique natural features of the tract. Blocks should be rectilinear, modified rectilinear, or another distinct geometric shape, except where topographic or other conditions necessitate a more amorphous configuration.

1. Maximum block length:

   Blocks with lots up to 20,000 square feet: 500 feet

   Blocks with lots greater than 20,000 square feet: 800 feet long, provided mid-block footpaths are provided

2. Alleys shall be permitted to bisect blocks.

C. Lot Design. Lots shall have frontage onto a street or a street and an alley. In general, in developments where lot sizes vary considerably, the smaller lots should be located closer to the existing town, with larger lots on the perimeter.

1. Lots abutting common greens, squares or parks shall be provided with sidewalks along their abutting lot lines.

2. Lot areas and widths shall vary at random in order to eliminate the appearance of a standardized subdivision. No more than two lots in a row shall have the same width. Lots shall vary by not less than five-foot increments.

D. Street Design. Street layout shall take into consideration internal open space areas, gateways, and vistas. Both street and pedestrian linkages to the existing town are recommended where possible.

1. A minimum of two connections with the existing public street system rated as at least a collector street shall be provided where possible. Connections giving access to collectors with existing sidewalks or trails shall be required where practicable.

2. Use of cul-de-sacs or other streets with a single point of access shall be minimized.

3. To calm traffic speeds, the use of “T” intersections, where vehicles must stop and turn to the right or left rather than proceeding forward in a straight line, are encouraged. At least 25% of all intersections within the subdivision shall take this form, unless other traffic calming measures, such as traffic islands or circles, are employed.

4. Street trees shall be planted along all streets in conformance with Section 215.

E. Alleys. Where provided, alleys shall be private streets or easements either dedicated to a homeowner association or as common access easements across the rear portions of lots.

1. Minimum easement width: 22 feet. A 5-foot utility easement shall be provided along the alley frontage of all adjacent lots and may overlap the alley easement; No fences shall be permitted within this easement.
2. Minimum paved alley width: 10 feet. Parking shall be prohibited on either side of the paved cartway of the alley.
3. Alley Lighting. Security lighting shall be provided on all garages or on poles adjacent to parking areas to provide alley lighting. Lighting fixtures and poles shall be of consistent architectural style and shall complement the predominant architectural theme of the subdivision. Light fixtures shall fully shield the light source and shall be designed and directed so as to eliminate glare onto adjacent properties and roadways. Use of motion sensors or other timing devices to minimize lighting when not needed is recommended.

F. Exterior Lighting. Exterior lighting shall fully shield the light source and be designed and directed so as to eliminate glare onto adjacent properties and roadways. Lighting fixtures and poles shall be of consistent architectural style and shall complement the predominant architectural theme of the project.

G. Outdoor Storage and Service Areas. No outdoor storage shall be permitted unless the Administrator determines that such storage is customarily required and integral to the use and that such storage will be adequately screened from all property lines. Any service area shall be located and designed to minimize its visibility from off-site.

H. Pedestrian Access. Every effort shall be made to provide a safe and convenient pedestrian connection to the downtown.

I. Signs. The location, dimensions and design of any proposed signage shall be consistent with the character and materials of existing signs in the historic district. Signage plans shall be provided with the special use permit application.

**Section 107.1: Design Standards - All Special Exception Uses**

A. Parking.

1. At least twenty percent (20%), but no more than fifty percent (50%) of the required parking shall be paved with reinforced grass “paver block” or similar porous paving material to minimize the visual impact of the parking area and maximize the pervious area.
2. Any portion of a parking lot constructed of porous pavement, up to a maximum of 50% of the entire parking area, and any sidewalks or trails not providing direct access between the principal building and the parking lot may be included as part of the required open space area.

B. Building Character.

1. Existing Structures. All exterior changes shall be compatible in architectural style, scale and materials with the existing structure and with the historic character of the town. Existing buildings with historic or architectural value on the site must be adaptively re-used to the greatest extent possible.
2. New Structures. The architectural design of all new buildings and structures shall be compatible in architectural style, scale and materials with the historic character of the town and shall avoid a monolithic appearance.

3. Building elevations and architectural details sufficient to show compliance with this standard shall be submitted for approval as part of the special exception application.

**Section 107.2: Additional Standards for Certain Special Exception Uses**

Additional standards set forth below shall apply to certain specific uses permitted with a special use permit in this ordinance. These are intended to serve as the minimum standards for these uses, and are not intended to substitute for other applicable provisions of this ordinance or for additional conditions that may be imposed in connection with special exception approvals. All special exception uses shall also be subject to the design standards of Section 107 and 107.1.

A. College or University

1. Minimum Parcel Size: Ten (10) acres, with safe and reasonable access to a state-maintained road
2. Maximum Gross Floor Area: 20,000 square feet in any one building and 80,000 square feet of total floor area
3. Maximum Number of Students: 300; provided, however, that no more than 20% of all students shall be boarders
4. Minimum Setback - Parking & Lighted Areas: 40 feet from the side and rear property line
5. Recreation uses customarily incidental and subordinate to the principal use shall be permitted in the open space and may include: swimming pools and related facilities, unlighted tennis and other sports courts, unlighted equestrian facilities, picnic areas, and passive recreation facilities, but not a golf course. The hours of operation for any outdoor recreational facilities shall not exceed 7:00 AM to 9:00 PM.

B. Conference Center or Corporate Retreat.

1. Minimum Parcel Size: Twenty-five (25) acres, with safe and reasonable access to a state-maintained road
2. Minimum Setback - Buildings, Parking & Lighted Areas: 250 feet from the side and rear property line
3. Permitted Recreation Uses: Recreation uses customarily incidental and subordinate to the principal, but not a golf course, use shall be permitted in the open space and may include: swimming pool and related facilities, unlighted tennis and other sports courts, unlighted equestrian facilities, picnic areas, and passive recreation facilities. The hours of operation for any outdoor recreational facilities shall not exceed 7:00 AM to 9:00 PM. (Amended 5/12/06)
4. Maximum Guest Rooms: 60. No more than 15 guest rooms shall be located in a single building.
5. Permitted Conference, Meeting and Banquet Facilities. Conference, meeting and banquet facilities designed to accommodate no more than 500 persons at any one time shall be permitted.
6. Permitted Dining Facilities. A full-service restaurant providing meal service to conference attendees and guests, but not to the general public, shall be permitted as an accessory use.
7. Outdoor events (e.g., weddings, receptions, parties) or similar activities conducted for compensation shall be permitted only upon application for a temporary zoning permit from the Zoning Administrator, who may impose conditions regarding hours of operation, volume

of amplified music, type and intensity of outdoor lighting, traffic control measures, and similar health, safety and welfare matters.

8. No products shall be sold on-site except for those that are clearly incidental and integral to permitted training programs and seminars.

C. Corporate Office

1. Minimum Parcel Size: Twenty-five (25) acres, with safe and reasonable access to a state-maintained road
2. Minimum Setback - Buildings, Parking & Lighted Areas: 250 feet from the side and rear property line
3. Maximum Gross Floor Area - All Buildings: 20,000 square feet
4. Maximum number of employees, trainees, and business visitors: 150 per day
5. Permitted Recreation Uses: Recreation uses customarily incidental and subordinate to the principal use, but not a golf course, shall be permitted in the open space and may include: swimming pools and related facilities, unlighted tennis and other sports courts, unlighted equestrian facilities, picnic areas, and passive recreation facilities. Hours of operation for any outdoor recreational facilities shall not exceed 7:00 AM - 9:00 PM. (Amended 5/12/06)
6. The corporate office may include facilities to accommodate associated training programs, seminars and related activities.
7. Permitted Dining Facilities: On-site food service for employees, trainees, and business visitors, but not restaurant facilities open to the general public.
8. No products shall be sold on-site except for those that are clearly incidental and integral to the training programs and seminars.

D. Country Club.

1. Minimum Parcel Size: Ten (10) acres, with safe and reasonable access to a state-maintained road
2. Minimum Setback - Buildings, Parking & Lighted Areas: 250 feet from the side and rear property line
3. Permitted Recreation Uses: Recreation uses customarily integral to a country club shall be permitted in the open space and may include: swimming pool and related facilities, unlighted tennis and other sports courts, but not a golf course, picnic areas, and passive recreation facilities. Hours of operation for any outdoor recreational facilities shall not exceed 7:00 AM - 9:00 PM. (Amended 5/12/06)
4. Golf courses shall meet the standards of Section 107.2.G.
5. Outdoor events (e.g., weddings, receptions, parties) or similar activities conducted for compensation shall be permitted only upon application for a temporary zoning permit from the Zoning Administrator, who may impose conditions regarding hours of operation, volume of amplified music, type and intensity of outdoor lighting, traffic control measures, and similar health, safety and welfare matters.

E. Country Inn.

1. Parcel shall have safe and reasonable access to a state-maintained road.

2. Minimum Setback - Buildings, Parking & Lighted Areas: 40 feet from the side and rear property line.
3. Maximum Guest Rooms: 20. No more than 6 guest rooms shall be located in a single building.
4. The owner or manager shall provide full-time management of the premises at all times when the establishment is occupied by guests.
5. Outdoor events (e.g., weddings, receptions, parties) or similar activities conducted for compensation shall be permitted only upon application for a temporary zoning permit from the Zoning Administrator, who may impose conditions regarding hours of operation, volume of amplified music, type and intensity of outdoor lighting, traffic control measures, and similar health, safety and welfare matters.

F. Cultural Center, Non-Profit

1. Parcel shall have safe and reasonable access to a state-maintained road.
2. Maximum Total Gross Floor Area: 40,000 square feet.
3. Minimum Setback - Parking & Lighted Areas: 40 feet from the side and rear property line.

G. Rural Resort (Added 5/12/06)

1. Minimum Parcel Size: 250 acres, with safe, reasonable access to no more than two state-maintained roads. This access limitation shall not preclude an additional access for emergency vehicles only.
2. Minimum Lot Width: 225 feet
3. Minimum Setback: All active recreation areas, parking and lighted areas: 250 feet from the corporate limits of the Town. Minimum setbacks for all other property lines shall be fixed in accordance with the approved special exception plat.
4. Minimum Yard - Front, Side and Rear: No less than 375 feet from the corporate limits of the Town. Existing accessory buildings within such yards shall be permitted in support of agricultural and recreational uses. Minimum yards for all other property lines shall be fixed in accordance with the approved special exception plat. Accessory structures other than buildings may be permitted in required yards in accordance with the provisions of Sections 181 and 182.
5. Maximum Building Height: 35 feet. For purposes of this subsection, “Building Height” shall be defined as follows: The vertical distance to the highest point of the roof for flat roofs; and, to the average height between eaves and the highest point of the roof in the case of pitched roofs, measured from the curb level, if the building is not more than ten (10) feet distance from the front lot line, or from the average finished grade at the front of the building in all other cases. The front of the building shall be defined as the building façade which faces the primary site access.
6. Roads/Access: Access shall comply with the following standards: Minimum 18-foot paved private access drive flanked by 3-foot wide grass shoulders. The paved area shall consist of 2” of paving over a 4” base.
7. Parking: Except as otherwise modified by this article, parking and loading shall be provided as required by Article XVI.

8. Landscaping/Buffering/Screening: Landscaping, buffering and screening shall be provided in accordance with the requirements of Sections 211.1 and 211.2.
9. Nature and Maximum Size of Use: Rural resort with conference and meeting facilities, restaurant, spa and recreational amenities not to exceed the following:
    a. 241,000 gross square feet non-residential floor area, containing:
        i. 168-room accommodations (lodging units) for overnight guests
        ii. 160-seat restaurant
        iii. 26,000 square foot spa
        iv. 11,000 square feet of conference and meeting space;
    b. accessory buildings of up to 27,500 gross square feet, supporting the resort's recreational and agricultural uses;
    c. public utility buildings of up to 2,000 gross square feet, which shall be excluded from calculating the Maximum Floor Area Ratio and Maximum Building Lot Coverage (below), and
    d. Recreational amenities.
10. Temporary Special Events: Temporary special events shall be permitted only as approved in the special use permit approved for the rural resort in accordance with the provisions of Section 172.1.
11. Maximum Floor to Area Ratio: 0.0246 Notwithstanding any other provision of this ordinance, for the purposes of this limitation, "Gross Floor Area" shall be calculated as follows: The sum of the total horizontal areas of the several floors of all buildings on a lot, measured from the interior faces of exterior walls. The term "floor area" shall include basements; elevator shafts and stairwells at each story; floor space used for mechanical equipment with structural headroom of six (6) feet, six (6) inches or more; penthouses; attic space, whether or not a floor has actually been laid, providing structural headroom of six (6) feet, six (6) inches or more; interior balconies and mezzanines. The term gross floor area shall not include cellars or outside balconies which do not exceed a projection of six (6) feet beyond the exterior walls of the building. For purposes of this section, cellar is defined as that portion of a building below the first-floor joists at least half of whose clear ceiling height is below the mean level of the adjacent ground. Such a portion of a building shall not be used for habitation. Parking structures below or above grade and rooftop mechanical structures are excluded from gross floor area.
12. Maximum Building Lot Coverage: 3.55 percent, based on gross acreage.
13. Minimum Open Space: A minimum of 75% of the gross lot area shall be open space meeting the requirements of this subsection.
    a. Open space shall be configured to include all major floodplains, very steep slope land areas of 5,000 contiguous feet or more and wetlands located on the property. Additional land as needed to meet minimum open space requirements shall be designated as open space and shall be selected to add to the visual amenities of the rural resort and to minimize the impact of the resort facilities on surrounding areas and shall incorporate historic resources, prime agricultural soils, floodplain areas, wetlands, steep slopes, existing tree cover and other environmentally sensitive resources to the greatest extent possible.

b. Recreational uses customarily incidental and subordinate to the rural resort permitted in the open space area shall be predominantly passive in nature, but may include: swimming pools and related facilities, boating facilities, tennis and other sports courts, equestrian facilities, picnic areas, ball fields, children's play equipment and passive recreation facilities, provided that no building other than barns or stables may exceed 5,000 square feet of gross floor area. Driveways, trails and parking areas supporting these facilities may also be located in the open space area. Under and above-ground public utility facilities approved in accordance with Section 62 shall be permitted provided that all installations are designed to minimize land disturbance within the open space to the greatest extent practicable.

c. Notwithstanding the foregoing subparagraph b., uses in major floodplains, very steep slope land areas of 5,000 contiguous square feet or more and wetlands shall be limited to uses allowed in the open space area, except that the following restrictions shall apply:

i. No swimming pools shall be permitted.

ii. Impervious surfaces installed within regulated floodplains shall not exceed the area limitations set forth in Article XVII, Part II and shall not be located within the floodway.

iii. Within steep slope land areas of 5,000 contiguous square feet or more containing very steep slopes, facilities and uses shall be limited to passive recreation uses such as trails for non-motorized use and picnic uses and minor utilities as approved under Section 61 as amended as of the date of the facility or installation is proposed.

iv. Within very steep slopes, to the maximum extent feasible: 1) excavation, grading and other land disturbance for such passive recreation use shall be minimized, and 2) development shall be planned and executed so as to preserve natural landforms and minimize disturbance to soil geology, hydrology and environmental features.

H. School, Public or Private

1. Minimum Parcel Size: Ten (10) acres, with safe, reasonable access to a state-maintained road.

2. Maximum Number of Students: 300; provided, however, that no more than 20% of all students shall be boarders.

3. Minimum Setback - Parking & Lighted Areas: 40 feet from the side and rear property line.

4. Permitted Recreation Uses: Recreation uses customarily incidental and subordinate to the principal use shall be permitted in the open space and may include: unlighted playing fields, unlighted tennis and other sports courts, and passive recreation facilities, but not a golf course. The hours of operation for any outdoor recreational facilities shall not exceed 7:00 AM to 9:00 PM.

**Section 107.3 Exceptions to Additional Standards**

The additional standards contained within Section 107.2 may be modified by Special Use Permit procedures set forth in Article V provided that the application satisfies the public purpose of those standards to an equivalent degree.

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# ARTICLE X. RESIDENTIAL ZONING DISTRICTS

## PART I. R-1 SINGLE-FAMILY RESIDENTIAL DISTRICT

### Section 108: Purpose

This district is designed to accommodate single-family detached residential uses at low densities as designated in the comprehensive plan.

### Section 109: Permitted Uses

The following uses are permitted in this district:

A. Single-family detached dwellings

B. Public parks

### Section 110: Accessory Uses and Structures

The following accessory uses and structures are permitted in this district:

A. Home occupations

B. Accessory uses and structures customarily appurtenant to a permitted or approved special exception use. Accessory structures shall only be located as provided for in Section 182. (Amended 6/9/16)

### Section 111: Special Exception Uses

The following uses are permitted in this district subject to securing a special use permit as provided in Article V:

A. Adult assisted living

B. Adult care center

C. Child care center

D. Cluster lot subdivision

E. Libraries and Museums (Amended 11/13/14)

F. Short-Term Rental (Amended 12/8/22)

G. Neighborhood utility facility

H. Places of worship

I. Public and private schools

J. Special uses of older structures including antique shop, professional office as a home occupation, and other appropriate commercial uses as specifically approved by the town council.

**Section 112: Lot Requirements**

A. Minimum Lot Size: 10,000 square feet

B. Minimum Lot Width: 70 feet at the required minimum front yard line and 50 feet at the front property line.

C. Yard Depth Requirements: (Amended 6/9/16)

   1. Front: 25 feet minimum and 50 feet maximum, except in developed areas where the front yard shall not be less than the smaller of the front yards of the two immediately adjacent buildings. There shall be no maximum front yard for flag lots.

   2. Side: 10 feet minimum; 25 feet minimum when adjacent to a street

   3. Rear: 30 feet minimum

D. Building Lot coverage: 35 percent maximum

**Section 113: Cluster Lot Requirements**

A. Purpose: Cluster development is an option designed to allow a reduction in the standard minimum lot size in exchange for the provision of an equivalent amount of usable open space. Any conditions of approval adopted by Council are in addition to the requirements listed below.

B. Minimum Lot size: 8,000 square feet

C. Minimum Lot Width: 50 feet at the minimum front yard; 40 feet at the property line

D. Yard Depth Requirements:

   1. Front: 20 feet minimum and 30 feet maximum, except in developed areas where the front yard shall not be less than the smaller of the front yards of the two immediately adjacent buildings or 30 feet maximum.

   2. Side: 7.5 feet minimum; 20 feet minimum when adjacent to a street

   3. Rear: 30 feet minimum

E. Minimum Usable Open Space: One square foot of useable open space for each square foot reduction in the minimum non-cluster lot size. A minimum of 15 percent of the tract shall consist of useable open space as defined in Article XIII.

F. Design Criteria: Buildings shall be clustered along existing or proposed roads. Useable open space shall be contiguous and used to preserve natural and environmental resources identified in the comprehensive plan.

**Section 114: Maximum Building Height**

A. Principal building: 35 feet

B. Accessory structures: 15 feet

**Section 115: Off-Street Parking**

Off-street parking shall be provided as required in Article XVI.

## PART II. R-2 SINGLE-FAMILY RESIDENTIAL DISTRICT

### Section 116: Purpose

This district is designed to accommodate single-family detached residential uses in older, established neighborhoods at low densities as designated in the comprehensive plan.

### Section 117: Permitted Uses

The following uses are permitted in this district:

A. Single-family detached dwellings without attached garages (Amended 9/26/24)

B. Public Parks

### Section 118: Accessory Uses and Structures

The following accessory uses and structures are permitted in this district:

A. Home occupations

B. Accessory uses and structures customarily appurtenant to a permitted or approved special exception use. Accessory structures shall only be located as provided for in Section 182. (Amended 6/9/16)

### Section 119: Special Exception Uses

The following uses are permitted in this district subject to securing a special use permit as provided in Article V:

A. Adult assisted living

B. Adult care center

C. Child care center

D. Libraries and Museums (Amended 11/13/14)

E. Short-Term Rental (Amended 12/8/22)

F. Neighborhood utility facility

G. Places of worship

H. Public and private schools

I. Special uses of older structures including antique shop, professional office, and other appropriate commercial uses as specifically approved by the town council.

J. Public safety centers (amended 5/22/08)

K. Single-family detached dwellings with side- or rear-load garages (Added 9/26/24)

**Section 120: Lot Requirements**

A. Minimum Lot Size: 8,000 square feet

B. Minimum Lot Width: 50 feet at the required minimum front yard line and 40 feet at the front property line

C. Yard Depth Requirements:

1. Front: 20 feet minimum and 30 feet maximum, except in developed areas where the front yard shall not be less than the smaller of the front yards of the two immediately adjacent buildings or 30 feet maximum.

2. Side: 10 feet minimum; 20 feet minimum when adjacent to a street (Amended 9/26/24)

3. Rear: 30 feet minimum

D. Building Lot coverage: 25 percent maximum, but in no case to exceed 3,125 square feet (amended 5/9/13; 7/28/22; 9/26/24)

E. Impervious Lot Coverage: 45 percent maximum, but in no case to exceed 5,625 square feet (added 7/28/22)

F. Floor to Area Ratio: 0.30 maximum, but in no case shall the gross floor area exceed 3,750 square feet (added 9/26/24)

**Section 121: Maximum Building Height**

A. Principal building: 25 feet (amended 5/9/13; 5/27/21; 9/26/24)

B. Accessory structures: 15 feet

**Section 122: Off-Street Parking**

Off-street parking shall be provided as required in Article XVI.

## PART III. R-3 RESIDENTIAL DISTRICT

### Section 123: Purpose

This district is designed to accommodate single-family detached, duplex and single-family attached residential uses at medium densities as designated in the comprehensive plan.

### Section 124: Permitted Uses

The following uses are permitted in this district:

A. Single-family detached dwellings

B. Two-family dwellings (duplex)

C. Single-family attached dwellings (townhouse)

D. Public parks

### Section 125: Accessory Uses and Structures

The following accessory uses and structures are permitted in this district:

A. Home occupations

B. Accessory uses and structures customarily appurtenant to a permitted or approved special exception use. Accessory structures shall only be located as provided for in Section 182. (Amended 6/9/16)

### Section 126: Special Exception Uses

The following uses are permitted in this district subject to securing a special use permit as provided in Article V:

A. Adult assisted living

B. Adult care center

C. Child care center

D. Libraries and Museums (Amended 11/13/14)

E. Short-Term Rental (Amended 12/8/22)

F. Neighborhood utility facility

G. Nursing home

H. Places of worship

I. Public and private schools

J. Special uses of older structures including antique shop, professional office, and other appropriate commercial uses as specifically approved by the town council.

K. Public Uses, such as governmental or public utility buildings or uses. (added 11/8/07)

**Section 127: Density**

Maximum density shall not exceed 6 dwelling units per acre.

**Section 128: Lot Requirements**

A. Minimum Lot Size:
   1. Single-family detached: 7,000 square feet
   2. Two-family (duplex): 5,000 square feet per unit
   3. Single-family attached (townhouse): 1,400 square feet per unit.
B. Minimum Lot Width:
   1. Single-family detached: 50 feet at the minimum front yard line; 40 feet at the property line
   2. Two-family (duplex): 37.5 feet per unit
   3. Single-family attached (townhouse): 14 feet
C. Yard Depth Requirements: (Amended 6/9/16)
   1. Front: 15 feet minimum and 30 feet maximum, except in developed areas where the front yard shall not be less than the smaller of the front yards of the two immediately adjacent buildings or 30 feet maximum.
   2. Side: 7.5 feet minimum for single-family detached, duplex and end and corner townhouse units.
   3. Rear: 20 feet minimum
D. Building Lot coverage: 50 percent maximum

**Section 129: Maximum Building Height**

A. Principal building: 35 feet
B. Accessory structures: 15 feet

**Section 130: Townhouse Design Features**

A. Abutting townhouses shall have complementary but not identical facades.
B. A minimum of three units and maximum of six units shall be continuously connected.
C. Townhouses shall front on a public street or townhouse private accessway as provided in the Town of Middleburg Street and Parking Standards.
D. No townhouse shall have attached to its front facade a garage or carport unless the garage is an integral part of the residential building and does not project beyond the face of the building. Only in the case of an integrated garage shall a front driveway be permitted.

**Section 131: Off-Street Parking**

Off-street parking shall be provided as required in Article XVI.

## Part IV. R-4 RESIDENTIAL DISTRICT

### Section 132: Purpose

This district is designed to accommodate duplex, single-family attached and multi-family uses at medium densities as designated in the comprehensive plan. Overall density in new areas zoned R-4 should generally not exceed the maximum density recommended by the comprehensive plan.

### Section 133: Permitted Uses

The following uses are permitted in this district:

A. Two-family (duplex)

B. Single-family attached (townhouse)

C. Multi-family dwellings (apartments)

D. Public parks

### Section 134: Accessory Uses and Structures

The following accessory uses and structures are permitted in this district:

A. Home occupations

B. Accessory uses and structures customarily appurtenant to a permitted or approved special exception use. Accessory structures shall only be located as provided for in Section 182. (Amended 6/9/16)

### Section 135: Special Exception Uses

The following uses are permitted in this district subject to securing a special use permit as provided in Article V:

A. Adult assisted living

B. Adult care center

C. Child care center

D. Community utility facility, provided such facility is located on public property (Added 11/9/95)

E. Libraries and Museums (Amended 11/13/14)

F. Neighborhood utility facility

G. Nursing home

H. Place of worship

I. Public or private school

J. Special uses of older structures including antique shop, professional, and other appropriate commercial uses as specifically approved by the town council.

**Section 136: Density**

Maximum density shall not exceed 10 dwelling units per acre for multi-family dwellings and 6 dwelling units per acre for townhouses.

**Section 137: Lot Requirements**

A. Minimum Lot Size:
   1. Two-family (duplex): 5,000 square feet per unit
   2. Single-family attached (townhouse): 1,400 square feet per unit
   3. Multi-family (apartment): 22,000 square feet
B. Minimum Lot Width:
   1. Two-family (duplex): 37.5 feet per unit
   2. Single-family attached: 14 feet
   3. Multi-family: 100 feet
C. Yard Depth Requirements:
   1. Front: 15 feet minimum and 35 feet maximum, except in developed areas where the front yard shall not be less than the smaller of the front yards of the two immediately adjacent buildings or 35 feet maximum.
   2. Side: 7.5 feet minimum for single family detached, duplex and end and corner townhouse units and 30 feet for multi-family units.
   3. Rear: 20 feet minimum single family detached, duplex and townhouse units; 30 feet minimum multi-family units.
D. Building Lot coverage: 35 percent maximum

**Section 138: Maximum Building Height**

A. Principal building: 35 feet
B. Accessory structures: 15 feet

**Section 139: Usable Open Space and Recreational Requirements for Multi-Family Dwellings**

A. 25 percent of the site area shall be reserved as usable open space as defined in Article XIII. Active recreation space required below shall not be counted toward the usable open space requirement.
B. A minimum of 100 square feet of active recreation space shall be provided for each dwelling unit. The following are illustrative of the facilities that shall be deemed to serve active recreational needs: tennis courts, swimming pools, sauna and exercise rooms, meeting or activity rooms within clubhouses, basketball courts, swings, slides, and other play apparatus.
C. Each development shall satisfy its active recreation requirement by installing the types of recreational facilities most likely to be suited to and used by the residents in that development.

At least 15 percent of the active recreation space shall consist of tot lots, unless it appears that less than 5 percent of the residents of a development are likely to be children under 12.

D. Each active recreation area shall be centrally located and easily and safely accessible to the residents of the development.

E. Each active recreation area shall be constructed on land that is relatively flat, dry and capable of serving the purposes intended by this ordinance.

**Section 140: Design Features**

A. Abutting townhouses shall have complementary but not identical facades.

B. A minimum of three townhouse units and maximum of six townhouse units shall be continuously connected.

C. Townhouses shall front on a public street or townhouse private accessway as provided in the Town of Middleburg Street and Parking Standards.

D. No townhouse shall have attached to its front facade a garage or carport unless the garage is an integral part of the residential building and does not project beyond the face of the building. Only in the case of an integrated garage shall a front driveway be permitted.

E. Multi-family buildings (apartments) shall avoid massive, monolithic, and repetitive building types, facades and setbacks, and shall be compatible in mass, scale, and design with surrounding areas. Building elevations and architectural details shall be submitted to the planning commission to demonstrate compliance with this section if the project is not reviewed by the Historic District Review Committee as provided in Article XVII.

**Section 141: Off-Street Parking**

Off-street parking shall be provided as required in Article XVI.

**Section 142: Reserved**

## PART V: PRD PLANNED RESIDENTIAL DEVELOPMENT DISTRICT

### Section 143: Purpose

Planned residential developments (PRD) are intended to encourage development in the traditional pattern of Middleburg to include a mixture of housing types and price ranges, community facilities and services, and open space and recreation facilities.

### Section 144: Minimum District Size

A planned residential development district shall be at least five acres unless the town council finds a smaller area suitable due to its unique historic or environmental features or its redevelopment or infill development potential.

### Section 145: General Procedures

Consideration of an application for a PRD shall consist of three stages:

A. Sketch Plan

Applicants for a planned residential development district shall submit three copies of a sketch plan showing the proposed development for review and comment. The administrator shall transmit the sketch plan to the commission. The commission shall review the sketch plan at the next meeting after it is received and shall provide comments and recommendations to the applicant within 60 days after the sketch plan is received.

B. Concept Plan/Comprehensive Plan Amendment

1. A petition for concept plan approval and amendment of the comprehensive plan may be filed any time after receipt of the commission's sketch plan comments.
2. The administrator shall refer the petition to the commission which shall hold a public hearing in conformity with Article VI of this ordinance.
3. The commission shall review the petition and make a recommendation to the council to approve, approve with modifications, or disapprove the petition within 60 days after the public hearing.
4. The administrator shall forward the petition to the council with the commission's recommendations. The council shall hold a public hearing in conformity with Article VI of this ordinance.
5. The council shall proceed as expeditiously as possible to approve, approve with modifications, or disapprove the petition after the public hearing.

C. Zoning Map Amendment

The zoning map amendment shall be filed and processed in accordance with Article XVIII of this ordinance.

**Section 146: Permitted Uses**

The following uses are permitted in a planned residential development district when listed in the ordinance approving the concept plan and establishing the district:

A. Single-family detached
B. Duplex
C. Single-family attached
D. Multi-family
E. Accessory uses
F. Home occupations
G. Public parks
H. Schools
I. Colleges
J. Bed and breakfast
K. Neighborhood utility facility
L. Place of worship
M. Library
N. Municipal buildings
O. Municipal parking lots
P. Group home
Q. Cemetery
R. Nursing homes
S. Child care center
T. Special Uses as approved by the town council

**Section 147: Residential Density**

A. Residential density limits shall be as established in the comprehensive plan. The base density shall be the lower of the density numbers shown on the Land Use Policy Map in the Comprehensive Plan. The higher number shall be the maximum density allowed within a planned residential development through the provision of additional public benefit as provided in Subsection 147.C. In no case shall a planned residential development be approved which permits more dwellings per acre than indicated on the land use policy map.
B. The number of units allowed in a planned residential development shall not exceed the base density unless the town council, in its sole discretion, finds that the proposed development plan provides additional benefits to the public health, safety and welfare by providing one or more of the following features above the minimum requirements of this ordinance:
    1. Dedication of public facility sites

2. Additional open space
3. Design reflecting the traditional development pattern of the Town of Middleburg
4. Environmental protection
5. Historic preservation

C. The permitted number of units allowed in a planned residential development may be increased as determined by the town council above the base density upon a finding of additional public benefit in accordance with the formulas set out below:

| ADDITIONAL PUBLIC BENEFIT | INCREASE IN DENSITY |
|---|---|
| 1. Public Facility Sites: | |
| For dedication of public facilities recommended by the comprehensive plan. | Up to 10 percent of base density |
| For provision or dedication of off-site road improvements or payments in lieu of such improvements. | Up to 10 percent of base density |
| 2. Open Space: | |
| For provision of additional usable open space beyond the minimum requirements of this ordinance. | Up to 5 percent of base density for each 5 percent open space; up to 10 percent of base density |
| 3. Traditional town design: | |
| For site and building design which is in conformity with the traditional design characteristics of the town. Examples include period architecture in conformity with the town design manual, superior use of building materials, and siting compatible with the existing town development pattern. | Up to 20 percent of base density |
| 4. For protection of environmental features as shown on the comprehensive plan: | |
| Floodplains or natural drainageways | Up to 5 percent of base density |
| Slopes 15 to 25 percent | Up to 5 percent of base density |
| Use of existing hydrological systems or innovative engineering solutions for stormwater management | Up to 5 percent of base density |
| 5. Historic preservation | |
| For appropriate use of a designated historic structure or site | Up to 5 percent of base density |
| For compatible development adjacent to a designated historic structure or site | Up to 5 percent of base density |

**Section 148: Usable Open Space and Recreational Requirements for Planned Residential Developments**

A. Twenty-five percent of the site area shall be reserved as usable open space as defined in Article XIII.

B. A minimum of 100 square feet of active recreation space shall be provided for each dwelling unit. The following are illustrative of the facilities that shall be deemed to serve active recreational needs: tennis courts, swimming pools, sauna and exercise rooms, meeting or activity rooms within clubhouses, basketball courts, swings, slides, and other play apparatus.

C. Each development shall satisfy its active recreation requirement by installing the types of recreational facilities most likely to be suited to and used by the residents in that development. At least 15 percent of the active recreation space shall consist of tot lots, unless it appears that less than 5 percent of the residents of a development are likely to be children under 12.

D. Each active recreation area shall be centrally located and easily and safely accessible to the residents of the development.

E. Each active recreation area shall be constructed on land that is relatively flat, dry and capable of serving the purposes intended by this ordinance.

**Section 149: Lot and Height Requirements**

Lot and height requirements shall be as provided for the R-4 Residential District; provided, however, that the town council may waive or modify specific lot or height requirements at the time of approval of the PRD district. Such waiver or modification shall be made a part of the ordinance approving the PRD district.

**Sections 150 through 151: Reserved**

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# ARTICLE XI. COMMERCIAL ZONING DISTRICTS

## PART I. C-1 RESTRICTED COMMERCIAL DISTRICT

### Section 152: Purpose

This district is designed to accommodate commercial uses which act as a transition between residential districts and more intensive commercial districts. Commercial uses in this district will be located in new buildings or buildings which were formerly residential but which may be more desirable for commercial activities because of higher traffic volumes or other market factors. The town intends that existing residential buildings be converted to commercial use rather than have new buildings constructed, whenever possible.

### Section 153: Permitted Uses

The following uses and structures are permitted in the C-1 district:

A. Bed and breakfast

B. Single-family detached dwellings (Amended 10/30/24)

C. Dwellings in business buildings or over stores or offices (dwelling in combination)

D. Libraries and Museums (Amended 11/13/14)

E. Municipal building

F. Municipal parking lot

G. Place of worship

H. Professional offices (Amended 10/9/03; Amended 7/27/23)

I. Public park

J. Retail stores and shops such as bookstores, antique shops, gift shops, jewelry stores, florist shops and clothing stores.

K. Social, fraternal clubs and lodges

### Section 154: Special Exception Uses

The following uses and structures are permitted in the C-1 district subject to securing a special use permit in accordance with Article V:

A. Neighborhood utility facility

B. Nursery school and child care center

C. Personal service businesses (Amended 7/13/06)

**Section 155: Lot Requirements**

A. Minimum Lot Size: 6,000 square feet. In addition, a minimum lot area of 3,000 square feet must be provided for each dwelling unit more than one on any lot.

B. Minimum Lot Width: 60 feet at the front property line

C. Yard Depth Requirements

1. Front: 0 feet minimum and 30 feet maximum, except the front yard shall not be less than the smaller of the front yards of the two immediately adjacent buildings nor more than 30 feet.

2. Side: 0 feet, except adjacent to residential district where the side yard shall equal the minimum side yard of the adjacent residential district, or 7.5 feet, whichever is less.

3. Rear: 0 feet, except adjacent to residential district where the rear yard shall equal the minimum rear yard of the adjacent residential district, or 30 feet, whichever is less.

D. Maximum Building Lot Coverage: 35 percent (Amended 10/9/03)

**Section 156: Maximum Building Height**

A. Principal building: 25 feet, or additions to existing buildings may exceed 25 feet (with a maximum of 35 feet) with a special use permit. (Amended 10/9/03, 03/11/04)

B. Accessory structures: 15 feet

**Section 157: Off-Street Parking**

Off-street parking shall be provided as required in Article XVI.

## PART II. C-2 TOWN COMMERCIAL DISTRICT

### Section 158: Purpose

This district is designed to accommodate a wide variety of commercial activities (particularly those that are pedestrian oriented) that will result in the most efficient and attractive use of the town's central business district.

### Section 159: Permitted Uses

The following uses and structures are permitted in the C-2 district:

A. Dwellings in business buildings or over stores or offices (dwelling in combination)

B. Financial institutions without drive-thru windows

C. Low traffic generating restaurants, dine in or carry out, which have no drive- thru service. Service or consumption outside a fully enclosed structure is allowed. (Amended 10/9/03)

D. Municipal building

E. Municipal parking lot

F. Personal service businesses

G. Place of Worship

H. Public park

I. Professional offices, not located on street level or first floor (see special exception) (Amended 10/9/03; Amended 7/27/23)

J. Repealed. (7/27/23)

K. Retail stores and shops

L. Social, fraternal clubs and lodges

M. Fitness Studios (Added 2/14/13)

### Section 160: Special Exception Uses

The following uses and structures are permitted in the C-2 district subject to securing a special use permit in accordance with Article V:

A. Single-family detached dwellings (Added 10/30/24)

B. Financial institution with drive-thru window

C. Fitness center

D. Funeral home

E. Inn

F. Libraries and Museums (Added 11/13/14)

G. Neighborhood utility facility

H. Nursery school and child care center

I. Service station

J. Professional Offices located on street level or first floor (Added 10/9/03; Amended 7/27/23)

K. Indoor theatre (Amended 10/9/03)

**Section 161: Lot Requirements**

A. Minimum Lot Size: None

B. Minimum Lot Width: None

C. Yard Depth Requirements

1. Front: 0 feet minimum and 30 feet maximum, except the front yard shall not be less than the smaller of the front yards of the two immediately adjacent buildings nor more than 30 feet or such greater maximum front yard as may be approved with a special use permit. (Amended 9/13/07)

2. Side: 0 feet, except adjacent to residential district where the side yard shall equal the minimum side yard of the adjacent residential district or 7.5 feet, whichever is less.

3. Rear: 0 feet, except adjacent to residential district where the rear yard shall equal the minimum rear yard of the adjacent residential district or 30 feet, whichever is less.

D. Maximum Building Lot Coverage: 85 percent, maximum building lot coverage may exceed 85 percent (up to 100 percent) with a special exception (Added 10/9/03)

**Section 162: Building Height**

A. Principal building: 30 feet, building height for new construction and/or additions may exceed 30 feet (up to 35 feet) with a special exception. (Amended 10/9/03)

B. Accessory structures: 15 feet

**Section 163: Off-Street Parking**

Off-street parking shall be provided as required in Article XVI.

## PART III. C-3 GENERAL COMMERCIAL DISTRICT

### Section 164: Purpose

This district is designed to accommodate more intense commercial and light industrial activities, and wholesale and other businesses which do not lend themselves to being concentrated within the central business district.

### Section 165: Permitted Uses

The following uses and structures are permitted in the C-3 district:

A. Building supply

B. Commercial greenhouse operations without on-site sales

C. Low traffic generating restaurants, dine in or carry out, which have no drive- thru service. Service or consumption outside a fully-enclosed structure is allowed. (Amended 10/9/03)

D. Manufacturing, processing, creating, repairing, renovating, painting, cleaning, assembling of goods, merchandise and equipment with no storage or display of goods outside fully-enclosed building and lot size equal to or less than 22,000 square feet.

E. Motor vehicle-related sales with installation of parts or accessories (e.g., tires or mufflers).

F. Municipal parking lot

G. Personal service businesses (Amended 6/8/17)

H. Professional offices (Amended 10/9/03; Amended 7/27/23)

I. Sales and rental of goods, merchandise and equipment with no storage or display of goods outside a fully enclosed building and lot size equal to or less than 22,000 square feet.

J. Fitness Studios (Added 2/14/13)

K. Dwellings in business buildings or over stores or offices (dwelling in combination) (Added 10/30/24)

### Section 166: Special Exception Uses

The following uses and structures are permitted in the C-3 district subject to securing a special use permit in accordance with Article V:

A. Auto repair garage

B. Animal Hospital (Amended 10/9/03)

C. Community utility facility

D. Commercial greenhouse operation with on-site sales

E. Single-family detached dwellings (Amended 10/30/24)

F. Fitness center

G. Inn

H. Manufacturing, processing, creating, repairing, renovating, painting, cleaning, assembling of goods, merchandise and equipment with lot size greater than 22,000 square feet and/or storage and display of goods outside a fully-enclosed building.

I. Motor vehicle sales

J. Neighborhood utility facility

K. Open air market (farm and craft markets, produce markets, and horticultural sales with outdoor display) (Amended 10/9/03)

L. Parking lot facility (Added 2/10/05)

M. Sales and rental of goods, merchandise and equipment with lot size greater than 22,000 square feet and/or storage and display of goods outside a fully-enclosed building.

N. Social, fraternal clubs and lodges

O. Warehouse

P. Car wash, Recycling (Added 2/11/99)

Q. Self-Storage Facility (Added 10/12/00)

**Section 167: Lot Requirements**

A. Minimum Lot Size: 6,000 square feet

B. Minimum Lot Width: 50 feet at the front property line

C. Yard Depth Requirements

1. Front: 0 feet minimum and 30 feet maximum, except the front yard shall not be less than the smaller of the front yards of the two immediately adjacent buildings nor more than 30 feet.
2. Side: 0 feet, except adjacent to residential district where the side yard shall equal the minimum side yard of the adjacent residential district or 7.5 feet, whichever is less.
3. Rear: 0 feet, except adjacent to residential district where the rear yard shall equal the minimum rear yard of the adjacent residential district or 30 feet, whichever is less.

D. Maximum Building Lot Coverage: 50 percent

**Section 168: Maximum Building Height**

A. Principal building: 30 feet (Amended 10/9/03)

B. Accessory structures: 15 feet

**Section 169: Off-Street Parking**

Off-street parking shall be provided as required in Article XVI.

## PART IV. COMMERCIAL USE AND DESIGN STANDARDS

### Section 170: In General

There are certain commercial uses, whether or not regulated by special use permit, that, by their very nature may have impacts that differ substantially from those uses permitted by right or may be incompatible with other permitted uses of land. The commercial use and design standards of this Part are intended to recognize and help to mitigate the major potential impacts commonly associated with certain commercial uses. Compliance with these standards is required as a prerequisite to receipt of an occupancy permit for any commercial use to which such standards apply. In the case of a special exception use, these standards are in addition to any conditions that may be imposed as part of the approval of a special use permit for such use.

### Section 170.1: Use and Design Standards for Specific Commercial Uses

The following additional use and design standards shall be met by the listed uses in accordance with this Article:

A. Car Wash, Recycling. Recycling car wash facilities shall be subject to the following use and design standards, in addition to all other applicable regulations: (Amended 2/11/99)

   1. Bay doors shall be oriented away from the public right-of-way, if possible.
   2. There shall be no outdoor storage associated with the use.
   3. Details of the water recycling system to be employed by the facility shall be submitted with the special exception application. This system shall include provisions for on-site water drainage, filtration and reclamation to capture and filter water used to wash vehicles. The system shall be designed to reclaim at least 75% of the water used to wash and rinse each vehicle. Information submitted must be sufficient to ensure that used water from the facility will not have a detrimental effect on the town's sewage treatment facilities, the existing storm drainage system, adjacent properties or streets, as determined by the Town Engineer.

B. Self-Storage Facility. Self-storage facilities shall be subject to the following use and design standards, in addition to all other applicable regulations: (Amended 10/12/00)

   1. Only "dead storage" shall be permitted, which shall mean the keeping of goods not in use and not associated with any office, retail or other business activity conducted on premises. Conducting an office, retail or other business or service use from a storage unit shall be prohibited. One administrative office for the proprietor of the self-storage business shall be permitted within the facility in appropriately designed space.
   2. All storage shall be inside a building or fully enclosed structure.
   3. Vehicle parking shall be for tenants and employees only, while they are on the site. Motor vehicles shall not be parked overnight or otherwise stored outside on the site unless associated with another permitted principal use on the site.
   4. Storage of flammable or hazardous materials and explosives is prohibited, as well as storage of any materials that are offensive or noxious because of odors, dust, or fumes.

5. The height of any individual storage unit, from floor to ceiling, shall not exceed ten feet. Individual storage units shall not be stacked vertically, except within a fully enclosed building.
6. Landscaping and screening acceptable to the Town Council shall be provided in all yards facing public roadways or properties in residential use.
7. Site lighting, if any, shall utilize fully shielded cut-off fixtures and be designed and located so as to prohibit glare onto adjacent properties.

C. Parking Lot Facility. Parking Lot facilities shall be subject to the following use and design standards, in addition to all other applicable regulations: (Added 2/10/05)

1. Lot coverage by impervious surfaces shall be determined based upon minimum buffering and landscaping requirements except the buffer reduction permitted by Section 211(a). However, lot coverage and spaces provided may be limited through the special use permit.
2. The parking facility will:
   a. utilize fully shielded cut-off light fixtures approved by the Historic District Review Committee and designed and located so as to prohibit glare onto adjacent properties.
   b. be arranged to be compatible with the surrounding use and design, particularly with regard to traffic circulation, parking, and appearance.
   c. be limited to specific hours of operation through special use permit (if required by the Town Council).
   d. have any permanent or temporary structure or equipment used to control or monitor entry to the facility from the public right of way reviewed by the Historic District Review Committee.
   e. not be associated with the demolition of any structure unless otherwise approved by the Historic District Review Committee and Town Council.

D. Fitness studios shall be subject to the following use and design standard, in addition to all other applicable regulations: (Added 2/14/13)

No noise or music shall be permitted in conjunction with a fitness studio that exceed 45 decibels, as measured from any point outside the studio.

**Sections 170.2 through 170.10: Reserved**

## PART V. MUV MIXED USE VILLAGE DISTRICT

(added in its entirety 9/13/07)

### Section 170.11: Purpose

This district is intended to encourage development which includes a variety of residential housing types, limited commercial uses, and institutional/public uses designed in an integrated, concentrated development pattern at a small-town pedestrian scale in the traditional character of Middleburg.

### Section 170.12: General Procedure

Reclassification of existing land to the MUV District shall follow the procedural requirements for Amendments as outlined in Article XVIII and shall be approved pursuant to a plan showing the location and extent of the proposed MUV District.

### Section 170.13: Minimum District Size

A mixed-use village district shall be at least ten (10) acres in size.

### Section 170.14: Permitted Uses

The following uses are permitted in this district:

A. Dwellings, single family detached

B. Dwellings, single family attached

C. Dwelling multi-family

D. Dwellings in business buildings or over offices

E. Professional office

F. Medical office

G. Municipal buildings

H. Municipal parking lot

I. Utility and stormwater uses

### Section 170.15: Special Exception Uses

The following uses are permitted in the MUV district subject to securing a special use permit in accordance with Article V:

A. Adult assisted living

B. Bed and Breakfast

C. Child care center

D. Restaurant

E. Personal service businesses (Amended 6/8/17)

**Section 170.16: Accessory Uses and Structures**

Accessory uses and structures are permitted for single family detached and attached housing in accordance with the provisions Article X, Section 134.

**Section 170.17: MUV Housing Unit Types and Performance Standards**

The following housing types shall be permitted in the MUV in accordance with the standards provided for each:

A. Single family detached houses. This dwelling type consists of fully detached; single family residences located on individual lots. Detached housing in the MUV is distinguished by small front and side yards. The streetscape of MUV detached housing is a critical element given the small setbacks from the street, thus each plan using this housing type shall demonstrate good design practices. The following regulations apply:

1. Minimum Lot Size: 4,000 square feet
2. Maximum Building Lot Coverage: 75 percent
3. Maximum Building Height: 35 feet
4. Minimum setbacks for principal structures:
    a. Front: 15 feet
    b. Side: 5 feet
    c. Corner side: 20 feet
    d. Rear: 20 feet
    e. Exceptions: Accessory buildings or uses may be located no closer than five (5) feet to any side or rear lot line
5. Minimum Lot Width: 40 feet
6. Vehicular access for single family detached dwellings shall be from the rear and the primary pedestrian entrance shall be on the public street side.
7. Seventy-five percent of the single family detached dwellings within the MUV District shall have front porches.

B. Single family attached dwellings. This dwelling type consists of single family attached units with individual outside access. Row of townhouses shall contain no less than three (3) and no more than six (6) units in a group and are subject to the following regulations:

1. Minimum Lot Size: 1,400 square feet per unit
2. Minimum lot width: 20 feet
3. Maximum building height: 35 feet
4. Minimum setbacks for principal structures:
    a. Front: 20 feet
    b. Side (end unit): 10 feet
    c. Rear: 20 feet

d. Exceptions: Accessory buildings or uses may be located no closer than five (5) feet to any side or rear lot line.

5. Vehicular access for single family attached dwellings shall be from the rear and the primary pedestrian entrance shall be on the public street side.

6. Seventy-five percent of the single family attached dwellings within the MUV District shall have front porches.

Note: Setbacks shall be varied at least two (2) feet for all townhouse units within a group, except that two (2) abutting units may have the same setback, provided no more than four (4) units in the group have the same setback. Architectural treatment shall vary so that no more than two (2) abutting units are substantially the same.

C. Multi-family dwellings. Multi-family buildings are buildings comprised of a minimum of three dwelling units in a single structure. These residential units may or may not be located above non-residential space. The following apply to a multi-family building in which the majority of the floor area is devoted to residential uses:

1. Minimum Lot Size: 8,000 square feet

2. Maximum building height: 35 feet

3. Minimum setbacks:

a. Front: 25 feet

b. Side: 20 feet

c. Rear: 25 feet

**Section 170.18: Non-Residential Uses**

A. Minimum Lot Size: None

B. Minimum Lot Width: None

C. Yard Depth Requirements:

1. Front: 0 feet minimum and 30 feet maximum, except the front yard shall not be less than the smaller of the front yards of the two immediately adjacent buildings nor more than 30 feet.

2. Side: 0 feet, except adjacent to residential district where the side yard shall equal the minimum side yard of the adjacent residential district or 7.5 feet, whichever is less.

3. Rear: 0 feet, except adjacent to residential district where the rear yard shall equal the minimum rear yard of the adjacent residential district or 20 feet, whichever is less.

D. Maximum Building Lot Coverage: 85 percent, maximum building lot coverage may exceed 85 percent (up to 100 percent) with a special exception

E. Building Height: 35 feet

**Section 170.19 Design Features**

A. Abutting townhouses shall have complementary but not identical facades.

B. Townhouses shall front on a public street or townhouse private access-way as provided in the Town of Middleburg Street and Parking Standards.

C. No townhouse shall have attached to its front facade a garage or carport unless the garage is an integral part of the residential building and does not project beyond the face of the building. Only in the case of an integrated garage shall a front driveway be permitted.

D. Multi-family buildings (apartments) shall avoid massive, monolithic, and repetitive building types, facades and setbacks, and shall be compatible in mass, scale, and design with surrounding areas. Building elevations and architectural details shall be submitted to the planning commission to demonstrate compliance with this section if the project is not reviewed by the Historic District Review Committee as provided in Article XVII.

**Section 170.20 Parking**

Parking spaces shall be provided as required by Article XVI. Parking shall be provided along streets or in the rear of buildings with the exception of on-site parking for single family detached and attached residences. Adjacent on-street parking spaces created by a commercial use or development in conformance with an approved site plan may be applied toward the off-street parking requirement of that use or development. Shared parking per Article XVI shall be encouraged.

**Section 170.21: Buffering and Screening**

Acknowledging that one of the objectives of the mixed use village district is to encourage interrelationships between uses, the Town Council may modify the buffering and screening requirements contained in Article XV, in conjunction with the approval of the site plan.

**Section 170.22: Landscaping**

In conjunction with the approval of the development plan, the Town Council may modify the requirements of Part. II of Article XV in favor of the landscaping shown on the site plan. Landscaping within the MUV district shall conform with that stipulated in the Comprehensive Plan.

**Section 170.23: Open Space**

Open space, consisting of active or passive recreational/gathering space, shall be provided in accordance with the following:

A. A minimum of 300 square feet of open space shall be provided for each detached or attached single family dwelling unit;

B. A minimum of 200 square feet of open space shall be provided for each multi-family dwelling unit;

C. A minimum of 100 square feet of open space shall be provided for each 500 gross square feet of non-residential space.

In recognition of the coexistence of residential and non-residential uses within this district, the open space areas for residential and non-residential uses may be common area provided that no more than 50% of the required residential open space may be double-counted toward the non-residential use requirement. This open space may be consolidated into a village green area or several smaller areas. If the required open space area is consolidated into a village green, it shall be located such that is it easily and safely accessible to the residents of the development and users of the non-residential space.

**Section 170.24: Sidewalks**

A network of sidewalks, a minimum of 5 feet in width, shall be provided within the MUV District in order to provide a sense of connectivity throughout the District and with the remainder of the Town.

**Section 170.25: Streets**

Private streets are encouraged within the MUV District. If public streets are provided, pavement widths shall be as narrow as permitted by VDOT.

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# ARTICLE XII. SUPPLEMENTARY USE REGULATIONS

## PART I. GENERAL PROVISIONS

### Section 171: Plans to Accompany Applications for Zoning Permits (amended 5/12/06)

A. A site plan or plat, prepared and approved in accordance with the provisions of this ordinance, shall be required to assist the town council and town officials in the review of applications for zoning permits, to assure compliance with all applicable requirements of this ordinance.

B. The following developments and uses shall require submission of a site plan:

1. All permitted uses in the A-C and R districts, except the following:
   a. Single family detached dwellings and their related accessory uses.
   b. Agriculture.
2. All permitted uses in the C districts.
3. Special uses permitted in accordance with Article V of this ordinance.
4. Any development in which any required off-street parking space is to be used by more than one establishment.

C. Site plans or any portion thereof involving engineering, architecture, landscape architecture, or land surveying shall be certified by an engineer, architect, or land surveyor authorized by the State to practice as such.

Site plans shall be prepared to a scale of one-inch equals one hundred feet (1" = 100') or larger. The sheet(s) shall be 24 inches by 36 inches.

D. All site plans shall be submitted to the zoning administrator in clearly legible blue or black lined copies and shall contain the following information:

1. Name of development, the developer and designer.
2. Scale, north arrow, vicinity map insert, date and number of sheets.
3. Names of adjoining property owners.
4. Location and description of existing easements, buildings, watercourses, utilities, drainage structures and other pertinent features.
5. Topography with contour interval of two feet.
6. Location, name and present width of existing adjoining streets/sidewalks or other public ways.
7. Building setback lines.
8. Location and dimensions of proposed building(s) and/or modifications to existing buildings. The number of floors, floor area and proposed use(s) for the building. If the building contains multi-family units, the number and size of the dwelling units shall be shown.
9. Location of proposed on-site and off-site improvements including streets, sidewalks, curb and gutters, drainage structures, sanitary sewers, water lines, street lighting, fencing, landscaping, etc.
10. Location of off-street parking spaces indicating type of surfacing, width of spaces and a note indicating the number required by town ordinance.

11. Proposed on-site and off-site improvements including street, sidewalks, sanitary sewers, water lines and drainage structures, which shall include plan and profile drawings for existing and proposed streets, proposed sanitary sewers and be accompanied by certification from the Virginia Department of Highways and Transportation that the street and drainage plans meet current requirements.
12. A detailed cost estimate of all on-site and off-site improvements with a corresponding statement signed by the developer acknowledging complete responsibility for the installations of the improvements per the approved plans under the conditions specified by the town council prior to approval of the zoning permit.

E. All developments and uses not requiring a site plan pursuant to Article XII of this ordinance shall require the submission of a plat prepared by a certified land surveyor, except that plats submitted for additions to an existing single family dwelling or accessory structure related to an existing single family dwelling may be prepared by other than a certified land surveyor or registered engineer. Each such plat shall indicate the following information:

1. The dimensions of the lot or parcel, the boundary lines thereof, and the area of land contained therein.
2. The location, dimensions and height of any building, structure, or addition, whether existing or proposed.
3. The distance from all property lines to the proposed building, structure, or addition, shown to the nearest foot.
4. The proposed elevation of the first-floor level and of the lowest floor level of any proposed new building. Such elevations shall not be required for additions unless the proposed elevation of the lowest floor level of such addition is below the lowest floor elevation of the structure to which it is added.
5. The existing and intended use of each building or structure or part thereof, including the number of dwelling units within a dwelling.
6. The location and configuration of any existing or proposed off-street parking spaces(s), the number of spaces proposed to be provided, and information as to the proposed surfacing of such areas.
7. The signature and certification number, if applicable, of the person preparing the plat.
8. Such other information with regard to the lot, existing and proposed buildings, and existing and proposed uses thereof, and such other information with regard to contiguous lots as may be prescribed by resolution of the planning commission as being necessary to the proper enforcement of the provisions of this ordinance.

**Section 172: Features Exempt from Height Limitations**

A. The height limitations set forth in Articles IX, X, and XI shall not apply to the following features; provided that such structures or features shall be created only to a height necessary to accomplish the purpose intended, and further provided that any such structure or feature over 50 feet in height, as measured from the ground, shall require approval by the zoning administrator.

1. Chimneys, church spires, elevator shafts, barns and other bona fide agricultural buildings, radio and television antenna and towers, telecommunications antenna, water towers or

similar structural features not intended as places of occupancy or storage. (Amended 11/9/95)

2. Flagpoles or similar devices.
3. Heating and air conditioning equipment, solar collectors, and similar equipment, fixtures, and devices.

B. The features listed in Subsection A. are exempt from the height limitations set forth in Articles IX, X, and XI if they conform to the following requirements:

1. Not more than 25 percent of the total roof area may be covered by such features.
2. The features described in Subsection A.3. must be set back from each edge of the roof a minimum distance of one foot for every foot by which such features extend above the roof surface of the principal building to which they are attached.

**Section 172.1 Temporary Special Events** (Added 5/12/06)

A. For purposes of this section, a special event shall be defined as a temporary commercial or festive activity or promoted at a specific location outside of the principal resort structures that is not customarily associated with resort activities. Examples of temporary special events include, but are not limited to, circuses, music fairs or concerts, tent revivals, art shows, craft shows, rodeos, corn mazes, festival, civil war enactments when planned or promoted to attract members of the general public, the majority of whom are not expected to stay overnight at the resort. Any temporary special event reasonably expected to attract more than one hundred people at any one time or more than six hundred people during any day of the event shall require advance approval by the Zoning Administrator in accordance with the provisions of this section.

B. The location and nature of use of areas proposed for the site of temporary special events shall be depicted on a concept plan or plat submitted as a part of the special use permit required by Section 104. The number of temporary special events requiring approval by the Zoning Administrator may be limited as a condition of approval and shall be subject to further reasonable conditions addressing any and all of the following without limitation:

1. Hours of operation
2. Noise limits
3. Location of facilities, including parking and sanitation
4. Lighting
5. Trash removal
6. Security and crowd control
7. Emergency access
8. Traffic management and directional signage
9. Crowd management if expected attendance is exceeded

C. The Zoning Administrator shall approve a temporary zoning permit application for a special event if it meets all of the following standards and criteria:

1. The proposed temporary event shall be located, operated and maintained in a manner consistent with the provisions of this ordinance.

2. The particular location requested can reasonably accommodate the proposed temporary event, given the proposed use's nature, size and duration.
3. The operation of the requested event at the location proposed and within the time period specified shall not create significant adverse impacts, including but not limited to environmental, visual, glare, traffic, noise or odor impacts, on adjacent properties, or improvements on adjacent properties, or in the surrounding area.
4. The proposed event shall not create an unreasonable risk of:
    a. Significant damage to public or private property, beyond normal wear and tear
    b. Injury to persons
    c. Public and private disturbances or nuisances
    d. Unsafe impediments or distractions to, or congestion of, vehicular or pedestrian travel
    e. Additional police, fire, trash removal, maintenance or other public services demands, unless substantially mitigated by the applicant or operator
5. The time and location requested for the proposed special event shall not be already permitted or reserved for other activities.
6. Permanent alterations to the site are prohibited, unless the Zoning Administrator specifically approves the alteration so that the permit applicant can comply with this subsection.
7. Permanent signs are prohibited. Temporary signs shall be permitted as approved by the Zoning Administrator. All temporary signs that are associated with the temporary event use shall be removed when the special event ends.
8. Temporary special events shall not violate any applicable conditions of approval that apply to the principal use on the site.
9. The applicant or operator has received or complies with any other required permits, such as health department permits, or other federal, state or county regulations.

D. The Zoning Administrator may impose conditions reasonably necessary to assure compliance with the standards in this Section to ensure that operation and maintenance of the special event mitigate potential adverse impacts on existing uses on adjoining properties and in the surrounding areas, and to protect the public health, safety and general welfare. Conditions may address, but are not limited to, provisions for adequate parking, storage, and lighting; provisions of security, traffic safety, fire and life safety; conditions limiting hours of operation; provision for adequate sewage disposal; and any other health and safety concerns the Zoning Administrator may deem necessary to comply with the standards in subsection C. above. In addition, the Zoning Administrator may require the posting of a bond to ensure timely removal of structures and materials and restoration of the area.

**Section 173: Commercial Vehicles in Residential Districts**

A. One commercial vehicle per dwelling unit with a gross vehicle weight of less than 15,000 pounds may be parked overnight by an occupant of the dwelling unit who is the owner or operator of the vehicle, except as prohibited in subsection B. below.

B. The following commercial vehicles are prohibited from overnight parking, regardless of ownership or occupancy.
    1. Garbage truck

2. Tractor or trailer or both
3. Dump truck
4. Tow truck
5. Passenger bus (excluding school buses)
6. Cement truck
7. Stake bed truck
8. Flatbed truck
9. Construction equipment
10. Fuel oil truck

C. Construction equipment and construction-related vehicles may be parked only during the duration of construction.

D. The provisions of the subsections above shall not prohibit the overnight parking of any vehicle or equipment in the A-C district as long as such vehicles are used in bona fide agricultural operations.

## PART II. MANUFACTURING/PROCESSING PERFORMANCE STANDARDS

### Section 174: Smoke

No manufacturing or processing use in the C-3 district shall emit any smoke, that is visible to the naked eye, from a vent, stack, chimney, or combustion process.

### Section 175: Noise

A. No manufacturing or processing use in the C-3 district shall generate noise that tends to have an annoying or disruptive effect upon uses located on adjacent lots. The table below establishes the maximum permissible noise levels for manufacturing and processing uses in the C-3 district.

B. Table of Maximum Permitted Sound Levels, dB(A), measured at the property line.

| Residential | | Commercial |
|---|---|---|
| 7 a.m-7 p.m. | 7 p.m-7 a.m. | 55 |
| 50 | 45 | |

C. Noise resulting from temporary construction activity that occurs between 7 a.m. and 7 p.m. shall be exempt from the requirements of this section.

### Section 176: Vibration

A. No manufacturing or processing use shall generate any ground-transmitted vibration that is perceptible to the human sense of touch measured at the property line.

B. Vibrations resulting from temporary construction activity that occurs between 7 a.m. and 7 p.m. shall be exempt from the requirements of this section.

**Section 177: Odors**

A. The "odor threshold", for purposes of this section, is defined as the minimum concentration in air of gas, vapor, or particulate matter than can be detected by the olfactory systems of a panel of healthy observers
B. No manufacturing or processing use shall generate any odor that reaches the odor threshold measured at the property line.

**Section 178: Disposal of Liquid Wastes**

No manufacturing or processing use shall discharge into the town sewage treatment facility any waste that cannot be adequately treated by biological means.

**Section 179: Water Consumption**

No manufacturing or processing use that requires a daily average of more than 7,000 gallons of water.

**Section 180: Electrical Disturbance or Interference**

No manufacturing or processing use shall:

A. Create any electrical disturbance that adversely affects any operation or equipment other than that owned by the maker on any such disturbance; or
B. Otherwise cause, create, or contribute to the interference with electronic signals (including television and radio broadcasting transmissions) to the extent that the operation of any equipment not owned by the maker of such disturbance is adversely affected.

## PART III. PERMITTED EXTENSIONS INTO REQUIRED YARDS

**Section 181: General Provisions.**

Except as may be qualified by the provisions of this ordinance, no structure or part thereof shall be built or moved on a lot which does not meet all of the minimum yard requirements for the zoning district in which the structure is located.

**Section 182: Permitted Extensions into Required Yards.**

No building or structure, including fences and walls, or any addition thereto may be located in whole or in part in any setback or front, rear, or side yard required by this ordinance, except as provided in the district regulations and qualified herein. No structure may be erected over a public right-of-way or easement, except as expressly permitted by the Town. Notwithstanding anything to the contrary in this ordinance, no zoning permit shall be approved for any structure which does not comply with Virginia Department of Transportation (VDOT) sight distance requirements.

A. Fences and Walls. Fences and walls may be located anywhere within required yards subject to the sight distance provisions of this section and the following limitations:

1. Front Yards and Side Yards adjacent to a street. Fences and walls within any required front yard or side yard adjacent to a street shall not exceed four (4) feet in height. (Amended 12/9/99; 6/9/16)
2. Side and Rear Yards. Fences and walls within any required side yard (not adjacent to a street) or rear yard in residential districts shall not exceed six (6) feet in height, except when abutting a higher density residential or non-residential district or use, where such fences or walls shall not exceed eight (8) feet in height. Fences or walls within any required side yard (not adjacent to a street) or rear yard in non-residential districts shall not exceed eight (8) feet in height. When elements such as columns, finials, pillars or posts are part of a fence or wall in the side or rear yard, then total height, including such elements, may exceed the height limit by up to one (1) foot, provided that no such element is greater than 24 inches in width or diameter and is located no closer than three (3) feet from any other such element. (Amended 12/9/99; 6/9/16)
3. Exceptions to Height Limit. (Amended 6/9/16)
   a. Retaining walls which are necessitated by the existing grade of the property may exceed the height limit in the amount required to retain soil from entering adjacent properties or a public right-of-way or easement.
   b. Fences or walls may exceed the height limit where required to comply with screening provisions of this ordinance or the safety standards of other applicable governmental regulations.
   c. On corner lots in residential districts, the Zoning Administrator may approve a fence exceeding four (4) feet in height, but not to exceed six (6) feet in height, in either a required front yard or side yard adjacent to a street, but not both. Any such fence must be of a design that is at least 25 percent open.
4. Prohibited Fencing Materials in Residential Areas. No barbed wire, electrical elements or other hazardous materials, and no unfinished concrete or cinder block or other similar unfinished material shall be maintained as a fence or part of a fence or wall in a residential district or abutting a residential district or use, except in conjunction with bona fide agricultural uses in the A-C district; provided, however, that underground "invisible" fencing shall be permitted.

B. Certain At-grade Structures. Walkways, sidewalks, and steps or other architectural features, constructed at grade may extend anywhere into any required yard.

C. Decks and Patios. The following shall apply to any deck or patio attached to a principal structure in any zoning district. Any such structures not attached to a principal structure shall be considered an accessory structure.

1. Decks or Patios Attached to Residential Structures. Uncovered decks and patios which are attached to a principal residential structure may extend into no more than fifty percent (50%) of a required side yard (not adjacent to a street) or rear yard, but no closer than five (5) feet to any property line.
2. Decks or Patios Attached to Non-Residential Structures. Uncovered decks and patios which are attached to a principal non-residential structure may extend into no more than fifty percent (50%) of any required yard, provided all other requirements of this ordinance can be met.

D. Porches, Stairs, Landings, Mechanical Units and Architectural Features. Unenclosed porches, stairs, handicapped ramps and landings, covered or uncovered, which are attached to a principal structure; areaways and window wells; mechanical units; and bay windows, oriels, and chimneys, none of which exceed ten (10) feet in width, may project into no more than fifty percent (50%) of any required yard, but no closer than five (5) feet to any lot line. (Amended 9/26/24)

E. Detached garages. Detached garages may be located anywhere within a rear yard provided that such garage is no closer than five (5) feet to any lot line. (Added 9/26/24)

F. Other Accessory Buildings and Structures. (Amended 12/9/99; 6/9/16; 9/26/24)

Accessory buildings and structures, other than detached garages, may be located anywhere within a rear yard, or within a side yard (not adjacent to a street), provided that such buildings are no closer than five (5) feet to any lot line. Additionally:

1. Trellises, arbors, pergolas, open, ornamental entryways, such as an arch, and other similar unenclosed ornamental structures not exceeding twelve (12) feet in width and eight (8) feet in height, and flag poles may be located anywhere within a required front yard or side yard adjacent to a street, provided that such structures are no closer than five (5) feet to any lot line.

2. On corner lots in residential districts improved with dwellings that are legally nonconforming as to required yard depths, the Zoning Administrator may approve an accessory building or structure to be located within a front yard, or within side yard adjacent to a street, subject to the following:

   a. Such building or structure cannot, at the discretion of the Zoning Administrator, be reasonably located within a rear yard, or within a side yard (not adjacent to a street);

   b. The encroachment into a front yard, or into a side yard adjacent to a street, shall be minimized to the extent necessary to accommodate the structure, and;

   c. In no case shall any such building or structure be located closer than five (5) feet to any lot line.

G. Exceptions. (Amended 6/9/16)

1. Historic District Waiver. The provisions of this section may be waived by the Town Council within the Historic District if the Historic District Review Committee recommends, and the Town Council finds, that a waiver of said provisions is necessary to maintain or enhance the integrity of the historic district, and the public safety can be maintained.

2. Special Use Permit. The Town Council may approve a special use permit to modify the provisions of this Section, but only in accordance with the provisions of Article V governing special use permits.

**Sections 183 through 184: Reserved.**

# ARTICLE XIII. OPEN SPACE

## Section 185: Usable Open Space

A. Every residential development containing more than 25 dwelling units shall maintain at least five percent of the total area of the development as permanent usable open space.

B. Usable open space means an area that:

1. Is not encumbered with any substantial structure;
2. Is not devoted to any roadway, parking area or sidewalk;
3. Is left in its natural or undisturbed state if wooded, except for the development of pedestrian trails;
4. Is developed for ball fields, picnic areas or other similar facilities or is properly landscaped if not wooded at the time of development;
5. Is capable of being used and enjoyed for the purposes of informal and unstructured recreation and relaxation;
6. Is legally and practicably accessible to the residents of the development of which it is a part; and
7. Contains no land which lies in a floodplain or in an area containing slopes 15 percent or greater.

## Section 186: Ownership and Maintenance of Recreation Areas and Open Space

A. Recreation facilities and open space required in accordance with this ordinance shall remain under the control of the developer (or his successor) or a homeowners association or similar organization that satisfies the criteria contained in Section 188.

B. The person or entity identified in subsection A. as having ownership of the recreation facilities and open space shall be responsible for the continuing preservation and proper maintenance of such facilities and open space.

## Section 187: Dedication of Open Space

A. Any portion of any lot proposed for residential development which is designated as a neighborhood park in the comprehensive plan (not exceeding five percent of the total lot area) shall be included as part of the area set aside to satisfy the requirements of Section 185. This area may be dedicated to public use.

B. If more than five percent of a lot proposed for residential development lies within an area designated as a neighborhood park in the comprehensive plan, the town may attempt to acquire the additional land by:

1. Encouraging the developer to utilize the cluster subdivision option and dedicate the resulting common open space; or
2. Purchasing or condemning the required land.

**Section 188: Homeowners Associations**

Homeowners associations or similar legal entities responsible for the maintenance and control of common areas, including recreation facilities and open space, pursuant to Section 186 shall be established so that:

A. Provision for the establishment of the association or similar entity is made before any lot in the development is sold or any building occupied;

B. The association or similar entity has clear legal authority to maintain and exercise control over such common areas and facilities; and

C. The association or similar legal entity has the power to compel contributions from residents of the development to cover their proportionate shares of the costs associated with the preservation and maintenance of such common areas and facilities.

**Section 189: Flexibility in Administration**

A. The requirements of this ordinance concerning the amount, size, location and nature of recreational facilities and open space to be provided in connection with residential developments, cluster developments and planned town developments are established by the council as presumptive standards consistent with the comprehensive plan. The council recognizes that the underlying objectives of this ordinance may be achieved differently because of the particular nature of a tract of land or the facilities proposed or other factors. Therefore, minor deviations from these standards may be permitted whenever council determines that the minimum requirements will be equaled or exceeded by the proposed deviation.

B. The official record of action taken on a development application shall contain a statement of the reasons for allowing any deviation from the standards of this ordinance.

**Sections 190 through 193: Reserved**

# ARTICLE XIV. SIGNS

(This Article repealed and reenacted in its entirety 12/10/20)

## PART I. GENERAL PROVISIONS

### Section 194: Findings, purpose and intent; interpretation.

A. Signs obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation. The purpose of this article is to regulate the size, color, illumination, movement, materials, location, height and condition of all signs placed on private property for exterior observation, thus ensuring the protection of property values, the character of the various neighborhoods, the creation of a convenient, attractive and harmonious community, protection against destruction of or encroachment upon historic areas, and the safety and welfare of pedestrians and wheeled traffic, while providing convenience to citizens and encouraging economic development. This article allows adequate communication through signage while encouraging aesthetic quality in the design, location, size and purpose of all signs. This article shall be interpreted in a manner consistent with the First Amendment guarantee of free speech. If any provision of this article is found by a court of competent jurisdiction to be invalid, such finding shall not affect the validity of other provisions of this article which can be given effect without the invalid provision.

B. Signs not expressly permitted as being allowed by right or by special use permit under this article, by specific requirements in another portion of this chapter, or otherwise expressly allowed by the Town are forbidden.

C. A sign placed on land or on a building for the purpose of identification, protection or directing persons to a use conducted therein shall be deemed to be an integral but accessory and subordinate part of the principal use of land or building. Therefore, the intent of this article is to establish limitations on signs in order to ensure they are appropriate to the land, building or use to which they are appurtenant and are adequate for their intended purpose while balancing the individual and community interests identified in subsection A. of this section.

D. These regulations are intended to promote signs that are compatible with the use of the property to which they are appurtenant, landscape and architecture of surrounding buildings, are legible and appropriate to the activity to which they pertain, are not distracting to motorists, and are constructed and maintained in a structurally sound and attractive condition.

E. These regulations distinguish between portions of the Town designed for primarily vehicular access and portions of the Town designed for primarily pedestrian access.

F. These regulations do not regulate every form and instance of visual speech that may be displayed anywhere within the jurisdictional limits of the Town. Rather, they are intended to regulate those forms and instances that are most likely to meaningfully affect one or more of the purposes set forth above.

G. These regulations do not entirely eliminate all of the harms that may be created by the installation and display of signs. Rather, they strike an appropriate balance that preserves ample channels of communication by means of visual display while still reducing and mitigating the extent of the harms caused by signs.

**Section 195: Definitions.**

A. *A-Frame sign* means a two-faced sign with supports that are connected at the top and separated at the base, forming an "A" shape not more than four feet high. These are also referred to as "sandwich board" signs. They are included in the term "portable sign."

B. *Advertising* means any words, symbol, color or design used to call attention to a commercial product, service, or activity.

C. *Animated sign* means a sign or part of a sign that is designed to rotate, move or appear to rotate or move. Such a sign is sometimes referred to as a "moving sign."

D. *Awning sign* means a sign placed directly on the surface of an awning.

E. *Banner* means a temporary sign of flexible material.

F. *Building frontage* means the length of the main wall of a building which physically encloses usable interior space and which is the architecturally designed wall that contains the main entrance for use by the general public.

G. *Chalk-board sign* means a framed slate or chalk-board that can be written on with chalk or similar markers.

H. *Comprehensive sign plan* means a plan for the signage of a property that includes multiple tenants or owners with shared parking or other facilities.

I. *Feather sign.* A lightweight, portable sign typically mounted along one edge on a single, vertical, flexible pole the physical structure of which may resemble a feather, sail, bow, or teardrop.

J. *Flag* means a piece of cloth or similar material, typically oblong or square, attachable by one edge to a pole or rope and used as a symbol or decoration; this includes pennants.

K. *Flashing sign* means a sign that includes lights that flash, blink, or turn on and off intermittently.

L. *Freestanding sign* means any non-portable sign supported by a fence, retaining wall, or by upright structural members or braces on or in the ground and not attached to a building.

M. *Height* means the maximum vertical distance from the base of the sign structure at normal grade to the top of the highest attached component of the sign. Normal grade shall be construed to be the lower of:

   1. Existing grade prior to construction; or
   2. The newly established grade after construction, exclusive of any filling, berming, mounding or excavating primarily for the purpose of mounting or elevating the sign.

N. *Illegal sign* means any sign erected without a required permit or which otherwise does not comply with any provisions of this article.

O. *Illuminated sign* means a sign that is backlit, internally lighted, or indirectly lighted, but does not include a neon sign.

P. *Marquee* means a permanent structure projecting beyond a building wall at an entrance to a building or extending along and projecting beyond the building's wall and generally designed and constructed to provide protection against the weather.

Q. *Marquee sign* means a sign attached to and made a part of a marquee or any similar projections from a building, with changeable, fixed or both types of lettering in use.

R. *Minor sign* means a wall or freestanding sign not exceeding one (1) square foot in area, not exceeding four feet in height, and not illuminated.

S. *Monument sign* means a sign affixed to a structure built on grade in which the sign and the structure are an integral part of one another; a monument sign is included in the term "freestanding sign."

T. *Neon sign* means a sign containing exposed tubes filled with light-emitting gas.

U. *Nonconforming sign.* Any sign which was lawfully erected in compliance with applicable regulations of the Town and maintained prior to the effective date of this article and which fails to conform to current standards and restrictions of the zoning ordinance.

V. *Off-premises sign* means a sign that directs attention to a business, product, service or activity conducted, sold or offered at a location other than the premises on which the sign is erected.

W. *Portable sign* means any temporary sign not affixed to a building, structure, vehicle or the ground. It does not include a flag or banner.

X. *Projecting sign* means any sign, other than a wall, awning or marquee sign, affixed to a building and supported only by the wall on which it is mounted.

Y. *Public area* means any public place, public right-of-way, any parking area or right-of-way open to use by the general public.

Z. *Roof sign* means a sign erected or constructed, in whole or in part, upon or above the highest point of a building with a flat roof, or the lowest portion of a roof for any building with a pitched roof.

AA. *Sign.* Any device (writing, letter work or numeral, pictorial presentation, illustration or decoration, emblem, symbol or trademark, flag, banner or pennant or any other device, figure or character) visible to and designed to communicate information to persons in a public area. The term "sign" does not include the display of merchandise for sale on the site of the display.

BB. *Sign face* means the portion of a sign structure bearing the message.

CC. *Sign structure* means any structure bearing a sign face.

DD. *Temporary sign* means any sign intended to be displayed for a limited period.

EE. *Vehicle or trailer sign* means any sign attached to or displayed on a vehicle, if the vehicle or trailer is used for the primary purpose of advertising a business establishment, product, service or activity. Any such vehicle or trailer shall, without limitation, be considered to be used for the primary purpose of advertising if it fails to display current license plates, inspection sticker, or municipal decal, if the vehicle is inoperable, if evidence of paid-to-date local taxes cannot be made available, or if the sign alters the standard design of such vehicle or trailer.

FF. *Wall Sign* means any sign attached to a wall or painted on or against a flat vertical surface of a structure.

GG. *Window sign* means any sign visible outside the window and attached to or within 18 inches in front of or behind the surface of a window or door.

**Section 196: Permit required.**

A. *In general.* A sign permit is required prior to the display and erection of any sign except as provided in section 197 of this Article.

B. *Application for permit.*

1. An application for a sign permit shall be filed with forms furnished by the Zoning Administrator. The applicant shall provide sufficient information to determine if the proposed sign is permitted under the zoning ordinance and other applicable laws, regulations, and ordinances. An application for a temporary sign shall state the dates intended for the erection and removal of the sign.

2. The Zoning Administrator or designee shall promptly process the sign permit application and approve the application, reject the application, or notify the applicant of deficiencies in the application within 10 business days after receipt; however, for any sign requiring a Certificate of Appropriateness (COA) per § 238 of this Ordinance, the Zoning Administrator or designee shall process the sign permit as above within 5 business days after final action on the COA. Any application that complies with all provisions of this zoning ordinance, the building code, and other applicable laws, regulations, and ordinances shall be approved.

3. If the application is rejected, the Town shall provide a list of the reasons for the rejection in writing. An application shall be rejected for non-compliance with the terms of the zoning ordinance, building code, or other applicable law, regulation, or ordinance.

C. *Permit fee.* A nonrefundable fee as set forth in the uncodified fee schedule adopted by the Town Council shall accompany all sign permit applications.

D. *Duration and revocation of permit.* If a sign is not installed within one year following the issuance of a sign permit (or within 30 days in the case of a temporary sign permit), the permit shall be void. The permit for a temporary sign shall state its duration, not to exceed 30 days unless another time is provided in the zoning ordinance. The Town may revoke a sign permit under any of the following circumstances:

1. The Town determines that information in the application was materially false or misleading;

2. The sign as installed does not conform to the sign permit application; or

3. The sign violates the zoning ordinance, building code, or other applicable law, regulation, or ordinance.

E. *Overlay district regulations.* All signs in the Middleburg Historic District require approval of a Certificate of Appropriateness per § 238 of this Ordinance except when a sign permit is not required as provided in § 197.

**Section 197: Permit not required.**

A sign permit is not required for:

A. Signs erected by a governmental body or required by law.

B. Flags up to 16 square feet in size not containing any commercial advertising; provided, that no freestanding pole shall be erected in the public right-of-way nor be within five (5) feet of a service drive, travel lane or adjoining street.

C. The changing of messages on marquees and the repair of an existing permitted sign, except that repair of a nonconforming sign must comply with § 202 E.

D. Temporary signs as follows:

1. One (1) sign, no more than twelve (12) square feet in area, located on property where a building permit is active.
2. On any property for sale or rent, not more than one sign with a total area of up to twelve (12) square feet and a maximum height of six (6) feet when the sign abuts a road with a speed limit of 25 miles per hour or less, and when the sign abuts a road with a speed limit greater than 25 miles per hour not more than one sign with a total area of up to twenty four (24) square feet and a maximum height of eight (8) feet.
3. Official notices or advertisements posted or displayed by or under the direction of any public or court officer in the performance of his official or directed duties; provided, that all such signs shall be removed no more than ten (10) days after their purpose has been accomplished.
4. On residential property, one or more temporary signs with a total area of no more than sixteen (16) square feet.
5. On residential property, window signs, provided that the total extent of window signs do not obstruct more than 25% of the total area of all windows on each building façade.

E. Not more than two minor signs per parcel.

F. A-frame signs more than fifty (50) feet from the nearest public right of way.

G. Pavement markings. Any sign applied directly and entirely to and flush with an asphalt, concrete, or similar paved surface.

**Section 198: Prohibited signs.**

In addition to signs prohibited elsewhere in this Code or by applicable state or federal law, the following signs are prohibited:

A. General prohibitions.

1. Signs that violate any law of the Commonwealth relating to outdoor advertising.
2. Signs attached to natural vegetation.
3. Signs simulating, or which are likely to be confused with, a traffic control sign or any other sign displayed by a public authority. Any such sign is subject to immediate removal and disposal by an authorized Town official as a nuisance.
4. Vehicle or trailer signs.
5. Freestanding signs more than 10 feet in height.
6. Any sign displayed without complying with all applicable regulations of this chapter.

B. Prohibitions based on materials.

1. Signs painted directly on a building, except where expressly permitted by this chapter.
2. Animated signs. This subsection does not apply to flags expressly permitted under this article.
3. Flashing signs or other signs displaying flashing, scrolling or intermittent lights or lights of changing degrees of intensity.

4. Signs consisting of illuminated tubing or strings of lights outlining property lines or open sales areas, rooflines, doors, windows or wall edges of any building, except for temporary decorations not to exceed three months per year.
5. Signs that emit smoke, flame, scent, mist, aerosol, liquid, or gas.
6. Signs that emit sound.
7. Any electronic sign that is generated by a series of moving images, such as an LED, digital display, or other video technology, whether displayed on a building, vehicle, or mobile unit.
8. Strings of flags visible from, and within 50 feet of, any public right-of-way.
9. Internally illuminated signs.
10. Neon signs.
11. Feather signs.

C. Prohibitions based on location.

1. Off-premises signs, unless specifically permitted by this chapter.
2. Signs erected on public land other than those approved by an authorized Town official in writing, required by law without such approval, or permitted under Virginia Code § 24.2-310 E. Any sign not so authorized is subject to immediate removal and disposal by any authorized official. Removal of the sign under this provision does not preclude prosecution of the person responsible for the sign.
3. Roof signs.
4. Any sign that obstructs free or clear vision, or otherwise causes a safety hazard for vehicular, bicycle or pedestrian traffic due to its location.
5. Window signs whose aggregate area on a window or door exceed twenty-five percent (25%) of the total area of the window or door.

**Section 199: Measurements of sign area and height.**

A. Supports, uprights or structure on which any sign is supported shall not be included in determining the sign area unless such supports, uprights or structure are designed in such a way as to form an integral background of the display; except, however, when a sign is placed on a fence, wall, planter, or other similar structure that is designed to serve a separate purpose other than to support the sign, the entire area of such structure shall not be computed. In such cases, the sign area shall be computed in accordance with the preceding provisions.

B. In instances where there are multiple tenants or users on a property or in a building, allowable sign area for all parties shall not exceed the maximum sign area computed as if there were a single tenant or user.

C. Sign area.

1. Sign area is calculated under the following principles:

   a. With signs that are regular polygons or circles, the area can be calculated by the mathematical formula for that polygon or circle. With signs that are not regular polygons or circles, the sign area is calculated using all that area within a maximum of three abutting or overlapping rectangles that enclose the sign face.

b. The permitted area of a double-faced sign shall be considered to be the area on one side only. If one face contains a larger sign area than the other, the larger face shall be used in calculating the sign area. A double-faced sign must have an internal angle between its two faces of no more than 45 degrees.

c. For projecting signs with a thickness of four inches or more, the sign area also includes the area of the visible sides of the sign, calculated as a rectangle enclosing each entire side view.

2. The supports, uprights or structure on which any sign is supported shall not be included in determining the sign area unless such supports, uprights or structure area are designed in such a manner as to form an integral background of the display.

D. Maximum height. The maximum height for any sign shall be 25 feet unless otherwise specified within this chapter.

**Section 200: Maintenance and removal.**

A. All signs shall be constructed and mounted in compliance with the Virginia Uniform Statewide Building Code.

B. All signs and components thereof shall be maintained in good repair and in a safe, neat and clean condition.

C. The Zoning Administrator may cause to have removed or repaired immediately without written notice any sign which, in his opinion, has become insecure, in danger of falling, or otherwise unsafe, and, as such, presents an immediate threat to the safety of the public. If such action is necessary to render a sign safe, the cost of such emergency removal or repair shall be at the expense of the owner as provided in § 38-2 et seq. of the Middleburg Code.

D. The owner of any advertising sign, other than a permitted off-premises sign, located on commercial property where the use or business has ceased operating shall, within 60 days of the cessation of use or business operation, remove the sign or replace the sign face with a blank face until such time as a use or business has resumed operating on the property.

E. Sign condition, safety hazard, nuisance abatement, and abandonment.

1. Any sign which becomes a safety hazard or which is not kept in a reasonably good state of repair shall be put in a safe and good state of repair within 30 days of a written notice to the owner and permit holder.

2. Any sign which constitutes a nuisance may be abated by the Town under the requirements of Virginia Code §§ 15.2-900, 15.2-906, and/or 15.2-1115.

**Section 201: General requirements.**

A. *Placement.* Except as otherwise permitted, all freestanding signs shall be set back from any street right-of-way at least half the height of the sign.

B. *Illumination.* All permitted signs may be indirectly lighted, unless such lighting is specifically prohibited in this article. Except as where otherwise required by law, the light source shall be so shielded that it illuminates only the face of the sign and shall consist of full cut-off or directionally shielded lighting fixtures that are aimed downward and controlled so that the directed light shall be substantially confined to the sign to minimize glare, sky glow, and light trespass. The beam width shall not be wider than that needed to light the sign.

C. *Landscaping.* All non-temporary freestanding or monument signs shall be installed with a minimum surround of three (3) feet of regularly maintained landscaping in every direction.

**Section 202: Nonconforming signs.**

A. Signs lawfully existing on the effective date of this chapter or prior ordinances, which do not conform to the provisions of this chapter, and signs which are accessory to a nonconforming use shall be deemed to be nonconforming signs and may remain except as qualified below. The burden of establishing nonconforming status of signs and of the physical characteristics/location of such signs shall be that of the owner of the property. Upon notice from the zoning administrator, a property owner shall submit verification that sign(s) were lawfully existing at time of erection. Failure to provide such verification shall be cause for order to remove sign(s) or bring sign(s) into compliance with the current ordinance.

B. No nonconforming sign shall be enlarged nor shall any feature of a nonconforming sign, such as illumination, be increased.

C. Nothing in this section shall be deemed to prevent keeping in good repair a nonconforming sign. Nonconforming signs shall not be extended or structurally reconstructed or altered in any manner, except a sign face may be changed so long as the new face is equal to or reduced in height and/or sign area.

D. No nonconforming sign shall be moved for any distance on the same lot or to any other lot unless such change in location will make the sign conform in all respects to the provisions of this article.

E. A nonconforming sign that is destroyed or damaged by any casualty to an extent not exceeding fifty (50) percent of its area may be restored within two (2) years after such destruction or damage but shall not be enlarged in any manner. If such sign is so destroyed or damaged to an extent exceeding fifty (50) percent, it shall not be reconstructed but may be replaced with a sign that is in full accordance with the provisions of this article.

F. A nonconforming sign which is changed to become conforming or is replaced by a conforming sign shall no longer be deemed nonconforming, and thereafter such sign shall be in accordance with the provisions of this article.

G. A nonconforming sign structure shall be removed if the use to which it is accessory has not been in operation for a period of two years or more. Such structure sign shall be removed by the owner or lessee of the property. If the owner or lessee fails to remove the sign structure, the zoning administrator or designee shall give the owner fifteen (15) days' written notice to remove it. Upon failure to comply with this notice, the zoning administrator or designee may enter the property upon which the sign is located and remove any such sign or may initiate such action as may be necessary to gain compliance with this provision. The cost of such removal shall be chargeable to the owner of the property.

**Section 203: Non-commercial signs.**

A. *Substitution.* Wherever this Article permits a sign with commercial content, non-commercial content is also permitted subject to the same requirements of size, color, illumination, movement, materials, location, height and construction.

B. *Off-site Signs for Noncommercial Use of Limited Duration.* With a permit, a noncommercial organization may erect up to two (2) off-premises temporary signs on properties in commercial

zoning districts with the consent of the persons in charge of such properties. Each sign shall be no more than twelve (12) square feet in area and six (6) feet in height. The area of the sign counts against the maximum temporary sign area permitted on that lot. No more than one off-premises temporary sign may be displayed per lot. Display of such signs shall be limited to 30 days at a time. Each organization shall be limited to the display of such signs no more than four (4) times within any calendar year.

**Section 204: Reserved.**

## PART II. SIGN REGULATIONS BY USE AND DISTRICT

**Section 205: Residential district and Agricultural-Conservancy district signs.**

A. Except as otherwise prohibited in this Article, the following signs are permitted as accessory to residential uses in Residential and Agricultural-Conservancy districts.

| | Permanent | Temporary | Flags (not containing any commercial advertising) |
|---|---|---|---|
| Max. total area (aggregate) | 3 sf | 16 sf | 64 sf |
| Max. area each | 3 sf | 16 sf | 16 sf |
| Max. number | 1 | no limit | no limit |
| Setback | ----- | ----- | height of flagpole |
| Max. height | 4’ | 4’ | 25’ |

B. Except as provided otherwise in this Article, the following signs are permitted as accessory to non-residential uses in Residential and Agricultural-Conservancy districts.

| | Freestanding, Projecting and Other Permanent | Temporary | Flags (not containing any commercial advertising) |
|---|---|---|---|
| Max. total area (aggregate) | per regulations for Commercial district signs in Section 206 | 32 sf | no limit |
| Max. area each | | 32 sf | 96 sf |
| Max. number | | no limit | no limit |
| Setback | | ----- | height of flagpole |
| Max. height | | 8’ | none |

**Section 206. Commercial district signs.**

A. *Generally.* Except as provided otherwise in this Article, the following signs are permitted as accessory uses in commercial districts. In addition, up to one minor sign per business is permitted.

| | Permanent | | | Temporary | Flags (not containing any commercial advertising) |
|---|---|---|---|---|---|
| | Freestanding | Projecting | Other (i.e. Wall, Window, Awning) | | |
| Max. total area (aggregate) | 1 sf per 2 lineal feet of building frontage, up to 36 sf absolute max. (includes all permanent signs) | | | 16 sf | no limit |
| Max. area each | 20 sf | 10 sf | 20 sf | 16 sf | 16 sf |
| Max. number | 1 per building | 3 per building | 1 per tenant | 1 per building | no limit |
| Max. height | 10’ | ----- | ----- | 10’ (if freestanding) | 25’ (subject to setback at least half the height of the flagpole) |
| Clearance to bottom of sign | 7.5’ min. if overhanging sidewalk or other walkway | 7.5’ min. if overhanging sidewalk or other walkway; 12’ max. | ----- | 7.5’ min. if overhanging sidewalk or other walkway | 7.5’ min. if overhanging sidewalk or other walkway |

B. *Window signs.* Window signs are permitted up to 25% of the area of a window and count toward the maximum total area of permanent signs. Window signs are permitted only on the first floor of a building.

**Section 207: Reserved**

# ARTICLE XV. BUFFERING, SCREENING AND TREES

## Section 208: Applicability

This article shall apply to all site plan and subdivision applications approved after the effective date of this ordinance. This article applies to the construction of any parking lot containing more than five parking spaces. This article shall apply to the enlargement of any parking lot resulting in more than five spaces but not to the resurfacing of an existing lot. (Amended 2/10/05)

## PART I. BUFFERING AND SCREENING

## Section 209: Purpose

A. Minimal buffering and screening can provide an impression of separation of spaces and more extensive screening can shield entirely one use from another;

B. Buffering and screening can provide a greater sense of privacy from visual or physical intrusion varying with the intensity of the screening;

C. Buffering and screening can protect and enhance property values; and

D. Buffering and screening protect the general health, safety and welfare of the town and its residents.

## Section 210: General Buffering and Screening Standards

Every development shall provide sufficient buffering and screening so that neighboring properties are screened from any adverse effects of the development and the development is screened from any adverse effects of adjacent uses such as streets.

## Section 211: Compliance with Buffering and Screening Standards

A. The following buffer yards shall be provided between various uses:

1. Commercial adjacent to residential: 15 feet
2. Commercial adjacent to institutional: 10 feet
3. Commercial adjacent to agricultural conservancy: 15 feet
4. Multi-family residential next to single family, duplex, townhouses or commercial: 20 feet
5. Residential adjacent to agricultural conservancy: 15 feet
6. Institutional adjacent to residential: 15 feet
7. Institutional adjacent to commercial: 10 feet
8. Institutional adjacent to agricultural conservancy: 15 feet

A solid wall or fence at least six (6) feet in height may be used to reduce the required buffer yard by 50 percent, if the remaining yard can be effectively planted. (Amended 2/10/05)

B. Buffer yards shall contain sufficient trees and shrubs to provide an opaque screen between uses. An opaque screen is intended to exclude all visual contact between uses and to create a strong impression of separation. In general, small trees planted at a rate of 1 tree per 30 feet or large canopy trees planted at a rate of 1 tree per 40 feet and 1 evergreen tree planted at a rate of 1 tree per 20 feet shall be deemed to meet the requirements of this section. Evergreen shrubs planted at a rate of 3 shrubs per 10 feet in buffer yards of 10 feet and doubled in buffer yards of 25 feet shall be deemed to meet the requirements of this section. Plants should be placed to achieve maximum screening from intensive use areas of adjoining properties. Existing vegetation, such as hedgerows and trees, may be used to satisfy the requirements of this Section.

C. No required buffer yard shall exceed 10 percent of the lot area of the subject property, but in no instance shall the buffer yard be less than five feet.

**Section 211.1 Special Buffering Requirements for Rural Resort** (Added 5/12/06)

A. A minimum of the first 50 feet of setback or yard area adjacent to any lot three acres or less in size shall be landscaped and screened with solid fencing and/or landscaped area the provides year-round screening and shall be planted in accordance with the provisions of Section 211.2. The use of natural topography, vegetation and trees that provide screening at the required density, depth and height shall be credited towards this buffer yard requirement.

B. Driveways shall not be located within a required buffer yard area except as minimally necessary to access the site.

C. Plant materials shall be provided within the required buffer yard in accordance with the provisions of Section 211.2 and shall be selected in accordance with the requirements of Section 217.

**Section 211.2 Special Planting Requirements for Rural Resort Buffers** (Added 5/12/06)

Required buffer yards in rural resorts shall be planted in accordance with the following requirements:

| | Required plant units - minimum per 100 lineal feet: |
|---|---|
| A. Front yard buffer width: 20’ minimum | 3 canopy trees<br>3 understory trees<br>24 shrubs<br>3 evergreen trees |
| B. Rear yard buffer width 25’ minimum | 4 canopy trees<br>7 understory trees<br>30 shrubs (75% evergreen)<br>4 evergreen trees |
| C. Side yard buffer width 20’ minimum | 2 canopy trees<br>5 understory trees<br>20 shrubs<br>2 evergreen trees |

**Section 212: Flexibility in Administration Required**

A. The council recognizes that the buffering and screening requirements of this article cannot address every situation because of the wide variety of developments and the relationships between them. The council may permit deviations from the presumptive requirements of Section 211 whenever such deviations meet or exceed the standards contained in Section 210.

B. Whenever the council allows or requires a deviation from the requirements of Section 211, it shall include the screening requirement on the zoning permit along with the reasons for allowing or requiring the deviation.

## PART II. TREES

### Section 213: Purpose

A. The preservation of existing trees and the planting of trees, shrubs and other vegetation reduces erosion and sedimentation;

B. Trees provide shade in summer and windbreaks in winter;

C. Trees restore soils and land cleared as a result of construction or grading;

D. Trees are proven producers of oxygen, an element necessary for human survival;

E. Trees are an invaluable physical, aesthetic and psychological counterpoint to the town setting; and,

F. Trees protect the general health, safety and welfare of the town and its residents.

### Section 214: Preservation of Trees

A. Every development shall retain all existing, healthy trees at least 18 inches or more in diameter measured at three feet above the ground unless such retention would unreasonably burden the development.

B. No excavation, embankment, or other subsurface disturbance shall be undertaken within an area equal to one foot of horizontal distance for every inch of diameter of any tree 18 inches in diameter or greater and no impervious surface may be located within 12.5 feet of any such tree unless compliance with this section would unreasonably burden the development.

C. A development is unreasonably burdened if the proposed activities on a lot would have to be substantially altered to accomplish such retention and such alteration would result in an unreasonable hardship on the developer as determined by the council.

D. If the preservation of trees required in subsections A. and B. above results in the elimination of space that would otherwise be devoted to parking and, as a result, the parking requirements of Section 222 cannot be met, the number of parking spaces required may be reduced by the number of spaces "lost", up to a maximum of 15 percent of the required parking spaces.

### Section 215: Street Tree Planting

Street trees shall be required along both sides of all newly constructed streets which are dedicated for public use. Street trees shall be planted in an area generally within 20 feet of the public right-of-way. The developer shall provide an average of at least one deciduous canopy tree for every 40 feet of street frontage. All trees shall have a minimum caliper of two inches when planted and a trunk at least 12 inches in diameter when fully mature.

### Section 216: Parking Lot Landscaping

A. Perimeter Landscaping Adjacent to Public Street - 5 Spaces or More (Added 6/10/04)

1. A minimum ten-foot (10’) wide perimeter landscape strip shall be provided between any parking lot and public right-of-way. If the perimeter landscaping strip is used for best management practices, such as a rain garden, the Commission upon the recommendation of

the Town Engineer and Zoning Administrator may reduce the perimeter landscape strip to eight feet (8').

2. The perimeter strip shall include the following minimum landscape requirements (Amended 06/10/04):

   a. One (1) canopy tree per 30 linear feet (lf) of street frontage;

   b. Two (2) ornamental trees per 30 lf of street frontage;

   c. Canopy trees shall have a minimum caliper of 4 inches and be of a species selected from the Town of Middleburg Approved Tree/Shrub List;

   d. Ornamental trees shall have a minimum caliper of 2 inches and be of a species selected from the Town of Middleburg Approved Tree/Shrub List;

   e. Shrubs and ground cover shall be installed, as appropriate to planting size and species, to provide full coverage of the area and placed to complement tree landscaping. Invasive species are to be avoided. Maximum mature height of shrubs shall not exceed 4' so as not to impair automobile sight distance. The requirements of Section 215 may be met if in accordance with Section 216.A.. (Amended 2/10/05).

B. Perimeter Landscaping Adjacent to Abutting Properties (Added 6/10/04)

1. A minimum five foot (5') wide perimeter landscape strip shall be provided between any parking lot and abutting properties. The landscape strip shall be a combination of shrubs, groundcover, fences, brick or stone walls, seat walls or planter boxes to provide a semi-opaque screen that has as minimum height of 30".

2. The Commission may approve the perimeter landscape width to be a minimum of three feet (3') if two or more of the following conditions are met:

   a. a semi-opaque screen is installed consisting of a stone or brick wall, planter boxes, seat walls, evergreen hedge or combination of these elements not less than 30" in height;

   b. an existing durable barrier, such as a hedge or wall is located on the abutting property adjacent to the perimeter landscape strip;

   c. the perimeter landscape strip is used for best management practices, such as a rain garden.

C. Interior Landscaping – 5 Spaces or More (Added 6/10/04)

1. A minimum of five percent (5%) of the interior parking lot area shall be landscaped. No landscaped area shall be less than 50 square feet. The landscaped area shall be planted at a rate of one tree and three shrubs per ten parking spaces. Each parking lot island shall contain a minimum of one canopy tree. For parking lots with less than 10 spaces, this requirement can be met by increasing the perimeter landscaping by the equivalent square footage.

2. The following interior landscaping requirements shall be provided for lots of 10 spaces or more:

   a. One (1) landscape island per 10 parking spaces. Landscape islands shall be a minimum of 162 square feet (sf), with a dimension of not less than 9' x18';

   b. Each landscape island shall contain one (1) canopy tree with a minimum caliper size of 4 inches and be of a species selected from the Town of Middleburg approved Tree/Shrub List;

c. Shrubs and ground cover in the landscape islands shall be installed, as appropriate to planting size and species, to provide full coverage of the area and placed to complement tree landscaping. Invasive species are to be avoided. Maximum mature height of shrubs shall not exceed four feet (4') so as not to impair automobile sign distance;

d. Landscaping materials shall be located within planting islands to allow for the mature size of the species and in a manner which will protect the plants from vehicles. Vehicles are presumed to have a body overhang of 3'6".

3. The Commission may approve some or all of the required landscape islands to be aggregated provided that the aggregate total of internal landscaping shall equal or exceed the landscaped area otherwise required within the landscaped islands.

D. Other General Matters:

1. Parking lots shall be designed to prevent vehicles from striking trees. Vehicles are presumed to have a body overhang of three feet, six inches. (Amended 6/10/04)

2. Berms shall have a maximum slope of 3:1 (Amended 6/10/04)

3. The council may waive the requirements of this Section in any commercial district when such landscaped areas cannot be reasonably provided because of existing structures or other unique features of the central business area; provided, however, that if landscaping requirements are waived, the applicant shall make an in lieu cash payment to the town in an amount equivalent to the cost of the landscaping so waived to be used by the Town solely for public landscaping purposes. (Amended 6/13/02, 6/10/04)

**Section 217: Approved Tree/Shrub Material** (Added 6/10/04)

A. Trees and shrubs included in the list in subsection 217.D. may be used to satisfy the planting requirements of this article. The list is divided into the following categories: canopy trees, ornamental trees and shrubs. Selections must conform to the varieties and functions identified on this list unless an alternative is approved per subsection 217.B.

B. Any applicant may apply to the Zoning Administrator for approval of substitute plants for any plant listed on the Town of Middleburg Approved Tree/Shrub List. The Zoning Administrator shall refer such requests to the Streetscape Committee for review and recommendation. The Zoning Administrator shall approve or disapprove the substitute plant request within sixty (60) days of such application.

C. The Streetscape Committee shall annually review the Town of Middleburg Approved Tree/Shrub List and recommend any changes to the Town Council, which shall refer the matter to the Planning Commission for hearing and recommendation in accordance with the provisions of this ordinance.

D. Town of Middleburg Approved Tree/Shrub List: (Tree/Shrub List Begins on Following Page)

## CANOPY TREES

| COMMON NAME | Scientific Name | Height (ft.) | Spread (ft.) | Deciduous /Evergreen | NATIVE | Sun/ Shade | Special Features |
|---|---|---|---|---|---|---|---|
| Bald Cypress | Taxodium distichum | 50-70 | 20-30 | D | Yes | Sun | Long-living |
| Birch, River | Betula nigra 'Duraheat' | 60-70 | 20-30 | D | Yes | Sun | Exfoliating bark |
| Black Gum | Nyssa sylvatica | 30-50 | 20-30 | D | Yes | Sun | Good Fall color |
| Maple, Red | Acer rubrum | 40-70 | 30-50 | D | Yes | Sun | Good Fall color |
| Maple, Sugar | Acer saccharum | 60-75 | 2/3 ht. | D | Yes | Sun | Legacy & Green Mountain cultivars recommended |
| Oak, Northern Red | Quercus rubra | 60-75 | =/> ht. | D | Yes | Sun | |
| Oak, Willow | Quercus phellos | 40-60 | 30-40 | D | Yes | Sun | Needs space, fast growing, small leaves, good shade |
| Oak, White | Quercus alba | 50-80 | =/> ht. | D | Yes | Sun | Needs space |
| Oak, Swamp White | Quercus bicolor | 50-60 | =/> ht. | D | Yes | Sun | Needs space |
| Oak, Chestnut | Quercus prinus | 60-70 | =/> ht. | D | Yes | Sun | Dry, rocky sites |
| Plane Tree, London | Platanus x acerifolia | 75-100 | 75-100 | D | Yes | Sun | |
| Sweetgum | Liquidambar rotundiloba | 60-75 | 2/3 ht. | D | Yes | Sun | Fruitless variety |
| Dawn Redwood | Metasequoia glyptostroboides | 70-100 | 25-30 | D | No | Sun | Pyramidal habit, wet areas, requires space |
| Elm, Lacebark | Ulmus parvifolia | 40-50 | 40-50 | D | No | Sun | Recommend 'Allee' |
| Ginkgo | Ginkgo biloba | 50-80 | =/> ht. | D | No | Sun | Only male trees as fruit are messy |
| Golden Raintree | Koelreuteria paniculata | 30-40 | =/> ht. | D | No | Sun | Summer blooming |
| Hornbeam, European | Carpinus betula | 40-60 | 30-40 | D | No | Sun | Recommend 'Columnaris,' a good narrow habit. |
| Linden, Littleleaf | Tila cordata | 60-70 | 1/2 - 2/3 ht | D | No | Sun | Summer bloom |
| Linden, Silver | Tilia tomentosa | 50-70 | 1/2 - 2/3 ht | D | No | Sun | Summer bloom, leaves have silver underside |
| Pagoda, Japanese | Sophora japonica | 50-75 | 50-75 | D | No | Sun | Blooms July – August, fine leaf |
| Zelkova, Japanese | Zelkova serrata | 50-80 | 50-80 | D | No | Sun | Vase shaped, ascending branches |

**CANOPY TREES** (continued)

| COMMON NAME | Scientific Name | Height (ft.) | Spread (ft.) | Deciduous /Evergreen | NATIVE | Sun/ Shade | Special Features |
|---|---|---|---|---|---|---|---|
| Arborvitae | Thuja plicata | 50-70 | 15-20 | E | Yes | Sun/P. Shade | Recommend 'Green Giant,' narrow, compact with good winter color |
| Cedar, Blue Atlas | Cedrus atlantica | 40-60 | 30-40 | E | No | Sun | Specimen use, bluish green foliage |
| Cedar, Deodora | Cedrus deodora | 40-50 | 30-40 | E | No | Sun | Specimen or grouping |
| Cedar of Lebanon | Cedrus libani | 40-60 | 40-60 | E | No | Sun | Specimen, wide spreading |
| Cryptomeria, Japanese | Cryptomeria japonica | 50-60 | 20-30 | E | No | S/PS | Conical, slow growing |
| Douglas-Fir | Psuedotsuga menziesii | 40-80 | 12-20 | E | No | Sun | Specimen use, better at this altitude/zone than Fraser Fir |
| Fir, White | Abies concolor | 30-50 | 15-30 | E | Yes | Sun | Drought and cold tolerant |
| Hinoki False Cypress | Chamaecyparis obtuse | 50-75 | 30-40 | E | No | S/PS | Pyramidal, useful specimen |
| Holly, American | Ilex opaca | 40-50 | 18-40 | E | Yes | S/Sh. | Pyramidal when young, requires male and female |
| Magnolia, Southern | Magnolia grandiflora | 60-80 | 30-50 | E | Yes | Sun | Waxy leaves, late spring flowering |
| Pine, Austrian | Pinus nigra | 30-40 | 20-25 | E | No | Sun | Beautiful but may be prone to disease |
| Pine, Limber | Pinus flexilis | 30-50 | 15-30 | E | Yes | Sun | Dark bluish green leaf |
| Spruce, Norway | Picea, abies | 40-60 | 25-30 | E | No | Sun | Pyramidal, Windbreak |
| Spruce, Serbian | Picea omorika | 50-60 | 20-25 | E | No | Sun | Protect drooping lower branches for full beauty |

## ORNAMENTAL TREES

| COMMON NAME | Scientific Name | Height (ft.) | Spread (ft.) | Deciduous /Evergreen | NATIVE | Sun/ Shade | Special Features |
|---|---|---|---|---|---|---|---|
| Buckeye, Red | Aesculus pavia | 10-20 | =/> ht. | D | Yes | Sun | Blooms June-July, single trunk only |
| Carolina Silverbell | Halesia tetrapteria | 30-40 | 20-35 | D | Yes | S/Sh | Moist soil |
| Dogwood, Flowering | Cornus florida | 20-30 | =/> ht. | D | Yes | S/Sh | Recommend 'Appalachian Spring', 'Aurora', 'Cloud Nine', and Rutgers Hybrids |
| Fringetree, White | Chioanthus virginicus | 25-30 | 25-30 | D | Yes | S/PS | Blooms summer, fragrant |
| Hornbeam, American | Carpinus caroliniana | 20-30 | 20-30 | D | Yes | S/PS | Good fall color |
| Magnolia, Sweet Bay | Magnolia virginiana | 10-20 | 10-20 | D | Yes | S/PS | Wet areas, summer bloom, fragrant flowers |
| Maple, Amur | Acer ginnala | 15-20 | =/> ht. | D | Yes | Sun | Small specimen tree |
| Paw Paw | Asimina triloba | 15-30 | | D | Yes | PS | Mid-spring bloom, purple flowers |
| Redbud | Cercis canadensis | 20-30 | 25-30 | D | Yes | S/PS | Spring bloom. 'Forest Pansy' is purple leaf variety |
| Serviceberry, downy | Amelanchier arborea | 15-20 | Variable | D | Yes | S/PS | Recommend 'Autumn Brilliance' |
| Sourwood | Oxydendrum arboreum | 25-30 | 20 | D | Yes | Sun | Can be difficult to establish |
| Witchhazel, Common | Hamamelis virginiana | 20-30 | 20-25 | D | Yes | S/PS | Yellow flowers in autumn |
| Cherry, Flowering | Prunus serrulata | 20-25 | 20-25 | D | No | Sun | Recommend Kwanzan, Okame and Yoshino |
| Dogwood, Korean | Cornus kousa | 20-30 | 20-30 | D | No | S/PS | Spring bloom, exfoliating bark |
| Dogwood, Cornelian Cherry | Cornus mas | 20-25 | 15-20 | D | No | Sun | Blooms very early, yellow flowers |
| Maackia, Amur | Maackia amurensis | 20-30 | 20-30+ | D | No | Sun | Late summer flower |
| Magnolia, Star | Magnolia stellata | 15-20 | 10-15 | D | No | Sun | Early bloom, fragrant white flowers |
| Maple, Paper Bark | Acer griseum | | | D | No | Sun | Beautiful exfoliating bark, specimen use |
| Maple, Trident | Acer buergeranum | 20-25 | 20-25 | D | No | PS | Good small specimen |
| Snowbell, Japanese | Styrax japonicus | 20-30 | 20-30 | D | No | S/PS | Spring bloom |
| Arborvitae | Thuja 'Emerald Green' | 15-20 | 4-5 | E | No | Sun/ | Pyramidal |
| Holly, American | Ilex opaca | 40-50 | 15-20 | E | Yes | Sun or Shade | Can be sheared to keep formal appearance & limit growth |
| Holly, Nellie Stevens | Ilex x 'Nellie Stevens' | 15-25 | 10-15 | E | Yes | Sun | Pyramidal, pretty leaf |
| Umbrella Pine | Sciadopitys verticillata | 20-25 | 15-20 | E | No | Sun | Pyramidal, unusual texture |
| Yew | Taxus cuspidate capitata | 10-12 | 4-6 | E | No | Sun or Shade | Slow growing |

## SHRUBS

| COMMON NAME | Scientific Name | Height (ft.) | Spread (ft.) | Problem Free | NATIVE | Sun/ Shade | Special Features |
|---|---|---|---|---|---|---|---|
| Abelia, Glossy | Abelia x grandiflora | 3-5 | 3-5 | Yes | No | Sun | Recommend 'Edward Goucher', 'Little Richard', 'Sherwood'; Blooms all summer |
| Boxwood, Littleleaf | Buxus microphylla | 3-5 | 3-5 | Yes | No | S/Sh. | Recommend 'Winter Gem' and 'Wintergreen'; slow growing |
| Buttonbush | Cephalanthus occidentalis | 3-6 | 3-6 | Yes | Yes | S/PS | Use in wet areas |
| Cherry Laurels | Prunus laurocerasus | 4-8 | 3-6 | Yes | No | S/Sh. | Recommend 'Otto Luykens' and 'Schipkaensis' |
| Dogwood, Red Osier | Cornus sericea | 7-9 | 10+ | Yes | Yes | S/Sh. | Prefers wet soils, red twigs |
| Dwarf Fothergilla | Fothergilla gardenii | 2-3 | 3-4 | Yes | Yes | PS | Fragrant white flowers, good fall color |
| Hydrangea | Hydrangea macrophylla | 3-6 | 4-6 | Yes | No | S/PS | Summer bloom |
| Hydrangea, Lacecap | Hydrangea mortensias | 3-6 | 4-6 | Yes | No | S/PS | Summer bloom |
| Hydrangea, Oakleaf | Hydrangea quercifolia | 4-6 | 4-6 | Yes | No | Shade | Provide room for spread |
| Leatherleaf Mahonia | Mahonia bealei | 6-10 | 5-8 | Yes | No | Shade | Large berries |
| Lilac | Syringa vulgaris | 3-5 | 4-5 | Yes | No | Sun | Recommend 'Miss Kim', 'Dalbin' |
| Oregon Grape Holly | Mahonia aquifolium | 3-6 | 3-5 | Yes | | Shade | Glossy green leaf, dark blue berries |
| Pieris, Japanese | Pieris japonica | 9-12 | 6-8 | Yes | No | Shade | Evergreen, early bloom |
| Shamrocks Holly | Ilex glabra 'Shamrock' | 3-4 | 3-4 | Yes | No | S/PS | (also called Inkberry), Evergreen, wet areas, deer resistant |
| Skimmia | Skimmia japonica | 3-4 | 3-4 | Yes | No | PS | Evergreen, fruit, small |
| Summersweet | Clethra alnifolia | 3-8 | 4-6 | Yes | Yes | Shade | Attract hummingbirds; select smaller varieties, wet soil. |
| Sweet Box | Sarcococca hookeriana var. humilis | 4-6 (In.) | Spread | Yes | No | Shade | Good evergreen ground cover, fragrant |
| Viburnum, Arrowwood | Viburnum dentatum | 6-8 | 6-15 | Yes | No | Sun | Spring flower |
| Viburnum, Blackhaw | Viburnum prunifolium | 12-15 | 8-12 | Yes | No | Sun | Small tree |
| Viburnum, Burkwood | Viburnum x burkwoodii | 8-10 | 2/3 ht. | Yes | No | Sun | Fragrant |
| Viburnum, Korean Spice | Viburnum carlesii | 4-5 | 3-5 | Yes | No | S/PS | Very fragrant flowers |
| Viburnum, Lindenwood | Viburnum dilatatum | 8-10 | 2/3 ht. | Yes | No | Sun | Spring flower |
| Virginia Sweetspire | Itea virginica | 3-5, | | Yes | | Shade | Recommend 'Henry Garnet', Red Fall color |
| Winterberry | Ilex verticillata | 6-10 | | Yes | Yes | Sun | Recommend 'Harvest Red', 'Red Sprite' and 'Sparkleberry'; requires male and female |
| Winter Daphne | Daphne odora | 4 | 4 | | Yes | Shade | Mounded with winter flowers |
| Yew | Taxus spp. | | | | | | Many cultivars, all shapes and sizes, good drainage required |

**Sections 218 through 220: Reserved**

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# ARTICLE XVI. OFF-STREET PARKING AND LOADING REQUIREMENTS

## Section 221: Definitions

The words and phrases defined below shall have the meaning indicated when used in this section, unless otherwise specifically provided or clearly required by the context.

A. *Driveway*. That portion of the parking lot that consists of a travel lane bounded on either side by an area that is not part of the parking lot.

B. *Gross Floor Area (GFA)*. The total floor area of a building measured by adding the outside dimensions of the building at each floor level intended for occupancy or storage.

C. *Loading and Unloading Area*. The portion of the parking lot used to satisfy the requirements of Section 230.

D. *Parking Aisles*. That portion of the parking lot consisting of lanes which provide access to parking spaces.

E. *Parking Lot*. An area used by vehicles for access, circulation, parking, and loading and unloading.

F. *Parking Space*. A portion of the parking lot which accommodates the parking of one vehicle.

## Section 222: Number of Off-Street Parking Spaces Required (amended 10/9/03; 5/12/06; 11/13/14; 10/13/16)

A. Any use which is established, expanded or changed shall be required to provide off-street parking areas as specified in this ordinance. When there is a change in use to a use that has the same or lesser parking requirements than the previous use, no additional parking shall be required. When there is a change to a use that has a greater parking requirement than the previous use, the difference in required spaces between the previous and proposed use shall be provided, except as specified in this section. When an existing structure and/or use is enlarged or expanded, the minimum of off-street parking requirements shall be provided for the area of such enlargement or expansion. Notwithstanding the above, for special exception uses, the Town Council may require the provision of off-street parking for the entire structure or use as expanded or enlarged.

The town recognizes that the table of parking requirements listed below cannot and does not cover every possible situation that may arise. Therefore, in cases not specifically covered, the town council is authorized to determine the parking requirements using the standards in the table of off-street parking requirements as a guide.

**TABLE OF OFF-STREET PARKING REQUIREMENTS**

| Use | Parking Requirement |
|---|---|
| RESIDENTIAL USES: | |
| Single family detached: | 2 spaces/unit |
| Duplex: | 2 spaces/unit |
| Townhouse: | 2 spaces/unit |
| Multi-family: | |
| Efficiency/One bedroom | 1.5 spaces/unit |
| Two bedroom | 2 spaces/unit |
| Three bedroom | 2 spaces/unit |
| Housing for the elderly: | 2 spaces/3 units |
| OTHER USES: | |
| Animal Hospital: | 1 space/500 s.f. of GFA (Added 9/13/01) |
| Auditorium: | 1 space/4 seats |
| Automobile repair garage: | 1 space/200 s.f. of GFA |
| Automobile service station: | 2 spaces/service bay + 1 space/employee plus additional spaces for auxiliary uses. |
| Bed & breakfast: | 2 spaces/unit + 1 space/guest room |
| Building Supply: | 1 space/500 s.f. of GFA (Added 10/9/03) |
| Car wash, recycling: | 1 space/employee + 4 stacking spaces/bay (Added 2/11/99) |
| College or university: | 1 space/10 students |
| Commercial greenhouse operations: | |
| With On-Site Sales | 1 space/40 s.f. of GFA (Amended 10/9/03) |
| Without On-Site Sales | 1 space/500 s.f. of sales area or 1 space/employee, whichever is greater (Added 10/9/03) |
| Conference Center/Corporate Retreat/ Rural Resort: | 1 space/lodging unit + 1 space/employee + such spaces as are required for assembly rooms and affiliated facilities, as determined by the Administrator |
| Country Inn: | 1 space/guest room +, if public restaurant, required restaurant spaces; restaurant parking spaces other than those already provided will be waived for existing buildings in the C-2 zoning district (Added 9/13/01; Amended 10/9/03) |
| Dry cleaner/laundromat | 1 space/300 s.f. of GFA; parking spaces other than those already provided will be waived for existing buildings in the C-2 zoning district (Amended 10/9/03) |

| Use | Parking Requirement |
|---|---|
| Elementary school: | 1.75 spaces/classroom |
| Financial institution: | |
| Without Drive-Thru | 1 space/400 s.f. of GFA of public area + 1 space/300 s.f. of GFA of office area (Added 10/9/03) |
| With Drive-Thru | 1 space/400 s.f. of GFA of public area + 1 space/300 s.f. of GFA of office area + 3 stacking spaces/drive-up window (Added 10/9/03) |
| Fitness Center | 1 space/300 s.f. of GFA (Added 2/14/13) |
| Fitness Studios | 1 space/300 s.f. of GFA; fitness studio parking spaces other than those already provided will be waived for existing buildings within 300 feet of a public parking facility. (Added 2/14/13) |
| Funeral home: | 1 space/200 s.f. of GFA |
| High school: | 1 space/3 students at capacity |
| Horseback riding and stables: | 1 space/horse that could be kept at the stable at maximum capacity |
| Indoor theatre: | 1 space/3.5 seats |
| Inn: | 1 space/guestroom + required spaces for restaurant areas, if public restaurant included; required restaurant parking spaces other than those already provided will be waived for existing buildings in the C-2 zoning district (Amended 10/9/03) |
| Library: | 1 space/500 s.f. of GFA (Amended 11/13/14) |
| Manufacturing, processing, creating, repairing, cleaning, assembling of goods, merchandise and equipment: | 1 space/400 s.f. of GFA (Amended 10/9/03) |
| Middle school: | 1.75 spaces/classroom |
| Motor vehicle-related sales with installation of parts and accessories: | 1 space/400 s.f. of GFA |
| Motor vehicle sales: | 1 space/400 s.f. of GFA |
| Municipal Building: | Parking required for equivalent private use (Added 10/9/03) |
| Museum: | 1 space/500 s.f. of GFA (Added 11/13/14) |
| Nursery school: | 1 space/employee + 1 space/200 s.f. of GFA |
| Nursing home: | 3 spaces/5 beds |

| **Use** | **Parking Requirement** |
|---|---|
| Personal services: | 1 space/300 s.f. of GFA; parking spaces other than those already provided will be waived for existing buildings in the C-2 zoning district (Amended 10/9/03) |
| Place of worship: | 1 space/4 seats in the principal place of worship (1 per 24 linear inches of bench) or 1 space/100 s.f. of net floor area of any accessory assembly hall, whichever results in the greater number of parking spaces (Amended 6/13/02) |
| Professional Office: | 1 space/300 s.f. of GFA (Amended 10/9/03) |
| Restaurant: | |
| Dine In | 1 space/300 s.f. of GFA if within 300 feet of public parking lot; if not, 1/150 s.f. of GFA; in both cases + 1/4 outside seats over 12 seats; parking spaces other than those already provided will be waived for existing buildings in the C-2 zoning district (Amended 10/9/03) |
| Carry-out | With Seats: 1/4 seats<br>Without Seats: 1/employee + 2 spaces; parking spaces other than those already provided will be waived for existing buildings in the C-2 zoning district (Amended 10/9/03) |
| Retail stores and shops: | 1 space/400 s.f. of GFA; parking spaces other than those already provided will be waived for existing buildings in the C-2 zoning district (Amended 10/9/03) |
| Rooming and boarding houses: | 1 space/bedroom |
| Sales and rental of goods, merchandise and equipment: | |
| No outside storage or display | 1 space/300 s.f. of GFA (Amended 10/9/03) |
| Outside storage or display | 1 space/400 s.f. of GFA (Amended 10/9/03) |
| Self-Storage Facility: | 2 spaces for the office + 1 space/20 storage units (Added 10/12/00) |
| Short-Term Rental: | 1 space/guest room (Amended 12/8/22) |
| Social, fraternal clubs and lodges: | 1 space/400 s.f. of GFA |
| Spa: | 1 space/treatment room |
| Swimming and tennis clubs or privately owned recreation conducted primarily outside enclosed structures, except a golf course: | 1 space/200 s.f. of building area, + 1 space/every 3 persons that the outdoor facilities are designed to accommodate at maximum capacity (Amended 10/9/03) |
| Warehouse: | 1 space/1,000 s.f. of GFA, or 1 space/employee, whichever is greater (Amended 10/12/00) |

B. All uses, except for single family detached, attached and duplex units, shall provide handicapped accessible parking in accordance with the latest edition of the Virginia Uniform Statewide Building Code (VUSBC) and the most current Americans with Disabilities Act Accessibility Guidelines (ASAAG). Such spaces shall be considered part of, rather than an addition to the required number of spaces. (Amended 5/15/00)

**Section 223: Fee in Lieu of Off-Street Parking Spaces**

A. Any applicant required to provide off-street parking due to a change of use, expansion of an existing use or new construction may request a waiver of all or a portion of the parking requirement in the commercial districts (C-1, C-2 and C-3) by making a payment to the town parking fund in accordance with the fee schedule established by the council.

B. An off-street parking waiver granted pursuant to this section shall run with the land, and any further change in use requiring additional parking shall require satisfaction of any additional parking requirements.

C. No refund of such payment pursuant to subsection B. shall be made in the event of a subsequent change to a use requiring less parking.

D. Payment required by subsection B. shall be made to the town in one lump sum prior to the issuance of a zoning permit. Payment shall not guarantee the availability of parking for the development. Funds derived from such payment shall be deposited by the town in a special parking fund and shall be used exclusively to acquire and develop off-street parking facilities for the commercial districts.

**Section 224: Parking Space Dimensions** (Amended 5/15/00)

A. The following table provides the minimum size requirements for automobile parking spaces. Dimensions are in feet.

| Parking Options | Width | Length |
|---|---|---|
| Standard, Head-in (Diagonal or Perpendicular) | 9’ | 18’ |
| Compact, Head-in (Diagonal or Perpendicular) | 8’ | 16’ |
| Parallel Parking | 8’ | 22’ |
| Stacking Spaces | 8’ | 18’ |
| Handicapped Parking | Per VUSBC Standards | |

B. Parking areas containing ten or more parking spaces may contain up to 20 percent compact spaces. Compact spaces shall be clearly marked for small or compact cars only.

C. One in every eight handicapped spaces shall provide additional width for van access. The additional width space shall be at least 16 feet wide and 18 feet long.

D. Where wheel stops or curbing are provided for parking spaces, a one-foot reduction in the stall length shall be allowed, provided the resulting overhang does not encroach upon required landscaped areas and/or pedestrian access areas. Such overhang areas shall be graded no higher than 2 inches above the top of the curb or stop.

**Section 225: Parking Aisle and Driveway Widths**

Parking lot aisle and driveway widths shall conform to the following table, which varies the width requirement according to the angle of parking.

| | Parking Angle | | | | |
|---|---|---|---|---|---|
| Aisle Width | 0° | 30° | 45° | 60° | 90° |
| One-way traffic | 13' | 13' | 13' | 18' | 22' |
| Two-way traffic | 19' | 20' | 21' | 22' | 22' |

**Section 226: Location and Use of Spaces**

All off-street parking spaces shall be located on-site or within 300 feet of the lot containing the structure or use to which they are accessory. A recorded easement or agreement shall be provided demonstrating that permission for off-site parking has been granted by the owner of the off-site parking area. No off-street parking for a structure or use permitted only in a C district shall be located in an R district except upon approval of a special use permit by the Town Council as provided in Article V.

Adjacent on-street parking spaces created by a commercial use or development in conformance with an approved site plan may be applied toward the off-street parking requirement of that use or development.

Off-street parking facilities shall be used solely for the parking of vehicles in operating condition by patrons, occupants or employees of the use to which such parking is accessory. No motor vehicle repair work except emergency service shall be permitted in association with any off-street parking facilities.

**Section 227: Joint Use of Off-Street Parking Spaces**

A. A single parking area may contain required spaces for several different uses, but except as otherwise provided in this section, the required spaces assigned to one use may not be credited to any other use. (Amended 5/15/00)

B. The same spaces may be credited to two or more uses to the extent that the uses operate at different times. For example, if a church parking lot is generally occupied only 50 percent of capacity on days other than Sunday, another use could make use of 50 percent of the church parking spaces on those other days. The council shall approve, based upon information submitted by the applicant, any proposal for shared parking.

**Section 228. General Design Requirements**

A. Parking areas shall be designed so that, without resorting to extraordinary movements, vehicles may exit such areas without backing onto a public street. All non-through areas that exceed 200 feet in length shall be provided with a turn-around that accommodates an AASHTO SU-30 vehicle (e.g., single-unit delivery trucks, cargo vans and mini-buses that do not exceed 30 feet in overall length). This requirement does not apply to driveways serving one or two dwelling units. (Amended 5/15/00)

B. Parking areas shall be designed so that sanitation, emergency, and other public service vehicles can serve the development without backing unreasonable distances or making other dangerous or hazardous turning movements.

C. Parking areas shall be designed so that parked vehicles cannot extend beyond the perimeter of such areas onto adjacent properties or public rights-of-way.

D. Parking circulation areas shall be designed so that vehicles can proceed safely without posing a danger to pedestrians or other vehicles and without interfering with parking areas.

E. Driveways in residential districts shall be located a minimum of five feet from any property line.

F. No parking for townhouses or multi-family dwellings shall be located in any required yard, buffer yard or setback. (Amended 5/15/00)

G. Parking spaces for commercial uses shall be: (Amended 2/10/05)

   1. Located behind the building setback line or 10 feet from the ultimate street right-of-way, whichever is greater. Parking areas and accessways shall not cover more than 30 percent of the front yard actually provided.

   2. Set back a minimum of eight feet from all buildings.

   3. Set back a minimum of five feet from property lines, except that parking shared by uses located on two different lots may extend to and over the boundary lines of the lots it serves, provided that other required setbacks are met.

   4. Located outside of any required yard, buffer yard, or setback.

   5. The Town Council may waive the requirements of this subsection for sites within the Historic Middleburg District with existing structures built prior to 2000 where sufficient area is not available to provide the required setback and where the Town Council is satisfied that the public safety will not be unduly compromised.

H. Parking areas for commercial uses shall be located to the rear or side of the building which they are designed to serve. If located at the side, screening shall be provided at the lot line by landscaping or decorative walls or fences to a minimum height of three (3) feet.

I. Common parking areas and/or accessways shall be permitted and are encouraged for commercial uses.

J. All retaining walls, screening, landscaping and building walls shall be protected from vehicle contact.

K. The minimum radius for a curb return in parking areas shall be two feet.

L. Parking areas shall not be used as stormwater detention facilities.

**Section 229: Reserved** (Amended 5/15/00)

**Section 230: Loading and Unloading Areas for Commercial Uses**

A. Whenever the normal operation of any development requires that goods, merchandise or equipment be routinely delivered to or shipped from that development, a sufficient off-street loading area shall be provided in accordance with this section to accommodate the delivery or shipment operations in a safe and convenient manner.

B. The off-street loading area shall be of sufficient size to accommodate the numbers and types of vehicles that are likely to use the area, given the nature of the proposed development. The following table indicates the number of spaces that are generally assumed to satisfy the standards of this section. However, the commission may require more or fewer loading spaces if reasonably necessary to satisfy these standards.

| Gross Leasable Floor Area | Number of loading spaces | |
|---|---|---|
| 1,000 - 19,999 | 1 | |
| 20,000 - 79,999 | 2 | |
| 80,000 or more | 3 | (Added 5/12/06) |

C. A standard loading space shall be at least 15 feet by 30 feet with a minimum vertical clearance of 15 feet.

D. Off-street loading areas shall be located and designed so that the vehicles intended to use them can (a) maneuver safely and conveniently to and from a public right-of-way, and (b) complete the loading and unloading operations without obstructing or interfering with any public right-of-way or any parking space or parking lot aisle.

E. No off-street loading area shall be used to satisfy the requirements for off-street parking, nor shall any portion of any off-street parking area be used to satisfy the area requirements for loading and unloading facilities.

F. The commission is authorized to waive the loading requirements in the C-1, C-2 and C-3 districts when a determination is made that the proposed use can be adequately served by an existing on or off-street loading area or where provision of a loading area is not feasible because of the location of existing buildings and structures.

G. Required off-street loading spaces may be provided jointly for two or more uses subject to the approval of the council. The overall number of loading spaces may be reduced by the council where adjacent uses can demonstrate that they can be adequately served by a shared loading facility.

**Section 231: Surface Requirements**

A. Except as otherwise specifically provided in the performance standards for any use, off-street parking and loading areas, except those serving single family detached dwellings, including circulation aisles and entrances, shall be designed to provide protection against potholes, erosion, dust and storm water runoff. Storm water management will be required for the increase in runoff for a 10-year storm event. A credit for storm water management will be given for utilizing best management practices such as rain gardens and/or alternative pervious surface materials. Surface materials may include gravel, compact stone, concrete, asphalt, brick, paving and grasscrete. Alternative surface materials may be approved by the Zoning Administrator and Town Engineer, based on the total number of parking spaces and vehicle trips per day. (Amended 10/9/03; Amended 5/12/06)

B. All off-street parking and loading areas shall be appropriately marked with painted lines or other markings. Signs and/or pavement markings shall be used to identify designated compact and handicapped parking spaces and off-street loading areas. Adequate signs and/or pavement markings shall be provided to ensure safe movement of traffic through the parking lot.

C. All handicapped parking spaces shall be clearly identified by the placement of signs containing the words "RESERVED PARKING" and a handicapped logo. These signs must be a minimum of 4 feet high and 1.5 square feet in area.

D. All off-street parking and loading areas shall be properly maintained. Specifically, all off-street parking and loading areas shall be kept in good condition (for example, free from potholes and all lines and markings shall be kept clearly visible.)

**Sections 232 through 235: Reserved**

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# ARTICLE XVII. OVERLAY ZONING DISTRICTS

## PART I. MIDDLEBURG HISTORIC DISTRICT REGULATIONS

### Section 236: Purpose and Intent

The purpose of the historic district regulations is to protect the "Historic Middleburg District", which was established to preserve the unique historical, architectural and cultural, and archaeological heritage represented by the original section of the town, and all significant historic and archaeological resources within the town, in order to protect the quality of life of town residents, to strengthen the town's economy by promoting and enhancing business and tourism, and to protect property values.

### Section 237: Boundaries of Historic Middleburg District

A. The Historic Middleburg District shall include the original town boundaries as shown on the map of Middleburg which is on the map of Loudoun County by Yardley Taylor drawn in 1853. The district is bounded on the North by Marshall Street, on the East by Independence Street, on the South by Federal Street and on the West by Constitution Street. In addition, the district includes the area within 300 feet of the perimeter of the above described boundary within the corporate limits. The district is created as an overlay zoning district to be superimposed on the other districts contained in this ordinance or amendments thereto.

B. Whenever a portion of a lot or parcel lies within the district as described by subsection A. above, the entire lot or parcel shall be subject to the provisions of this ordinance.

### Section 238: Certificate of Appropriateness Required to Erect, Reconstruct, Alter, Restore, or Raze a Structure.

In order to promote the general welfare through the preservation and protection of historic places and areas of historic interest, except as provided herein, no building or structure within a designated historic district may be demolished in whole or in part, nor may any architectural features of any buildings or structures within such district which are subject to public view from a public street be altered, nor shall any building or structure, including signs, hereafter be erected, reconstructed, altered, relocated or restored within such district, unless and until an application for a certificate of appropriateness shall have been approved by the Historic District Review Committee, or, on appeal, by the Town Council.

### Section 239: Application for Certificate of Appropriateness

A. Optional Pre-application Review Procedure

1. Prior to the preparation of working drawings and specifications or calling for proposals or bids from contractors, prospective property developers, owners or agents may prepare preliminary scale drawings and outline specifications, including color samples for outside work, for review and informal discussion with the historic district review committee. The purpose of this review shall be to acquaint the developer, owner or agent with standards of appropriateness of design that are required of the proposed development.

2. The optional pre-application review shall not require formal application but shall require notice to be given to the zoning administrator and subsequent notification of the chairman

at least ten days before the date of the meeting at which the preliminary drawings are to be discussed.

3. In the case of minor projects involving alterations to existing buildings or structures, the committee, if the preliminary drawings and other data are sufficiently clear and explicit, may approve such projects following such preapplication review, provided that the applicant shall submit an application conforming to the preapplication submission.

4. Should data submitted for preapplication review show alterations, remodeling, or repairs not changing the exterior appearance, the administrator may exempt the application from the provisions of this section and approve a permit under the provisions of Section 243.A. of this ordinance.

B. Procedure for Obtaining a Certificate of Appropriateness

1. Application for a certificate of appropriateness shall be made by the owner of the building, structure, or land to the administrator. Such application shall indicate the proposed use of the building, structure, or land and shall be accompanied by one-quarter inch minimum scale plans and specifications (herein "plans") as may be required by the committee. The plans shall include, but not be limited to, the part or parts of the building, structure or land that are, or will be, subject to view from a public street, public way, or other public place. The plans shall show the proposed exterior architectural and features of such building, structure or land, which shall include, but shall not necessarily be limited to, the general design, arrangement, texture, materials, and color proposed to be used in the project, and the type of windows, exterior appurtenances and accessory structures which will be subject to public view from a public street, public way or other public place.

2. The administrator shall place the matter on the agenda for consideration at the next regularly scheduled committee meeting after receipt of the application, provided that it is a complete application and was filed with the administrator at least fourteen days prior to the meeting date. Otherwise, the application shall be placed on the agenda for consideration at the next following regularly scheduled committee meeting. If a public hearing is required pursuant to Section 239.B.3., the matter shall be placed on the agenda for the first regularly scheduled committee meeting following the public hearing. (Amended 2/10/05)

3. The committee shall hold a public hearing within 60 days (or such shorter time as council may direct) after notification by the administrator of the filing of an application for a permit to raze, demolish or move any building in whole or in part. At least seven days notice of the time and place of the hearing shall be given by the administrator as follows:

   a. in writing to the applicant;

   b. in writing to adjacent property owners; and

   c. by publication in the form of an advertisement in a newspaper of general circulation within the town.

4. The committee shall either approve a certificate of appropriateness, with or without conditions, or with such modifications of the plans as the committee deems necessary to achieve the intent of this ordinance, or the committee shall disapprove the certificate after consideration of the criteria set forth in Section 241. The committee shall state its reasons for disapproval in writing. Failure of the committee to approve or disapprove a certificate within 30 days from the date of the committee meeting at which an application was first considered shall be deemed approval of the application as submitted.

5. If the committee approves the certificate of appropriateness, the administrator shall process the application for a zoning or sign permit for the project. If the committee has disapproved the certificate of appropriateness, the administrator shall proceed to notify the applicant that a location or sign permit for the project will not be processed.
6. The time for decision on a certificate of appropriateness may be extended by mutual agreement between the applicant and town.
7. If the committee disapproves the erection, reconstruction alteration, restoration, moving or razing of a building or structure, the committee shall state its reasons in writing and may make recommendations to the applicant about the appropriateness of design, arrangement, texture, materials, color, and location of the building or structure involved. In the case of disapproval with recommendations, the applicant may file an amended application for a certificate of appropriateness with the committee within 90 days.
8. No application which has been denied shall be heard by the committee for one year except in cases where the applicant amends the application within 90 days as provided in Section 239.B.7.

C. Procedure for Zoning Administrator Exemptions (Added 10/10/02)

For minor actions that may be approved without a Certificate of Appropriateness pursuant to Section 243.B., an application shall be submitted on a form provided by the Town to permit the Administrator to determine if the proposed action is exempt from review by the Historic District Review Committee. The form shall be accompanied by sufficient information, such as photographs, materials specifications and/or color samples, to permit the Administrator to make the required finding that the proposed minor action will not permanently affect the character of the district and, in the case of repainting projects, that the proposed color(s) match or are compatible with colors included in an adopted Town historic district color palette.

**Section 240: Demolition, Razing and Moving of Building or Structures**

A. Applications involving any building or structure which is to be demolished, razed or moved under the provisions of this ordinance shall be subject to the provisions of § 15.2-2306 of the Code of Virginia, as amended.

B. The committee may consult with civic groups, public agencies and interested citizens, recommend the acquisition of the property by public or private bodies or agencies, and explore the possibility of moving one or more structures or other features to preserve the buildings or structures concerned in accordance with the purposes of this ordinance during the demolition delay period set forth in the applicable provisions of § 15.2-2306 of the Code of Virginia, as amended.

**Section 241: Matters to be Considered in Acting on the Appropriateness of the Erection, Reconstruction, Alteration, Restoration, or Demolition of a Building or Structure**

In reviewing certificate of appropriateness applications, the committee shall base its decision on whether the proposals therein are compatible with the existing building or structure, if any, and with the surrounding historic district. Interior arrangement or features not subject to any public view shall not be considered. The following shall be considered by the committee in acting on the appropriateness of the proposed erection, reconstruction, alteration, restoration, or demolition of buildings or structures:

A. Exterior architectural features, including all signs, which are subject to public view from a public street, way or place.

B. Design, arrangement and relative size.

C. Texture, material and color.

D. The relation of the factors in A., B., and C. above to similar features of buildings and structures in the immediate surroundings.

E. The extent to which the building or structure would be harmonious with or obviously incongruous to the historic aspect of the surroundings.

F. In the case of a building to be razed or moved, a primary consideration shall be the extent to which its continued existence would tend to protect irreplaceable historic places and preserve the general historic atmosphere of the town.

G. The extent to which the building or structure will promote the general welfare of the town and all citizens by the preservation and protection of historic places and areas.

H. The extent to which said preservation and protection will promote the general welfare by maintaining and increasing real estate values, generating business, creating new positions, attracting tourists, encouraging study and interest in American history, stimulating interest and study in architecture and design, educating citizens in American culture and heritage, and making the town a more attractive and desirable place in which to live.

I. The extent to which the proposal adheres to the Historic District Guidelines for the Town of Middleburg adopted by the Town Council and incorporated herein by reference.

**Section 242: Time Limit**

A certificate of appropriateness shall be valid for one (1) year from the date of issuance. If the demolition, erection, reconstruction, alteration, relocation or restoration for which the certificate was issued is not commenced within one year and thereafter diligently pursued, a new certificate shall be obtained prior thereto.

**Section 243: Exclusions**

A. Ordinary Maintenance Excluded. (Amended 10/10/02)

Nothing in this ordinance shall be construed to prevent the ordinary maintenance or repair, as listed below, of any exterior elements of any building or structure described in Section 239.A.4. The following ordinary maintenance and repair work shall be exempt from the requirement to obtain a certificate of appropriateness.

1. Replacement of missing or broken window panes, roofing slates, tiles, or shingles, outside doors, window frames, or shutters where no substantial change in design, color or material is proposed.

2. Ordinary maintenance, including repair and replacement, of other exterior architectural features, such as siding or fencing, with the same design, color and material, unless such repair or replacement, in the opinion of the Zoning Administrator, will perpetuate a condition or treatment that is considered inappropriate or incompatible with the character of the district, as indicated by the Middleburg Historic District Guidelines or previous decisions of the Historic District Review Committee.

3. Repainting resulting in the same color (Original painting of masonry surfaces is not exempted from review).

B. Minor Actions Excluded.

Furthermore, certain minor actions may be exempted by the Zoning Administrator from the requirement to obtain a certificate of appropriateness if the Administrator finds that such action will not permanently affect the character of the historic property or district. Such ordinary maintenance or repair and minor actions shall include the following and any similar actions which, in the opinion of the Zoning Administrator, will have no more effect on the character of the district than those listed: (Amended 10/10/02)

1. Repainting to a color selected from a color palette of historically accurate paint colors adopted by the Historic District Review Committee or to a color found by the Administrator to be compatible with a color included in an adopted color palette. (Added 10/10/02)
2. Addition or deletion of storm doors or storm windows and window gardens.
3. Minor landscaping structures, such as walks, low retaining walls, small fountains, ponds and the like which will not substantially affect the character of the property and its surroundings.

Provided, however, that the Zoning Administrator shall have authority to order that work be stopped and that a certificate of appropriateness application be filed for review by the committee in any case where, in the Zoning Administrator's opinion, the action may have an adverse effect on the historic district or may produce colors, patterns or details clearly inconsistent with the character of the present structures or with the prevailing character of the surroundings and the district as a whole.

C. Public Safety Exclusion

Nothing in this article shall be construed to prevent the construction, reconstruction, alteration or demolition of any such elements which the authorized municipal officers shall certify as required by public safety; provided, however, that in appropriate cases measures required to protect the public safety may be approved for a period not to exceed 12 months.

**Section 244: Appeals**

A. Appeals to the Council. Appeals to the council from any final decision of the committee may be made by any person by filing a petition with the Clerk of Council, setting forth the basis for the appeal, within one week of the committee's decision. The appeal shall be placed on the next regularly scheduled council meeting following receipt of the appeal. The filing of the appeal shall stay the decision of the committee pending the outcome of the appeal to the council, except that the filing of such petition shall not stay the committee's decision if such decision denies the right to raze or demolish a historic structure or building. The council may reverse, modify or affirm the decision of the committee.

B. The owner of any building, structure or land within the district that is the subject of a final decision of the council may appeal such decision within 30 days of the date the final decision is rendered by the council by filing a petition at law with the Circuit Court of Loudoun County setting forth the alleged illegality of the action of the council.

The filing of a petition for review shall stay the decision of the council pending the outcome of the appeal to the Circuit Court of Loudoun County, except that the filing of a petition shall not

stay the decision of the council if such decision denies the right to raze or demolish a building or structure.

**Section 245: Designation of Historic Districts**

The Historic Middleburg District may be enlarged or altered and new historic districts, including individual historic landmarks, may be established by the Town Council pursuant to § 15.2-2306 of the Code of Virginia, as amended, and to Article XVIII of this ordinance. One or more property owners within the affected area, the Town Council, the Historic District Review Committee, or the Planning Commission may propose amendments to an existing district or creation of a new one.

A. Criteria for Designation of Historic Districts

Any proposed districts or amendments to districts shall meet one or more of the following criteria:

1. possess an identifiable character representative of the town's architectural, archaeological, and/or cultural heritage; or
2. be closely associated with one or more persons, events, activities, or institutions that have made a significant contribution to local, regional, or national history; or
3. contain buildings, structures or archaeological resources whose exterior design or features exemplify the distinctive characteristics of an historic type, period or method of construction, or which represent the work of an acknowledged master; or
4. have yielded, or are likely to yield, information important to local, regional or national history or prehistory; or
5. owing to its unique location or singular physical characteristic, represent an established and familiar visual feature of the neighborhood, community or town; or
6. encompass parcels of land or portions thereof adjacent to a street which is a significant historic route of tourist access to the town.

B. Boundaries of Historic Districts.

The boundaries of historic districts shall be drawn to include those lands which are adjacent to the landmarks, buildings or structures for which the historic district was established and any other lands which the Town Council deems important to ensure preservation of the essential historic character of the district.

C. Inventory of Buildings and Structures.

Following the creation of each historic district, the Zoning Administrator shall establish and maintain an inventory of the historic buildings and structures within the district.

**Section 245a. Repealed.** (1/10/19)

## PART II: FLOODPLAIN OVERLAY DISTRICT REGULATIONS

(Added 6/14/01; Part II repealed in its entirety and new Part II enacted 12/10/15; amended 2/9/17)

### Section 246.1: General Provisions

A. Statutory Authorization and Purpose [44 CFR 59.22(a)(2)]

This Ordinance is adopted pursuant to the authority granted to localities by Va. Code § 15.2 - 2280.

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

1. regulating uses, activities, and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies;
2. restricting or prohibiting certain uses, activities, and development from locating within districts subject to flooding;
3. requiring all those uses, activities, and developments that do occur in flood-prone districts to be protected and/or flood-proofed against flooding and flood damage; and,
4. protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

B. Applicability

These provisions shall apply to all privately and publicly owned lands within the jurisdiction of the Town of Middleburg ("the Town") and identified as areas of special flood hazard according to the flood insurance rate map (FIRM) that is provided to the Town by FEMA.

C. Compliance and Liability

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

D. Records [44 CFR 59.22(a)(9)(iii)]

Records of actions associated with administering this Ordinance shall be kept on file and maintained by the Floodplain Administrator.

E. Abrogation and Greater Restrictions [44 CFR 60.1(b)]

This Ordinance supersedes any Ordinance currently in effect in flood-prone districts. Any Ordinance, however, shall remain in full force and effect to the extent that its provisions are more restrictive.

F. Severability

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

G. Penalty for Violations [44 CFR 60.2(e)]

Any person who fails to comply with any of the requirements or provisions of this article or directions of the Zoning Administrator or any authorized employee of the Town shall be guilty of the appropriate violation and subject to the penalties therefore.

The VA USBC addresses building code violations and the associated penalties in Section 104 and Section 115. Violations and associated penalties of the Zoning Ordinance are addressed in Article VII.

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

**Section 246.2: Administration**

A. Designation of the Floodplain Administrator [44 CFR 59.22(b)]

The Zoning Administrator is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator. The Floodplain Administrator may:

1. Do the work themselves. In the absence of a designated Floodplain Administrator, the duties are conducted by the Town Administrator.
2. Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees.
3. Enter into a written agreement or written contract with another community or private sector entity to administer specific provisions of these regulations. Administration of any part of these regulations by another entity shall not relieve the community of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 C.F.R. Section 59.22.

B. Duties and Responsibilities of the Floodplain Administrator [44 CFR 60.3]

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

1. Review applications for permits to determine whether proposed activities will be located in the Special Flood Hazard Area (SFHA).

2. Interpret floodplain boundaries and provide available base flood elevation and flood hazard information.
3. Review applications to determine whether proposed activities will be reasonably safe from flooding and require new construction and substantial improvements to meet the requirements of these regulations.
4. Review applications to determine whether all necessary permits have been obtained from the Federal, State or local agencies from which prior or concurrent approval is required; in particular, permits from state agencies for any construction, reconstruction, repair, or alteration of a dam, reservoir, or waterway obstruction (including bridges, culverts, structures), any alteration of a watercourse, or any change of the course, current, or cross section of a stream or body of water, including any change to the 100-year frequency floodplain of free-flowing non-tidal waters of the State.
5. Verify that applicants proposing an alteration of a watercourse have notified adjacent communities, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management), and other appropriate agencies (VADEQ, USACE) and have submitted copies of such notifications to FEMA.
6. Approve applications and issue permits to develop in flood hazard areas if the provisions of these regulations have been met, or disapprove applications if the provisions of these regulations have not been met.
7. Inspect or cause to be inspected, buildings, structures, and other development for which permits have been issued to determine compliance with these regulations or to determine if non-compliance has occurred or violations have been committed.
8. Review Elevation Certificates and require incomplete or deficient certificates to be corrected.
9. Submit to FEMA, or require applicants to submit to FEMA, data and information necessary to maintain FIRMs, including hydrologic and hydraulic engineering analyses prepared by or for the Town, within six months after such data and information becomes available if the analyses indicate changes in base flood elevations.
10. Maintain and permanently keep records that are necessary for the administration of these regulations, including:
    a. Flood Insurance Studies, Flood Insurance Rate Maps (including historic studies and maps and current effective studies and maps) and Letters of Map Change; and
    b. Documentation supporting issuance and denial of permits, Elevation Certificates, documentation of the elevation (in relation to the datum on the FIRM) to which structures have been floodproofed, other required design certifications, variances, and records of enforcement actions taken to correct violations of these regulations.
11. Enforce the provisions of these regulations, investigate violations, issue notices of violations or stop work orders, and require permit holders to take corrective action.
12. Advise the Board of Zoning Appeals regarding the intent of these regulations and, for each application for a variance, prepare a staff report and recommendation.
13. Administer the requirements related to proposed work on existing buildings:
    a. Make determinations as to whether buildings and structures that are located in flood hazard areas and that are damaged by any cause have been substantially damaged.

b. Make reasonable efforts to notify owners of substantially damaged structures of the need to obtain a permit to repair, rehabilitate, or reconstruct, and prohibit the non-compliant repair of substantially damaged buildings except for temporary emergency protective measures necessary to secure a property or stabilize a building or structure to prevent additional damage.

14. Undertake, as determined appropriate by the Floodplain Administrator due to the circumstances, other actions which may include but are not limited to: issuing press releases, public service announcements, and other public information materials related to permit requests and repair of damaged structures; coordinating with other Federal, State, and local agencies to assist with substantial damage determinations; providing owners of damaged structures information related to the proper repair of damaged structures in special flood hazard areas; and assisting property owners with documentation necessary to file claims for Increased Cost of Compliance coverage under NFIP flood insurance policies.

15. Notify the Federal Emergency Management Agency when the corporate boundaries of the Town have been modified and:

    a. Provide a map that clearly delineates the new corporate boundaries or the new area for which the authority to regulate pursuant to these regulations has either been assumed or relinquished through annexation; and

    b. If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended regulations shall be provided to Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and FEMA.

16. Upon the request of FEMA, complete and submit a report concerning participation in the NFIP which may request information regarding the number of buildings in the SFHA, number of permits issued for development in the SFHA, and number of variances issued for development in the SFHA.

17. It is the duty of the Floodplain Administrator to take into account flood, mudslide and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land management and use throughout the entire jurisdictional area of the Town, whether or not those hazards have been specifically delineated geographically (e.g. via mapping or surveying).

C. Use and Interpretation of FIRMs [44 CFR 60.3]

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

1. Where field surveyed topography indicates that:

    a. adjacent ground elevations are below the base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as special flood hazard area and subject to the requirements of these regulations;

    b. adjacent ground elevations within the SFHA are above the base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the SFHA. (amended 2/9/17)

2. In FEMA-identified special flood hazard areas where base flood elevation and floodway data have not been identified and in areas where FEMA has not identified SFHAs, any other flood hazard data available from a Federal, State, or other source shall be reviewed and reasonably used.
3. Base flood elevations and designated floodway boundaries on FIRMs and in FISs shall take precedence over base flood elevations and floodway boundaries by any other sources if such sources show reduced floodway widths and/or lower base flood elevations.
4. Other sources of data shall be reasonably used if such sources show increased base flood elevations and/or larger floodway areas than are shown on FIRMs and in FISs.
5. If a Preliminary Flood Insurance Rate Map and/or a Preliminary Flood Insurance Study has been provided by FEMA:
    a. Upon the issuance of a Letter of Final Determination by FEMA, the preliminary flood hazard data shall be used and shall replace the flood hazard data previously provided from FEMA for the purposes of administering these regulations.
    b. Prior to the issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data shall be deemed the best available data pursuant to Section 246.3.A.3 and used where no base flood elevations and/or floodway areas are provided on the effective FIRM.
    c. Prior to issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data is permitted where the preliminary base flood elevations or floodway areas exceed the base flood elevations and/or designated floodway widths in existing flood hazard data provided by FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.

D. Jurisdictional Boundary Changes [44 CFR 59.22, 65.3]

The Town shall pass a resolution acknowledging and accepting responsibility for enforcing floodplain ordinance standards prior to annexation of any area containing identified flood hazards. If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, the Town shall prepare and adopt amendments to these regulations to adopt the FIRM and such regulatory requirements as appropriate; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended regulations shall be provided to Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and FEMA.

In accordance with the Code of Federal Regulations, Title 44 Subpart (B) Section 59.22 (a) (9) (v), all NFIP participating communities must notify the Federal Emergency Management Agency and optionally the State Coordinating Office in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area.

In order that all Flood Insurance Rate Maps accurately represent the community's boundaries, a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished floodplain management regulatory authority must be included with the notification.

E. District Boundary Changes

The delineation of any of the Floodplain Districts may be revised by the Town where natural or man-made changes have occurred and/or where more detailed studies have been conducted or undertaken by the U. S. Army Corps of Engineers or other qualified agency, or an individual documents the need for such change. However, prior to any such change, approval must be obtained from the Federal Emergency Management Agency.

F. Interpretation of District Boundaries

Initial interpretations of the boundaries of the Floodplain Districts shall be made by the Zoning Administrator. Should a dispute arise concerning the boundaries of any of the Districts, the Board of Zoning Appeals shall make the necessary determination. The person questioning or contesting the location of the District boundary shall be given a reasonable opportunity to present his case to the Board and to submit his own technical evidence if he so desires.

G. Submitting Technical Data [44 CFR 65.3]

The Town's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, the Town shall notify the Federal Emergency Management Agency of the changes by submitting technical or scientific data. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and flood plain management requirements will be based upon current data.

H. Letters of Map Revision

When development in the floodplain will cause or causes a change in the base flood elevation, the applicant, including state agencies, must notify FEMA by applying for a Conditional Letter of Map Revision and then a Letter of Map Revision.

Example cases:

- Any development that causes a rise in the base flood elevations within the floodway.
- Any development occurring in Zones A1-30 and AE without a designated floodway, which will cause a rise of more than one foot in the base flood elevation.
- Alteration or relocation of a stream (including but not limited to installing culverts and bridges) [44 Code of Federal Regulations §65.3 and §65.6(a)(12)]

**Section 246.3: Establishment of Zoning Districts**

A. Description of Special Flood Hazard Districts [44 CFR 59.1, 60.3]

Basis of Districts:

The various special flood hazard districts shall include the SFHAs. The basis for the delineation of these districts shall be the FIS and the FIRM for Loudoun County, Virginia and Incorporated Areas, prepared by the Federal Emergency Management Agency, dated February 17, 2017 and any subsequent revisions or amendments thereto. (Amended 2/9/17)

The Town may identify and regulate local flood hazard or ponding areas that are not delineated on the FIRM. These areas may be delineated on a "Local Flood Hazard Map" using best available topographic data and locally derived information such as flood of record, historic high water marks or approximate study methodologies.

The boundaries of the SFHA Districts are established as shown on the FIRM which is declared to be a part of this Ordinance and which shall be kept on file at the Town offices.

1. The **Floodway District** is in an **AE Zone** and is delineated, for purposes of this ordinance, using the criterion that certain areas within the floodplain must be capable of carrying the waters of the one percent annual chance flood without increasing the water surface elevation of that flood more than one (1) foot at any point. The areas included in this District are specifically defined in the above-referenced FIS and shown on the accompanying FIRM.

   *** The effective FIRM does not include AE Zones nor a designated regulatory floodway within the corporate limits of the Town.

2. The **AE**, or **AH** Zones on the FIRM accompanying the FIS shall be those areas for which one-percent annual chance flood elevations have been provided and the floodway has not been delineated.

   *** The effective FIRM does not include AE or AH Zones within the corporate limits of the Town.

3. The **A** Zone on the FIRM accompanying the FIS shall be those areas for which no detailed flood profiles or elevations are provided, but the one percent annual chance floodplain boundary has been approximated. For these areas, the following provisions shall apply [44 CFR 60.3(b)]:

   The Approximated Floodplain District shall be that floodplain area for which no detailed flood profiles or elevations are provided, but where a one hundred (100)-year floodplain boundary has been approximated. Such areas are shown as Zone A on the maps accompanying the FIS. For these areas, the base flood elevations and floodway information from federal, state, and other acceptable sources shall be used, when available. Where the specific one percent annual chance flood elevation cannot be determined for this area using other sources of data, such as the U. S. Army Corps of Engineers Floodplain Information Reports, U. S. Geological Survey Flood-Prone Quadrangles, etc., then the applicant for the proposed use, development and/or activity shall determine this base flood elevation. For development proposed in the approximate floodplain, the applicant must use technical methods that correctly reflect currently accepted, non-detailed technical concepts, such as point on boundary, high water marks, or detailed methodologies hydrologic and hydraulic analyses. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator.

   The Floodplain Administrator reserves the right to require a hydrologic and hydraulic analysis for any development. When such base flood elevation data is utilized, the lowest floor shall be elevated to a minimum of one foot above the base flood level.

   During the permitting process, the Floodplain Administrator shall obtain:

   a. The elevation of the lowest floor (including the basement) of all new and substantially improved structures; and,

   b. if the structure has been flood-proofed in accordance with the requirements of this article, the elevation (in relation to mean sea level) to which the structure has been flood-proofed.

   Base flood elevation data shall be obtained from other sources or developed using detailed methodologies comparable to those contained in a FIS for subdivision proposals and other proposed development proposals (including manufactured home parks and subdivisions) that exceed twenty-five lots or five acres, whichever is the lesser.

B. Overlay Concept

The Floodplain Districts described above shall be overlays to the existing underlying districts as shown on the Official Zoning Ordinance Map, and as such, the provisions for the floodplain districts shall serve as a supplement to the underlying district provisions.

If there is any conflict between the provisions or requirements of the Floodplain Districts and those of any underlying district, the more restrictive provisions and/or those pertaining to the floodplain districts shall apply.

In the event any provision concerning a Floodplain District is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.

**Section 246.4 District Provisions [44 CFR 59.22, 60.2, 60.3]**

A. Permit and Application Requirements

1. Permit Requirement

All uses, activities, and development occurring within any floodplain district, including placement of manufactured homes, shall be undertaken only upon the issuance of a zoning permit. Such development shall be undertaken only in strict compliance with the provisions of this Ordinance and with all other applicable codes and ordinances, as amended, such as the Virginia Uniform Statewide Building Code (VA USBC) and the Town's Subdivision Regulations. Prior to the issuance of any such permit, the Floodplain Administrator shall require all applications to include compliance with all applicable state and federal laws and shall review all sites to assure they are reasonably safe from flooding. Under no circumstances shall any use, activity, and/or development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch, or any other drainage facility or system.

2. Site Plans and Permit Applications

All applications for development within any floodplain district and all building permits issued for the floodplain shall incorporate the following information:

a. The elevation of the Base Flood at the site.

b. The elevation of the lowest floor (including basement).

c. For structures to be flood-proofed (non-residential only), the elevation to which the structure will be flood-proofed.

d. Topographic information showing existing and proposed ground elevations.

B. General Standards

The following provisions shall apply to all permits:

1. New construction and substantial improvements shall be according to Section 246.3 of this Ordinance and the VA USBC, and anchored to prevent flotation, collapse or lateral movement of the structure.

2. Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state anchoring requirements for resisting wind forces.

3. New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
4. New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
5. Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
6. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
7. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
8. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

In addition to provisions 1-8 above, in all special flood hazard areas, the additional provisions shall apply:

9. Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction, a permit shall be obtained from the U. S. Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission (a joint permit application is available from any of these organizations). Furthermore, in riverine areas, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management), other required agencies, and the Federal Emergency Management Agency.
10. The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.

C. Elevation and Construction Standards [44 CFR 60.3]

In all identified flood hazard areas where base flood elevations have been provided in the FIS or generated by a certified professional in accordance with Section 246.3.A.3, the following provisions shall apply:

1. Residential Construction

   New construction or substantial improvement of any residential structure (including manufactured homes) shall have the lowest floor, including basement, elevated to a minimum of one foot above the base flood level.

2. Non-Residential Construction

   New construction or substantial improvement of any commercial, industrial, or non-residential building (or manufactured home) shall have the lowest floor, including basement, elevated to a minimum of one foot above the base flood level. Non-residential buildings may be flood-proofed in lieu of being elevated provided that all areas of the building components below the elevation corresponding to the BFE plus one foot are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification, including the specific elevation

(in relation to mean sea level) to which such structures are floodproofed, shall be maintained by the Floodplain Administrator.

3. Space Below the Lowest Floor

   Fully enclosed areas of new construction or substantially improved structures which are below the regulatory flood protection elevation shall:

   a. not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator).

   b. be constructed entirely of flood resistant materials below the regulatory flood protection elevation;

   c. include measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet the following minimum design criteria:

      i. Provide a minimum of two openings on different sides of each enclosed area subject to flooding.

      ii. The total net area of all openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding.

      iii. If a building has more than one enclosed area, each area must have openings to allow floodwaters to automatically enter and exit.

      iv. The bottom of all required openings shall be no higher than one (1) foot above the adjacent grade.

      v. Openings may be equipped with screens, louvers, or other opening coverings or devices, provided they permit the automatic flow of floodwaters in both directions.

      vi. Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above.

4. Standards for Manufactured Homes and Recreational Vehicles

   a. All manufactured homes placed, or substantially improved, on individual lots or parcels, must meet all the requirements for new construction, including the elevation and anchoring requirements in Section 246.4.B and C.

   b. All recreational vehicles placed on sites must either:

      i. be on the site for fewer than 180 consecutive days, be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions); or

      ii. meet all the requirements for manufactured homes in Section 246.4.C.4.a.

D. Standards for Subdivision Proposals

1. All subdivision proposals shall be consistent with the need to minimize flood damage;
2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards; and,
4. Base flood elevation data shall be obtained from other sources or developed using detailed methodologies, hydraulic and hydrologic analysis, comparable to those contained in a Flood Insurance Study for subdivision proposals and other proposed development proposals (including manufactured home parks and subdivisions) that exceed twenty-five lots or five acres, whichever is the lesser.

**Section 246.5 Existing Structures in Floodplain Areas**

A structure or use of a structure or premises which lawfully existed before the enactment of these provisions, but which is not in conformity with these provisions, may be continued subject to the following conditions:

A. Any modification, alteration, repair, reconstruction or improvement of any kind to a structure and/or use located in any floodplain area to an extent or amount of less than fifty (50) percent of its market value shall conform to the VA USBC and the appropriate provisions of this Ordinance.

B. Any modification, alteration, repair, reconstruction or improvement of any kind to a structure and/or use located in any floodplain area to an extent or amount of fifty (50) percent or more of its market value shall be undertaken only in full compliance with this Ordinance and shall require the entire structure to conform to the VA USBC. This provision applies regardless of whether the modification, alteration, repair, reconstruction or improvement is itself located in the floodplain.

**Section 246.6: Variances; Factors to be Considered [44 CFR 60.6]**

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

While the granting of variances generally is limited to a lot size less than one-half acre, deviations from that limitation may occur. However, as the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases. Variances may be issued by the Board of Zoning Appeals for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the provisions of this section.

Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of this section are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

In passing upon applications for variances, the Board of Zoning Appeals shall satisfy all relevant factors and procedures specified in other sections of the zoning ordinance and consider the following additional factors:

A. The danger to life and property due to increased flood heights or velocities caused by encroachments.

B. The danger that materials may be swept on to other lands or downstream to the injury of others.

C. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.

D. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.

E. The importance of the services provided by the proposed facility to the community.

F. The requirements of the facility for a waterfront location.

G. The availability of alternative locations not subject to flooding for the proposed use.

H. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

I. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.

J. The safety of access by ordinary and emergency vehicles to the property in time of flood.

K. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.

L. The historic nature of a structure. Variances for repair or rehabilitation of historic structures may be granted upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

M. Such other factors which are relevant to the purposes of this ordinance.

The Board of Zoning Appeals may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.

Variances shall be issued only after the Board of Zoning Appeals has determined that the granting of such will not result in (a) unacceptable or prohibited increases in flood heights, (b) additional threats to public safety, (c) extraordinary public expense; and will not (d) create nuisances, (e) cause fraud or victimization of the public, or (f) conflict with local laws or ordinances.

Variances shall be issued only after the Board of Zoning Appeals has determined that the variance will be the minimum required to provide relief.

The Board of Zoning Appeals shall notify the applicant for a variance in writing that the issuance of a variance to construct a structure below the one percent (1%) chance flood elevation (a) increases the risks to life and property and (b) will result in increased premium rates for flood insurance.

A record shall be maintained of the above notification as well as all variance actions, including justification for the issuance of the variances. Any variances that are issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator.

**Section 247: Definitions [44 CFR 59.1]**

The following definitions shall apply to their use within this Article only, unless specifically referred to elsewhere in the Zoning Ordinance.

A. *Appurtenant or accessory structure* - Accessory structures not to exceed 200 sq. ft.

B. *Base flood* - The flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the 100-year flood.

C. *Base flood elevation* - The water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year. The water surface elevation of the base flood in relation to the datum specified on the community's Flood Insurance Rate Map. For the purposes of this ordinance, the base flood is the 1% annual chance flood.

D. *Basement* - Any area of the building having its floor sub-grade (below ground level) on all sides.

E. *Board of Zoning Appeals* - The board appointed to review appeals made by individuals with regard to decisions of the Zoning Administrator in the interpretation of this ordinance.

F. *Development* - Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, temporary structures, mining, dredging, filling, grading, paving, excavation, drilling or other land-disturbing activities, or permanent or temporary storage of equipment or materials. (Amended 2/9/17)

G. *Elevated building* - A non-basement building built to have the lowest floor elevated above the ground level by means of solid foundation perimeter walls, pilings, or columns (posts and piers).

H. *Encroachment* - The advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

I. *Existing construction* - structures for which the "start of construction" commenced before July 5, 2001. "Existing construction" may also be referred to as "existing structures." (Amended 2/9/17)

J. *Flood or flooding* -

1. A general or temporary condition of partial or complete inundation of normally dry land areas from:

   a. the overflow of inland or tidal waters; or,

   b. the unusual and rapid accumulation or runoff of surface waters from any source.

   c. mudflows which are proximately caused by flooding as defined in paragraph 1.b. of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

2. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph 1.a. of this definition.

K. *Flood Insurance Rate Map (FIRM)* - an official map of a community, on which the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

L. *Flood Insurance Study (FIS)* – a report by FEMA that examines, evaluates and determines flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudflow and/or flood-related erosion hazards.

M. *Floodplain or flood-prone area* - Any land area susceptible to being inundated by water from any source.

N. *Flood proofing* - any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

O. *Floodway* - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

P. *Freeboard* - A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization in the watershed.

Q. *Highest adjacent grade* - the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

R. *Historic structure* - Any structure that is

1. listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
4. individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
    a. by an approved state program as determined by the Secretary of the Interior; or,
    b. directly by the Secretary of the Interior in states without approved programs.

S. *Hydrologic and Hydraulic Engineering Analysis* – Analyses performed by a licensed professional engineer, in accordance with standard engineering practices that are accepted by the Virginia Department of Conservation and Recreation and FEMA, used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.

T. *Letters of Map Change (LOMC)* - A Letter of Map Change is an official FEMA determination, by letter, that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

1. *Letter of Map Amendment (LOMA)*: An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends

the current effective Flood Insurance Rate Map and establishes that a Land as defined by meets and bounds or structure is not located in a special flood hazard area.

2. *Letter of Map Revision (LOMR)*: A revision based on technical data that may show changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. A Letter of Map Revision Based on Fill (LOMR-F), is a determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer exposed to flooding associated with the base flood. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

3. *Conditional Letter of Map Revision (CLOMR)*: A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study.

U. *Lowest adjacent grade* - the lowest natural elevation of the ground surface next to the walls of a structure.

V. *Lowest floor* - The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Federal Code 44CFR §60.3.

W. *Manufactured home* - A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

X. *Manufactured home park or subdivision* - a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Y. *Mean Sea Level* - is an elevation point that represents the average height of the ocean's surface (such as the halfway point between the mean high tide and the mean low tide) which is used as a standard in reckoning land elevation.

Z. *New construction* - For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after July 5, 2001, including any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

AA. *Post-FIRM structures* - A structure for which construction or substantial improvement occurred on or after July 5, 2001. (Amended 2/9/17)

BB. *Pre-FIRM structures* - A structure for which construction or substantial improvement occurred before July 5, 2001. (Amended 2/9/17)

CC. *Recreational vehicle* - A vehicle which is

1. built on a single chassis;

2. 400 square feet or less when measured at the largest horizontal projection;

3. designed to be self-propelled or permanently towable by a light duty truck; and,

4. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.

DD. *Repetitive Loss Structure* – A building covered by a contract for flood insurance that has incurred flood-related damages on two occasions, in which the cost of the repair, on the average, equaled or exceeded 25 percent of the market value of the structure at the time of each such flood event; and at the time of the second incidence of flood-related damage, the contract for flood insurance contains increased cost of compliance coverage.

EE. *Severe repetitive loss structure* - a structure that: (a) Is covered under a contract for flood insurance made available under the NFIP; and (b) Has incurred flood related damage – (i) For which 4 or more separate claims payments have been made under flood insurance coverage with the amount of each such claim exceeding $5,000, and with the cumulative amount of such claims payments exceeding $20,000; or (ii) For which at least 2 separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the market value of the insured structure.

FF. *Shallow flooding area* – A special flood hazard area with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

GG. *Special flood hazard area* - The land in the floodplain subject to a one (1%) percent or greater chance of being flooded in any given year as determined in Section 246.3 of this ordinance.

HH. *Start of construction* - The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of the construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

II. *Structure* - for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

JJ. *Substantial damage* - Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

KK. *Substantial improvement* - Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred repetitive loss or substantial damage regardless of the actual repair work performed. The term does not, however, include either:

1. any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code

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

2. any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

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

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

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

**Sections 248 through 249: Reserved**

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# ARTICLE XVIII. AMENDMENTS

## Section 250: Amendments in General

Amendments to the text of this ordinance or to the zoning map may be made in accordance with the provisions of this ordinance whenever required by the public necessity, convenience, general welfare or good zoning practice.

## Section 251: Initiation of Amendments

A. Amendments to zoning district boundaries or classification of property shown on the zoning map may be initiated by property owners of the land proposed to be rezoned, by filing with the council a zoning map amendment petition. The petition shall be addressed to the council and shall be on a standard form provided by the zoning administrator and accompanied by a reasonable fee to be determined in accordance with a fee schedule separately adopted by the council.

B. Amendments to the text of the ordinance or in the zoning boundaries or classification of properties shown on the zoning map may be initiated by the council or the planning commission in accordance with the provisions of § 15.2-2285, Code of Virginia, 1950 (as amended). (Amended 5/14/98)

## Section 252: Planning Commission Hearing and Notice Required

A. No article amending any provision of this ordinance may be adopted until a public hearing has been held on such article.

B. Upon receipt of a properly filed amendment request or petition, the administrator shall schedule a public hearing by the planning commission on the amendment and provide public notice as required by § 15.2-2204, Code of Virginia, 1950 (as amended) and Article VI of this ordinance. (Amended 5/14/98)

## Section 253: Planning Commission Consideration of Proposed Amendments

Following the public hearing, the planning commission shall forward the proposed amendment to the council, together with its recommendation. Failure of the commission to report to the council within 90 days or such shorter period as may be set by council, after the first meeting of the commission following the date the proposed amendment has been referred to the commission shall be deemed approval by the commission of such amendment. The planning commission need not confine its recommendation to the proposed amendment as contained in the petition, but may reduce or enlarge the extent of land that it recommends be rezoned or may recommend that land be rezoned to a different zoning classification than that requested in the petition. However, the commission shall hold another hearing on the application, pursuant to requirements of § 15.2-2204, Code of Virginia, 1950 (as amended) and Article VI before recommending an increase in the extent of land rezoned or a rezoning to a more intensive use classification than set forth in the petition. (Amended 5/14/98)

## Section 254: Town Council Hearing and Notice Required

A. Before approving and adopting any zoning ordinance or amendment thereof, the council shall hold at least one public hearing and provide public notice as required by Article VI, after which it

may make appropriate changes or corrections in the ordinance or proposed amendment; provided, however, that no land may be zoned to a more intensive use classification than was contained in the public notice without an additional public hearing after notice required by Article VI.

B. The council may approve or deny an amendment as submitted, rezone to a classification other than that requested by the applicant (provided all notification requirements have been met), or may rezone only a portion of the area proposed for rezoning in the original application.

**Section 255: Limitation on Filing New Petition After Original Denied**

No new petition concerning any or all of the same property shall be filed within 12 months of the date of denial by the council.

**Section 256: Withdrawal of Petitions**

Any petition filed pursuant to Section 251 above may be withdrawn upon written request of the applicant any time prior to the submission of any public hearing notice for advertisement; provided, that if the request for withdrawal is made after publication of the notice of hearing such withdrawal shall only be with the consent of either the commission or the council, whichever body has advertised the hearing, and no new petition concerning any or all of the same property shall be filed within 12 months of the date of action by the respective body approving such withdrawal unless such body in its action approving the withdrawal specifies that the time limitation shall not apply and permits the petition to be withdrawn "without prejudice."

**Section 257: Proffered Conditions**

A. The conditional zoning provisions contained in Title 15.2-2303 and Title 15.2-2299 through 15.2-2302, Code of Virginia, 1950 (as amended) are incorporated as part of this ordinance as if set out fully herein. Proposed conditions shall be proffered in writing, in advance of the public hearing before the town council by the owner of the property which is the subject of the proposed zoning map amendment. (Amended 5/14/98)

B. There shall be no amendment or variation of conditions created pursuant to this Section until after a public hearing before the town council advertised pursuant to Article VI.

**Sections 258 through 261: Reserved**

# ARTICLE XIX. OUTDOOR LIGHTING STANDARDS

(Added 6/23/11; amended 2/14/13)

## Section 262: Purpose and Intent.

The purpose of this lighting ordinance is to permit reasonable uses of outdoor lighting for safety, utility, security, and enjoyment while preserving the ambiance of the night; to conserve energy and resources to the greatest extent possible; to minimize glare and obtrusive light by limiting outdoor lighting that is misdirected, excessive or unnecessary; to help protect the natural environment from the damaging effects of night lighting; to promote Middleburg as a safe and friendly pedestrian environment and to preserve the historical character of the Town of Middleburg for future generations.

## Section 263: Applicability

A. All outdoor lighting fixtures installed on private and public property after the effective date of this ordinance shall comply to the ordinance provisions contained in this article. This article shall not apply to interior lighting. However, overly bright inside light emitted outdoors from any structure will be subject to control by this ordinance if it is determined by the Administrator that it creates a light trespass as defined by this ordinance.

B. All outdoor lighting fixtures existing and legally installed and operative before the effective date of this article are exempt from these requirements unless they are determined to create light trespass on adjacent properties as defined by this article. When existing lighting fixture become inoperable, replacement fixtures shall be submitted following the procedures of Section 267 and approved by the Administrator, subject to the provisions of this article.

C. If a property or use with non-conforming lighting is abandoned as defined by Article VIII, Section 92.I. of the Middleburg Zoning Ordinance, then all outdoor lighting shall be reviewed and brought into compliance with this article before any use is resumed on such property.

## Section 264: Definitions

A. *Lamp or bulb* means the light-producing source installed in the socket portion of a luminaire or fixture.

B. *Luminaire or Fixture* means a complete lighting unit including the lamps or bulbs, together with the parts required to distribute the light, to position and protect the lamps, and to connect the lamps to the power supply.

C. *Lumen* is a unit used to measure the amount of light emitted by lamps.

D. *Light pollution* means general sky glow caused by the scattering of artificial light in the atmosphere and resulting in decreased ability to see the natural night sky.

E. *Glare* means the brightness of a light source that causes eye discomfort.

F. *Light trespass* is defined as the maximum illumination, when measured at a point five feet within the adjacent property line at a height of five feet and facing the light fixture(s), greater than 1 vertical footcandles. Values above 1 fc constitute trespass. This value is roughly equivalent to a 150-watt reflectorized incandescent floodlight at a distance of 100 feet. (Amended 2/14/13)

G. *Shielding or hooding* means that no light rays are emitted by a fixture above the horizontal plane running through the lowest point of the fixture where light is emitted.

H. *Accent lighting* means any directional lighting which emphasizes a particular object or draws attention to a particular area.

I. *Spotlight or Floodlight* means any lamp that incorporates a reflector or a refractor to concentrate the light output into a directional beam in a particular direction.

J. *Footcandle* means a unit of measure of the intensity of light falling on a surface, equal to one lumen per square foot and originally defined with reference to a standardized candle burning at one foot from a given surface.

**Section 265: Exemptions**

The following are exempt from the provisions of this ordinance:

A. Traffic control signals and devices

B. Temporary emergency lighting (i.e. fire, police, repair workers)

C. Lawful moving vehicle lights

D. Navigation lights designated by the administrator for purposes of public safety

E. Other special situations approved by the Town for temporary or periodic events (e.g. fairs, fiestas, carnivals, night-time construction)

F. Decorative holiday lighting from November 15 through the next following January 15

G. Any light fixture on a commercial building or site that received a certificate of appropriateness from the Middleburg Historic District Review Committee, as further defined in the Historic District Design Guidelines - Outdoor Architectural Lighting. (Added 2/14/13)

**Section 266: General Standards**

A. Outdoor lighting must be hooded, shielded and aimed downward.

B. When required by this article, all hoods or shields must mask the direct horizontal surface of the light source. The light must be aimed so that the illumination is only pointing downward onto the ground surface, with no escaping light permitted to contribute to sky glow by shining upward into the sky.

C. Any light which is determined to meet the standard for light trespass on an adjacent property shall be considered a violation and be brought into compliance.

D. Existing fixtures may be adapted to comply with this ordinance by adding a properly designed hood or shield, or by pointing any upward-shining, shielded fixture downward onto the ground surface.

E. All outdoor lighting fixtures shall be designed, installed, located and maintained such that glare onto adjacent properties or streets is minimized and all direct illumination kept within the boundaries of the fixture owner's property.

F. Accent lighting, when approved in accordance with Section 267, shall be directed downward onto the building or object and not toward the sky or onto adjacent properties. Direct light emissions shall not be visible above the roof line or beyond the building edge.

**Section 267: Submittals**

All Site Plan, Subdivision, Certificate of Appropriateness or Zoning Location Permits which include the installation of outdoor lighting fixture(s) for new construction, shall provide evidence of compliance with the requirements of this ordinance. The submittal shall contain the following information and be submitted as part of the site plan or other permit application for approval:

A. Plans indicating the location, type and height of luminaries or fixtures including both building and ground-mounted fixtures;

B. A description of the luminaries or fixtures, including lamps, poles or other supports and shielding devices, which may be provided as catalogue illustrations from the manufacturer;

C. Photometric data, such as that furnished by the manufacturer, showing the angle of light emission; and

D. Additional information as may be required by the Planning Commission in order to determine compliance with this ordinance.

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