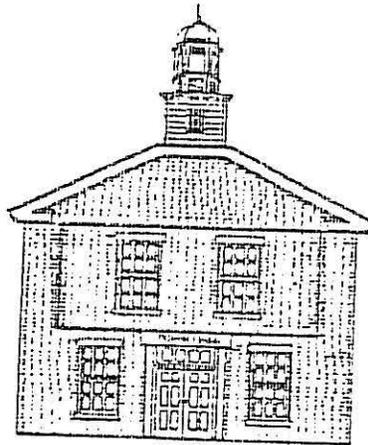


TOWN OF NEWBURGH  
ZONING ORDINANCE

TITLE 13, CHAPTER 130  
NEWBURGH CODE OF ORDINANCES



SETTLED 1303

Adopted

January 22, 1997

*By The Newburgh Town Council*

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Title 13, Chapter 130  
Newburgh Code of Ordinances

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### 130.1: STATEMENT OF INTENT

#### (A) Purpose

This Ordinance is intended to implement the Comprehensive Master Plan for the Town of Newburgh, Indiana and to promote public health, safety, convenience and general community well-being by uniformly establishing growth and development standards which are consistent with community adopted land use and development goals. Specifically, this Ordinance is designed to protect community character and enhance the integrity of the town core area of Newburgh, accommodate future growth and development in ways which minimize traffic congestion; service delivery and advance community economic and social well-being in a manner consistent with improving the overall quality of life for residents.

#### (B) Method of Approach

This Ordinance, consistent with Indiana Code Section 36-7-4-601 600 series, which permits the adoption of a zoning ordinance to regulate land use in the planning jurisdiction and to embrace growth and development policies which promote public health, safety, comfort, morals, convenience and general welfare, allows the planning jurisdiction to be divided into one or more land use districts or zoning districts to regulate the manner in which real property is improved, developed, maintained and used. This Ordinance defines the land use districts hereinafter called zoning districts and establishes for each zoning district standards for development in terms of lot size; arrangement of buildings and improvements; building size, mass, and function; the residential and commercial use of the property; access requirements; and sets other conditions of development essential to carry the growth and development policies adopted in the Comprehensive Land Use Plan and to provide suitable and uniform procedures for securing development approvals throughout the planning jurisdiction.

#### (C) Official Zoning Map

In order to delimit zoning district boundaries this Ordinance provides for an Official Zoning Map to be made an integral part of this Ordinance by reference.

#### (D) Special Development Conditions

In order to accommodate special or unusual development conditions and problems, or unique geographic, physical, natural or built environmental circumstances, this Ordinance identifies "overlay" zones in which special development approval procedures must be followed.

#### (E) Planned Unit Development

This Ordinance also provides for development of large tracts of undeveloped land with development approval procedures which encourage flexible site design, building arrangements, development phasing and use but which are consistent and complimentary to overall development standards for the community.

#### (F) Development Approval Procedures

This Ordinance sets forth the procedures for seeking development approval and establishes procedures for public notification and development petition review.

**(G) Enforcement Roles and Procedures**

This Ordinance is intended to establish the roles and responsibilities for the enforcement, alteration, amendment and development review procedures to be followed by the Newburgh Planning Commission, the Newburgh Advisory Board of Zoning Appeals, any professional staff positions, and by any advisory bodies established under this Ordinance for the purposes of implementing one or more Sections of this Ordinance.

**(H) Construction and Common Usage**

For the purposes of this Ordinance, the following conventions shall apply:

1. "Commission" shall mean Newburgh Plan Commission unless otherwise denoted in the text.
2. "Board" shall mean the Newburgh Advisory Board of Zoning Appeals unless otherwise denoted in the text.
3. The word "shall" is mandatory.
4. The word "may" is permissive.
5. The word "person" includes individuals, firms, corporations, partnerships, associations, governmental bodies, agencies and all other legal entities.
6. Words in the singular include the plural; words in the plural include the singular; words in the present tense include the past tense.
7. The phrase "used for" shall be constructed to mean "occupied for," "intended for," "designed for," "maintained for," and all other similar meanings.

## 130.2: ADMINISTRATION/ENFORCEMENT

### (A) Administrative Proceedings

The Planning Commission shall adopt rules of procedure necessary for the conduct of its affairs in keeping with the provisions of this Ordinance. Meetings shall be held at the call of the chairman and at such other times as the Commission may determine. All meetings shall be open to the public.

At the first meeting of each year the Commission shall elect a President and Vice-President from among its members. The Commission shall keep minutes of its proceedings showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact and shall keep records of its examinations and other official actions of which shall be of public record and be immediately filed in the office of the Commission.

### (B) Plan Commission

For the purpose of this Ordinance, the Plan Commission shall have the following duties:

1. Initiate proposed amendments to this Ordinance;
2. Review all proposed amendments to this Ordinance and make recommendations to the Town Council;
3. Review and make finding on development plans for subdivisions, commercial structures, planned unit developments, and other similar plans for all proposed developments within the Commission's jurisdiction;
4. Render interpretations of this Ordinance as may be necessary from time to time;
5. Initiate and/or perform other planning functions and perform studies as may be deemed appropriate.
6. Hire or retain a planning and zoning administrator, with the approval of the Town Council, to be the enforcement agent of this Ordinance at the direction of the Commission.
7. Appoint various advisory bodies on matters pertaining to the enforcement of this Ordinance with the approval of the Town Council.
8. Take appropriate actions to insure compliance with this Ordinance, including reviewing decisions of the zoning administrator when requested.

### (C) Zoning Administrator

For the purposes of this Ordinance, the Zoning Administrator hereinafter referred to as the "Administrator" shall have the following duties:

1. Issue improvement location permits, temporary and occupancy permits, and conditional use permits.
2. Maintain permanent records of improvement location permits, variances, conditional use permits, and amendments to this Ordinance.

3. Make amendments to the zoning district maps upon enactment, publication, and recording of rezoning ordinances.
4. Prepare factual reports pertaining to any variance, conditional use, or amendment to this Ordinance.
5. Prepare variances and conditional uses provided for this Section, and prepare amendments to this Ordinance.

**(D) Board of Zoning Appeals**

1. The Board of Zoning Appeals is established by this Ordinance. The appointment and terms of the Board shall be in accordance with Indiana Code 36-7-4-901, 902.
2. The Board of Zoning Appeals shall approve or deny all variances, conditional uses, and appeals from the terms of the zoning ordinance, but only in the classes of cases or in the specified situations specified in the zoning ordinance. The Board may impose reasonable conditions as part of its approval.
3. The Board shall set a date for a public hearing on any petition.
  - (a) The notice of the public hearing shall be published one time before the date of the hearing.
  - (b) Prior to the public hearing by the Board of Zoning Appeals, the petitioner must file in the Office of the Administrator proof of notification.
  - (c) Cost of the notice must be borne by the petitioner.
  - (d) A person may not communicate with any member of the Board before the hearing with the intent to influence the members' action on a matter pending before the Board. Not less than seven (7) days before the hearing, however, the Administrator may file with the Board a written statement setting forth any facts or data pertinent to the matter.
  - (e) Should the petitioner fail to comply with the notice requirements, as provided by this Section, before the second regular meeting of the Board of Zoning Appeals following the date said petition is filed, the petition shall be withdrawn by the Board of Zoning Appeals and shall not be accepted for rehearing for a period of not less than six (6) months from the date of petition withdrawal by the Board of Zoning Appeals.

**(E) Site Review Advisory Committee and Site Plans**

1. The Plan Commission may establish a Site Review Advisory Committee to review and advise the Plan Commission about the acceptability of the site plan prior to action by the Plan Commission. The Site Review Advisory Committee is intended to provide a technical review of development site plans to ensure compliance with sound site design principles, to minimize traffic conflicts and improve safety for vehicles entering and leaving the site, to provide for access of public emergency vehicles, to reduce public service and maintenance burdens and to protect existing properties from adverse impacts caused by new development on surrounding parcels. The Site Review Advisory Committee will provide advice and recommendations to the Plan Commission and to the Board of Zoning Appeals for the action of each respective body.
2. The Site Review Advisory Committee shall be comprised of no less than five (5), but no more than seven (7) persons to be appointed by the Plan Commission with the consent of the Town Council.

3. The Site Review Advisory Committee may establish rules of procedure, to be approved by the Plan Commission, for the conduct of its business. If rules of procedures are adopted each petitioner shall be informed of those procedures in advance of appearance or presentation of materials to the Site Review Advisory Committee.
4. The Site Review Advisory Committee shall review site plans so as to:
  - (a) minimize dangerous traffic movements;
  - (b) reduce traffic congestion;
  - (c) improve ingress and egress conditions;
  - (d) maintain existing mature trees to the maximum extent possible;
  - (e) provide for public view screens of unsightly activities;
  - (f) establish an aesthetically pleasing landscaping design;
  - (g) protect and enhance the architectural integrity of Newburgh;
  - (h) eliminate hazards to public safety; and
  - (i) provide for efficient use of the site with respect to buildings, accessory structures and freestanding signs, so as not to impede safe traffic flow and pedestrian circulation.
  - (j) review other factors as may be requested by the Plan Commission or by the Board of Zoning Appeals on a case by case basis.
5. Site Plan Requirements and Acceptance
  - (a) All site plans shall contain the following information, as well as the information requested at § 2.16 A, 3.
    - (1) The location and exact dimensions of all property lines, existing and proposed structures, parking lots and drives, roadways and right-of-ways, sidewalks, bicycle paths, ground signs, refuse disposal areas, bicycle parking areas, fences, freestanding electrical equipment, recreational facilities, utility easements and other easements recorded or proposed and other freestanding structural features as determined to be necessary by the Administrator.
    - (2) A site vicinity map depicting the location of existing buildings, structures, roadways and rights-of-way, utility easements, and parking areas on adjacent property within one hundred (100) feet of the site.
    - (3) The petitioner shall supply six (6) copies of the site plan drawn to scale .
    - (4) The petitioner shall be required to supply a drainage plan showing the details of proposed storm water management features and off site runoff characteristics with completion of the proposed improvements.

- (b) Site plan review by the Committee or Administrator shall be required for all proposed new exterior structural construction except one and two household dwelling units, temporary uses, fences, permitted accessory buildings, structures and uses accessory to structures in any zoning district. Expansion of existing commercial structures shall require a site plan for review. Changes in use without structural change shall not be required to file a site plan.
- (c) The Site Review Advisory Committee, if created, shall issue a statement of findings to the Plan Commission, the Board of Zoning Appeals and to the petitioner about the acceptability of the site plan and offer suggestions for improvement and additions if warranted. If the site plan is accepted by the Plan Commission, the Administrator shall issue an improvement location permit if the building and/or use conform to the other provisions of this Ordinance. If the petitioner requests a zoning ordinance text amendment or zoning map change, the Site Review Advisory Committee shall file a report with the Plan Commission stating the findings and recommendations of the Site Review Committee regarding the acceptability of the site plan. If the petitioner seeks approval of a conditional use permit, the Site Review Advisory Committee shall inform the board of zoning appeals of its findings.

**(F) Zoning Ordinance or Map Amendment or Repeal**

1. A proposed ordinance for amendment or repeal of the zoning ordinance, in whole or in part including the Official Zoning Map, may be proposed by a member of the Town Council to the Town Council, the Plan Commission to the Town Council, or by petition of owners of property of at least 50% of the parcel or parcels within the area involved in the petition either to the Town Council or to the Plan Commission.
2. No later than twenty-one (21) days prior to the first reading by the Town Council, the petitioner must provide the Town Council the following:
  - (a) A petition describing the property that is the subject of the desired amendment, the amendment desired, and any facts pertinent to the request.
  - (b) A location map.
  - (c) An ordinance.
  - (d) A site plan as defined in section 2.5.
  - (e) Costs of publication of the ordinance (see 4. below).
  - (f) Costs of recording the ordinance (see 5. below).
3. All petitions shall be filed with the required number of copies on 8 1/2 x 11 inch paper with the petition as the first document, map as second document, and ordinance as the third document. In addition, six (6) copies of a site plan must accompany these documents.
4. The petitioner shall determine from the designated newspaper the costs of publication of the ordinance and shall file with his petition a certified check payable to that designated newspaper for required amount.

5. The petitioner will file with his petition a certified check payable to the Town Clerk, for the costs of recording.
6. The petition and ordinance shall be assigned to the Plan Commission for hearing and recommendations. A proposed ordinance for the amendment or repeal of the zoning ordinance or map must be referred to the Plan Commission for consideration and report before any final action is taken by the Town Council. Upon receiving or initiating a proposed ordinance, the Commission shall, within sixty (60) days hold a public hearing on the proposed ordinance.
  - (a) Notice of the public hearing shall be published one time at least ten (10) days before the date of the Plan Commission hearing.
  - (b) A notice must be posted on the property by the petitioner, in a place visible to the public, no less than twelve (12) days prior to the Plan Commission hearing.
  - (c) A notice of hearings must be mailed by the petitioner by certified mail, return receipt requested, to each of the abutting property owners, no less than twelve (12) days prior to the Plan Commission hearing.
  - (d) Costs of the notices shall be borne by the petitioner.
  - (e) Should the petitioner fail to comply with the notice requirements, as provided by this Section, before the second regular meeting of the Plan Commission following the date that said petition is filed, the petition shall be withdrawn. If withdrawn, the petitioner may not reapply for approval involving the same property for a period of not less than twelve (12) months.
7. Prior to the public hearing by the Commission, the petitioner must file with the Town Clerk a copy of the letter of notice, an affidavit listing the abutting property owners, and the date notices were mailed after the effective date.
8. Whenever Town Council shall change by ordinance the district boundaries or classifications of property, the Town Clerk shall record a copy of the ordinance with the County Recorder immediately after the effective date.

**(G) Use or Development Commitments**

1. At the time of filing the petition to amend zoning maps, or not later than ten (10) days prior to hearing of the petition to amend zoning maps, the petitioner may file a use or development commitment, or both. (See "development commitment" definition).
2. If a use or development commitment is filed or amended after consideration of the rezoning petition of the Plan Commission, the petition together with the use or development commitment, may be heard or reheard by the Plan Commission to enable the Plan Commission to vote on the petition with the use or development commitment in its final form. No use or development commitment shall be considered by the Town Council of the Town of Newburgh until it has been considered in its final form by the Plan Commission.
3. If the petition is to be reheard by the Plan Commission, as provided, the petitioner shall again notify all abutting property owners (listed in the affidavit filed pursuant to Section 130.2(F)6 and counsel of record by certified mail.

4. If a use or development commitment is to be included in an ordinance adopted by the Town Council of the Town of Newburgh to rezone property, the ordinance shall contain the following provisions:

"The subject property herein rezoned shall be used and developed only in accordance with the use or development commitment which is attached hereto and incorporated herein and no improvement location permits shall be issued until petitioner records said use or development commitment in the Office of the Recorder of Warrick County, Indiana.

**(H) Commission Action and Commitments**

1. Following a public hearing at which any interested person may appear to testify against or support the petition, the Plan Commission shall recommend either the passage, denial, or passage with amendments of the petition and ordinance.
2. The Commission and the Council shall pay reasonable regard to the following in granting petitions for development approval, ordinance amendment and map changes:
  - (a) The amendment conforms to the comprehensive plan.
  - (b) Current conditions and the character of current structures and uses in each district and in the vicinity of the proposed project.
  - (c) The most desirable use for which the land in each districts is adapted.
  - (d) The conservation of property values throughout the jurisdiction.
  - (e) Responsible development and growth.
  - (f) The zoning classification of the property is improper and the amendment will correct the improper classification.
  - (g) Major physical, economic, or social changes have substantially altered the area in a manner not anticipated in the comprehensive plan, and the amendment will assist the development of the area consistent with the changes.
3. The commitments and recommendations of the Commission shall become part of the record.

**(I) Town Council Action**

Within thirty (30) days after the hearing on the proposed ordinance for amendment or repeal of the zoning ordinance, the Secretary of the Plan Commission shall provide to the Town Council of the Town of Newburgh a written report that indicates the recommendations of the Commission concerning the ordinance. Within 90 days after receiving the report of the Commission concerning the proposed ordinance, the Town Council of the Town of Newburgh shall vote on the proposed ordinance or return the proposed ordinance to the Plan Commission with further amendment. If no vote is taken within ninety (90) days after the Commission's recommendations, the action of the Commission is final. (See Indiana Code at 36-7-4-606(g)).

(J) Time Limits

1. The denial of a petition by the Town Council or the withdrawal of a petition by the petitioner from the Town Council prohibits the Plan Commission or Town Council from hearing a petition for amendment of that property or any part thereof for twelve (12) months after the date of denial or withdrawal by the Commission or petitioner.
2. Nothing contained in A. above shall prevent the Town Council from reconsidering a petition which has been previously defeated. A two-thirds (2/3) vote of the elected members of the Town Council shall be required to approve the motion to reconsider. If the motion to reconsider is approved, the petition shall be returned to second reading. The hearing on second reading shall be not less than 25 days from the date of the vote on the motion to reconsider. The petitioner shall notify all adjoining property owners and the attorney or consultant for the remonstrators, if any, of the date of the hearing on second reading and of the reconsideration of the petition. The notice shall be sent certified mail, return receipt requested, not less than 15 days prior to the hearing date.

(K) Appeals Before the Board of Zoning Appeals

1. The Board of Zoning Appeals shall hear and determine appeals from and review:
  - (a) Any order, requirement, decision or determination made by the Zoning Administrator or staff member under the zoning ordinance.
  - (b) Any order, requirement, decision or determination made by an administrative board or other body except the Newburgh Plan Commission or Town Council in relation to the enforcement of an ordinance requiring the procurement of an improvement location permit or occupancy permit.
2. An appeal filed with the Board of Zoning Appeals must specify the grounds of the appeal and must be filed within such time and in such form as prescribed by the Board of Zoning Appeals by rule.
3. The administrative official, administrative board, or other body from whom the appeal is taken shall, on the request of the Board of Zoning Appeals, transmit to it all documents, plans, and papers constituting the record of the action from which an appeal was taken.
4. Upon appeal, the Board may reverse, affirm, or modify the order, requirement, decision, or determination appealed. For this purpose, the Board has all the powers of the official, officer, board, or body from which the appeal was taken.
5. Within five (5) working days, the Board of Zoning Appeals shall file in the Office of the Town Clerk a copy of its decision.

(L) Time Limits

1. The denial of a petition for a variance, conditional use, or an appeal by the Board of Zoning Appeals or the withdrawal of such a petition by the petitioner shall prohibit the Board of Zoning Appeals from hearing a petition for a variance, conditional use, or an appeal for the subject property or a part thereof for 12 months from the date of the denial or withdrawal.
2. An exception to 1. above may be made upon unanimous vote of the Board of Zoning Appeals.

**(M) Appeals from Board Decisions**

The person or persons aggrieved by a decision of the Board of Zoning Appeals may appeal the decision in the manner provided in Indiana Code 36-7-4-1003.

**(N) Fees**

1. The Plan Commission shall recommend to Town Council a schedule of fees, charges, and expenses for improvement location permits, appeals, petitions for amendments, zoning map changes, planned unit developments, and other matters pertaining to this Ordinance. The Town Council shall establish a schedule of fees and shall post the schedule of fees in the offices of the Administrator and Town Clerk.
2. The schedule of fees may be amended or altered only by the Town Council and shall not be a part of this Ordinance.
3. Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal.

**(O) Penalty**

1. Any person who violates any provision of this ordinance shall be subject to the penalties set forth in the Town Code.
2. Any person, firm or corporation, or anyone acting in behalf thereof who shall violate or fail to comply with any of the provisions of this Section by conduct or activity or the erection, construction, enlargement, conversion, moving, or maintenance of any building, structure, or use which is continued, operated or maintained, on land or water, use in whole or in part, contrary to any of the provisions of this Ordinance is hereby declared to be in violation of this Ordinance. The Town Attorney, or an attorney who has been appointed by the Town Council to represent them, may, immediately upon the violation being called to his attention institute injunctions, abate, or any other appropriate actions to prevent, enjoin, abate, or remove the violation. The action may also be instituted by any property owner, who may be especially damaged by a violation of this Ordinance. The remedy provided for herein shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.

**(P) Use Permits**

1. Issuance
  - (a) No building or other structure shall be erected, moved, relocated, added to, or structurally altered, nor shall any building, structure or land be established or changed in use without first applying for and obtaining an improvement location permit.
  - (b) The Administrator shall also issue an improvement location permit to all petitioners where the application indicates no exterior structural change or alteration and includes a change in use only if the use requested complies with the permitted uses in the zoning district of the property.
  - (c) An application for an improvement location permit involving any structural construction alterations or new development must be filed with the Administrator and must include the following:

- i. A site plan for the principal and accessory structures and uses, existing and proposed, showing size, location on lot, and lot size and required setbacks and yards. (Also see 2.5E.)
  - ii. Except for one and two-family dwellings and associated accessory buildings, the site plan must also show the following:
    - The exact property lines of property, including existing street and right-of-ways lines.
    - Adjacent properties on the same and the opposite frontage, indicating the entrance and exits to those properties, existing zoning and existing uses.
    - The exact location and dimension of access drives to the property, service drives, existing and proposed curb-cuts, and proposed directions of traffic flow on the property and into and from public rights-of-way.
    - The exact location and dimensions of any necessary frontage roads and other traffic improvements necessary to accommodate the proposed development.
    - The exact location, dimensions, and type of off-street parking and loading facilities.
    - A plan detailing landscaping, buffering, fences, outdoor lighting and signage, in accordance with the provisions of this Ordinance.
  - iii. The name and address of the person seeking approval.
  - iv. Any other plans or specifications which the Administrator deems necessary to determine whether the plans conform to this Ordinance.
- (d) One-household dwellings, duplexes, and permitted accessory structures in approved subdivisions shall be approved if applicable code requirements are met. All other applications shall undergo a Site Plan Review process if applicable.
  - (e) The Administrator shall, after the site review process, issue an improvement location permit if the building and/or use conform to the provisions of this Ordinance.
  - (f) Land and buildings may be used or constructed only for the use for which the current improvement location permit was issued.
  - (g) The improvement location permit must be displayed on the premises during any construction or alteration.
2. Improvement Location Permits: Revocation and Voiding
- (a) An improvement location permit may be revoked after at least ten (10) days written notice, if the condition of the zoning code requirements and/or the conditions of the permit are not met.
  - (b) An improvement location permit is void if construction has not been started or the use has not been established within one (1) year of the date of issuance. The Plan Commission may issue two (2) ninety (90) day extensions upon the request of the petitioner provided the petitioner can demonstrate the delay was caused by unavoidable circumstances.

(Q) Conditional Use Permits

1. A conditional use is a use of property, structure, or building within a zoning district other than a principally permitted use, which is expressly permitted by the ordinance. Conditional uses are generally considered undesirable or incompatible uses, therefore necessitating special or additional regulations than would otherwise be required in a specific zoning district.

2. Conditional Use verses Variances

An application for a variance seeks permission to do something which is not in conformance with the zoning ordinance. A variance is an overriding of the legislative judgment, justified by the existence of either an unnecessary hardship or a practical difficulty in physically or practically meeting the exact terms or specifications of the zoning ordinance.

In contrast, an applicant for a conditional use does not seek to "vary" the ordinance. The permission he seeks is one permitted by the ordinance, but with special conditions attached to insure protection of the health, safety, and welfare of the neighborhood and the general public.

Accordingly, while applicant for a variance must show both (a) unnecessary hardship or practical difficulty and (b) consistency with the public interest, a conditional use petition generally involves only the latter issue.

3. Authority to Grant

The authority to review plans and grant conditional use permits shall rest with the Board of Zoning Appeals.

4. Types of Conditional Use Exceptions

Land uses which create safety, traffic, noise, or other undesirable problems, and therefore require conditional use permits include:

- (a) Uses deemed necessary for the convenience of the community's residents which require special deliberation as to locale because of their inherent tendency to create noise, traffic, or density problems.
- (b) Uses which are necessary but incompatible uses within a specific zoning district.
- (c) Uses customarily sited in residential zones but which, because they attract great numbers of people, require special deliberation regarding conditions that must be attached to their permitted use and due consideration of their effect upon neighboring property owners.

5. Factors of Consideration

Before granting a conditional use permit, the Board of Zoning Appeals shall consider the following factors:

- (a) Concept of highest and best use. If there are other valid reasons for denying a conditional use permit, the denial may be sustained even if the proposed use is the highest and best use which can be made of the land in question. While a conditional use permit is not generally utilized as

a relief from hardship, the impact and financial consequences may properly be considered by the Board.

- (b) Traffic congestion. Evidence that a proposed use will create a traffic hazard, undue congestion, or some other severe or adverse impact on area traffic may justify denial of a conditional use permit.
- (c) Public convenience and welfare. The Board of Zoning Appeals must consider regulations provided in the zoning ordinance, including those necessary to protect the public health, safety, welfare, and convenience. The applicant must show that the proposed uses will not be offensive to the community health, safety, welfare, or convenience. On the other hand, evidence that a particular service is needed may indicate that the permit is reasonably necessary for the public convenience.
- (d) Public Safety. A conditional use permit may be denied if the proposed use would violate any specific health or safety regulations.
- (e) Regulation of competitive uses. The Board of Zoning Appeals shall not deny a permit solely for the purpose of limiting the number of similar businesses in an area. However, the Board may invoke reasonable minimum distances between similar businesses for some legitimate reasons such as safety or traffic.
- (f) Effect on neighboring property values. The intended use shall not cause a depreciation of value of adjacent property. In fact, such a finding may support the conclusion that the permit will conflict with the public interest. Future development of a given area should also be considered.
- (g) Impact on Comprehensive Development Plan. The issuance or the denial of a conditional use permit may have a direct and significant effect upon the community's planning scheme. This impact should not be of an adverse nature.
- (h) Checklist of development standards. The basic checklist of development standards that may receive special consideration includes, but is not limited to, the following items; which are general criteria to which specific standards may be applied by the Board of Zoning Appeals: ingress and egress to the site and to structures; parking and loading facilities; refuse and other service areas; utility services and facilities; appropriate screening and buffering; yards and open space; health and safety standards; and compatibility with surrounding uses.
- (i) Environmental impact statement. The Board of Zoning Appeals may require the applicant for a conditional use to perform an environmental impact study of the area in which the use is proposed. This condition may especially be applied to such examples as confined feed lots, mining or mineral extraction, landfills, stock yards, sewage treatment plants, chemical manufacturing, etc. An environmental impact study shall, if required, be conducted to meet the accepted standards of federal regulatory bodies such as FHWA "(Federal Highway Administration)."
- (j) Legitimate conditional use. The Board of Zoning Appeals shall review the particular facts and circumstances of each application and determine through findings of fact that the proposed use is a appropriate conditional use as established under the provisions of this ordinance.

## 6. Conditional Permit

The Board of Zoning Appeals shall have the authority to impose specific conditions on any conditional use permit. A conditional use permit may be denied where the applicant fails to comply with specific

conditions made a part of the permit by the Board, or fails to comply with a reasonable request of the Board for furnishing specific information related to the proposed use.

7. Filing and Notification Requirements

Filing and notification requirements for a conditional use are the same as prescribed for variances in Section 130.2(R) of this Ordinance.

8. Public Hearing

The Board of Zoning Appeals shall hold a public hearing within a reasonable length of time after receipt of an application for a conditional use from the applicant. However, the public hearing shall not be held sooner than ten (10) days after its receipt.

9. Board Action and Findings

Either at the public hearing or within a reasonable length of time thereafter, the Board shall either approve, conditionally approve, or disapprove the request. The Board shall further make a finding that the reasons set forth in the application are justifiable and that the development and zoning standards proposed are in conformance with the requirements and intent of the zoning ordinance.

No conditional use shall be granted by the Board except at a regular meeting thereof. Before granting a conditional use the Board shall make a determination in writing of its findings for each application. Such findings shall be based upon the Board's review of the "Factors of Consideration" listed in Section 130.2(Q).

(R) Variance

1. A person desiring a variance from the requirements of this Section must file a petition with the Board of Zoning Appeals describing the property that is the subject of variance, the type of variance required, the facts pertinent to the variance desired, and a site plan as defined in Section 130.2(E)5.
2. Following notice to adjoining property owners and the public hearing on the variance, the Board of Zoning Appeals must either grant or deny the petition. No variance may be granted except on a finding of all the following factors:
  - (a) The approval will not be injurious to the public health, safety, morals, and general welfare of the community, nor will it adversely effect the adopted Comprehensive Plan.
  - (b) The use and value of the area adjacent to the property included in variance will not be affected in a substantially adverse manner.
  - (c) The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property.
  - (d) The variance is not a variance of the use of the property.
  - (e) The need for the variance is not created by the applicant.

3. The Board of Zoning Appeals shall not grant a variance from a use district or classification. The grant of a variance is by resolution of the Board of Zoning Appeals and is not an amendment of this Ordinance.
4. The Board may incorporate into the granting of a variance whatever conditions or limitations are necessary to protect adjacent properties and the surrounding neighborhood and effectuate the purpose of this Ordinance.

### 130.3: GENERAL PROVISIONS

#### A. Landscaping

##### 1. Purpose

The landscaping and screening requirements specified herein are intended to foster aesthetically pleasing development which will protect and preserve the appearance, character, health, safety, and welfare of the community. Specifically, these regulations are intended to increase the compatibility of adjacent uses, and, in doing so, minimize the harmful impact of noise, dust and other debris, motor vehicle headlight glare or other artificial light intrusions, and other objectionable activities or impacts conducted or created by an adjoining or nearby use.

##### 2. Enforcement of Landscape Requirements

Wherever the submission and approval of a landscape plan is required by this Ordinance, such landscape plan shall be an integral part of any application for an improvement location permit. No improvement location permit shall be issued without Town approval of a landscape plan as required herein. Failure to implement the approved landscape plan shall be cause for revocation of the occupancy permit.

##### 3. Landscape Plan

###### (a) Landscape Plan Required

A landscape plan shall be required for all exterior construction and development activity. Such landscape plan shall be drawn in conformance with the requirements specified in this section. Landscape plans must be approved by the Zoning Administrator prior to the issuance of a building permit for exterior construction and development. The construction of detached single-household and two-household residences shall be exempt from this requirement.

###### (b) Content of Landscape Plan

All landscape plans submitted for approval shall contain or have attached thereto the following information:

- (i) The location and dimensions of all existing and proposed structures, parking lots and drives, roadways and rights-of-way, sidewalks, bicycle paths, ground signs, refuse disposal areas, bicycle parking areas, fences, freestanding electrical equipment, tot lots and other recreational facilities, and other freestanding structural features as determined necessary by the Administrator.
- (ii) The location, quantity, size and name, both botanical and common names, of all proposed planting materials.
- (iii) The location of existing buildings, structures and plant materials on adjacent property within one hundred (100) feet of the site.
- (iv) Existing and proposed grading of the site, including proposed berming, indicating contours, at one (1) foot intervals.

- (v) Specification of the type and boundaries of all proposed ground cover.
- (vi) The location, quantity, size and name, both botanical and common names, of all existing planting materials.
- (vii) Elevations of all fences proposed for location on the site.
- (viii) Elevations, cross-sections and other details as determined necessary by the Administrator.

4. Selection, Installation, and Maintenance of Plant Materials

(a) Selection

Planting materials used in conformance with the provisions of this Section shall be of good quality, of a species normally grown in Indiana, and capable of withstanding the extremes of individual site microclimates. Size and density of plant material, both at the time of planting and at maturity, are additional criteria which must be considered when selecting plant materials.

(b) Installation

All landscaping materials shall be installed in accordance with the current planting procedures established by the American Association of Nurserymen.

(c) Maintenance

i. Responsibility

The owner of the premises shall be responsible for the maintenance, repair, and replacement of all landscaping materials and barriers, including refuse disposal areas, as may be required by the provisions of this Section.

ii. Landscaping Materials

All landscaping materials shall be maintained in good condition so as to present a healthy, neat and orderly appearance, and plant material not in this condition shall be replaced when necessary and shall be kept free of refuse and debris.

iii. Fences and Walls

Fences, walls, and other barriers shall be maintained in good repair.

5. Design Criteria

Landscape plans described above shall be prepared based on the following design criteria. The evaluation and approval of landscape plans shall also be based on these design criteria.

(a) Scale and Nature of Landscaping Material

The scale and nature of landscaping materials should be appropriate to the size of the structures. Large scaled buildings, for example, should generally be complemented by larger scaled plants.

(b) Selection of Plant Material

Plant material should be selected for its form, texture, color, and concern for its ultimate growth. The use of weak-wooded and nuisance species, including but not limited to Silver Maples, Box Elders, Russian Olives, Tree of Heaven, Mulberry, Lombardy Poplars, Cottonwood, Honey Locusts and other similar species shall be avoided.

(c) Evergreens

Evergreens should be incorporated into the landscape treatment of a site, particularly in those areas screening parking lots from dedicated public rights-of-way or property zoned for residential use.

(d) Shade Trees

All shade trees shall have a minimum trunk size of two and one-half (2-1/2) inches in diameter upon installation, as measured six (6) inches above the established ground level.

(e) Softening of Walls and Fences

Plant material should be placed intermittently against long expanses of building walls, fences, and other barriers to create a softening effect.

(f) Planting Beds

Planting beds should be mulched with bark chips, feather rocks, or similar materials.

(g) Detention/Retention Basins and Ponds

Detention/retention basins and ponds shall be landscaped. Such landscaping should include shade and ornamental trees, evergreens, shrubbery, hedges, and/or other planting materials.

(h) Watering Plant Material

A permanent means of watering plant material should be provided. Installation of an automatic underground sprinkling system is recommended.

(i) Energy Conservation

(i) Deciduous trees should be placed on the south and west sides of buildings to provide shade from the summer sun.

(ii) Evergreens and other plant materials should be concentrated on the north side of buildings to dissipate the effect of winter winds.

(j) Preservation of Existing Plant Material

Existing plant material should, wherever practical as determined by the Zoning Administrator, be incorporated into the landscape treatment of a site.

(k) Berming

Earthen berms and existing topography should be, whenever determined practical by the Zoning Administrator, incorporated into the landscape treatment of a site, particularly when combined with plant material to facilitate screening.

6. Right-of-Way Landscaping

(a.) Applicability

Where a parcel abuts a dedicated public right-of-way, landscaping shall be provided in accordance with the provisions of this Section.

(b) Graded and Sodded

The unpaved portion of a public right-of-way shall be fine graded and sodded.

(c) Parkway Trees

(i) Quantity

Parkway trees shall be provided at the equivalent of not more than forty (40) feet apart in the right-of-way adjacent to the parcel.

(ii) Spacing

Such trees may be clustered or spaced linearly in the right-of-way as determined appropriate by the Administrator.

(iii) Size

Parkway trees shall have a minimum trunk size of two and one-half (2-1/2) inches in diameter, as measured six (6) inches above the established ground level.

(iv) Species

Parkway trees shall be limited to the following species. However, a variety of compatible species from this list should be included in the planting plan for a specific site or development:

- Linden
- Maple (excluding Silver Maple and other similar softwood species)
- Hackberry
- Oak
- Ash
- Other species of appropriate trees.

v. Other Landscape Material

No plant material or barriers, except as specified herein, may be located in a dedicated public right-of-way.

7. Parking Lot Landscaping

a. Applicability

All parking lots designed for seventy-five (75) or more parking spaces, as specified in Section 130.10 shall provide landscaping in accordance with the provisions of this Section. Smaller parking lots shall provide landscaping as deemed appropriate by the Administrator.

b. Interior Parking Lot Landscaping

(i) Area Required

Not less than ten percent (10%) of the interior of a parking lot shall be devoted to landscaping.

(ii) Landscaped Areas

The landscaped areas defined in Subsection b(i), above, shall be delineated and improved in conformance with the following:

- 1) Interior parking lot landscaping areas (planting islands) shall be dispersed throughout the parking lot in a design and configuration satisfactory to the Administrator.
- 2) Interior parking lot landscaping areas shall be a minimum of one hundred twenty (120) square feet in area and shall be a minimum of seven (7) feet in width, as measured from back of curb to back of curb.
- 3) Landscape Material - The plant material used to improve the landscape areas defined above shall conform to the following:

a) Type

The primary plant materials used in parking lots shall be shade tree species in conformance with 130.3(A), 5(b), (c) and (d), above. Ornamental trees, shrubbery, hedges, and other plant materials may be used to supplement the shade tree plantings, but shall not be the sole contribution to such landscaping.

b) Quantity

One (1) shade tree shall be provided for every one hundred twenty (120) square feet of landscaping area.

c) Ground Cover

A minimum of fifty percent (50%) of every interior parking lot landscaping area shall be improved with approved ground cover, as determined appropriate by the Administrator.

c. Perimeter Parking Lot Landscaping

Where a parking lot is located within a required yard, or within twenty (20) feet of a lot line, perimeter landscaping shall be required along the corresponding edge of the parking lot in conformance with the following provisions.

(i) Landscape Area

Where perimeter landscaping is required, it shall be provided within landscape areas at least five (5) feet in width, as measured from the back of curb and excluding any parking space overhang area.

(ii) Requirements Along Front and Corner Side Yards

1) Across From Residential Property

Where a parking lot is located across a dedicated public right-of-way from property zoned for residential use the following landscape improvements shall be required.

a) Plant Material

Continuous landscaping of evergreen or dense deciduous shrubs shall be provided across one hundred percent (100%) of the street frontage to a minimum height of four (4) feet. The height of such shrubs may be reduced if berming is provided so that the combined height of shrubs and berming is not less than four (4) feet. In addition, shade or ornamental trees shall be provided within this landscape area, with the number of trees not less than one tree per fifty (50) feet of frontage with the number of trees required, rounded to the nearest whole number. Additional plantings may be provided, subject to the approval of the Administrator. Plantings may not be sited so as to restrict the view of traffic or so as to impede on-coming ingress or egress from the site.

b) Ground Cover

Except where occupied by planting beds, all landscaping areas located in front and corner side yards shall be sodded or planted with another comparable ground cover as determined appropriate by the Administrator.

2) Across From Non-Residential Property

Where a parking lot is located across a dedicated public right-of-way from property zoned for non-residential use the following landscape improvements shall be required.

a) Plant Material

Landscaping of evergreen or dense deciduous shrubs shall be provided across fifty percent (50%) of the street frontage to a minimum height of four (4) feet. The height of such shrubs may be reduced if berming is provided so that the combined height of shrubs and berming is not less than four (4) feet. Additional plantings may be provided, subject to the approval of the Administrator.

b) Ground Cover

Except where occupied by planting beds, all landscaping areas located in front and corner side yards shall be sodded or planted with another comparable ground cover as determined appropriate by the Administrator.

(iii) Requirements Along Rear and Interior Side Yards

1) Plant Material

Where a parking lot abuts property zoned for residential use, the requirements of 130.3(A)c(i) and (ii) shall apply. Where a parking lot abuts property zoned for non-residential use, landscaping shall be provided across fifty (50) percent of that portion of the parking lot abutting the property line to a minimum height of four (4) feet. The height of such shrubs may be reduced if berming is provided so that the combined height of shrubs and berming is not less than four (4) feet. Such plantings shall be concentrated into shrub masses, typically containing seven (7) to nine (9) shrubs per shrub mass. Additional plantings may be provided, subject to the approval of the Administrator.

2) Ground Cover

Except where occupied by planting beds, all side and rear yard perimeter parking lot landscaping shall be sodded, seeded or planted with another comparable ground cover, as determined appropriate by the Administrator.

(B) Fences, Walls and Hedges

1. Permit Required

No person shall erect or substantially alter a fence or wall in the Town of Newburgh without having first obtained a permit issued by the Administrator. In the case of fences and walls which are erected on the property of another by a commercial organization or business, it shall be the obligation of that organization or business to obtain the permit. No permit shall be issued by the Town until the Administrator has determined that the proposed fence or wall complies with applicable regulations hereinunder and with all other applicable laws and ordinances of the Town.

2. General Restrictions and Prohibitions

- (a) No private fence, wall or hedges shall be erected or planted within the right-of-way of any public street, highway, parkway or alley. However, in the "A", R-1, or R-2 residential districts, fences and hedges or other plantings may be constructed or planted up to the edge of the resident's side of any sidewalks. Where no sidewalk exists, plantings may be placed not closer than four (4) feet from the curb or edge of the traveled portion of the roadway, without approval of the Town Council, but no such planting shall interfere with, obstruct the view of, or create a safety hazard for any motor vehicle being driven, whether on private property or on a public street. All improvements made by residents shall be maintained by the resident and the Town shall have the right to require the removal of any fence or hedge on a public right-of-way at no cost to the Town.
- (b) No fence or wall shall be maintained or erected if it is constructed with any material which is likely to inflict bodily harm should a person or animal come in contact with the fence or wall.

Materials covered by this prohibition include, sharp or ragged metal spikes or spears. Barbed wire may be used only as expressly authorized below.

- (c) No wall which interrupts, impedes or otherwise alters the natural flow of water shall be erected in any residential district.
- (d) No barbed wire or barbed wire fences shall be erected in any residential district.
- (e) All fences and walls shall be erected in conformity with the wind and stress resistance requirements of the building codes, ordinances and laws of the Town of Newburgh.
- (f) All fences shall be erected so that their finished side faces out, and the unfinished side faces the property of the person who has caused said fence to be erected.
- (g) All fences, walls and hedges shall be maintained in good, structurally sound repair, and in neat, clean and attractive condition.
- (h) All hedges shall be planted and maintained so that the hedge will not overhang or interfere with the use of a public way such as a sidewalk, alley or street.
- (i) No person shall plant, construct or maintain upon any land or premises within the Town, any hedge, wall, fence, or other structure or object which will interfere with, obstruct the view of or create a safety hazard for any motor vehicle being driven, whether on private property or on a public street.
- (j) The restrictions applicable to Residence Districts shall also apply to the "O" Limited Office District in all cases.

### 3. Height Restrictions

#### 1. Fences and Walls

- (a) **Front Yards:** No fence or wall which exceeds forty (40) inches in height above ground level shall be erected in the front or corner side yards of any residential structure in the "A1", R1, R2, R3 and R4 residential district.
- (b) **Side and Rear Yards:** No fence or wall which exceeds seventy-two (72) inches in height above ground level shall be erected in side yards or in rear yards of any residential structure in the "A1", R1, R2, R3 and R4 residential districts. Fences which are located in side and rear yards which abut business districts may not exceed ninety-six (96) inches above ground level.
- (c) **Commercial Districts:** No fence which exceeds ninety-six (96) inches in height above ground level shall be erected on premises in commercial districts. The use of barbed wire is prohibited except that the top twelve (12) inches of any fence in C4 Highway Large Scale District may be constructed of barbed wire.
- (d) **Pool Fences:** All pools must be contained within a fenced enclosure of not less than forty-eight (48) inches in height, and such fence shall be designed to prohibit unrestricted access to the pool.

4. Exemptions

Fences, walls and hedges legally in existence at the time of adoption of this Ordinance which are not in violation of 130.3(B)2(a), (b), or (c), above, and which do not present a safety hazard to pedestrian or vehicular traffic, and which do not prevent accessibility by emergency vehicles, but which violate other provisions of this Section may continue to be maintained and to exist, but may not be replaced if fifty percent (50%) or more of the fence, wall or hedge is either destroyed or removed.

5. Nonconforming Fences, Walls and Hedges

Nonconforming fences, walls and hedges not exempted, above, shall be subject to repair or removal. If, following inspection by the Administrator, any fence, wall or hedge in said Administrator's determination does not meet the requirements herein, the Administrator shall order the owner or occupier of the premises to make the necessary repairs, improvements or to remove the fence, wall or hedge. A reasonable period of time shall be provided to make the repairs, based upon the nature, extent and cost of such repairs, improvements or removals. Should the aforesaid owner or occupant fail to make the requested repairs, improvements or removal within the time provided, said owner or occupier shall be in violation of these regulations, and the Town shall be authorized to undertake the necessary repairs, improvements or removal at the expense of said owner or occupier.

(C) Temporary Uses

1. Temporary uses, as defined in this Ordinance, shall be permitted in all zoning districts, subject to the restrictions and standards established in this Ordinance, provided that any temporary use or structure shall meet the bulk regulations and parking requirements established in this Section. No temporary use or structure shall continue for such a length of time that it constitutes in effect a permanent use. Recurring temporary uses and structures, where the same temporary use or structure is established on the property on an annual basis or other regular period basis, shall be allowed and treated as conditional uses and shall be subject to the regulations established in this Ordinance.
2. Restrictions on temporary uses shall not apply to any use which is conducted entirely on private residential property, operated by the person, company, or organization owning the property, provided that the duration of the temporary use does not exceed forty-eight (48) hours and is repeated not more than four (4) times a year, except it shall be unlawful for any person, association, organization, business, firm or corporation to conduct, or cause to be conducted, a yard or garage sale at any one location for more than three (3) days in duration, on more than four (4) separate occasions in any twelve (12) month period. "Yard Sale" or "Garage Sale" is defined as the sale, offering for sale, bartering or exchanging of new or used goods at a location other than on property zoned for such activity.
3. Notwithstanding 2. above, any tent, trailer, or structure subject to the requirements of this Ordinance and intended or used for human occupancy shall comply with the Electric Code and Fire Prevention Code of the Town of Newburgh and shall not be used or occupied until a Certificate of Occupancy has been received from the Administrator.
4. Temporary Uses and Structures Subject to Administrative Approval.

The following temporary uses and structures are permitted in any zoning district if they meet the requirements of this Ordinance and receive a temporary use permit from the Administrator:

- (a) Construction trailers, equipment storage sheds and portable lavatories provided that:

- (i) The trailer, shed or portable lavatory is incidental to the construction of a building development;
  - (ii) The trailer, shed or portable lavatory is located on the same lot as the building development, an abutting lot, or such other location as approved by the Administrator;
  - (iii) The trailer, shed or portable lavatory shall remain on the property no longer than the time of construction; and
  - (iv) The trailer, shed or portable lavatory will be located no closer than 20 feet from any other property located in a residential district.
- (b) Christmas Tree Sales Lots, provided that:
- (i) The use is located on a lot that fronts a collector or arterial street;
  - (ii) The use is located on a vacant lot or parking area;
  - (iii) The trees are located at least twenty-five (25) feet from any structure on another lot;
  - (iv) Trees remaining on hand after December 25 shall be removed from the premises no later than fifteen (15) days after December 25; and
  - (v) A refundable bond, in an amount established by the Town Council, is posted with the Town.
- (c) Art, Craft and Book Sales
- (d) Sidewalk Sales
- (e) Yard/garage sales

5. Temporary Uses and Structures Subject to Approval by the Administrator

The following temporary uses and structures, and any other temporary uses and structures not specified in this Section, above are permitted only upon approval by the Administrator and based upon the standards set forth below:

- a. Carnivals and Festivals, provided that:
- (i) Trailers and other equipment do not block driveways or other points of emergency vehicular access to any property;
  - (ii) Trailers and other equipment do not block a public street, alley, or sidewalk; and
  - (iii) The operation will be located entirely within the private or public property designated for the event.

- b. Vendors' Carts and Stalls, provided that:
  - (i) The cart or stall will be located on a lot in the town core district;
  - (ii) The cart or stall will be located between the principal building and a public street; however, the cart or stall shall not block a public sidewalk;
  - (iii) The cart or stall will not block a driveway or other point of emergency vehicular access to any property;
  - (iv) The vendor has the express written consent of the owner of the property to place the cart or stall on the property; and
  - (v) Where operating on a public right-of-way or public property, the vendor shall maintain an insurance policy which designates the Town as the insured party against any liability for personal injuries or property damage.
- c. Produce and Farmer's Markets
- d. Sidewalk Cafes, when accessory to restaurants operating entirely within enclosed buildings.

(D) Satellite Dish Antennae

Satellite dish antennae are permitted in all districts subject to the following restrictions.

1. Conditional Use Permit Required

All installations of satellite antennae dishes (herein "dish") shall be considered extraordinary structures; and may only be installed upon obtaining a conditional use permit and a building permit prior to commencing installation.

2. Permit Issuance Criteria; Residential Districts

No conditional use permit or building permit shall be granted for a satellite dish in Districts A1, R1, R2, R3 and R4, unless:

- (a) All installations shall exhibit architectural quality; coloration to blend with surroundings, and structural integrity. Experimental or temporary installations, inferior materials, and questionable stability are not permitted. In every case, the entire installation shall be compatible with the character of the surrounding area of the Town and shall have no adverse impact on the property, the neighborhood, or general public. Permanent foundations shall be adequate for anticipated wind loads. Electrical connections shall be low voltage direct, except where the device connected is Underwriter's Laboratory approved, in which case alternating current will be allowed to code requirements. Consideration shall be given to protection of children as in the case of an attractive nuisance.
- (b) The smallest practical size shall be used for any dish. Such dish shall be of a size no greater than eight (8) feet in its maximum dimension. Any such dish shall be mounted as close to the ground

as possible, and shall not raise from the ground in excess of ten (10) feet in height at its maximum point. Elevated installations on poles or roofs are prohibited.

- (c) The construction and installation of a satellite dish shall strictly conform to all Town Ordinances. Once the dish is installed, it shall be maintained and the condition of the dish shall not be allowed to deteriorate or fall into disrepair.
  - (d) The applicant demonstrates that the proposed location is such that during all seasons, no part of the dish structure will be visible to the general public from a point that is between the ground level and ten (10) feet above ground level on surrounding property. This provision is satisfied by the installation of a screen for the dish at the time of installation.
  - (e) No more than one (1) such satellite dish may be installed on a single zoning lot.
  - (f) In every case, the installation shall be located in the rear yard. The location shall not be in the required setback areas, unless encroachment in the required side or rear setback areas provides an acceptable location if otherwise conformity with all of the other provisions of this Section. In such case, a variation is required, and the applicant shall file a petition with the Board of Zoning Appeals.
  - (g) In the event that compliance with 130.3(D) prevents the reception of satellite signals by satellite receiver antennas, a variance from this Section may be granted by the Board of Zoning Appeals.
3. Conditional Use Permit Issuance: Non-residential Districts

No conditional use permit or building permit shall be granted for satellite dishes in a non-residential district unless:

- (a) The applicant demonstrates that the intended use is authorized under applicable Federal law.
- (b) The smallest practical size shall be used for any dish. Such dish shall be of a size no greater than eight (8) feet in its maximum dimension. Any such dish to be mounted on a rooftop shall be reviewed by a licensed engineer or architect. No installation shall exceed the height of any existing structure on the building or surrounding buildings; provided that the overall height of the satellite dish does not exceed thirty five (35) feet from ground to the top of the antenna. Elevated installations on poles are prohibited. Any such dish shall be mounted as close to the ground or roof as possible and shall not be more than ten (10) feet in height from the ground or roof to its highest point.
- (c) The construction and installation of a satellite dish shall strictly conform to all Town Ordinances. Once the dish is installed, it shall be maintained and the condition of the dish shall not be allowed to deteriorate or fall into disrepair.
- (d) The applicant demonstrates that the proposed location is such that during all seasons, no part of the dish structure will be visible to the general public from a point that is between the ground level and ten (10) feet above ground level on surrounding property. This provision is satisfied by the installation of a screen for the dish at the time of installation. For purpose of rooftop installations, no part of the dish structure shall be visible from the ground.
- (e) No more than one (1) such satellite dish may be installed on a single zoning lot.

- (f) Where non-residential property abuts residential property, it must comply with the location requirements of 130.3(D)2(d) above on the abutting side.
- (g) All installations shall exhibit architectural quality; coloration to blend with surroundings, and structural integrity. Experimental or temporary installations, inferior materials, and questionable stability are not permitted. In every case, the entire installation, including coniferous plantings, shall be compatible with the character of the surrounding area of the Town and shall have no adverse impact on the property, the neighborhood, or general public. Permanent foundations shall be adequate for anticipated wind loads. Electrical connections shall be low voltage direct, except where the device connected is Underwriter's Laboratory approved, in which case alternating current will be allowed to code requirements. Consideration shall be given to protection of children as in the case of an attractive nuisance.
- (h) In the event that compliance with 130.3(d) prevents the reception of satellite signals by satellite receiver antennas, a variance from this Section may be granted by the Board of Zoning Appeals.

4. Procedure

An application for a conditional use permit for installation of a satellite dish shall be obtained from the office of the Administrator. The Administrator may approve the application if it meets the requirements of this Ordinance.

Where a variation, pursuant to 130.3(D)2(g) of this Ordinance is requested or required, the application shall be submitted to the Board of Zoning Appeals for review and final decision.

5. Application

In all requests for conditional use permits, the application shall include all items generally required for the actions sought (i.e., applicable fees, conditional use permit, building permit, zoning variation, etc.), plus the following:

- (a) Plot plan showing proposed location and dish projection at extremes of the satellite band to be viewed. This requirement will be satisfied by drawing radial lines from a point representing the pivot point of the dish to each end of the satellite band, then drawing a line perpendicular to each radial at a distance scaled to the distance between the rim of the dish to the pivot point. Each perpendicular line shall be scaled to the diameter of the dish to show its maximum protection on the plan at the extremes of its satellite scan. Compass directions will be adequate for this requirement.
- (b) Plans and specifications for the installation, including elevations, dish configurations, mount, foundation.
- (c) Complete description of any vegetation on the property.
- (d) Landscape plan for screening the installation from street view.
- (e) Location of principal structures on adjacent lots.

6. Roof and Other Antennae

- (a) Roof mounted T.V. antennae are permitted in all districts, subject to the following restrictions:

- (i) Number: The number of antennae permitted per principal structure shall conform to the following:
  - 1) One antenna per single-household detached dwelling.
  - 2) One antenna per individually serviced single-household attached or duplex dwelling.
  - 3) One antenna per multi-household building.
  - 4) One antenna per commercial use, whether freestanding or part of a multi-use building.
  - 5) The number of antennae per conditional use shall be controlled by conditional use permit.
- (ii) Dimension: The maximum dimension, whether height, length or diameter, of any antenna shall not exceed ten (10) feet.
- (iii) Mounting: No antenna shall be mounted on the roof at the front of the house.
- (iv) Other: Any T.V. antenna which does not meet the requirements 130.3(D)6, above, shall be considered a conditional use. In considering the granting of this conditional use the Board of Zoning Appeals shall find that, in addition to all other standards for conditional uses, the rooftop television antenna will be located so as to minimize its visibility from other properties.

(b) Amateur Radio Facilities

Antennae and support structures for amateur radio operators which are licensed by the Federal Communications Commission may be allowed, subject to particular zoning district regulations, provided that such antennae, whether mounted on a rooftop or on the ground, shall not extend more than 20 feet above the maximum height for permitted uses in the district.

(E) Business Vehicle Parking

- 1. Commercial Vehicles and equipment, other than those used in the principle use, may not be parked or stored on property in an A1, R1, R2, C1, C2, C3 or C4 district. Vehicles designed and intended for agricultural use are permitted in Agricultural zoning districts.
- 2. A business vehicle with a declared gross vehicle weight of not more than 11,000 pounds may be parked on residential property when used as a commuter vehicle by the owner or resident of the premises. However, said vehicles while parked on the property may not be loaded with trash or debris.

(F) Home Occupations

1. Purpose and Intent

The purpose of this Section is to permit the establishment of home occupations that are compatible with the residential districts in which they are located.

2. Definition

A home occupation is an accessory use of a dwelling unit which is:

- (a) Used for gainful employment that involves the assembly, processing or sale of goods and/or services; and is

- (b) Incidental and secondary to the residential use of the structure and does not change the essential residential character of the dwelling unit; and
- (c) Does not include garage/yard sales or home parties that are held for the sale of goods or services whose number of sales events exceeds four (4) a year.

3. General Requirements and Performance Criteria

All home occupations shall comply with the following standards:

- (a) The entrepreneur of every home occupation shall reside in the dwelling unit in which the business operates.
- (b) The use shall be conducted entirely within a completely enclosed structure.
- (c) The home occupation shall not interfere with the delivery of utilities or other services to the area.
- (d) The activity shall not generate any noise, vibrations, smoke, dust, odor, heat, glare, or electrical interference with radio or television transmission in the area that would exceed that which is normally produced by a dwelling unit in a zoning district used solely for residential purposes.
- (e) No toxic, explosive, flammable, radioactive or other restricted materials shall be used, sold, or stored on the site.
- (f) There shall be no alteration of the residential appearance of the premises, including the creation of a separate or exclusive business entrance(s) or use of signage to identify the business beyond that expressly allowed in residential districts.
- (g) No more than five (5) people at one time shall avail themselves of the service provided by the home occupation use at a given dwelling unit; or no more than twelve (12) people shall avail themselves of the provided service during a twenty-four (24) hour period.
- (h) No clients/pupils shall be permitted between the hours of 10 p.m. and 7 a.m.
- (i) No visible outdoor display or storage of materials, goods supplies or equipment shall be allowed.
- (j) The home occupation shall, at all times, comply with all other applicable laws and ordinances.
- (k) The home occupation shall not cause a significant increase in the amount of traffic or parking on the particular residential street.
- (l) The total area used for such home occupations shall take up no more than fifteen percent (15%), or three hundred (300) square feet (whichever is greater), of the structure it occupies. In no case shall a parking space within a garage be used to fulfill this area allowance.

4. Permitted Home Occupations

The following uses, because of their low-impact nature, and because they do not detract from the residential character of a neighborhood, provided they comply with the limitations set forth herein, are permitted subject to the general requirements and performance criteria specified in 130.2(F)2 and 3.

- (a) Attorney, CPA, Salesman, Architect/Landscape Architect, Interior Designer, Graphic Artist, Dog Grooming, Word Processor and Consultant for the purpose of preparing documents and drawings, and doing business by phone only.
  - (b) Artist Studios, provided no retail business is conducted on the premises.
  - (c) Child and Adult Day Care Homes provided that they comply with all applicable home occupation regulations. However, child day care homes which do not comply with these home occupation regulations may be allowed in zoning districts where they are listed as special uses and are approved pursuant to the procedures set forth by the Board of Zoning Appeals.
  - (d) Mail or Telephone Businesses, for receipt of mail orders only. Business must be conducted entirely by mail and/or telephone.
  - (e) Teaching/Instruction, limited to five (5) pupils at a time.
  - (f) Seminar groups up to a maximum of four (4) times a year, not to exceed twenty-eight (28) days per year.
  - (g) One (1) chair barber or beauty shop.
  - (h) Other uses with impacts similar to those listed in this Section as determined by the Zoning Administrator.
5. Prohibited Home Occupations

Certain uses have a demonstrated tendency to impair the uses and value of a residential district because of their tendency to expand beyond the limits permitted for home occupations. For this reason, the following uses, regardless of their compliance with the standards in 130.2(F)2 and 3 are prohibited as home occupations:

- (a) Any repair or rental shop operating on or from the premises such as repair or painting of autos, trailers, boats, and other equipment repair or rental.
- (b) Any wholesale, or retail business of any kind involving in-person transactions on the premises.
- (c) Animal hospitals, kennels, stables or bird keeping facilities.
- (d) Multiple-chair barber shops; beauty parlors; or massage parlors.
- (e) Clubs, including fraternity and sorority.
- (f) Funeral chapels or homes.
- (g) Medical or dental clinics, or general practice of medicine or dentistry.
- (h) Nursing homes.
- (i) Restaurants.
- (j) Warehousing.

- (k) Welding or machine shops.
- (l) Other uses with impacts similar or greater to those listed in this Section as determined by the Zoning Administrator pursuant to Section 130.2(P)1(3).

6. Provisions for the Handicapped

Persons with a medically certified physical handicap may be permitted a variance by the Board of Zoning Appeals to allow a prohibited home occupation.

(G) Accessory Uses and Structures

This section establishes regulations governing the type, size, character and location of accessory uses and structures.

1. Authorization

Subject to the limitations of this Section, accessory uses and structures are permitted in any zoning district in connection with any principal use lawfully existing within such district.

2. General Provisions for Accessory Uses and Structures

- (a) No accessory use or structure shall be approved, established or constructed before the principal use is approved in accordance with these regulations.
- (b) Accessory uses shall be compatible with the principal use and shall not be established prior to the establishment of the principal use; accessory uses shall not include a kennel or an accessory building for the keeping or the propagation of livestock. However, dog runs shall be permitted as an accessory use.
- (c) No accessory building, unless it conforms with the required conditions for accessory buildings for authorized special uses, shall be located within ten (10) feet of the nearest wall of the principal building.
- (d) No accessory building shall be located within the required front or side yard on the lot including the required side yard of a corner lot which is adjacent to the street, nor between the front of the building and the front lot line.
- (e) In residence districts, an accessory building in a rear or side yard shall be at least three (3) feet from any property line. In any district other than a residence district, accessory buildings used for required off-street parking purposes shall be located at least five (5) feet from the alley lot line.
- (f) No accessory building located in the rear yard of a corner lot shall be nearer to a street lot line than the minimum width required for a side yard abutting a street in the district where the lot is located.
- (g) No accessory building shall exceed ten and one-half (10-1/2) feet in height for a flat roof or mansard roof, or fourteen and one-half (14-1/2) feet for all other roofs, except as otherwise provided for garages in Subsection 130.3(G)4(a).

- (h) Nursery schools and child day care facilities shall be considered accessory uses in churches whether or not they are operated by the church in which they are located.
  - (i) Sign requirements shall be as set forth in 130.11.
3. Allowable Accessory Uses and Structures (Detached from Principal Structure)
- (a) Accessory uses shall be compatible with the principal use and shall not be established prior to the establishment of the principal use.
  - (b) No accessory building or structure shall be erected or altered at, nor be moved to, a location within ten (10) feet of the nearest wall of the principal building or structure, nor within the required front or side yards on the lot.
  - (c) Detached accessory buildings, structures or uses in a residential district shall:
    - (i) Cover not more than forty percent (40%) of the rear yard when located in a rear yard. However, in no case shall an accessory structure and its principal structure cover more of the lot than allowed in the lot coverage requirements for each zoning district.
    - (ii) Not be located in a yard between the principal structure and the side lot line.
    - (iii) Not be located between the building line and the principal structure (except as permitted in front yards).
  - (d) Accessory building heights and setbacks shall be as set forth in each of the zoning districts.
  - (e) There shall be no height restrictions on the erection of open mesh type fences enclosing parks, recreational areas and school sites.
  - (f) Accessory buildings, structures or uses shall be permitted as provided in Table 3-A below:

Table 3-A: Permitted Accessory Buildings, Structures and Uses

Table 3-A includes yard obstructions attached to the principal or a secondary structure as well as free-standing accessory buildings, structures and uses.

KEY:

<u>Required Yards</u>			<u>Districts</u>	
Front and Corner Side Yards	F		Residential District	Rsd
Side Yards	S		Non-Residential District	N-Rsd
Rear Yards	R		Residential and Non-Residential Districts	Both

	<u>Yard</u>		<u>District</u>
	S	R	Both
1) Accessory dwelling units to single-household detached homes			Both
2) Air-Conditioning Equipment (shall not be permitted within six (6) feet of any lot line except window air conditioners).	S	R	Both
3) Antennae (subject to the conditions of Subsection 3.4. above)	F	S	R Both
4) Arbors and Trellises	F	S	R Both
5) Awnings and Canopies	F	S	R Both
6) Balconies	F	S	R Both
7) Basketball backboard hoops, backboards and supporting posts	F	S	R Both
8) Bay Windows	F	S	R Both
9) Compost Pile/Structures		R	Both
10) Decks, Patios and Outdoor Fireplaces	S	R	Both
11) Dog Houses		R	Both
12) Driveway Pavement	F	S	R Both
13) Fences (see Fence Regulations, Section 130.3(B))	F	S	R Both
14) Fire Escapes (open) and Fire Towers		S	R Both
15) Flag Poles	F	S	R Both
16) Garages (detached), Coach Houses and Carports (See Garage Regulations, 130.3(G)4(a))	S	R	Both
17) Gazebos		S	R Rsd

	<u>Yard</u>			<u>District</u>
18) Open Off-Street Parking (in a residential district open parking must be within thirty (30) feet of the rear lot line or alley)	F	S	R	Both
19) Ornamental Light Standards	F	S	R	Both
20) Passive Elements of Solar Collectors, Entry Air Locks, Shading Screens, Other Passive or silent Energy Conserving Facilities (not more than ten (10) feet high nor a length longer than twenty percent (20%) of the wall of the principal building to which the facility is attached or adjacent)	F	S	R	Both
21) Permanently Anchored Lawn Furniture (Garden furniture and decorations such as benches, sundials, birdbaths, statues, sculpture, and art work)	F	S	R	Both
22) Playground and Laundry Drying Equipment			R	Rsd
23) Playhouses		S	R	Rsd
24) Sheds and Storage Structures for Garden Equipment (sheds for propagation or keeping of birds, poultry or livestock are prohibited)			R	Rsd
25) Steps, Open (shall not be less than one (1) foot from a lot line)	F	S	R	Both
26) Swimming Pools a minimum of six (6) feet from the property line.			R	Rsd
27) Tennis Courts		S	R	Both
28) Terraces at grade	F	S	R	Both
29) Transformers	F	S	R	Both
30) Vehicular storage of any vehicles			R	N-Rsd
31) Vehicular Storage of boats and recreational vehicles (In residence districts, not more than one (1) truck with a gross weight of eleven thousand (11,000) pounds or more, or one (1) trailer with a gross weight of five thousand (5,000) pounds or more, and not more than one (1) motorized mobile camping unit, boat, and/or boat trailer may be parked in a side or rear yard, but not in a front yard, side yard, or in any court area which opens toward a public street, except in a driveway.)		S	R	Rsd

4. Special Regulations Applicable to Particular Accessory Structures and Uses

(a) Garages

Garages for Newburgh Landmarks and structures in designated historic districts shall be subject to the following requirements:

(i) Height

- 1) For garages with flat and mansard roofs, height requirements for accessory buildings apply, as set forth in 2. above.
- 2) All garages without flat or mansard roofs shall be no taller than three-fourth (3/4) the height of the main house, measured to the roof apex, and in no case shall exceed twenty-eight (28) feet in height.

(ii) Yards. All garages shall meet the setback requirements for accessory structures, as set forth in 130.3(G).

(iii) Roofs. The roof of the garage shall be compatible in pitch and shape with the roof of the main house.

(b) Residential Recreation Facilities

The use of residential recreational facilities such as tennis courts and swimming pools shall be limited to the occupants of the residence and their guests.

(c) Accessory Parking Lots in Single Household Residential Districts

Parking lots shall not be permitted as an accessory use in any single household residential district except when authorized in a zoning district or as part of a planned development approved under this Ordinance.

(H) Mobile Homes, Trailers, House Cars

The following may not be used as living or sleeping quarters within the Town for more than seven (7) consecutive days in any six (6) month period except when within the confines of an approved mobile home court:

1. Recreational vehicles
2. Trailers
3. Mobile homes
4. Manufactured homes with an inside area of less than nine hundred fifty (950) square feet.

#### 130.4: NONCONFORMANCE

##### A Nonconforming Buildings, Structures, and Uses

###### 1. Purpose

The purpose of this provision is to provide for the short term maintenance of uses which do not conform to the provisions of this Ordinance and which were lawful at the time this Ordinance was adopted. The purpose is also to provide for the gradual elimination of non-conforming uses to uses which conform to the provisions of this Ordinance in order to accomplish the objectives of the Ordinance without undue burden to any single property owner.

###### 2. Exception for Repairs Pursuant to Public Order

In order to accomplish the objectives of the Ordinance without posing any hazard to the public or occupants of buildings and structures, nothing in this Section shall be deemed to prevent the strengthening or restoration of an unsafe structure. If any public official charged with protecting the public safety finds that a nonconforming structure or sign is unsafe in its then present condition, repair or restoration in violation of the provisions of this Section may occur.

###### 3. Classification of Types of Non-Conforming Uses

In order to limit the burden of converting a non-conforming use to a conforming use, the Town has adopted different regulations for different classes of non-conforming uses. The classes of non-conforming uses are as follows:

- (a) Class 1: A class one non-conforming use is the use of a building or structure which is specifically designed for the non-conforming use, and which requires substantial modification in order to accommodate a conforming use.
- (b) Class 2: A class two non-conforming use is a use of a building or structure which is designed to accommodate uses which conform to the requirements of this Ordinance, and which could accommodate a conforming use without any substantial modification.
- (c) Class 3: A class three non-conforming use is a use of a building or structure which is not conforming as to bulk, height, required yard, floor area ratio, or setback.
- (d) Class 4: A non-conforming use of land not involving a building or structure.

###### 4. General Regulations

###### (a) Improvements Underground or at Ground Level

Non-accessory improvements which are underground or substantially underground and which have a current market value in excess of \$5,000.00 and which comprise substantially all the improvements enjoyed in non-conforming use of land shall be deemed non-conforming structures and subject to the applicable provisions of this Article.

(b) Non-conforming Use of Land Accessory to the Nonconforming Use of a Building and Structure

The non-conforming use of land which is accessory to the non-conforming use of a building or structure may be continued for such time as the non-conforming use of the building or structure is permitted under the provisions of this Section.

(c) Relocation of Building or Structure

No building or structure shall be moved in whole or in part to any other location on the same or any other lot unless every portion of such building or structure which is moved and the use made thereof is made to conform to all of the regulations of the district in which it is to be located.

(d) Restoration of Buildings

A nonconforming building, except one identified by Town Council action as being of historic significance, which is destroyed or damaged by fire or other casualty or act of God may be restored only if the cost of reconstruction to a condition in which it was prior to the casualty does not exceed fifty percent (50%) of the replacement cost of the entire building and providing no restoration or reconstruction shall be undertaken unless it is started within one year from the date of notice by the Zoning Administrator of this provision or the date of partial destruction which ever is later and completed within 24 months from the date of partial destruction.

The time and cost limitations set forth herein shall not apply to any single family dwelling located in a residential district providing reconstruction of the dwelling begins within one year from the date of partial destruction and is thereafter diligently pursued. A non-conforming building, identified by Town Council action as being of historic significance may be restored in conformance with these provisions without respect to cost or replacement cost.

(e) Accessory Buildings

The requirements for non-conforming uses of non-conforming buildings, structures, or uses shall apply to all accessory buildings, structures, or buildings located on the same zoning lot.

(f) Burden of Establishing Non-Conforming Use

The burden of establishing any legal non-conforming use is to be met by the owner or party seeking to continue the use, or any person applying for a zoning certificate. Such persons shall provide sufficient proof in a form acceptable to the Zoning Administrator of the following:

- (i) Date of construction of the building or structure or date the use was established (proof may consist of a certified copy of a business license or building permit).
- (ii) Continuous operation of the non-conforming use (proof may consist of affidavits signed by persons having personal knowledge of the use of the premises since the use was established).
- (iii) Such other proof as may be deemed necessary by the Zoning Administrator.

(g) Discontinuance of Abandoned Non-Conforming Use

Except as otherwise provided herein, the voluntary abandonment of any non-conforming use of a building, structure, or premises for a period longer than six (6) months shall terminate any rights conferred by this Section to continue such use.

(h) Expansion of Non-conforming Use within a Building

(i) Class 1 and Class 3 non-conforming uses of a portion of a building may be expanded throughout the building in which they are located but no changes or structural alterations shall be permitted which would increase the bulk of such building or structure unless such changes conform to all the provisions of the zoning district in which such building is located.

(ii) Expansion of any Class 2 non-conforming use of any building or structure into any portion of the building in which it is not located shall not be permitted.

(i) Change in Non-Conforming Use

(i) Class 1 Non-conforming uses may be changed to another non-conforming use which is not permitted in the district providing that such use is not permitted in a more restrictive district than the district in which the existing non-conforming use is permitted.

Such change shall be permitted only after it has been reviewed by the Board of Zoning Appeals and approved as a special use. The jurisdiction over such change, the review of proposals and approval standards and procedures shall be the same as those which are applied for special uses, however the proposed changed use need not be specifically listed as special uses in the district in which they are sought.

(ii) Class 2 and Class 3 non-conforming uses shall not be changed to another non-conforming use.

(iii) No Class 4 non-conforming uses may be expanded, or extended beyond the area they occupy.

(j) Extension of Time

The Town Council, after receiving recommendations from the Board of Zoning Appeals, and after such board has conducted a public hearing, may extend the time period for any break in a non-conforming use for an additional six (6) months.

(k) Nonconforming Parking and Landscaping

When a proposed or completed repair, change in use, expansion of use, or change in structure result in non-conforming parking or landscaping, any person interested in the use or structure may petition for a waiver of any portion or all of the landscaping or parking requirement resulting from such change or proposed change. The procedures governing such waiver and decision making authority with respect to such waiver shall be the same as for minor variations. Such waivers shall be granted only when they are in the interest of the Town, or when conformance with the parking and landscaping requirements pose some practical difficulty or particular hardship. In determining whether there is a hardship, the Administrator shall balance

the cost of conformance against the detriment which may result from granting the waiver. Conditions or restrictions may be imposed by the Administrator at the time any waiver is granted. If the change is a proposed one, the waiver shall be applied for at the time of application for an improvement permit. If change has been completed the property agent shall have thirty (30) days from occupancy or use to apply for a waiver.

5. Non-conforming use of Lots of Record

- (a) Erection of new residences in residential districts, where permitted shall be permitted where both the lot width and total lot area each are at least eighty percent (80%) of that which is required, and where at least eighty percent (80%) of any required lot area for each dwelling is provided.
- (b) The erection of new single family dwellings on nonconforming lots is subject to the following additional regulations:
  - (i) The lot area shall be no less than eighty percent (80%) of the required lot area.
  - (ii) The dwelling shall be placed on the lot so as to provide a yard on each side of the dwelling such that the sum of the widths of the two side yards shall be not less than the minimum required, or the greater of the following: twenty percent (20%) of the width of the lot or three feet.
- (c) The erection of new structures or buildings in non-residential districts, shall be permitted on non-conforming lots of record if such proposed structure meets all of the requirements of the district in which it is sought to be located except for lot area.
- (d) Structures and buildings on non-conforming lots in existence at the time this ordinance was adopted may be maintained as non-conforming uses subject to the general provisions of this Section.

6. Special Regulations for Pre-Code Non-Conforming Buildings, Structures, and Uses

Notwithstanding the other provisions of this Ordinance the following additional provisions shall apply to pre-code uses:

- (a) Pre-code uses shall be those uses which were established prior to April 1, 1931.
- (b) Class 1 and Class 3 pre-code uses may be continued subject to the following restrictions:
  - (i) No repairs structural alterations or additions may be made to a Class 1 building which would increase the bulk of the building.
  - (ii) No increase in the bulk of a Class 3 pre-code use is permitted unless such increase in bulk conforms to the provisions of this Ordinance.
  - (iii) Class 2 pre-code uses may be continued subject to the following:

Repairs, additions or alterations and structural changes may be made to a non-conforming pre-code building or structure provided that said repairs, alterations, or structural regulations conform to the regulations of the district in which such building is located.

7. Non-conforming Signs

(a) Existing Permanent Signs Subject to Amortization

All non-conforming signs must be removed or brought into compliance with this ordinance within seven (7) years of the effective date of this ordinance.

(b) Removal of Certain Signs

Unsafe Signs

If the Administrator finds that any sign, retractable canopy or awning is unsafe or insecure, or is a menace to the public, he shall give written notice to the person displaying such sign. Correction of the condition which causes the Administrator to give such notice shall be effected within ten (10) days after receipt of the notice. If such condition is not corrected after such ten (10) day period, the Administrator is authorized to cause the sign to be removed forthwith at the expense of the person displaying the sign. Notwithstanding the foregoing provisions, the Administrator is authorized to cause any sign, retractable canopy or awning to be removed summarily and without notice whenever he finds that such a sign, canopy or awning is an immediate peril to persons or property.

## 130.5: ZONING DISTRICTS

### (A) Districts

For the purpose of this Ordinance, the Town of Newburgh is hereby divided into the following zoning districts:

#### 1) Residence Districts

- A1 Agricultural (10 acre minimum)
- RL Large Lot Residential (1 d.u./acre)
- R1 Single-Household Residential
- R2 Single-Household Residential (6 d.u./acre)
- R3 Medium Density Residential (10 d.u./acre)
- R4 Multiple Household Residential (15 d.u./acre)

#### 2) Commercial Districts

- C1 Town Core Commercial District
- C2 General Commercial District
- C3 Neighborhood Commercial District
- C4 Highway/Large Scale Commercial District

#### 3) Office and Industrial districts

- O1 Arterial Office District
- O2 Office Park District
- I1 Industrial Park District

#### 4) Overlay and Special Districts

- oTC Town Core District
- oAC Highway Corridor District
- oFP Floodplain Overlay District

### (B) Official Zoning District Map

The location and boundaries of the districts established by this ordinance are set forth on the zoning map entitled, "Town of Newburgh Zoning District Map", which is incorporated herein, and hereby made a part of this ordinance. Said map, together with everything shown thereon and all amendments thereto, shall be as much a part of this ordinance as though fully set forth and described herein.

The following rules shall apply with respect to the boundaries of the various districts as shown on the Zoning District Map:

1. The district boundaries are either streets or alleys unless otherwise shown and where districts designated on the map accompanying and made a part of this ordinance are bounded approximately by street or alley lines, said street or alley shall be construed to be the boundary of such district.

2. In areas not subdivided into lots and blocks, wherever a district is indicated as a strip adjacent to and paralleling a street or highway, the depth of such strips shall be in accordance with dimensions shown on the map measured at right angles from the center line of the street or highway, and the length of frontage shall be in accordance with dimensions shown on the map from section, quarter section, or division lines, or center lines of streets and highways, or railroad rights-of-way, unless otherwise indicated.
3. Where a district boundary line divides a lot in single ownership on the effective date of this ordinance, the Plan Commission, after due hearing, may extend the regulations for either portion of such lot.
4. The Zoning District Map is to be updated every ninety (90) days by the Administrator.

(C) Essential Public Services; Exempted

The erection, construction, alteration, or maintenance by public utilities, municipal departments or commissions, of overhead, surface or underground gas, electric, steam, or water, distribution or transmission systems, collection, communication, supply or disposal systems, including mains, drains, sewers, pipes, conduits, tunnels, wires, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, towers, poles, electrical substations, gas regulator stations and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of adequate service by such public health, safety, or general welfare, shall be exempt from the regulations of this ordinance, except for the following:

1. The installation shall conform to Federal Communications and Federal Aviation Administration rules and regulations, and those of other authorities having jurisdiction.
2. Landscaping, screening and yard requirements for the buildings and structures shall be determined by the Site Review Advisory Committee. Buildings and structures that cover a ground area of less than ten (10) square feet are exempt from the landscaping, screening, and yard requirements.

(D) Zoning of Annexed Land

Land hereafter annexed to, or consolidated with, the Town of Newburgh shall be assigned a Single Household Classification (R1) unless otherwise designated in the annexation ordinance.

## 130.6: RESIDENCE DISTRICTS

### (A) General Provisions

#### 1. Permitted Uses

Permitted uses of land or buildings, as hereinafter listed, shall be permitted in the districts indicated under the conditions indicated. No building or tract of land shall be devoted to any use other than a use permitted hereinafter in the zoning district in which such building or tract of land shall be located, with the exception of the following:

- (a) Uses lawfully established on the effective date of this ordinance.
- (b) Conditional uses, allowed in accordance with the provisions of 130.6(A)2 hereunder.

Uses already established on the effective date of this ordinance and rendered nonconforming by the provisions hereof, shall be subject to the regulations of 130.4. (Nonconforming Buildings, Structures and Uses).

Home occupations and uses which are accessory to permitted uses shall be permitted in all residential districts. Uses which are accessory to special uses may be permitted when approved as part of the special use, or when the Plan Commission finds they are not an expansion of an approved special use.

#### 2. Conditional Uses

Conditional uses, as hereinafter listed, may be allowed in the zoning districts indicated, subject to review by the Board of Zoning Appeals for approval in accordance with the provisions of 130.2(Q). Unless otherwise specifically set forth, whenever a conditional use is named as a major category in this Section, it shall be deemed to include all and only those itemized uses listed under the said category.

The Zoning Administrator may allow land uses (permitted or conditional) which, though not contained by name in the zoning district list of permitted uses, are deemed to be clearly similar in nature to the listed uses.

#### 3. Accessory Structures

Permitted accessory structures shall include accessory buildings customarily incidental to the above uses, including a private garage or private parking area, but not involving the conduct of a business. Any accessory building that is not a part of the main structure shall not exceed fourteen (14) feet in height, shall be located not less than sixty (60) feet from the front lot line, at least ten (10) feet from any dwelling situated on the same lot and at least six (6) feet from any other building or accessory building on the lot. Accessory buildings must be located in the rear yard. Such accessory buildings shall not be nearer than three (3) feet to any side or rear lot line, nor nearer than five (5) feet to any alley abutting the rear of the lot where the doors open to the alley. A private garage is permitted up to and including a maximum size of twenty-six (26) feet by forty-two (42) feet.

4. Lot Size Requirements

Lot size requirements shall be as specified under each zoning district. In addition, no use shall be established or hereafter maintained on a lot recorded after the effective date of this ordinance, which is of less area or less width than prescribed hereinafter for such use in the zoning district in which it is to be located.

5. Yard Requirements

- (a) Yard requirements shall be set forth under each zoning district. Front, side, and rear yards shall be provided in accordance with the regulations hereinafter indicated and shall be unobstructed from the ground level to the sky unless otherwise provided herein.
- (b) All accessory buildings which are attached to principal buildings (e.g., attached garages) shall comply with the yard requirements of the principal building, unless otherwise indicated.
- (c) The rear yard requirement for a through-lot shall be the same as the requirement for the front yard, for the particular district in which it is located.
- (d) In residential developments containing three (3) or more units, the yard requirements may be waived in order to encourage innovative design, including cluster development and the zero lot line concept, and to provide for such housing types as the atrium or patio house. Such waiver may be obtained through planned unit development procedures under the special use provisions, as provided within each residential district.

6. Building Bulk (Volume) Limitations

Building bulk limitations shall be expressed in terms of minimum yard requirements and maximum building height. All structures must comply with the building height limitations prescribed in the zoning districts.

7. Signs

Signs shall be allowed in Residence Districts in accordance with the regulations established in Section 130.11 of this Ordinance.

8. Off-Street Parking and Loading

In no instance shall parking be provided in the front yard of a residence, other than on a driveway. Off-street parking and loading facilities, accessory to uses allowed in Residence Districts, shall be provided in accordance with the regulations established in 130.10.

9. Landscaping and Screening

Landscaping, other than one and two family dwellings, and screening shall be required in Residence Districts in accordance with the regulations established in this ordinance.

10. Overlay Districts

In addition, the provisions of the following overlay districts may apply to new development in the residence districts: Town Core District and Highway Commercial District.

11. Plan Review in Residential Districts

All development in the R3 to Core Residence Districts shall be subject to Site Plan Review, as provided for in 130.2(E).

(B) A1 Agricultural District

1. Purpose Statement

The A1 Agricultural District is designed for agricultural uses on lands primarily in the outlying areas of the Town, prior to development of those areas into subdivisions. When subdividing occurs, it is expected that these areas will be rezoned to a class other than agricultural, in keeping with the general plan of that portion of the Town of Newburgh.

2. Permitted Uses

The following uses are permitted in the A1 District:

- (a) accessory uses
- (b) child care home
- (c) crop cultivation, farming
- (d) gardening, including truck farming
- (e) greenhouses
- (f) household farm dwellings, up to two (2) single
- (g) nurseries, plant materials
- (h) orchards
- (i) roadside stands for the sale of farm grown produce

3. Conditional Uses

The following conditional uses may be allowed in the A1 District:

- (a) bed and breakfasts
- (b) cemeteries
- (c) churches, temples, synagogues
- (d) convents, monasteries, seminaries
- (e) day care centers
- (f) elderly housing
- (g) golf, tennis, outdoor recreation
- (h) home occupations
- (i) public safety buildings
- (j) public, private schools, parks, playgrounds
- (k) quasi-public uses, retreat house, conference center
- (l) retail-nurseries, lawn, garden

4. Lot Size Requirements

Minimum Lot Area

All lots shall be 10 acres

5. Yard Requirements

No buildings except roadside stands shall be constructed within fifty (50) feet of any property line.

6. Building Height Limitations

Single-household dwellings and accessory structures shall not exceed thirty-five (35) feet in height. Barns, sheds, and silos, shall not exceed sixty (60) feet in height.

7. Site Plan Acceptance

In accordance with 130.2(E).

(C) RL Large Lot Residence District

1. Purpose Statement

The RL Large Lot District is intended to accommodate low density residential uses of a semi-rural character. This district is located in areas of existing large-lot development and/or in areas of natural beauty where maximum open space preservation is desired. The density shall not exceed one (1) dwelling unit per one (1) acre.

2. Permitted Uses

The following uses are permitted in the RL District:

- (a) accessory uses and structures, incidental to and on the same zoning lot as the principal use, as follows:
  - (i) Garages and carports. Garage dimensions shall not exceed 26 feet by 42 feet.
  - (ii) Gardens, private.
  - (iii) Greenhouses and conservatories, private (non-commercial).
  - (iv) Home occupations as set forth in Section 130.3(F).
  - (v) Swimming pools and tennis courts, private (non-commercial).
  - (vi) Toolhouses, sheds, and other similar buildings for the storage of domestic supplies.
  - (vii) Temporary storage of building materials and equipment for on-site construction for a period not to exceed the duration of such construction.
  - (viii) Temporary real estate tract offices; for the sole purpose of conducting the sale of lots of the tracts upon which such tract office is located, for a period not to exceed the duration of such sales.
  - (ix) Temporary storage of boats, campers, other types of recreational vehicles, and firewood allowed, but prohibited in the area located between the front building setback line and the corresponding street property line.
  - (x) Miscellaneous accessory structures including but not limited to satellite receiving dishes and play houses.

(b) single-household detached dwellings

3. Conditional Uses

The following conditional uses may be allowed in the RL District:

- (a) bed & breakfast
- (b) cemeteries
- (c) churches, temples, synagogues
- (d) crop cultivation
- (e) home occupations
- (f) planned unit developments
- (g) public safety buildings
- (h) public and private schools, parks, playgrounds
- (i) quasi-public uses, retreat house, conference center

4. Lot Size Requirements

Minimum Lot Area

one (1) acre

5. Yard Requirements

<u>Minimum Standards</u>	<u>Front Yard</u>	<u>Interior Side Yard</u>	<u>Corner Side Yard</u>	<u>Rear Yard</u>
Single-household detached dwellings	50 ft.	20 ft*	50 ft.	50 ft.
Accessory structures	50 ft.	20 ft.	30 ft.	3 ft.

\* Plus one (1) foot for each two (2) feet by which the building height exceeds 25 feet.

6. Building Height Limitations

No building or other structure erected within the RL District shall exceed thirty-five (35) feet in height.

7. Site Plan Acceptance

In accordance with 130.2(E).

(D) R1 Single-Household Residence District

1. Purpose Statement

The R1 Single-Household Residence District is intended to provide for residences at a density greater than estate development consistent with conventional suburban subdivisions and to protect these areas from the encroachment of incompatible uses.

2. Permitted Uses

The following uses are permitted in the R1 District:

- (a) accessory uses and structures, incidental to and on the same zoning lot as the principal use, as specified in 130.3(G).
- (b) single-household detached dwellings

3. Conditional Uses

The following conditional uses may be allowed in the R1 District:

- (a) bed & breakfast
- (b) cemeteries
- (c) churches, temples, synagogues
- (d) home occupations
- (e) planned unit developments
- (f) public safety buildings
- (g) public, private schools, parks, playgrounds

4. Lot Size Requirements

Minimum	Minimum
<u>Lot Area</u>	<u>Lot Width</u>
14,520 sq. ft.	75 ft., 100 ft. on corner lots

5. Yard Requirements

<u>Minimum Standards</u>	<u>Front Yard</u>	<u>Interior Side Yard</u>	<u>Corner Side Yard</u>	<u>Rear Yard</u>
Single-household detached dwellings	35 ft.*	12 ft.**	15 ft.	25 ft.
Accessory structures	35 ft.	12 ft.	15 ft.	3 ft.

\*Or the average setback of the two (2) adjoining structures, whichever is greater.

\*\*A total of thirty (30) feet for the two yards combined. Plus one (1) foot for each two (2) feet by which the building height exceeds thirty-five (35) feet.

6. Building Height Limitations

No building or other structure erected within the R1 District shall exceed thirty-five (35) feet in height.

7. Site Plan Acceptance

In accordance with 130.2(E).

(E) R2 Household Residence District

1. Purpose Statement

The R2 Household Residence District is intended to provide single-household residences with moderate sized lots, and to encourage efficient site arrangement through cluster and zero lot line arrangements. The density shall not exceed six (6) dwelling units per acre.

2. Uses

The following uses are permitted in the R2 District:

- (a) accessory uses and structures, incidental to and on the same zoning lot as the principal use, as specified in 130.3(G)
- (b) duplexes, up to four-plexes only, at the time of platting and no conversions are allowed after platting
- (c) single-household detached dwellings
- (d) the owner of a single-family residence may lease any portion of that residence not to exceed fifty percent (50%) of the total living area for an additional dwelling unit. Provided, however, the owner continues to reside in the residence

3. Conditional Uses

The following conditional uses may be allowed in the R2 District:

- (a) bed & breakfast
- (b) cemeteries
- (c) child care facilities
- (d) churches, temples, synagogues
- (e) congregate housing
- (f) convents, monasteries, seminaries
- (g) day care centers
- (h) elderly housing
- (i) family care facilities
- (j) group care facilities, six or more residents
- (k) planned unit developments
- (l) public safety buildings
- (m) public, private schools, parks, playgrounds
- (n) lodges and fraternal organizations

4. Lot Size Requirements

Minimum	Minimum
<u>Lot Area</u>	<u>Lot Width</u>
7,260 sq. ft.	65 ft., 85 ft. on corner lots

5. Yard Requirements

<u>Minimum Standards</u>	<u>Front Yard</u>	<u>Interior Side Yard</u>	<u>Corner Side Yard</u>	<u>Rear Yard</u>
Single-household detached dwellings	25 ft.**	8 ft.*	10 ft.	25 ft.
Accessory Structures	25 ft.	8 ft.	10 ft.	3 ft.

\* A total of twenty (20) feet for the two yards combined. Plus one (1) foot for each two (2) feet by which the building height exceeds twenty-five (25) feet.

\*\* Or the average setback of two adjacent structures, whichever is greater.

6. Building Height Limitations

No building or other structure erected within the R2 District shall exceed 35 feet in height.

7. Site Plan Acceptance

In accordance with Section 130.2(E).

(F) R3 Medium Density Residence District

1. Purpose Statement

The R3 Medium Density Residence District is primarily designed to provide for medium density housing in a setting which permits a wide variety of housing types and densities with effective use of open space. The density shall not exceed ten (10) gross dwelling units per acre.

2. Permitted Uses

The following uses are permitted in the R3 District:

- (a) accessory uses and structures, incidental to and on the same zoning lot as the principal use, as specified in 130.3(G)
- (b) child care facilities
- (c) family care facilities
- (d) group care facilities
- (e) single and two household detached dwellings
- (f) condominium units not exceeding six (6) units per building

3. Conditional Uses

The following conditional uses may be allowed in the R3 District:

- (a) bed and breakfasts
- (b) cemeteries
- (c) churches, temples, synagogues
- (d) congregate housing
- (e) convents, monasteries, seminaries
- (f) day care centers

- (g) elderly housing
- (h) golf, tennis, outdoor recreation
- (i) planned unit developments
- (j) public safety buildings
- (k) public, private schools, parks, playgrounds

4. Lot Size Requirements

<u>Minimum</u> <u>Lot Area</u>	<u>Minimum</u> <u>Lot Width</u>
4,356 sq. ft.	33 ft.
3,000 sq. ft. per d.u.	

5. Yard Requirements

<u>Minimum Standards</u>	<u>Front</u> <u>Yard</u>	<u>Interior</u> <u>Side Yard</u>	<u>Corner</u> <u>Side Yard</u>	<u>Rear</u> <u>Yard</u>
Principal Structure	15 ft.*	4 ft.**	8 ft.	25 ft.
Accessory structures	15 ft.	4 ft.	8 ft.	3 ft.

\*Or the average setback of adjacent structures, whichever is greater.

\*\*Or a total of twenty (20) percent of the frontage, whichever is less. Plus one (1) foot for each two (2) feet by which the building height exceeds twenty-five (25) feet.

6. Building Height Limitations

No building or other structure erected within the R3 District shall exceed thirty-five (35) feet in height.

7. Site Plan Acceptance

In accordance with 130.2(E).

(G) R4 Multi-Household Residence District

1. Purpose Statement

The R4 Multi-Household Residence District is intended to provide for a mixture of residential dwelling types and to allow other selected uses that are compatible with the District's residential character. The density will not exceed fifteen (15) gross dwelling units per acre.

2. Permitted Uses

The following uses are permitted in the R4 Districts:

- (a) accessory uses and structures, incidental to and on the same zoning lot as the principal use, as specified in Section 130.3(G)
- (b) child care facilities
- (c) duplexes
- (d) family care facilities
- (e) group care facilities
- (f) multi-household dwellings
- (g) Single-household attached dwellings

(h) single-household detached dwellings

3. Conditional Uses

The following conditional uses may be allowed in the R4 District:

- (a) alcohol abuse treatment
- (b) cemeteries
- (c) children's home
- (d) churches, temples, synagogues
- (e) congregate housing
- (f) convents, monasteries, seminaries
- (g) day care centers
- (h) drug rehabilitation treatment
- (i) elderly housing
- (j) golf, tennis, outdoor recreation
- (k) government, cultural, library, municipal, museum
- (l) halfway houses
- (m) libraries
- (n) nursing homes
- (o) planned unit developments
- (p) public safety buildings
- (q) public, private schools, parks, playgrounds
- (r) mobile home courts

4. Lot Size Requirements

Minimum lot size: 7,500 square feet  
Minimum lot area per dwelling unit: 2,900 square feet

5. Yard Requirements

<u>Minimum Standards</u>	<u>Front Yard</u>	<u>Interior Side Yard</u>	<u>Corner†† Side Yard</u>	<u>Rear Yard</u>
Principal Structure	30 ft.*	10 ft.**	12 ft.**	25 ft.
Accessory structures	30 ft.	10 ft.	12 ft.	3 ft.
Transitional Buffer Yard adjacent to Single-Household	—	10% of lot width†	—	10% of lot width†

\*Or the average of the two adjacent structures, whichever is least.

\*\*Or a combined 20 percent of the lot frontage, whichever is least.

†Minimum 19 ft., maximum 25 ft.

††This yard may be observed only when no other lots with frontage on this street have, or have the ability to have, a building frontage on this street.

6. Building Bulk Limitations

No building or other structure erected within the R4 District will exceed forty-five (45) feet in height.

7. Site Plan Acceptance

In accordance with 130.2(E).

### 130.7: COMMERCIAL DISTRICTS

#### (A) General Provisions

1. Purpose Statement

The general regulations for the Commercial Districts are set forth in 130.7.

2. Site Design Standards

In considering any application for development approval in the Commercial Districts, the following site design standards shall be adhered to:

(a) All utility lines shall be located underground.

(b) Pedestrian amenities, as deemed appropriate by the Site Review Advisory Committee, shall be provided.

3. Overlay Districts

In addition, the provisions of the following Commercial Overlay Districts at 130.9 shall apply to new development within the downtown area of Newburgh.

Refer to the Official Zoning Map for the exact location of the Commercial Districts.

#### (B) C1 Town Core Commercial District

1. Purpose Statement

This district is intended to create a unique downtown environment for the central business area of Newburgh, that has design features and a diversity of uses not found in the other Commercial Districts in the Town.

This district provides for institutional users customarily found in downtown areas including government buildings, cultural facilities, schools and also provides for a mixture of small scale business activity oriented toward visitors, office and business support services and residences, and ancillary uses.

2. General Requirements

All developments in the C1 District shall be subject to the following general requirements:

- (a) All applications for an improvement location permit in the C1 District shall be reviewed and recommended for approval or denial by the Plan Commission after a development review and report by the Site Review Advisory Committee as set forth in 130.2(E) (Site Review Advisory Committee).
- (b) "Drive-in" type establishments offering goods or services directly to customers waiting in parked motor vehicles are not permitted unless specifically authorized herein.
- (c) Only commercial uses, as specified below, are permitted beneath the second floor.

3. Permitted Uses

The following uses are permitted in the C1 District:

- (a) accessory uses
- (b) antique shops and galleries
- (c) art gallery and artist studio
- (d) barber shops
- (e) beauty shops
- (f) broadcast media studio (no tower)
- (g) churches, temples, synagogues
- (h) computer services
- (i) copying shops and quick print shops
- (j) cultural facilities
- (k) design studios
- (l) detective agency, no dogs
- (m) financial institutions without drive-up window
- (n) florist
- (o) bed and breakfast inns
- (p) libraries
- (q) medical and dental lab
- (r) membership organization-meeting hall, refreshments
- (s) residences above first floor
- (t) museums
- (u) offices, business, government, professional
- (v) offices, medical, dental
- (w) photo studio
- (x) repairs-household, personal goods
- (y) restaurants without drive-up window
- (z) retail-apparel and accessory
- (aa) retail-bakery, butcher, fruits, vegetables
- (bb) schools-correspondence, professional, business
- (cc) schools-dance, art, music, business
- (dd) shoe repair and shine shops
- (ee) social services, individual and family
- (ff) tailors

4. Conditional Uses

The following conditional uses may be permitted in the C1 District:

- (a) public parking lot, or garage
- (b) pet shops
- (c) physical education center, all inside
- (d) planned unit developments
- (e) public safety buildings
- (f) retail-furniture, appliances
- (g) retail-general merchandise

5. Development Area and Width

There are no minimum lot area or width requirements for the C1 District.

6. Yards

The yard requirements in the C1 District

	Front and Corner Side Yard	Interior Side Yard	Rear Yard
Building	The average of the setback of adjacent structures.	—	—
Parking	—	—	—
Transitional Buffer Yard Abutting Residential	—	10% of the lot width/ length or ten (10) feet, whichever is greater if required by the Site Review Advisory Committee	

7. Building Height

No building in the C1 District shall exceed a height, at the property line, of forty-five (45) feet.

8. Off-Street Parking and Loading

The parking and loading requirements for the C1 district shall be as specified in 130.10(B) and (C).

9. Landscaping and Screening

The landscaping and screening requirements for the C1 District shall be as specified in 130.3(A).

10. Sign Regulations

The sign regulations for the C1 District shall be as specified in 130.11.

11. Site Plan Acceptance

In accordance with 130.2(E).

(C) C2 General Commercial District

1. Purpose Statement

This district is intended to provide for the majority of retail and business needs of the Town except for highway oriented business activity centers and small scale neighborhood shopping districts.

2. General Requirements

All development in the C2 District shall be subject to the following general requirements:

(a) Site Plan Review.

(b) All business, servicing, storage or processing, except off-street parking, loading or such drive-in facilities as are specifically authorized herein, shall be conducted within completely enclosed buildings.

3. Permitted Uses

The following uses are permitted in the C2 District:

- (a) accessory uses
- (b) amusement and recreation buildings
- (c) amusement arcades
- (d) antique shops and galleries
- (e) art gallery and artist studio
- (f) auction rooms, house
- (g) auditorium or arena, indoor
- (h) auto service stations
- (i) ballrooms and dance halls
- (j) bar, tavern, lounge
- (k) barber shops
- (l) beauty shops
- (m) broadcast media studio (no tower)
- (n) bowling alleys
- (o) business services
- (p) carpet cleaning without plant
- (q) catering
- (r) churches, temples, synagogues
- (s) computer services
- (t) copying shops and quick print shops
- (u) cultural facilities

- (v) day care centers
- (w) department stores
- (x) design studios
- (y) detective agency, no dogs
- (z) diaper service
- (aa) dog grooming
- (bb) dry cleaners
- (cc) financial institutions
- (dd) financial institutions with drive-up
- (ee) florist
- (ff) funeral home, chapel, services
- (gg) gasoline stations
- (hh) halfway houses
- (ii) hardware, plumbing, heating equipment and supplies
- (jj) health centers
- (kk) hotels and motels
- (ll) job training, vocational rehabilitation service
- (mm) laundry collecting and dist. outlets
- (nn) laundry, coin operated
- (oo) libraries
- (pp) locksmith
- (qq) lumber yards, building supply stores, garden supplies
- (rr) mail order houses
- (ss) medical and dental laboratories
- (tt) meeting, assembly hall
- (uu) membership organization-meeting hall, refreshments
- (vv) miscellaneous repair shops-see exceptions
- (ww) motion picture theaters
- (xx) multi-household residences
- (yy) museums and art galleries
- (zz) offices, business, government, professional
- (aaa) offices, medical, dental
- (bbb) parking lot, garage, public
- (ccc) pet shops
- (ddd) photo studio
- (eee) photo finishing lab
- (fff) physical education center-all inside
- (ggg) printing, blueprinting operation
- (hhh) radio, TV stations, no tower
- (iii) repairs-electrical, refrigeration
- (jjj) repairs-household, personal goods
- (kkk) research, non-commercial, scientific, educational
- (lll) restaurants
- (mmm) retail-apparel and accessory
- (nnn) retail-bakery, butcher, fruits, vegetables
- (ooo) retail-furniture, appliances
- (ppp) retail-general merchandise
- (qqq) retail-grocery, hardware, drugs, liquor
- (rrr) retail-used merchandise
- (sss) retail-video sales, rentals
- (ttt) reupholstery and furniture repair

- (uuu) schools, dance
- (vvv) schools-correspondence, professional, business
- (www) schools-vocational, no exterior classes
- (xxx) shoe repair, shine, hat cleaning shops
- (yyy) social services, individual and family
- (zzz) tailors
- (aaaa) upholstery cleaning without plant

4. Conditional Uses

The following conditional uses may be permitted in the C2 District:

- (a) dry cleaning plants
- (b) equipment rental, leasing
- (c) local transit operation, service facilities
- (d) planned unit developments
- (e) public safety buildings
- (f) retail-video sales, rentals
- (g) taxi operations
- (h) taxidermist
- (i) veterinarian's office-household pets
- (j) beer garden

5. Development Area

Standard Lot: 5,000 square feet  
Transitional Lot: 7,500 square feet

6. Yards

	<u>Front and Corner Side Yard</u>	<u>Interior Side Yard</u>	<u>Rear Yard</u>
Building	—	—	—
Transitional Buffer Yard Abutting Residential	—	10% of the lot width/ length or ten (10) feet, whichever is greater	

7. Building Height

No building in the C2 District shall exceed forty-five (45) feet in height.

8. Off-Street Parking and Loading

The parking and loading requirements for the C2 district shall be as specified in 130.10(B) and (C).

9. Landscaping and Screening

The landscaping and screening requirements for the C2 District shall be as specified in 130.3(A).

10. Sign Regulations

The sign regulations for the C2 District shall be as specified in 130.11.

11. Site Plan Acceptance

In accordance with Section 130.2(E)

(D) C3 Neighborhood Commercial Districts

1. Purpose Statement

This district is intended to accommodate small scale retail establishments to service residential neighborhoods. These activities may be either in freestanding structures or a part of a planned retail center which contains less than 30,000 gross square feet. The C3 District is intended for the safety and convenience of residents in the immediate vicinity of the center without adversely impacting the quality of residential life in the areas immediately adjacent to the center

2. General Provisions

All developments for a C3 shall be subject to the following general provisions:

- (a) All applications for a C3 improvement location permit shall be reviewed and acted upon by the Plan Commission after a review and report by the Site Review Advisory Committee.
- (b) Drive-in type establishments offering goods and services directly to customers waiting in parked motor vehicles are not permitted unless specially authorized.
- (c) All exterior lighting shall be directed away from adjoining residential property and shall be of an intensity so as not to interfere with the enjoyment of adjacent residential property.
- (d) Accommodate pedestrian access to the maximum possible extent.

3. Permitted Uses

The following uses are permitted in the C3 District:

- (a) art and school supply stores
- (b) bakery, and other food shops preparing food for consumption off-premises but not for the consumption in vehicles
- (c) banks and other financial institutions without drive-thru facilities but with automatic teller machines
- (d) barber, beauty shops, hair styling salon
- (e) bicycle shops, sales/services
- (f) bookstores/stationary stores
- (g) camera and photography shops
- (h) day care facilities

- (i) delicatessen stores without liquor
- (j) drug stores
- (k) dry cleaning/laundry pick-up facilities
- (l) florists
- (m) funeral homes
- (n) grocery/convenience marts without gasoline pumps
- (o) hardware stores/paint and wallpaper
- (p) newsstands
- (q) professional offices for attorneys, doctors, accountants, architects, insurance, real estate, stock and commodities brokers, and other similar professional services
- (r) restaurants with the following characteristics: all food consumed inside an enclosed structure; no drive-in or drive-thru service is provided; and seating and table services is provided to patrons
- (s) shoe repair shops
- (t) single-household residences
- (u) small appliance repair shops
- (v) studio for art, music, dance, photography, etc.
- (w) tailor and alterations
- (x) video rental
- (y) other similar activities determined by the Administrator to be substantially similar to the permitted uses and which serve a non-business clientele in the immediate neighborhood

4. Conditional Uses

The following conditional uses may be permitted in the C3 District:

- (a) conditional uses which may be permitted in residence districts; RL, R1, R2, R3, and R4
- (b) convenience marts with gasoline pumps
- (c) libraries, galleries, art centers, and other similar uses including associated education institutions
- (d) lodges and fraternal organizations
- (e) planned unit developments
- (f) residential dwelling units at a density of less than 6 units per acre

5. Development Area and Width

There are no minimum lot area or width requirements in the C3 District. The maximum buildable lot shall not exceed 1.5 acres.

6. Yards

The yard requirements in the C3 District are as follows:

	Front and Corner <u>Side Yard</u>	Interior <u>Side Yard</u>	Rear <u>Yard</u>
Building	25 feet or the average setback of adjacent structures	10 feet	20 feet
Transitional Buffer Yard Abutting Residential		10% of the lot width/ length or twenty (20) feet, whichever is	

7. Building Height

greater

No building in a C3 District shall exceed a height of thirty-five (35) feet or the height of adjacent residential structure whichever is less.

8. Off-Street Parking and Loading

The parking and loading requirements for the C3 District shall be specified in 130.10(B) and (C).

9. Landscaping and Screening

The landscaping and screening requirements for the C3 District shall be specified in 130.3(A).

10. Sign Regulations

The sign regulations for the C3 District shall be as specified in 130.11.

11. Site Plan Acceptance

In accordance with 130.2(E).

(E) C4 Highway Large Scale District

1. Purpose Statement

This district is intended to provide for the intense business activity which is highway oriented or a part of a major planned business development and is meant to encourage flexibility in use by controlling traffic impact, site design, and land use.

The permitted land uses and restrictions over impact, bulk and design are structured to accommodate shopping districts over 100,000 gross square feet, and free standing business establishments and services.

2. Permitted Uses

When the Zoning Administrator finds that a particular use is in keeping with the intent and purpose of the C4 Commercial District, and can adequately meet the standards established for the C4 District specifically, and all Commercial Districts generally, as set forth in this Article, then, and only then, shall the following types of uses be permitted in the C4 District:

- (a) accessory uses
- (b) amusement arcades
- (c) auditorium, indoor/outdoor
- (d) auto body repair
- (e) auto parts supply
- (f) auto, rental/leasing
- (g) auto sales, new/used
- (h) auto service center
- (i) ballrooms, dance halls
- (j) billiard, pool establishments
- (k) bowling alleys
- (l) building material sales and storage
- (m) catering
- (n) churches, temples, synagogues
- (o) day care centers
- (p) department stores
- (q) detective agency
- (r) diaper service
- (s) dog grooming
- (t) dry cleaners
- (u) farm equipment, sales/service
- (v) financial institutions
- (w) florist
- (x) funeral home, chapel, services
- (y) health centers
- (z) hospitals
- (aa) job training, vocational rehabilitation service
- (bb) laundry, coin operated
- (cc) libraries
- (dd) locksmith-no exterior storage
- (ee) medical and dental lab
- (ff) medical and dental clinics
- (gg) membership organization-meeting hall, refreshments
- (hh) motion picture theaters
- (ii) museums and art galleries
- (jj) offices, business, government, professional
- (kk) offices, medical, dental
- (ll) parking lot, garage
- (mm) photo studio
- (nn) photo finishing lab
- (oo) physical education center, all inside
- (pp) printing, blueprinting operation
- (qq) radio, TV stations
- (rr) recreation-indoor commercial
- (ss) repairs-electrical, refrigeration
- (tt) repairs-household, personal goods
- (uu) residential-not ground floor
- (vv) restaurants
- (ww) retail-apparel and accessory
- (xx) retail-bakery, butcher, fruits, vegetables
- (yy) retail-furniture, appliances

- (zz) retail-general merchandise
- (aaa) retail-grocery, hardware, drug, liquor
- (bbb) retail-used merchandise
- (ccc) retail-video sales, rentals
- (ddd) schools, dance
- (eee) schools-correspondence, professional, business
- (fff) schools-vocational
- (ggg) services to buildings, no exterior storage
- (hhh) shoe repair, shine, hat cleaning shops
- (iii) shopping center 100,000 gross square feet
- (jii) social services, individual and family
- (kkk) tailors
- (lll) taxidermist
- (mmm) trade schools, no heavy equipment, truck operators
- (nnn) upholstery cleaning without plant
- (ooo) vet's office-household pets

Notwithstanding the foregoing, any use not established at the time this Ordinance is adopted shall only be permitted if it is consistent with the impact standards set forth in this Article and if it is located on sites whose site plan has been approved by the Board of Zoning Appeals.

### 3. Conditional Uses

The following uses may be allowed as a conditional use in the C4 District:

- (a) amusement parks
- (b) arenas, stadiums and sports fields
- (c) car wash
- (d) cemeteries
- (e) crematories
- (f) dry cleaning plants
- (g) farmers market
- (h) flea markets
- (i) motion picture drive in theater
- (j) planned unit developments
- (k) radio and TV towers
- (l) repair-welding, automotive, machinery
- (m) shopping center in excess of 100,000 square feet
- (n) taxi operations
- (o) any commercial activity in excess of 200,000 gross square feet

Notwithstanding the foregoing, any use not established at the time of this ordinance is adopted shall only be permitted if it is consistent with the impact standards set forth in this Section and if it is located on sites whose site plan has been approved by the Board of Zoning Appeals.

### 4. Conditional Use Requirements

Use of land classified as a conditional use within this zoning district shall provide the Town of Newburgh with a development impact statement. The development impact statement is designed to provide the decision-making process with adequate information relating to the impacts a large scale

commercial use will have on economic, environmental, aesthetic, cultural, residential, and public services within the community.

Criteria to be addressed in a development impact statement shall include the following:

- a. Economic Statement
  - (i) Projected property tax generation;
  - (ii) Projected sales tax generation adjusted for economic shift;
  - (iii) Projected benefits due to expanded customer/consumer service/product mix to be provided to the community; and
  - (iv) Impacts on surrounding property values.
- b. Environmental Statement
  - (i) Existing storm and sanitary sewers and their capacity;
  - (ii) Soils-type and classification for agricultural uses and structural stability;
  - (iii) Slope, proposed cut and fill;
  - (iv) Flood plain locations and impact of proposed development;
  - (v) Protected water table recharge areas and development impacts;
  - (vi) Impacts on surrounding land use, quality of life factors relating to physical, cultural, and aesthetic impacts the proposed development may have on surrounding existing land uses; and
  - (vii) Construction phases impacts, traffic on residential streets, erosion, inconvenience.
- c. Public Services Statement
  - (i) Transportation systems network impact;
  - (ii) Police/fire protection impact; and
  - (iii) General services impacts.

This statement may be replaced by a statement of no impact for the redevelopment expansion or reconstruction of existing urban centers. The statement of no impact shall include rationale for each of the above criteria. The statement must outline the center's use of existing services and how the redevelopment, reconstruction, or expansion of the center will not impact those existing services.

Any application which does not include all of the indicated materials shall be rejected and returned to the developer.

## 5. Site Plan Review

- (a) Allowable uses, permitted and conditional, in the C4 District are deemed to have the potential for adverse impacts if haphazardly located and laid out on their respective zoning lot. Such impacts may interfere with the use and enjoyment of adjacent property and uses.
- (b) Site plan review for Commercial Districts is required to protect the local economy, maintain safe traffic conditions, maintain the environment and assure harmonious land-use relationships between business uses and more sensitive land-uses in affected areas. Therefore, allowable uses, permitted and special, shall be subject to site plan review by the Town's Site Review Advisory Committee.

- (c) No building permit shall be issued nor structure or building shall be erected, in any of the commercial districts, nor shall existing buildings be altered, remodeled, or enlarged or extended until the Site Review Advisory Committee (SRAC) has approved a site development plan as outlined in Section 130.2(E).
- (d) The SRAC may approve the proposed site development plan with or without conditions. The SRAC may deny approval of the total site proposal or a portion thereof if they find that conditions, standards or purposes of this Section; or other germane Sections of the Ordinance; or the policies of the official Comprehensive Plan; or the general development policies and specific site design guidelines of the Town of Newburgh have not been complied with.
- (e) The Site Review Advisory Committee may waive or otherwise grant relief in the form of minor variations from the standards for bulk and design controls. Minor variations are defined as variations which allow a variation of up to twenty (20) percent of the listed standard for the following cases:
  - (i) The application of a design or impact control would cause an undue adverse impact on adjoining or nearby property.
  - (ii) The application of a particular design standard or control would cause an unsafe condition.
  - (iii) The granting of any relief from a design standard or control would enable better overall design and functioning that would not otherwise be achievable under strict applications of all bulk and design standards.

In no instance shall the Site Review Advisory Committee grant a minor variance in the transitional buffer yard requirements without a public hearing as per Section 130.2(R).

- (iv) Impact Controls and General Restrictions in C4 District
  - a. Residential dwelling units shall not be permitted below the second floor.
  - b. Mechanical Equipment to be Screened

All ground level and roof top mechanical equipment shall be fully screened from view from public streets.
  - c. Refuse Control

Temporary storage of refuse materials shall be limited to that produced on the premises. Refuse containers must be covered and shall be stored within completely enclosed buildings or placed in corrals providing complete screening from view.

d. Traffic Generation Managed

Any allowable use or use authorized by the Zoning Administrator which meets the following conditions shall be required to submit a traffic impact analysis:

- 1) any use in which the total floor area or outdoor retail sales lot area exceeds 50,000 square feet of gross floor area;
- 2) every medical office building, clinic, or office use where the total floor area exceeds 50,000 square feet;
- 3) every hotel or motel with an excess of one hundred (100) rooms;
- 4) every recreational facility, stadium, or similar establishment with a parking requirement in excess of 1000 spaces;
- 5) restaurants in excess of 7,000 square feet;
- 6) drive-in or fast-food restaurants in excess of 3,000 square feet.

e. Sensory and Nuisance Impacts

Processes, equipment, and goods for sale shall be limited to those that are found by the Zoning Administrator not objectionable to the enjoyment and use of adjoining and adjacent zoning lots which are within 500 feet, because of odor, dust, smoke, gases, vapors, noise, vibration, refuse matter or water-carried waste.

Any use or dissemination of sensory or fire, explosive, or radioactive material in a manner or quantity that endangers the public health, safety, comfort or welfare is a public nuisance and declared unlawful.

f. Transitional Buffer Yard Requirements

A transitional buffer yard shall be required for all commercial uses which are located adjacent to or across the alley from any residentially zoned district. The transitional buffer yard required for any Commercial District zoned lot shall be maintained as a planted or landscaped area only. Parking, storage, refuse containers or other structures, accessory or otherwise, shall not be located within any required transitional buffer yard.

Where a residential lot adjoins a non-residential lot, or is across the alley from a non-residential lot, the size of any required transitional buffer yard shall be 10% of the lot width or depth, whichever is applicable. The yard depth or width for a yard with varying widths or depths will be measured from the yard's mid-point.

Such transitional buffer yards shall extend the entire length of the abutting residential zoning district. The minimum transitional buffer yard required for any non-residential development shall be ten (10) feet in width. The maximum transitional buffer yard shall be one hundred (100) feet in width. Transitional buffer yard widths may be reduced as provided for in 130.3(A).

All landscaping shall be subject to review by the Site Review Advisory Committee as provided for in 130.3(A).

Access drives serving a transitional lot shall not be located within any required transitional buffer yard.

g. Lighting

Fixtures located on or within business zoning districts shall be located, directed or designed in such a manner as to contain direct light and glare to the Commercial District zoned parcel only. Lighting proposed for any development shall be indicated on the site plan and shall include the following information:

- 1) height of fixture
- 2) type of fixture
- 3) light throw area
- 4) location of fixture

h. Off-Street Parking and Loading

Off-street parking and loading shall be accessory to the principle use, provided in accordance with the regulations of Section 130.10(B). Overnight parking for vehicles used to carry out the business activity of the establishment shall be limited to an enclosed area or areas to the rear of the building.

i. Landscaping and Screening

Detailed landscaping and screening standards are set forth in Section 130.3(A).

j. Signs

Signs shall be allowed in the C4 districts in accordance with provisions of Section 130.11, Sign Regulations.

k. Permanent Outdoor Storage or Display

- 1) The storage or display of outdoor merchandise materials or inventory shall not encroach into areas of required parking.
- 2) The storage or display of outdoor materials, merchandise, or inventory shall not be located in required yard area within the lot.
- 3) Lighting of outdoor storage or display areas shall be directed or shaded in a fashion which contains the light to the display area.
- 4) Outdoor display areas located adjacent to a required transitional buffer yard shall be required to screen the display area.

l. Pedestrian Access

Designated pedestrian and bicycle pathways shall be provided and marked from the public sidewalk to the main entrances of the principal building.

Separate, designated pedestrian access shall be provided between parking areas and major entrances of a building or use which is required to provide fifty (50) or more parking spaces.

Secure bicycle parking facilities shall be provided.

Handicapped loading and unloading areas shall be required in a circulation drive in an area convenient to the main entrance to the principal building and zoning lot.

Handicapped parking and barrier-free site design facilities shall conform to the Americans With Disabilities Act regulations.

m. Impact, Bulk and Design Controls

In addition to meeting the requirements of this Subsection petitions for improvement location permits in the C4 District must also meet the following requirements of this Section.

- 1) Minimum Lot Size: 10 acres
- 2) Minimum Lot Width: None
- 3) Maximum Allowable Building Height: Forty-five (45) Feet
- 4) Minimum Yard Requirements

a) Abutting Non-Residential

Front and Corner Side Yard - A minimum front yard of fifty (50) feet, or a front yard equal to the average front yard of the developed parcels within the same block, shall be required for all new non-residential development. Other than the minimum driveway for access to the site, the front yard shall be maintained as a planted or landscaped area subject to the landscaping requirements in 130.3(A) of this ordinance.

No other side or rear yards shall be required except as required by the transitional buffer yard requirements.

b) Abutting Residential (Transitional Buffer Yard)

Where a C4 lot abuts the side or rear lot line of a residential lot the side or rear yard shall be 10% of the lot width/length or fifty (50) feet, whichever is greater.

5) Building Setback

Five percent (5%) of the average or width or depth of the lot.

6) Storage

Outside storage is permitted, but not within required yards. Outside storage shall be screened and landscaped per 130.3(A) of this ordinance.

7) Merchandise Display

Merchandise may be displayed outside the principal building except that no such display shall be within required off-street parking areas.

6. Site Plan Acceptance

In accordance with Section 130.2(E).

## 130.8: OFFICE DISTRICTS

### (A) General Provisions

For development approval for all Office Districts, a Site Plan Review shall occur and shall receive acceptance before the petition is forwarded to the Plan Commission for action.

### (B) O1 Arterial Office District

#### 1. Purpose Statement

The O1 District is designed to function as an office and related employment use area along major roadway corridors. The intent is to encourage high-quality office development that serves as a transitional use between the arterial roadway and adjacent residential areas of the Town.

Transition areas adjacent to residential districts and areas at or near major intersections are identified as having a significant impact on the Town. This is due to the need to protect the integrity and environment of the Town's residential neighborhoods, traffic safety conditions and the land-use character of key intersections. Therefore, all development proposed within these districts shall be subject to site plan review and approved as specified in 130.2(E) of this Ordinance.

#### 2. General Requirements

All development in the O1 Arterial Office District shall be subject to the general requirements of Site Plan Review, as provided for in 130.2(E).

#### 3. Permitted Uses

The following uses are permitted in the O1 District:

- (a) accessory uses
- (b) computer services
- (c) congregate care facilities
- (d) employer support activities including convenience retail, restaurants, fast food restaurants, card shops, pharmacies, grocery stores, and other similar goods and services
- (e) financial institutions
- (f) hospitals, shelter and care facilities
- (g) medical and dental clinics in excess of 4,000 sq. ft.
- (h) offices, business, government, professional, in excess of 10,000 gross square feet
- (i) offices, medical and dental
- (j) social services, individual and family

#### 4. Conditional Uses

The following conditional uses may be allowed in the O1 District:

- (a) day care facilities
- (b) parking lot, garage
- (c) public safety buildings

5. Lot Area and Width

	<u>Minimum Lot Area</u>	<u>Minimum Lot Width</u>
Standard Development Parcel	10,000 sq. ft.	80 feet

6. Yards

The minimum yard requirements in the O1 District shall be as follows:

(a) Abutting Non-Residential

	<u>Front and Corner Side Yard</u>	<u>Interior Side Yard</u>	<u>Rear Yard</u>
Building	10% of parcel depth	20 feet	20 feet
Parking	15 feet	12 feet	10 feet

(b) Abutting Residential

Where an O1 lot abuts the side or rear lot line of a residential lot, the side or rear yard shall be ten percent (10%) of the lot width/length or ten (10) feet, whichever is greater.

Front and corner side yards shall be the same as the adjacent residential district.

7. Building Height

No building or structure in the O1 District shall exceed fifty-five (55) feet in height and where an O1 abuts residential structures the height limitation shall be thirty-five (35) feet.

8. Off-Street Parking and Loading

The parking and loading requirements for the O1 District shall be as specified in 130.10(B) and (C).

9. Landscaping and Screening

The landscaping and screening requirements for the O1 District shall be as specified in 130.3(A).

10. Sign Regulations

The sign regulations for the O1 District shall be as specified in 130.11.

11. Site Plan Acceptance

In accordance with 130.2(E).

(C) O2 Office Park District

1. Purpose Statement

This district is designed to function primarily as an employment district. It provides a use and design opportunity for major office related employment uses to locate within the Town. The intent is to encourage the development of a campus-type office environment protected from incompatible uses.

However, the district also permits a limited amount of distribution functions which are often combined with office functions. These special uses are intended to facilitate the development of multi-tenant buildings (i.e., "Flex Tech" or "Business Park" developments) that may be suited to small business which by necessity must combine office, distribution and light processing at a single location.

2. General Requirements

All development in the O2 District shall be subject to the general requirements of site plan review as specified in 130.2.

3. Permitted Uses

The following uses are permitted in the O2 District:

- (a) accessory uses
- (b) computer services
- (c) day care centers
- (d) financial institutions - no drive-up
- (e) offices, business, government, professional
- (f) offices, medical, dental
- (g) social services, individual and family
- (h) support retail services including restaurants, pharmacies, copy shops, and other uses compatible with the office employment activity at the discretion of the Administrator.

4. Conditional Uses

The following conditional uses may be allowed in the O2 District:

- (a) cultural facilities
- (b) cultural facilities, as an accessory use
- (c) financial institutions with drive-up
- (d) gardens, botanical, zoological
- (e) health centers
- (f) limited warehousing, storage, distribution as an accessory use
- (g) medical and dental clinics
- (h) medical and dental lab
- (i) out-patient clinics
- (j) parking lot, garage
- (k) physical education center, all inside
- (l) physical education center, some outside
- (m) planned unit developments

- (n) public safety buildings
- (o) research development lab
- (p) schools, business, professional, trade

5. Development Area and Width

Standard Lot	<u>Minimum Lot Area</u> 2 acres may be subdivided into smaller lots	<u>Minimum Lot Width</u> 175 feet
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6. Yards

The minimum yard requirements for permitted and special uses shall be as follows:

	<u>Front and Corner Yard</u>	<u>Interior Side Yard</u>	<u>Rear Yard</u>
Building	50 feet*	30 feet*	30 feet*
Parking	25 feet	15 feet	15 feet

\*(plus 1 foot for each foot the building exceeds 45 feet in height)

7. Building Height

No building or structure in an O2 District shall exceed the following height limitations:

1. Permitted Uses - 75 feet.

8. Off-Street Parking and Loading

The parking and loading requirements for the O2 District shall be as specified in 130.10(B) and (C).

9. Landscaping and Screening

The landscaping and screening requirements for the O2 District shall be as specified in 130.11.

10. Sign Regulations

The sign regulations for the O2 District shall be as specified in 130.11.

11. Site Plan Acceptance

In accordance with 130.2(E).

(D) I1 Industrial Park Districts

1. Purpose Statement

The I1 District is intended for "clean" (low environmental impact) industrial uses that will be compatible with neighboring residential, office, and commercial districts. It is intended to accommodate warehousing, light fabrication, assembly, and storage activities, as well as associated office uses and certain other uses that are incidental to the principal ones as well as certain special uses. To ensure a high-quality industrial park setting, strict controls will limit outdoor storage, building facades, and on-site parking lot location and design.

2. General Requirements

(a) The following uses shall be prohibited in the I1 District:

- (i) Any business, servicing or processing, outside of an enclosed building, except for off-street parking and loading, unless otherwise indicated hereinafter.
- (ii) Any outdoor storage, except for motor vehicles in operable condition used for conducting the business or materials completely enclosed and effectively screened by a solid wall or fence (including solid entrance and exit gates) not less than six (6) feet nor more than eight (8) feet in height. In the event a solid wall is used to satisfy this requirement, the yard requirements of this district shall apply to the exterior wall.

(b) All applications for new construction or substantial additions or changes to an existing building or structure, as determined by the Zoning Administrator, within an I1 District shall be subject to Site Plan Review, as specified in 130.2(E), Site Plan Review.

3. Permitted Uses

The following uses are permitted in the I1 District:

- (a) accessory uses
- (b) antennas not located within a required yard
- (c) bedding and furniture assembly
- (d) boot and shoe manufacturing, no leather processing
- (e) cloth products manufacturing
- (f) commercial testing lab
- (g) contractors shops and storage yards
- (h) day care centers
- (i) display rooms-merchandise retail, wholesale
- (j) electronic, scientific precision instrument manufacturing
- (k) equipment rental, leasing
- (l) financial institutions
- (m) fur processing
- (n) gasoline stations, no repairs
- (o) health centers
- (p) laboratories-research and testing
- (q) laundries
- (r) light machinery products -appliance, business machines, etc.
- (s) lithographing

- (t) living quarters, watchmen and families, on site
- (u) machine shop
- (v) mail order houses
- (w) manufacturer of antennas, electronic equipment and any other allied products
- (x) musical instruments manufacture
- (y) offices, business, government, professional
- (z) orthopedic and medical appliance manufacture
- (aa) parking lot, garage
- (bb) pottery and ceramics manufacture
- (cc) printing and publishing establishments
- (dd) research, non-commercial, scientific, educational
- (ee) research, development lab
- (ff) restaurants
- (gg) sporting goods manufacture
- (hh) tool and die
- (ii) wearing apparel manufacture

4. Conditional Uses

The following conditional uses may be allowed in the I1 District, subject to the provisions of 130.2(Q).

- 1. airports and heliports, private, commercial
- 2. cartage and express facilities
- 3. cosmetics production
- 4. financial institutions - with drive-up
- 5. food, packaging and processing
- 6. health centers
- 7. planned unit developments
- 8. public safety buildings
- 9. warehouses and distribution facilities
- 10. woodworking, wood products manufacturing

5. Lot Area Requirements

The minimum area for a standard lot and a Planned Unit Development in an I1 District shall be as follows:

	Minimum <u>Lot Area</u>	Minimum <u>Lot Width</u>
Standard Development Parcel	1 acre	150 feet

6. Yards

The required yards in the I1 District shall be as follows:

	Front and Corner <u>Side Yard</u>	Interior Side <u>Yard</u>	Rear <u>Yard</u>
Building	35 feet	20 feet	20 feet
Parking	prohibited	10 feet	10 feet

7. Transitional Buffer Yard Requirements

Non-residential land uses abutting or across an alley from residential zoning uses shall be required to provide a minimum transitional yard equal to ten percent (10%) of the average width or depth of the lot adjacent to the residential zoning lot. Such transitional buffer yards shall extend the entire length of the abutting residential zoning district. The minimum transitional buffer yard required for any non-residential development shall be ten (10) feet in width. The maximum transitional buffer yard shall be one hundred (100) feet in width. Transitional buffer yard widths may be reduced as provided for in 130.3(4).

8. Building Height

No building or structure in an I1 District shall exceed forty-five (45) feet in height, except for: chimneys, antennae, flagpoles, roof mounted electrical equipment, solar collectors, and stair and elevator penthouses none of which shall exceed fifty (50) feet in height.

9. Outdoor Storage

All outdoor storage areas in an I1 District must be completely enclosed and effectively screened by a solid wall or fence (including solid entrance and exit gates) not less than six (6) feet nor more than eight (8) feet in height.

10. Parking and Loading

All parking and loading areas within an I1 District shall conform to the requirements of 130.3(B) and (C), Off-street Parking and Loading.

11. Landscaping and Screening

Landscaping and screening within the I1 District shall conform to the Requirements of 130.3(A).

12. Regulations

All signs, within an I1 district shall conform to the requirements of 130.11, Sign Regulations.

13. Site Plan Acceptance

In accordance with 130.2(E).

### 130.9: OVERLAY DISTRICTS

#### (A) General Provisions

1. The purpose of the Overlay Districts are to provide for those areas of town in which special and limiting circumstances occur and to provide for a mechanism through which development flexibility with respect to use, lighting, signage, site layout, and architectural design and landscaping. The Overlay Districts are not intended to supplant or stand instead of underlying district zoning requirements, except the oFP District, but rather to be complementary and clarifying of zoning requirements.

The Overlay Districts are specially designed to assist in the implementation of growth and development policies as adopted in the Comprehensive Plan; to advance community development objectives and to protect public health and safety.

In this Ordinance three (3) Overlay Districts are identified as follows:

- oTC: Town Core Overlay
- oHC: Highway Corridor Overlay
- oFP: Floodplain District Overlay

2. Boundaries

The boundaries of each Overlay District are shown on the Official Zoning Map Overlay Districts or the Town Master Plan for the Town of Newburgh and incorporated herein by reference.

#### (B) oTC Town Core Overlay District

1. Purpose Statement

The designation of the oTC Town Core Overlay District in the Town Master Plan is intended to protect the architectural integrity and community character of the older historic business district and the adjacent residential neighborhoods. While the area encompassed by the oTC District includes many historically significant structures and many designated in the National Register of Historic Places, it is not per se intended to be a historic district. Rather the oTC District is intended to conserve the architectural and geographic context of downtown and insure the continued viability of town core businesses and to ensure that residential neighborhoods are not adversely impacted by inappropriate development, commercial traffic or by haphazard unplanned growth.

The oTC District recognizes the following facts, special conditions and circumstances:

- (a) The town core area is a mixed use area consisting of small scale business activities and a variety of residence type dwelling units;
- (b) Few vacant or undeveloped parcels of land currently exist in the town core area; few new structures can be built except for demolition of existing structures with subsequent new construction;
- (c) Most properties either residential or commercial can not meet the lot size requirements or other provisions of this zoning ordinance;

- (d) Because the town core is largely comprised of the pre-code buildings (before 1931) the existing building stock is old, with building materials and architectural characteristics which provide a uniformly unique and distinguished character to the town core area. This characteristic can not be easily replicated and would normally not occur with rebuilding or new construction;
- (e) Many businesses now occupy structures designed for residential use and this adaptive reuse of these residential buildings is likely to continue;
- (f) Because of the unique topographic relationship to the Ohio River, the area encompassed by the oTC District has outstanding river views.

## 2. Objectives

Based upon the preceding special conditions and unique characteristics, the oTC District is intended to accomplish the following objectives:

- (a) Conserve, protect and enhance the architectural integrity of the District;
- (b) Permit sensitive and compatible adaptive reuse of existing buildings;
- (c) Ensure that new buildings and new construction is suited to the existing architectural context in terms of scale, building mass, exterior building materials and site arrangement;
- (d) Preserve diverse residential opportunities within the town core;
- (e) Enhance property values;
- (f) Protect riverfront access and maintain river views;
- (g) Encourage consistency in treatment of exterior building appearance through common signage, lighting and landscaping standards throughout the District;
- (h) Stimulate reinvestment and new investment in existing structures; and
- (i) Foster community wide pride and recognition of the town core area as a unique community resource.

## 3. Designation

The Official Zoning Map designates the oTC District. The boundaries of this district may be altered from time to time through action by Town Council under procedures for zoning ordinance amendments.

- (a) General Procedures
  - (i) All structural and use alterations within the oTC District shall require a Certificate of Appropriateness unless excepted herein.
  - (ii) Exterior changes and alterations shall be reviewed by the Site Review Advisory Committee and a report forwarded to the Plan Commission for action.

(b) Specific Actions Requiring Review and Certification of Appropriateness

Except as otherwise provided in this Ordinance, it shall be unlawful for any person, to:

- (i) Construct, reconstruct, alter, move, or demolish all or part of a building or principal structure within the oTC District without a Certificate of Appropriateness.
- (ii) Alter or change the use of a building originally constructed for residential purposes in the oTC District without obtaining a Certificate of Appropriateness by the Administrator.
- (iii) Make a change in use requiring interior structural alteration without review by the Administrator.
- (iv) Make an exterior change in driveways, walkways, fencing and the erection of accessory buildings without review by the Administrator.
- (v) Make changes in use requiring exterior structural change, alteration, removal, construction, or demolition without review by the Administrator.
- (vi) Make changes in exterior appearance for existing uses and new uses involving new or replacement signage, lighting, or parking facilities without review by the Administrator.

(c) Public Hearing

All petitions for a Certificate of Appropriateness which <sup>are denied</sup> ~~are~~ referred to the Plan Commission for action shall be afforded a public hearing prior to Plan Commission action.

4. Standards and Criteria for Certificates of Appropriateness

No Certificate of Appropriateness shall be issued unless the Administrator or Plan Commission finds that the applicant meets the following standards and criteria that the board determines are applicable for either physical changes or use alterations, or both:

(a) Physical Alteration or Changes

To the maximum extent possible the effect of the proposed work, if carried out, will promote achievement of the one or more of following criteria and the criteria:

- (i) preserve, protect and perpetuate the original or existing external architectural features of the building or structure;
- (ii) provide a harmonious stylistic relationship between the results of such work and the external architectural features of other improvements on the zoning lot and within the oTC District;
- (iii) preserve, protect and perpetuate the original, or existing distinctive character or special historic, aesthetic, architectural, archaeological, or cultural interest or value of the oTC Districts;
- (iv) for new construction, assure whether such construction would affect the external appearance of other improvements on such site or within the oTC District; and

- (v) preserve, protect, and perpetuate, allowable uses, economic health, protection of the public health, welfare, and safety, and the protection of property values in the oTC District area.

(b) Site Improvement and Maintenance Standards

The design improvement and maintenance of a zoning lot subject to this overlay district, exclusive of the principal building on such lot, shall meet the following standards:

- (i) the repair, replacement, and addition of new improvements shall be carried out to be harmonious with the character of similar improvements elsewhere on the site and in the oTC District in general, or in a manner consistent with the character of the adjacent properties;
- (ii) all walks, driveways, steps and accessory structures shall be maintained in a safe condition and kept in a proper state of repair.
- (iii) all off-street parking areas for automobiles shall be paved with bituminous, concrete or an equivalent dust-free surface.
- (iv) all accessory structures, including detached garages, fences and walls, shall be maintained in a structurally sound and sanitary condition. All such accessory structures shall be appropriately weather modified and properly surface coated to prevent deterioration;

(c) Maintenance of Exterior of Structures

The exterior of a structure shall be maintained in good repair, structurally sound and sanitary manner so as not to pose a threat to the health, safety or welfare of the occupants or the public and so as to protect the occupants or the public from the adverse effects of the environment.

4. Denial of Certificate of Appropriateness

- (a) All petitions denied either by the Administrator, and/or by the Plan Commission shall receive a report stating the reasons for denial, the procedures available for the applicant to appeal the denial and recommendations to be taken by the applicant to secure a Certificate of Appropriateness.
- (b) All petitions denied by administrative action and by actions of the Plan Commission may be appealed to the Board of Zoning Appeals.

5. Site Plan Acceptance

In accordance with 130.2(E).

(C) oHC Highway Corridor Overlay District

1. Statement of Purpose

The Highway Corridor Overlay District is intended to provide for coordinated urban design between and among intense commercial developments located along major thoroughfares and provide for effective traffic control by providing for traffic management measures within the development approval process.

The oHC District has the following specific objectives:

- Eliminate traffic conflicts among uses located on major thoroughfares.
- Minimize the conflict between through traffic and destination traffic..
- Provide for pedestrian circulation within the oHC District.
- Reduce visual conflicts which could interfere with safe automobile operation.

2. Site Plan Review

No building permit shall be issued nor structure or building shall be erected, nor existing building altered, remodeled, or enlarged or extended until the Site Review Advisory Committee (SRAC) has accepted a site development plan as outlined in 130.2(E). The SRAC may recommend approval of the proposed site development plan with our without conditions. The SRAC may also recommend denial of the total site proposal or a portion thereof if they find that conditions, standards or purposes of this Section; or other germane Sections of this Ordinance; or the policies of the official Comprehensive Plan; the purposes of the underlying zoning or the general development policies and specific site design guidelines and the oHC District of the Town of Newburgh, have not been complied with.

3. Enforcement of Appeals

Decisions by the Plan Commission shall be enforced by the Administrator in accordance with the provisions of 130.2(B).

4. Site Development Criteria

In considering any application for development review approval, the Site Review Advisory Committee shall be guided by the following criteria:

(a) Parking Lot Location and Design

- (i) Break up large parking areas at regular intervals with landscaped islands.
- (ii) Put signs and light poles in landscaped islands and setbacks to minimize the potential for collision with such obstacles.
- (iii) All access drives shall be located at the maximum possible distance away from adjacent residential property lines.

- (iv) The view of parking lots from adjacent streets and peripheral lots containing nonresidential uses, shall be screened along at least fifty percent (50%) of their length. The view from abutting lots containing residential uses shall be screened along one hundred percent (100%) of the parking lot length.

(b) Driveways and Internal Circulation.

Minimize the number of curb cuts on any one site to minimize traffic congestion on abutting roads. The minimum distance between curb cuts shall be one hundred fifty (150) feet.

- (i) Encourage shared driveways between abutting properties.
- (ii) Locate driveway cuts a maximum distance away from nearby intersections from other driveway cuts to improve circulation and minimize the potential for accidents.
- (iii) Discourage dog-leg intersections and other awkward intersection configurations.
- (iv) Locate signs and landscaping so that they do not obstruct motorists view.
- (v) Separate parking aisles from site circulation routes.
- (vi) Provide sufficient stacking room at driveway/street intersections.
- (vii) Discourage use of site circulation as "cut throughs" for vehicles from abutting roads.

(c) Landscaping and Screening

- (i) Open space and associated landscaping and amenities.
  - 1) preserve existing trees on a site wherever possible.
  - 2) landscaping required around all ground signs.
  - 3) provide street tree planting along the thoroughfare right-of-way.
- (ii) Landscaping and Screening in required yards.
  - 1) screen parking areas from adjacent roads.
  - 2) situate significant landscaped buffers between transitional use areas. The size of the buffer shall depend on the uses in question.
  - 3) in transitional yards berms combined with plantings shall be used to block car headlights from reaching buildings, especially residential buildings. Where a site oHC District abuts a residential use, a continuous, solid visual screen, including landscaping shall be provided.
  - 4) where two nonresidential lots abut one another a landscape screen shall be provided along at least fifty percent (50%) of the length of the common property line.

(iii) Building Landscaping

- 1) separate buildings from parking lots with landscaping and walkways.
- 2) foundation landscaping shall be provided on fronts of buildings in the form of raised planters or plant beds flush with the ground. Portable planters are prohibited. Raised planters shall be constructed of materials compatible with the building.
- 3) provide for pedestrian access to the site and pedestrian movement on site.

(iv) Screening Mechanical Equipment and Refuse Disposal Areas

- 1) all roof-top and ground level mechanical equipment, refuse disposal areas, and utilities shall be screened from view.
- 2) encourage landscaping in front of fences screening refuse disposal areas, mechanical equipment and outdoor storage areas.

e. Right-of-Way Landscaping

- 1) require street tree plantings at regular intervals

(d) Specific Landscaping and Screening Requirements

For detailed landscaping requirements see 130.3(A), Landscaping and Screening

(e) Lighting

All exterior lighting shall be shaded or inwardly directed in such a manner so that no direct lighting or glare is cast upon adjacent residential or institutional property. Pedestrian areas shall be lighted with pedestrian scale lighting.

5. Development Approval

In addition to the requirements set forth in the Site Plan Review procedures at 130.2(E), the following additional requirements shall be met:

- (a) Site lighting plan showing the location intensity and time period of operation of all exterior lighting.
- (b) Detailed pedestrian circulation plan indicating pedestrian walkways, access routes and indicating how potential conflicts between auto traffic and pedestrians will be handled.
- (c) Signage plan indicating the size, placement, landscaping and hours of operation of all exterior building signs, ground signs and pole signs.
- (d) Traffic impact report indicating average daily traffic volume entering and leaving the site, peak traffic conditions, the contribution of site traffic to the area and establishing a plan for traffic mitigation.

6. Site Plan Acceptance

In accordance with 130.2(E).

(D) oFP Floodplain Overlay District

1. The purpose of this section is to guide development in flood hazard areas in order to reduce the potential for loss of life and property; reduce the potential for health and safety hazards; and, to reduce the potential for extraordinary public expenditures for flood protection and relief. Under the authority granted to local units of government to control land use within their jurisdiction, which includes taking into account the effects of flooding, the Town of Newburgh has adopted the following floodplain management regulations in order to accomplish the following:
  - (a) to prevent unwise developments from increasing flood or drainage hazards to others;
  - (b) to protect new buildings and major improvements to buildings from flood damage;
  - (c) to protect human life and health from the hazards of flooding;
  - (d) to lessen the burden on the taxpayer for flood control projects, repairs to flood-damaged public facilities and utilities, and flood rescue and relief operations;
  - (e) to maintain property values and a stable tax base by minimizing the potential for creating flood blighted areas; and
  - (f) to make federally subsidized flood insurance available for property in the Town of Newburgh by fulfilling the requirements of the National Flood Insurance Program.

2. Definitions

For the purpose of this district, the following definitions are adopted:

- (a) Building - see "structure".
- (b) Development - any man-made change to improved or unimproved real estate including but not limited to:
  - (i) construction, reconstruction, or placement of a building or any addition to a building;
  - (ii) installing a manufactured home on a site, preparing a site for a manufactured home or installing a travel trailer on a site for more than 180 days;
  - (iii) installing utilities, erection of walls and fences, construction of roads, or similar projects;
  - (iv) construction of flood control structures such as levees, dikes, channel improvements, etc.;
  - (v) mining, dredging, filling, grading, excavation, or drilling operations;
  - (vi) construction and/or reconstruction of bridges or culverts;
  - (vii) storage of materials; or

(viii) any other activity that might change the direction, height, or velocity of flood or surface waters.

"Development" does not include activities such as maintenance of existing buildings and facilities such as painting, re-roofing; resurfacing roads; or gardening, plowing, and similar agricultural practices that do not involve filling, grading, excavation, or the construction of permanent buildings.

- (c) Existing manufactured home park or subdivision - means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted herein.
- (d) Expansion to an existing manufactured home park or subdivision - means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).
- (e) FEMA - means Federal Emergency Management Agency
- (f) FBFM - means Flood Boundary Floodway Map
- (g) FHBM - means Flood Hazard Boundary Map
- (h) FIRM - means Flood Insurance Rate Map
- (i) Flood - a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow, the unusual and rapid accumulation, or the runoff of surface waters from any source.
- (j) Floodplain - the channel proper and the areas adjoining any wetland, lake or watercourse which have been or hereafter may be covered by the regulatory flood. The floodplain includes both the floodway and the floodway fringe districts. Notify adjacent communities and the State Coordinating Office prior to any alteration or relocation of a watercourse, and submit copies of such notifications to FEMA.
- (k) Letter of Map Amendment (LOMA) - An amendment to the currently effective FEMA map that establishes that a property is not located in a Special Flood Hazard Area (SFHA). A LOMA is only issued by FEMA.
- (l) Letter of Map Revision (LOMR) - An official revision to the currently effective FEMA map. It is issued by FEMA and changes flood zones, delineations, and elevations.
- (m) Flood Protection Grade or the "FPG" - means the elevation of the regulatory flood plus two feet at any given location in the SFHA.
- (n) Lowest Floor - means the lowest of the following:
  - (i) the top of the basement floor;

- (ii) the top of the garage floor, if the garage is the lowest level of the building;
- (iii) the top of the first floor of buildings elevated on pilings or constructed on a crawl space with permanent openings; or
- (iv) the top of the floor level of any enclosure below an elevated building where the walls of the enclosure provide any resistance to the flow of flood waters unless:
  - (1) the walls are designed to automatically equalize the hydrostatic flood forces on the walls by allowing for the entry and exit of flood waters, through providing a minimum of two openings (in addition to doorways and windows) having a total area of one (1) square foot for every two (2) square feet of enclosed floor area subject to flooding. The bottom of all such openings shall be no higher than one (1) foot above the enclosed area's floor.
  - (2) such enclosed space shall be usable for non-residential purposes and building access.
- (o) Manufactured home - means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."
- (p) New manufactured home park or subdivision - means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.
- (q) Recreation vehicle - means a vehicle which is (1) built on a single chassis; (2) 400 square feet or less when measured at the largest horizontal projections; (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.
- (r) Regulatory Flood - means the flood having a one percent probability of being equalled or exceeded in any given year, as calculated by a method and procedure which is acceptable to and approved by the Indiana Natural Resources Commission. The regulatory flood elevation at any location is as defined in this ordinance. The "Regulatory Flood" is also known by the terms "Base Flood".
- (s) SFHA or Special Flood Hazard Area - means those lands within the jurisdiction of the Town that are subject to inundation by the regulatory flood. The SFHAs of the Town are generally identified as such on the Flood Insurance Rate Map of the Town prepared by the Federal Emergency Management Agency and dated May 17, 1982. The SFHAs of those parts of unincorporated Warrick County that are within the jurisdiction of the Town or that may be annexed into the Town are generally identified as such on the Flood Insurance Rate Map prepared for Warrick County by the Federal Emergency Management Agency and dated May 17, 1982.
- (t) Structure - means a structure that is principally above ground and is enclosed by walls and a roof. The term includes a gas or liquid storage tank, a manufactured home, or a prefabricated building. The term also includes recreational vehicles and travel trailers to be installed on a site for more than 180 days.

- (u) Substantial improvement - means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 per cent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damages" regardless of the actual repair work performed. The term does not include improvements of structures to correct existing violations of state or local health, sanitary, or safety code requirements or any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure."

### 3. Duties of the Administrator

The Zoning Administrator is appointed to review all development and subdivision proposals to insure compliance with this ordinance, including but not limited to the following duties:

- (a) Ensure that all development activities within the SFHAs of the jurisdiction of the Town meet the requirements of this ordinance.
- (b) Provide information and assistance to citizens upon request about permit procedures and floodplain construction techniques.
- (c) Ensure that construction authorization has been granted by the Indiana Natural Resources Commission for all development projects subject to this ordinance, and maintain a record of such authorization (either copy of actual permit or letter of recommendation).
- (d) Maintain a record of the "as-built" elevation of the lowest floor (including basement) of all new and/or substantially improved buildings constructed in the SFHA.
- (e) Maintain a record of the engineer's certificate and the "as built" floodproofed elevation of all buildings subject to this ordinance.
- (f) Cooperate with state and federal floodplain management agencies to improve base flood and floodway data and to improve the administration of this ordinance. Submit reports as required for the National Flood Insurance Program.
- (g) Maintain for public inspection and furnish upon request regulatory flood data, SFHA maps, copies of DNR permits and letters of recommendation, federal permit documents, and "as built" elevation and floodproofing data for all buildings constructed subject to this ordinance.
- (h) Notify adjacent communities and the State Coordinating Office prior to any alteration of relocation of a watercourse, and submit copies of such notifications to FEMA.

### 4. Regulatory Flood Elevation

This ordinance's protection standard is the regulatory flood. The best available regulatory flood data is listed below. Whenever a party disagrees with the best available data, the party submitting the detailed engineering study needs to replace existing data with better data and submit it to the Department of Natural Resources for review and approval.

- (a) The regulatory flood elevation and floodway limits for the SFHAs of the Ohio River shall be as delineated on the 100 year flood profiles in the Flood Insurance Study of the Town dated November 17, 1981 and the corresponding Flood Boundary Floodway Map dated May 17, 1982

and prepared by the Federal Emergency Management Agency. The regulatory floodway shall be according to the best data available as provided by the Department of Natural Resources.

- (b) The regulatory flood elevation for each SFHA delineated as an "AH Zone" or "AO Zone" shall be that elevation (or depth) delineated on the Flood Insurance Rate Map of the Town.
  - (c) The regulatory flood elevation and floodway limits for each of the remaining SFHAs delineated as an "A Zone" on the Flood Insurance Rate Map of the Town shall be according to the best data available as provided by the Department of Natural Resources.
  - (d) The regulatory flood elevation and floodway limits for the SFHAs of those parts of unincorporated Warrick County that are within the extraterritorial jurisdiction of the Town or that may be annexed into the Town shall be as delineated on the 100 year flood profiles in the Flood Insurance Study of Warrick County dated February 3, 1993 and the corresponding FBFM dated February 3, 1993 prepared by the Federal Emergency Management Agency.
  - (e) If the SFHA is delineated as "AH Zone or AO Zone," the elevation (or depth) will be delineated as "Zone A" on the County Flood Insurance Rate Map. If the SFHA is delineated on the County Flood Insurance Rate Map, the regulatory flood elevation and floodway limits shall be according to the best data available as provided by the Department of Natural Resources.
5. Improvement Location Permit

No person, firm, corporation, or governmental body not exempted by state law shall commence any "development" in the SFHA without first obtaining an Improvement Location Permit from the Town. The Town shall not issue an Improvement Location Permit if the proposed "development" does not meet the requirements of this ordinance.

- (a) The application for an Improvement Location Permit shall be accompanied by the following:
  - (i) A description of the proposed development.
  - (ii) Location of the proposed development - sufficient to accurately locate property and structure in relation to existing roads and streams.
  - (iii) A legal description of the property site.
  - (iv) A site development plan showing existing and proposed structure locations and existing and proposed land grades.
  - (v) Elevation of lowest floor (including basement) of all proposed structures. Elevation should be in National Geodetic Vertical Datum of 1929 (NGVD).
- (b) Upon receipt of an application for an Improvement Location Permit, the Zoning Administration shall determine if the site is located within an identified floodway or within the floodplain where the limits of the floodway have not yet been determined.
  - (i) If the site is in an identified floodway the Building Official shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Department of Natural Resources and apply for a permit for construction in a floodway.

Under the provisions of IC 13-2-22 a permit from the Natural Resources Commission is required prior to the issuance of a local building permit for any excavation, deposit, construction or obstruction activity located in the floodway. This includes land preparation activities such as filling, grading, clearing and paving etc. undertaken before the actual start of construction of the building.

No action shall be taken by the Building Official until a permit has been issued by the Natural Resources Commission granting approval for construction in the floodway. Once a permit has been issued by the Natural Resources Commission, the Town may issue the local Improvement Location Permit, provided the provisions contained in this ordinance have been met. The Improvement Location Permit cannot be less restrictive than the permit issued by the Natural Resources Commission.

- (ii) If the site is located in an identified floodway fringe, then the Building Official may issue the local Improvement Location Permit provided the provisions contained in this ordinance have been met.
- (iii) If the site is in an identified floodplain where the limits of the floodway and floodway fringe have not yet been determined (shown as Zone A on the Flood Insurance Rate Map), and the drainage area upstream of the site is greater than one square mile, the Building Official shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Department of Natural Resources for review and comment.

No action shall be taken by the Building Official until either a permit for construction in the floodway or a letter of recommendation citing the 100 year flood elevation and the recommended Flood Protection Grade has been received from the Department of Natural Resources.

Once the Building Official has received the proper permit or letter of recommendation approving the proposed development, an Improvement Location Permit may be issued provided the conditions of the ILP are not less restrictive than the conditions received from Natural Resources and the Provisions contained in this ordinance have been met.

- (iv) If the site is in an identified floodplain where the limits of the floodway and floodway fringe have not yet been determined and the drainage area upstream of the site is less than one square mile, the Zoning Administrator shall require the applicant to provide an engineering analysis showing the limits of the floodway, floodway fringe and 100 year elevation for the site. Upon receipt, the Zoning Administrator may issue the local Improvement Location Permit, provided the provisions contained in this ordinance have been met.

6. Preventing Increased Damages

- (a) No development in the SFHA shall create a damaging or potentially damaging increase in flood heights, velocity or threat to public health and safety.
- (b) Within the floodway identified on the Flood Boundary and Floodway Map or the Flood Insurance Rate Map, the following standards shall apply:
  - (i) No development shall be allowed which acting alone or in combination with existing or future similar works, will cause any increase in the elevation of the regulatory flood; and

- (ii) For all projects involving channel modifications or fill (including levees) the developer, through the Town, shall submit a request to the Federal Emergency Management Agency to revise the regulatory flood data.
  - (c) Within all SFHAs identified as A Zones (no 100 year flood elevation and/or floodway/floodway fringe delineation has been provided) the following standard shall apply:

The total cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the regulatory flood elevation more than one-tenth (0.1) of one foot and will not increase flood damages or potential flood damages.
  - (d) Public Health Standards in all SFHAs
    - (i) No development in the SFHA shall include locating or storing chemicals, explosives, buoyant materials, flammable liquids, pollutants, or other hazardous or toxic materials below the Flood Protection Grade, unless such materials are stored in a storage tank or floodproofed building constructed according to the requirements of this ordinance.
    - (ii) New and replacement sanitary sewer lines and on-site waste disposal systems may be permitted providing all manholes or other above ground openings located below the FPG are watertight.
7. Protecting Buildings
- (a) In addition to the damage prevention requirements of this ordinance, all buildings to be located in the SFHA shall be protected from flood damage below the FPG.
  - (b) This building protection requirement applies to the following situations:
    - (i) construction or placement of any new building;
    - (ii) structural alterations to an existing building that increase the market value of the building by more than 50% (excluding the value of the land);
    - (iii) reconstruction or repairs made to a damaged building that are valued at or more than 50% of the market value of the building (excluding the value of the land) before damage occurred;
    - (iv) installing a manufactured home on a new site or a new manufactured home on an existing site. This ordinance does not apply to returning the existing manufactured home to the same site it lawfully occupied before it was removed to avoid flood damage; and
    - (v) installing a travel trailer on a site for more than 180 days.
  - (c) This building protection requirement may be met by one of the following methods. The Building Official shall maintain a record of compliance with these building protection standards as required in of this ordinance.
  - (d) A residential or non residential building may be constructed on a permanent land fill in accordance with the following:

- (i) The fill shall be placed in layers no greater than 1 foot deep before compacting to 95% of the maximum density obtainable with the Standard Proctor Test method.
  - (ii) The fill should extend at least ten feet beyond the foundation of the building before sloping below the FPG.
  - (iii) The fill shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulkheading. If vegetative cover is used, the slopes shall be no steeper than 3 horizontal to 1 vertical.
  - (iv) The fill shall not adversely affect the flow of surface drainage from or onto neighboring properties.
  - (v) The lowest floor (see definition of lowest floor in "Definitions") shall be at or above the FPG.
- (e) A residential or non residential building may be elevated in accordance with the following:
- (i) The building or improvements shall be elevated on posts, piers, columns, extended walls, or other types of similar foundation provided:
    - (a) Walls of any enclosure below the elevated floor shall be designed to automatically equalize hydrostatic flood forces on the walls by allowing for the entry and exit of flood waters, through providing a minimum of two openings (in addition to doorways and windows) having a total area of one (1) square foot for every two (2) square feet of enclosed floor area subject to flooding. The bottom of all such openings shall be no higher than one (1) foot above the enclosed area's floor.
    - (b) Any enclosure below the elevated floor is used for non-residential purposes and building access.
  - (ii) The foundation and supporting members shall be anchored and aligned in relation to flood flows and adjoining structures so as to minimize exposure to known hydrodynamic forces such as current, waves, ice, and floating debris.
  - (iii) All areas below the FPG shall be constructed of materials resistant to flood damage. The lowest floor (including basement) and all electrical, heating, ventilating, plumbing, and air conditioning equipment and utility meters shall be located at or above the FPG. Water and sewer pipes, electrical and telephone lines, submersible pumps, and other waterproofed service facilities may be located below the FPG.
- (d) Manufactured homes and travel trailers (also called recreational vehicles) to be installed or substantially improved on a site for more than 180 days must meet one of the following anchoring requirements:
- (i) The manufactured home shall be elevated on a permanent foundation such that the lowest floor shall be at or above the FPG and securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. This requirement applies to all manufactured homes to be placed on a site;
    - (1) outside a manufactured home park or subdivision;

- (2) in a new manufactured home park or subdivision;
  - (3) in an expansion to an existing manufactured home park or subdivision; or
  - (4) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood.
- (ii) The manufactured home shall be elevated so that the lowest floor of the manufactured home chassis is supported by reinforced piers or other foundation elements that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

This requirement applies to all manufactured homes to be placed on a site in an existing manufactured home park or subdivision that has not been substantially damaged by a flood.

- (e) Recreation vehicles placed on a site shall either:
- (i) be on the site for less than 180 consecutive days;
  - (ii) be fully licensed and ready for highway use (defined as being 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
  - (iii) meet the requirements for "manufactured homes" in this section.
- (f) A non-residential building may be floodproofed to the FPG (in lieu of elevating) if done in accordance with the following:
- (i) A Registered Professional Engineer shall certify that the building has been designed so that below the FPG, the structure and attendant utility facilities are watertight and capable of resisting the effects of the regulatory flood. The Building design shall take into account flood velocities, duration, rate of rise, hydrostatic pressures, and impacts from debris or ice.
  - (ii) Floodproofing measures shall be operable without human intervention and without an outside source of electricity.

#### 7. Other Development Requirements

- (a) The Plan Commission shall review all proposed subdivisions to determine whether the subdivision lies in a flood hazard area as defined elsewhere by ordinance. If the commission finds the subdivision to be so located, it shall cause the developer to forward plans and materials to the Indiana Department of Natural Resources for review and comment. The commission shall require appropriate changes and modifications to the plat in order to assure that:
- (i) it is consistent with the need to minimize flood damages;
  - (ii) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage;
  - (iii) adequate drainage is provided so as to reduce exposure to flood hazards;

- (iv) onsite waste disposal systems, if provided, will be so located and designed to avoid impairment of them or contamination from them during the occurrence of the regulatory flood.
  - (b) Developers shall record the 100 year flood elevation on all subdivision plats containing lands identified elsewhere by ordinance as within a flood hazard area prior to submitting the plats for approval by the Plan Commission.
  - (c) All owners of manufactured home parks or subdivisions located within the SFHA identified as Zone A on the Town's FHMB or FIRM shall develop an evacuation plan for those lots located in Zone A and file it with the local Plan Commission and file it with the appropriate community emergency management authorities.
8. Variances
- (a) The Board of Zoning Appeals may consider issuing a variance to the terms and provisions of this ordinance provided the applicant demonstrates that:
    - (i) there exists a good and sufficient cause for the requested variance;
    - (ii) The strict application of the terms of this ordinance will constitute an exceptional hardship to the applicant, and
    - (iii) The granting of the requested variance will not increase flood heights, create additional threats to public safety, cause additional public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.
  - (b) The Board of Zoning Appeals may issue a variance to the terms and provisions of this ordinance subject to the following standards and conditions:
    - (i) No variance for a residential use within a floodway subject to this ordinance may be granted.
    - (ii) Any variance granted in a floodway subject to this ordinance will require a permit from the Indiana Natural Resources Commission.
    - (iii) Variances to the Building Protection Standards of this ordinance may be granted only when a new structure is to be located on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures construed below the flood protection grade.
    - (iv) Variance may be granted for the reconstruction or restoration of any structure individually listed on the Register of Historic Places or the Indiana State Survey of Historic Architectural, Archaeological and Cultural Sites, Structures, Districts, and Objects;
    - (v) All variances shall give the minimum relief necessary and be such that the maximum practical flood protection will be given to the proposed construction; and
    - (vi) The Board of Zoning Appeals shall issue a written notice to the recipient of a variance that the proposed construction will be subject to increased risks to life and property and could require payment of excessive flood insurance premiums. Such notice shall be recorded by the property owner in the office of the Recorder of Warrick County.

9. Disclaimer of Liability

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on available information derived from engineering and scientific methods of study. Larger floods can and will occur on rare occasions. Therefore, this ordinance does not create any liability on the party of the Town, Natural Resources, or the State of Indiana, for any flood damage that results from reliance on this ordinance of any administrative decision made lawfully thereunder.

10. Violations

Failure to obtain an Improvement Location Permit in the SFHA or failure to comply with the requirements of a permit or conditions of a variance shall be deemed to be a violation of this ordinance. All violations shall be subject to a civil penalty not to exceed \$2,500.

- (a) A separate offense shall be deemed to occur for each day the violation continues to exist.
- (b) The Newburgh Planning Commission shall inform the owner that any such violation is considered a willful act to increase flood damages and therefore may cause coverage by a Standard Flood Insurance Policy to be suspended.
- (c) Nothing herein shall prevent the Town from taking such other lawful action to prevent or remedy any violations.

11. Abrogation and Greater Restrictions

This ordinance repeals and replaces other ordinances adopted by the Town to fulfill the requirements of the National Flood Insurance Program. However, this ordinance does not repeal the original resolution or ordinance adopted to achieve eligibility in the Program. Nor does this ordinance repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. Where this ordinance and other ordinance easements, covenants, or deed restrictions conflict or overlap, whichever imposes the more stringent restrictions shall take precedence.

12. Separability

The provisions and sections of this ordinance shall be deemed separable and the invalidity of any portion of this ordinance shall not affect the validity of the remainder.

## 130.10: OFF-STREET PARKING AND LOADING REQUIREMENTS

### (A) Scope and Application

#### 1. Scope of Regulations

The off-street parking and loading provisions of this ordinance shall apply as follows:

- (a) For all buildings and structures erected and all uses of land established after the effective date of this ordinance, accessory parking and loading facilities shall be provided as required in this ordinance.
- (b) When the intensity of use of any building, structure, or premises shall be increased through the addition of dwelling units, gross floor area, sitting capacity, or other units of measurement specified herein for required parking or loading facilities, parking and loading facilities as required herein shall be provided for such increase in intensity of use and for any existing deficiency in parking or loading facilities.
- (c) Whenever the existing use of a building or structure shall hereafter be changed to a new use, parking or loading facilities shall be provided as required for such new use.

#### 2. Existing Parking and Loading Facilities

Accessory off-street parking and loading facilities in existence on the effective date of this ordinance and located on the same lot as the building or use served shall not hereafter be reduced below, or if already less than, shall not be further reduced below, the requirements for a similar new building or use under the provisions of this ordinance.

#### 3. Permissive Parking and Loading Facilities

Nothing in the ordinance shall be deemed to prevent the voluntary establishment of off-street parking or loading facilities to serve any existing use of land or buildings, provided that all regulations herein governing the location, design, and operation of such facilities are adhered to.

#### 4. Damage or Destruction

For any conforming or legally nonconforming building or use which is in existence on the effective date of this ordinance, which subsequently thereto is damaged or destroyed by fire, collapse, explosion, or other cause, and which is reconstructed, reestablished, or repaired, off-street parking or loading facilities need not be provided, except that parking or loading facilities equivalent to any maintained at the time of such damage or destruction shall be restored or continued in operation. However, in no case shall it be necessary to restore or maintain parking or loading facilities in excess of those required by this ordinance for equivalent new uses or construction.

#### 5. Submission of Plot Plan

Any application for a improvement location permit, or for an occupancy certificate where no improvement location permit is required, shall include therewith a plot plan, drawn to scale and fully dimensioned, showing any off-street parking or loading facilities to be provided in compliance with this ordinance.

(B) Off-Street Parking

1. General Requirements

(a) Parking, Requirements for Legal Non-conforming Uses

All legal nonconforming uses in structures of 1,200 square feet or greater shall be required to provide parking at the rates applicable for the use as specified in this Section.

The Zoning Administrator shall confirm whether or not it is feasible for the owner or developer of such lots to provide all of the required parking spaces. His decision shall be based on the following:

- (i) Whether existing development on the lot leaves inadequate space for the required parking,
- (ii) Whether the development standards set forth in this Section, and elsewhere in the Town Code for any new development on the lot leave inadequate space on the lot to accommodate the required parking,
- (iii) Whether the required number of parking spaces are available on other lots in accordance with this Section, and
- (iv) Whether additional land can be acquired to expand the lot to accommodate the required parking.
- (v) If it is physically impossible to provide such parking the Zoning Administrator may waive the same or all of the required parking.

(b) Location of Parking Spaces

All parking spaces required to serve buildings or uses erected or established after the effective date of this ordinance shall be located on the same zoning lot as the building or use served, except that parking spaces to serve business, commercial, industrial, and office buildings or uses may be located off lot if within 500 feet of such use if said parking spaces are located in a business, industrial or office district. If any parcel is located within one hundred (100) feet of, and but for the interpositions of a public street is contiguous with, a publicly maintained parking lot, the parking spaces in such lot may be counted to meet the parking space obligations of this ordinance with the permission of the Plan Commission.

Buildings or uses existing on the effective date of this ordinance which are subsequently altered or enlarged so as to require the provision of parking spaces under this ordinance, may be served by parking facilities located on land other than the zoning lot on which the building or use served is located, provided such facilities are within 500 feet walking distance of a main entrance to the use served. Owners of property, non-conforming as to parking, who elect to provide parking and become conforming may locate such parking on land other than the zoning lot on which the building or use is located, as allowed in this Section.

(c) Parking Prohibited in required Front and Corner Side Yards

Off-street parking spaces, open to the sky, may be located in any yard except the required front yard or corner side yard. Enclosed building structures and carports containing off-street parking shall be subject to all applicable yard requirements.

(d) Control of Off-Street Parking Facilities

In cases where parking facilities are permitted on land other than the zoning lot on which the building or use served is located, such facilities shall be in the same possession as the zoning lot occupied by the building or use to which the parking facilities are accessory.

Private possession may be either by deed or long-term lease or contractual arrangement, the term of such lease or contractual arrangement to be determined by the Zoning Administrator; and such deed or lease shall be filed with the Zoning Administrator. The deed or lease shall require such owner or his or her heirs or assigns to maintain the required number of parking facilities for the duration of the use served or the deed or lease.

(e) Size of Parking Stalls

Except for parallel parking spaces, each required off-street parking space shall be at least nine (9) feet in width and at least seventeen and one-half (17.5) feet in length, exclusive of access drives or aisles, ramps, columns, or office or work areas. Such space shall have a vertical clearance of at least seven (7) feet, and shall be measured at right angles to the axis of the vehicle. For parallel parking, the length of the parking space shall be increased to twenty-two (22) feet. Compact car spaces, with minimum dimensions of eight (8) feet by sixteen (16) feet may be substituted for a portion of the required spaces.

(f) Handicapped Parking

Any parking area to be used by the general public shall provide parking spaces designated and located to adequately accommodate the handicapped, and these shall be clearly marked as such. The number of handicapped spaces shall conform to the schedule of parking requirements at 130.10(C)2 and shall be located in close proximity to the principal building. The designation of handicapped parking stalls shall constitute consent by the property owner to the enforcement of the restriction of such spaces to handicapped motorists by the Town.

(g) Access

All off-street parking facilities shall be designed with appropriate means of vehicular access to a street or alley in a manner which will least interfere with traffic movement.

(h) Collective Provision

(i) Off-street parking facilities for separate uses may be provided collectively if the total number of spaces so provided is not less than ninety (90) percent of the separate requirements of each such use and all regulations governing location of accessory parking spaces in relation to the uses served are adhered to. Except for the following provisions, no parking space or portion thereof shall serve, or be counted as a required space for more than one (1) use unless otherwise authorized by the Zoning Administrator.

(ii) The Zoning Administrator may authorize a reduction in the total number of required parking spaces for two or more non-residential uses jointly providing off street parking when their respective hours of operation do not normally overlap. Reduction of joint use parking shall be subject to the following conditions:

- 1) No more than fifty percent of the parking spaces required for a building or use may be supplied by parking facilities required for any other building or use.
- 2) The number of shared spaces for two or more distinguishable land uses shall be determined by mutual consent of the parties involved.
- 3) The property owners involved in the joint use of off-street parking facilities shall submit a legal agreement approved by the Town Attorney guaranteeing that the parking spaces shall be maintained so long as the use requiring parking is in existence or unless the required parking is provided elsewhere in accordance with the provisions of this article. Such instrument shall be recorded by the property owner with the (ed. note: appropriate recorder of such agreements) and a copy filed with the Zoning Administrator.

(i) Fractional Space

When determination of the number of off-street parking spaces required by this ordinance results in a requirement of a fractional space, that fractional space may be disregarded. Parking spaces required on an employee basis shall be based on the maximum number of employees on duty or residing or both, on ninety (90) percent of the premises at any one time.

(j) Utilization

Except as may otherwise be provided for the parking of trucks in the granting of special uses, required accessory off-street parking facilities shall be solely for the parking of passenger automobiles of patrons, occupants, or employees of such uses.

(k) Design Maintenance

- (i) Plan: The design of parking lots or areas shall be subject to the approval of the Zoning Administrator.
- (ii) Character: Accessory parking spaces may be open to the sky, or enclosed in a building.
- (iii) Surfacing: All open off-street parking areas, shall be surfaced with a hard surface material.
- (iv) Landscaping and Screening: Screening and landscaping of off-street parking areas shall be provided pursuant to the requirements of 130.3(A), Buffering and Landscaping.
- (v) Lighting: Any lighting used to illuminate off-street parking areas shall be designed and equipped to cast light down from the fixture head, away from residential properties and public streets in such a way as not to cause glare. However, in no case shall such lighting exceed three (3) footcandles measured at the lot line.
- (vi) Signs: Accessory signs shall be permitted on parking areas in accordance with the provisions specified in 130.11.

2. Specific Requirements

All off-street parking spaces hereinafter required by this ordinance, except those required for one- and two-family dwellings, shall be designed in accordance with one of the formulae set forth in the Off-Street Parking Schedule, 130.10(D). Off-street parking spaces shall be provided in accordance with the Classes as hereinafter set forth in the Off-Street Parking Schedule. Parking spaces for accessory uses not specifically enumerated within a parking class shall be assumed to be included in the principal (permitted or special) use requirement. If, for any reason the classification of any use, for the purpose of determining the amount of off-street, parking or the number of spaces to be provided by such use is not readily determinable hereunder, the parking class of such use shall be established by the Zoning Administrator.

The calculation of parking spaces for a given business shall always include one (1) space for each vehicle owned by the business.

When computing required parking spaces, the total number of required spaces shall be based upon use(s) of the zoning lot or portion thereof. Therefore, one principal use may actually contain two or more parking class uses. (e.g., retail sales and warehousing.)

3. Bicycle Parking Facilities

Bicycle parking facilities are recommended to be a stationary bicycle storage rack designed to secure the frame and one of the wheels of the bicycle where the bicyclist provides only the locking mechanism.

(C) Off-Street Loading

1. General Requirements

(a) Location

All required loading berths shall be located on the same zoning lot as the use served. All motor vehicle loading berths which abut a residence district or an intervening alley separating a residence district from a business or industrial district shall be completely screened therefrom by building walls or by a uniformly painted, solid fence, wall, or door, and/or according to the provisions of screening loading areas as specified in 130.3(A), Landscaping and Screening. No permitted or required loading berth shall be located within 30 feet of the nearest point of intersection of any two (2) streets. No loading berth shall be located in a required front or side yard where berths would abut a residence district. Any loading berth located in a required rear yard may be open to the sky.

(b) Size

Unless otherwise specified, a required off-street loading berth shall be at least twelve (12) feet in width by at least thirty (30) feet in length for short berths, and twelve (12) feet in width by at least fifty (50) feet in length for long berths exclusive of aisle and maneuvering space, and shall have a vertical clearance of at least fifteen (15) feet. Maneuvering aprons for short berths shall be at least thirty-five (35) feet and for long berths shall be at least sixty (60) feet. Access lanes for short berths shall be twelve (12) feet in width for one-way lanes and twenty-two (22) feet in width for two-way lanes. For long berths, access lanes shall be fourteen (14) feet in width for one-way

lanes and twenty-four (24) feet in width for two-way lanes. Space dedicated for access lanes may also be considered as space for the maneuvering apron.

(c) Access

Each required off-street loading berth shall be designed with appropriate means of vehicular access to a street or alley in a manner which will least interfere with traffic movement, separated from customer and/or employee parking, and shall be subject to approval by the Zoning Administrator.

(d) Surfacing

All open off-street loading berths shall be surfaced with bituminous, concrete or an equivalent dust-free surface.

(e) Utilization

Space allocated to any off-street loading use shall not, while so allocated, be used to satisfy the space requirements for any off-street parking facilities or portions thereof.

(f) Central Loading

Central loading facilities may be substituted for loading berths on the individual zoning lots provided the following conditions are fulfilled:

- (i) Each zoning lot served shall have direct access to the central loading area without crossing streets or alleys at-grade.
- (ii) Total off-street loading berths provided shall meet the minimum requirements herein specified, based on the use of the several types of uses served. (Area of types of uses may be totaled before computing number of loading berths.)
- (iii) No zoning lot served shall be more than five hundred (500) feet removed from the central loading area.
- (iv) The tunnel or ramp connecting the central loading area with the zoning lot served shall be not less than seven (7) feet in width and have a clearance of not less than seven (7) feet.

(g) Minimum Facilities

Uses for which off-street loading facilities are required herein, but which are located in buildings of less floor area than the minimum prescribed for such required facilities, shall be provided with adequate receiving facilities, accessible by motor vehicle off any adjacent alley, service drive, or open space on the same zoning lot.

(D) Specific Requirements

The specific requirements for off-street loading areas are set for in the following Schedule:

## SCHEDULE OF PARKING REQUIREMENTS

### Residential

Apartment Hotel/Bed and Breakfast	One (1) space per unit
Boarding House	One (1) space per bedroom plus one (1) space per manager, employee
Convalescent Home Nursing Home	One (1) space per four (4) residents plus one (1) space per employee
Elderly Housing	One (1) space per four (4) units plus one space (1) per employee
Hotel/Motel	One (1) space per guest room plus one (1) space per employee
Mobile Home Park	One and one-half (1.5) spaces per unit
Multi-Family	One and one-half (1.5) spaces per unit
Single Family	Two (2) spaces per unit for all single-family constructed after the date of adoption of this ordinance. Structures built prior to the date of adoption of this ordinance shall be required to have one (1) off-street parking space
Two Family	One and one-half (1.5) spaces per unit

### Business

Auto Service	One (1) space per employee plus two (2) spaces per service bay
Car Wash	Four (4) space per bay or stall plus one (1) space per employee plus six (6) stacking for automated facility
Drive Through Facility	Five (5) stacking spaces for the first window, plus two (2) stacking spaces for each additional window in addition to the parking required for that specific land use
Durable Goods, Furniture, Appliances, etc.	Two (2) space per on thousand (1,000) square feet gross floor area
Eating/Drinking	Sixteen (16) spaces per one thousand (1,000) feet gross floor area
Retail, Freestanding and Shopping	Four (4) space per one thousand (1,000) square feet

Center Under 55,000 Square Feet GLA	gross floor area
Shopping Center over 55,000 square feet GLA	Five (5) spaces per one thousand (1,000) square feet gross floor area
Wholesale	One (1) space per one thousand (1,000) square feet gross floor area for the first ten thousand (10,000) square feet, plus one (1) per two thousand, (2,000) square feet gross floor area for the remaining space, plus one (1) space for each vehicle used in the conduct of the business. Office area parking shall be calculated separately based on office parking rates

#### Services & Institutions

Cemetery/Undertaking	One (1) space per four (4) seats in parlor plus one (1) space per two (2) employees plus one (1) space per vehicle used in connection with the enterprise
Financial/Civic Building	Four (4) spaces per one thousand (1,000) square feet gross floor area
Gym/Health Club	Five (5) spaces per one thousand (1,000) square feet gross floor area
Hospital/Sanitarium	One (1) space per two (2) beds plus one and one-half (1.5) spaces per one (1) emergency room bed plus one (1) space per employee
Medical/Dental	Six (6) spaces per practitioner plus one (1) per employee
Office Business & Professional	Three (3) spaces per one thousand (1,000) square feet gross floor area
Personal Services (Tailor, Shoe Repair, Barber/Beauty Shop, Tanning Spa, Dry Cleaners)	Three (3) spaces per one thousand (1,000) square feet gross floor area
Radio	One (1) space per employee
Religious Institution	One (1) space per three (3) seats

#### Schools and Libraries

College/University	One (1) space per two (2) employees plus one (1) space per four (4) students
Dance/Music/Vocational/Trade	One (1) space per employee plus two (2) spaces for each three (3) students based on the maximum number of

	students attending classes on the premises at any one time
Day Care/Nursery	Four (4) spaces per one thousand (1,000) square feet of gross floor area
K-10th Grades	One (1) space per employee plus four (4) spaces for visitors
Library	Three (3) spaces per one thousand (1,000) square feet of gross floor area
Senior High School	One (1) space per employee plus one (1) space per eight (8) students

#### Culture/Entertainment

Amusement Establishment	One (1) space per three (3) persons capacity plus one (1) space per employee
Arena/Stadium	One (1) space per four (4) seats plus one (1) space per two (2) employees
Bowling Alley	Five (5) spaces per lane
Club/Lodge	Four (4) spaces per one thousand (1,000) square feet gross floor area
Cultural Institution	One (1) space per three hundred (300) square feet gross floor area
Golf Course	Sixty (60) spaces per nine (9) holes plus one (1) space per two (2) employees
Swimming Pool or Natatorium	One (1) space per six (6) persons at capacity plus one (1) space per employee
Tennis Club	Three (3) spaces per court
Theater	One (1) space per two (2) seats plus one (1) space per two (2) employees

#### Industrial

Manufacturing, Utility, Research and Development	One (1) space per one and one-half (1.5) employees plus one (1) space per company vehicle
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Warehouse

One (1) space per one thousand (1,000) square feet of gross floor area for the first twenty thousand (20,000) square feet plus one space per two thousand (2,000) square feet for the second twenty thousand (20,000) square feet to forty thousand (40,000) square feet gross floor area, plus one (1) space per four thousand (4,000) square feet for building area above forty thousand (40,000) square feet gross floor area

## SCHEDULE OF PARKING REQUIREMENTS

### Handicapped Parking Stall Requirements

Parking stall requirements shall conform to the Americans With Disabilities Act regulations.

SCHEDULE OF OFF-STREET LOADING REQUIREMENTS

Use	Gross Floor Area (square feet)**	No. of Berths & Size*
<b>Residential</b>		
Hotel, Motel, Dormitory, Fraternity, Convalescent or Nursing Home & Elderly Housing	10,000 - 100,000 each additional 100,000	One short One short
Multi-Family	30,000 - 100,000	One Short
<b>Commercial</b>		
Personal Services, Restaurants	500 - 10,000	One Short
	10,000 - 25,000	Two Short
	25,000 - 40,000	Two Long
	40,000 - 100,000	Three Long
	each additional 200,000	One Long
Retail, Wholesale	5,000 - 10,000	One Short
<b>Services &amp; Institutions</b>		
Banks, Civic Buildings, Offices, Business Services	10,000 - 100,000	One Short
	each additional 100,000	One Short
	up to 500,000	One Short
	each additional 500,000	
Hospitals	10,000 - 100,000	One Short
	each additional 100,000	One Short
<b>Schools</b>		
Elementary, Secondary, College or University	10,000 - 100,000	One Short
	each additional 100,000	One Short
<b>Culture/Entertainment</b>		
Arena, Stadium, Auditorium, Convention Hall, Amusement Establishment	10,000 - 20,000	One Short
	20,000- 100,000	One Long
	each additional 100,000	One Long
Theater	10,000 - 25,000	One Short
	each additional 50,000	One Short

SCHEDULE OF OFF-STREET LOADING REQUIREMENTS

Use	Gross Floor Area (square feet)**	No. of Berths & Size*
<u>Industrial</u>		
Air/Bus/Rail, Utilities, TV & Radio Stations	10,000 - 40,000	One Short
	40,000 - 100,000	One Long, One Short
	each additional 100,000	One Long
Cartage & Freight Facility	5,000 - 40,000	One Long
	40,000 - 100,000	Two Long
	each additional 100,000	One Long
Manufacturing, Warehousing and Research & Development	5,000 - 10,000	One Short
	10,000 - 40,000	One Long
	40,000 - 100,000	Two Long
	each additional 100,000	One Long
*Berth (Loading Dock) Dimensions	Short 10 ft wide x 35 ft deep	One Long Long
**Gross Floor Area refer to buildings or structures on premises		12 ft wide x 50 ft deep



## 130.11: SIGN ORDINANCE

### (A) Purpose Statement

The sign regulations, controls, and provisions set forth in this Section are made in accordance with an overall plan and program for the public safety, area development, preservation of property values, and the general welfare of the Town of Newburgh and are intended to: aid in traffic control and traffic safety; preserve and protect property values; lessen congestion of land and air space; provide against undue concentrations of signs which distract and endanger traffic safety and traffic flow; establish reasonable standards for commercial and other advertising through the use of signs, in order to maintain and encourage business and area development; avoid uncontrolled proliferation of signs; recognize the rights of the public on roads, streets, and highways; preserve the wholesome and attractive character of the Town; and to recognize that the general welfare includes a community plan that provides for a community that shall be beautiful as well as healthful, spacious as well as clean, and well balanced in its growth and development. Also, the purpose of the sign ordinance is to provide for the gradual elimination of non-conforming signs and to provide for new, altered or replaced signs which conform to the provisions of this ordinance in order to accomplish its objectives.

This Section is intended to regulate the design and placement of signs from the date of adoption of this ordinance, in the following circumstances:

- Where a newly constructed facility includes signs;
- Where a sign is replaced because of a change of occupancy, ownership or use;
- Where a new sign is added to an existing building;
- Granting of a special use or expansion of a facility which includes signs.

### (B) Legislative Findings and Objectives

Regulation of the location, size, placement and certain features of signs is necessary to enable the public to locate goods, services and facilities in Newburgh without difficulty or confusion and to encourage the attractiveness of the community and to protect property values throughout the Town. Accordingly, it is the intention of this ordinance to establish regulations which will:

- Restrict signs and lights which overload the public's capacity to receive information or which increase the probability of accidents by distracting attention or obstructing vision;
- Reduce conflict among signs and light and between public and private environmental information systems;
- Promote signs which are compatible with their surroundings, are appropriate to the type of business to which they pertain and are expressive of the identity of proprietors and other persons displaying signs;

(C) Basis on Which Signs are Regulated

The display of signs in the Town is regulated on the basis of the following factors:

1. The district in which the sign is displayed;
2. The following design features:
  - The type of sign (wall, ground, etc.);
  - The size of the sign;
  - The height of the sign from the ground;
  - The location of the sign;
  - The type of illumination.
3. The use type in residential districts.

In addition, certain signs are regulated on the basis of additional factors, as set forth in this ordinance.

(D) Prohibited, Exempt, and Temporary Signage

1. Prohibited Signage

The following signs are prohibited in all districts:

- (a) Signs containing any flashing or running lights or lights creating an illusion of movement.
- (b) Signs which imitate official traffic signs. This category does not include signs which are accessory to parking lots, driveways or roads.
- (c) Signs placed on a parked vehicle or trailer where the apparent purpose is to advertise a product or direct people to a business located on the same or nearby property.
- (d) A sign in any residential district, exceeding a height of three and one-half (3 1/2) feet above the street grade within twelve (12) feet of the intersecting street lines bordering a corner lot.
- (e) A sign in any business district within eight (8) feet of the intersecting street lines bordering a corner lot, provided that this regulation shall not apply to that part of a building above the first floor.
- (f) Private and political signs are prohibited in the public right-of-way.
- (g) No signs are permitted on utility poles.

2. Exempt Signage

The following are hereby designated as "exempt signs" and, as such are subject only to the regulations contained in this Subsection. Signs shall not exceed six (6) square feet in area unless otherwise specified below.

- (a) House numbers and house nameplates, provided that nameplates shall not exceed one (1) square foot in area.

- (b) Memorial plaques, cornerstones, historical plaques, and similar designations displayed for non-commercial purposes.
  - (c) Paper notices placed on bulletin boards or on kiosks maintained by any governmental organization.
  - (d) Signs erected, required, or allowed by permit, by governmental bodies, or authorized for a public purpose by any law, statute or ordinance. Such public signs may be of any type, number, area, height, location, or illumination as authorized by law, statute, or ordinance.
  - (e) Signs which direct or guide persons to facilities intended to serve the public, including signs identifying rest rooms, public telephones, walkways, and similar facilities. Advertising matter is not permitted on such signs. This category 5. does not include signs accessory to parking or driveway areas.
  - (f) Flags bearing the officially adopted design of a nation, state, (except "garrison" size flags other than the official national flag of the United States of America which are permitted), or political subdivision of a state. Flags shall not exceed thirty (30) square feet in size.
  - (g) Property management signs, not to exceed one square foot in area. This category 7. applies only to wall signs.
  - (h) Directional or instructional signs accessory to parking and driveway areas, subject to the following regulations:
    - (i) Such signs shall not be permitted in single-family residential districts.
    - (ii) One single or double-faced sign may be erected to designate each entrance to or exit from a parking or driveway area, provided that the surface area of each such sign shall not exceed three (3) square feet.
    - (iii) Signs designating the conditions of use of off-street parking spaces furnished by a business may be placed in parking lots or alleys. Such signs may include the name of the business furnishing the parking spaces but may not include any other advertising.
  - (i) In the case of buildings used by two (2) or more commercial businesses, signs having a surface area not in excess of six (6) square feet which identify the several occupants of the building. This category 9. applies only to wall signs. Any footage above six (6) square feet shall be deducted from allowable signage.
3. Temporary Signage

The following signs are hereby designated as "temporary signs" and are subject only to the provisions contained in this Section:

- (a) Political signs or posters announcing candidates seeking public political office and/or political and public issues that will be contained on an election ballot, provided that such signs shall not exceed sixteen (16) square feet in area in residential districts and thirty-two (32) square feet in non-residential districts. There shall be no limit on the number of political signs on a given property. When such signs promote a candidate for political office, they shall be removed within



seven (7) days after an election. No sign shall be erected prior to March 1 for the primary and not before September 1 for the general election.

- (b) A sign advertising the sale or lease of a lot or space on which the sign is placed. Such signs may not be illuminated signs and may not exceed sixteen (16) square feet in area in residential districts and thirty-two (32) square feet in non-residential districts. Only one (1) real estate sign may be placed on the lot or premises to which it pertains, except that two (2) such signs may be placed on double frontage lots. A real estate sign shall be removed within seven (7) days after the exchange of the deed or the execution of the lease of the lot or space to which the sign pertains.
- (c) One (1) construction sign per project identifying the parties involved in the construction to occur or occurring on the lot or premises on which the sign is placed. Such signs may not be illuminated signs and may not exceed sixteen (16) square feet in surface area in residential districts, or thirty-two (32) square feet in surface area in commercial districts. Such signs may identify the owner's name, the architect for the project, the contractor or contractors for the project, the financing arrangements for the project, and the purpose for which the project is intended. No products or services may be advertised on construction signs. A construction sign shall be removed within fourteen (14) days after use commences for the project to which the sign pertains.
- (d) An event sign announcing a campaign, drive or event of a civic, philanthropic, educational or religious organization. When displayed in the form of posters not larger than sixteen (16) square feet in surface area, event signs may be displayed as off-premises signs. A business may display more than one (1) event sign in the form of such posters. In addition to posters, not-for-profit organizations may display event signs in the form of off-premises signs subject to such limitations as are established by the enforcement officer. Size requirements may be modified by the Town Council to include banners. Event signs may be displayed no sooner than thirty (30) days in advance of the scheduled event and shall be removed no later than seven (7) days after the conclusion of the event.
- (e) Holiday decorations, signs or other material displayed on Town property in connection with civic, patriotic or religious holidays without permission of the Town Council.
- (f) A yard sign which announces the sale of tangible personal property by means of the business commonly known as a "garage sale" or "yard sale". Garage sale or yard sale signs shall be a maximum of four (4) square feet in size. There shall be no more than four (4) such sales advertised at the same address in any one (1) year. No signs are permitted on utility poles. No signs may be posted prior to twelve (12) hours in advance of the sale and must be removed within twelve (12) hours of the close of the sale.
- (g) Residential may not exceed twenty percent (20%) of the window area.
- (h) Portable or wheeled signs for advertising a new business not to exceed a period of fourteen (14) days.
- (i) Signs which move, or give the appearance of moving. This category includes pennants, streamers, inflatable signs, balloons or other air or gas filled fixtures, "garrison" size flags (other than the official national flag of the United States of America) and all other signs which flutter, undulate, swing, rotate, oscillate or otherwise move by natural or artificial means, except banners.

(E) Establishment of Sign Districts

For the purposes of this ordinance, the Town is divided into certain sign districts.

1. Districts

- (a) Those parts of the Town which are located in zoning base districts A1, RL, R1, R2, R3, R4, and any associated overlay districts according to the Official Zoning Map are designated as Residential Sign Districts.
- (b) Those parts of the Town which are located in zoning base districts C1, C2, C3, C4, and any associated overlay districts according to the Official Zoning Map are designated as Commercial Sign Districts.
- (c) Those parts of the Town which are located in zoning base or overlay districts O1 or O2 and any associated overlay districts, according to the Official Zoning Map are designated as Office Sign Districts.
- (d) Those parts of the Town which are located in zoning base district I1, and any associated overlay districts, according to the Official Zoning Map are designated as Industrial Sign Districts.

2. Display of Signs by Businesses Within Districts

If a business is a permitted or conditional use within the Business, Office, Industrial, or Residential Districts or a legal non-conforming use, it may display a sign in accordance with the applicable Table of Basic Design Elements (see below) and all other relevant Sections of this ordinance.

3. Table of Basic Design Elements

The table below summarizes the types of signs permitted in each type of sign district.

- E: Exempt
- S: Requires a special permit
- P: Permitted by right
- T: Temporary, permitted by right
- NO: Not permitted

Sign	Res.	Comm.	Off.	Ind.
Banner	NO	S	S	S
<ul style="list-style-type: none"> <li>•allowed for announcing opening of new business or special events</li> <li>•may not be allowed for longer than 30 days</li> <li>•location and size approval required from Zoning Administrator</li> <li>•may not be granted for the same location more than twice per year</li> <li>•must be located on the site of the event being advertised; except banners advertising a community event.</li> </ul>				

Sign	Res.	Comm.	Off.	Ind.
Construction Sign •1 per project •no products advertised •max.16 s.f. residential, 32 s.f. non-residential	T	T	T	T
Directional •no advertising •public facilities (restrooms, public telephones, walkways), max. 6 s.f. •driveway, exit/entrance, max. 3 s.f. •parking lot conditions, max. 6 s.f.	E	E	E	E
Event Window Signs (campaign, civic, philanthropic, educational, religious) •posters, max. 6 s.f. or approval of the Zoning Administrator	T	T	T	T
Flashing Running Lights •except for time and temperature and blinking lights in C4 district	NO	NO	NO	NO
Garage or Yard Sale •max. size 4 s.f.	T	T	T	T
Government •paper notices in bulletin boards, kiosks maintained by government •erected, required or authorized for public purposes •max. 6 s.f.	E	E	E	E
Ground •1 per street frontage (except that uses with over 300 foot frontage can have additional sign for each additional 300 feet w. min. 100 foot spacing) •max. size (in s.f.) •max. height (in ft.) •no more than 2 support standards •shopping center •multi-tenant bldg. •time and temperature	NO NO NO NO NO	P 40 15 200 s.f. 100 s.f. P	P 40 15 — — P	P 40 15 — — P
Historic	S	S	S	S
House and Name Plate •max. size 1 s.f.	E	E	E	E

Sign	Res.	Comm.	Off.	Ind.
Identification ●building w/ more than 1 commercial use ●wall sign only, max. size 6 s.f.	E	E	E	E
illumination ●external ●internal ●neon	S NO NO	P P P	P S S	P P P
Imitations of Traffic Signs	NO	NO	NO	NO
Marquees	NO	S P in C1	S	S
Memorial Plaques, Cornerstones, Historical Plaques ●displayed for non-commercial purposes ●max. size 6 s.f.	E	E	E	E
Moving	NO	NO	NO	NO
Murals, works of art (painted on exterior surface)	S	S	S	S
Outdoor Advertising Sign Structure (Billboard)	NO	P only in Highway Corridor Overlay District	NO	P
Placed on Vehicle/Trailer	NO	NO	NO	NO
Political and Real Estate ●1 per street frontage for real estate ●no limit on number of political signs ●max size, 16 s.f. in residential 32 s.f. in non-residential	T	T	T	T
Portable/Wheeled	NO	NO	NO	NO
Projecting	S	S	S	S
Proximity to Street Intersection ●signs in residential districts, more than 3-1/2' high, within 12' of intersection  ●signs in commercial districts, within 8' of	NO	—	—	—

Sign	Res.	Comm.	Off.	Ind.
intersection, not above 1st floor	—	NO	—	—
Residential District Special Use	S	—	—	—
Residential Ground Signs	S	—	—	—
Rooftop	NO	NO	NO	NO
Under canopy	P	P	P	P
Wall				
•1 per building frontage, except in multi-tenant buildings	NO	P	P	P
•max. 20% of wall area (excluding doors and windows)				
•time and temperature*	—	S	S	S
Window				
•1 per window 20% coverage	NO	P	P	P

\* Time and Temperature Signs — flashing lights allowed.  
Advertising, news or information conveyance prohibited.

- In the case of a multi-tenant building devoted to non-residential use, total allowable wall and ground signage shall be allocated between the identifiable leaseholds in the structure.

(F) Permits

1. Sign Permits Required

From and after the effective date of this ordinance, no person may erect, alter or relocate any banner; wall sign; ground sign; permanent window sign; canopy; or awning in the Town without first obtaining a permit from the Zoning Administrator and paying the required fee. Routine maintenance or changing of parts of a sign shall not be considered as an alteration of a sign, provided that the maintenance or change of parts does not alter the surface area, height, or otherwise make the sign non-conforming.

2. Electrical Permit Required

In addition to complying with the provisions of this ordinance, all signs in which electrical wiring and connections are to be used shall be subject to the provisions of the Electrical Code of the Town. No permit for construction or alteration of an illuminated sign may be issued under the procedures provided in the Electrical Code unless and until the Zoning Administrator provides a certification that the proposed construction or alteration conforms to this ordinance.

3. Permit Applications

Applications for sign permits shall be made upon forms provided by the Zoning Administrator.

4. Issuance of Permits

Upon the filing of an application for a sign permit, the Zoning Administrator (or his authorized deputy) shall examine the plans, specifications and other data submitted, and may, if deemed necessary, inspect the premises upon which the proposed sign is to be erected; and if it appears that the proposed sign is in compliance with all the requirements of this ordinance and in conformity with the Zoning Ordinance and all other applicable ordinances of the Town and if the appropriate permit fee has been paid, the Zoning Administrator shall issue a permit for the proposed sign. If the work authorized under a sign permit has not been completed within six (6) months after the date of issuance, the permit shall become null and void.

5. Permit Fees

With each application for a sign permit, a fee shall be paid as designated by the Town from time to time. If an electrical permit is required, an additional fee shall be paid for the cost of the electrical permit.

6. Revocation

All rights and privileges acquired under the provisions of this ordinance are mere licenses, revocable at any time by the Zoning Administrator. All permits issued pursuant to this Section are subject to this provision.

7. Failure to Obtain Permit

Any person who erects, alters or moves a permanent sign after the effective date of this ordinance without obtaining a permit as required by this Section (if applicable) shall be subject to a penalty for violation of this ordinance.

(G) Wall Signs

1. Wall Sign Size

Wall signs shall be a maximum of twenty percent (20%) of the wall area on which they are located.

If a sign is enclosed by a box or other form of outline, the total area of the sign (including the background) shall be counted in calculating the percentage of the signable area being used by the sign. If a sign consists of individual letters without any box or other form of outline, only the area of the letters shall be counted.

2. Wall Sign Location

A wall sign may be located on any part of the front facade except for any part of a door or window. The sign may not protrude beyond the sides or top of the business facade or protrude more than fifteen (15) inches from the wall face on which it is located. Wall signs are prohibited in residential districts.

3. Number of Signs

A business may display only one (1) wall sign per street frontage. Letters and/or logos displayed without backing material must be placed reasonably close together so as to constitute a single sign.

4. Special Limitation for Businesses on Corner Lots

If a business which is located on a corner lot displays a ground sign, such business may display only one (1) wall sign (which may be oriented to either of the streets on which the business has frontage.)

5. Special Regulations for Time and Temperature Wall Signs

A time and temperature device may be displayed as a wall sign subject to the regulations in the Table of Basic Design Elements and this Section. If such devices utilize flashing lights, the frequency of change may not be greater than one (1) change per three (3) seconds. The use of information is prohibited.

6. Residential District Special Use Sign

A special use in a residential district may display a wall sign that has been approved by the Board of Zoning Appeals pursuant to the special use procedures. Residential district special use signs may be a maximum of twenty (20) square feet.

(H) Rooftop Signs

Rooftop signs are not allowed in any zoning districts.

(I) Ground Signs

1. Frontage Requirement

No business may display a ground sign oriented to any street or highway unless the business has not less than twenty-five (25) feet of frontage at grade along such street or highway. Multi-family uses located in residential districts may display a ground sign if the use consists of not less than twenty (20) dwelling units and has not less than one hundred (100) feet of frontage along a street or highway.

2. Area Limitations

Except as otherwise specified in this ordinance, the maximum area permitted per sign face for ground signs in all zoning districts shall be forty (40) square feet.

3. Height Limitations

The maximum permitted height for ground signs shall be fifteen (15) feet.

4. Sign Setback

In no case shall the sign obstruct visibility from a driveway or to an abutting street or vice versa. Private signs are prohibited in the public right-of-way.

5. Number of Ground Signs

A business may display only one (1) ground sign for each street frontage. However, a business which has in excess of three hundred (300) feet of frontage on public streets and highways may display one (1) additional ground sign for each three hundred (300) feet of frontage in excess of the first three hundred (300) feet of frontage. However, no business may display a ground sign within one hundred (100) feet of any other ground sign displayed by the same business.

6. Special Limitation for Businesses on Corner Lots

If a business which is located on a corner lot displays a ground sign, such business may display only one (1) wall sign.

7. Residential District Conditional Use Sign

A special use in a residential district may display either a ground or wall sign, that has been approved by the Board of Zoning Appeals pursuant to the conditional use procedures. Residential district special use signs may be a maximum of twenty (20) square feet and have a maximum height of five (5) feet.

(J) Canopies and Awnings

1. Location Requirements

(a) No portion of a canopy or awning shall be less than seven (7) feet above the level of the sidewalk or other public thoroughfare over which it projects.

(b) No portion of a canopy or awning may extend beyond a point two (2) feet inside the curb line.

2. Coverage Limitations and Display of Information

(a) Information on a canopy or awning shall be limited to official names, logo, or purpose of business.

(b) Not more than twenty-five percent (25%) of the surface area of the canopy or awning may be used for the name, logo or purpose of the business.

(c) The location and installation of canopies and awnings is subject to the approval of the Zoning Administrator.

3. Under Canopy Signs

A sign suspended beneath a canopy, ceiling, roof or marquee. The lower edge of the under canopy sign shall be a minimum of nine (9) feet above the surface of the ground. The sign size shall be limited to a maximum eighteen (18) inches of height, and the sign length shall be no longer than seventy-five percent (75%) of the depth of the canopy, ceiling, roof or marquee to which the sign is attached.

(K) Window Signs

1. Coverage Limitations

A business may display one (1) business window sign per window. A window sign may not exceed twenty percent (20%) of the window area. Window signs are prohibited in all residential districts.

2. Computation of Coverage

Window panels separated only by mullions shall be considered as one (1) continuous window pane in the computation of window surface area.

3. Window Displays

No restrictions are placed on window displays. However, no window display may be maintained which has the effect of circumventing the intent of this Section. If material purporting to be a window display has such effect, it shall be deemed to be a window sign and not a window display.

4. Upper Story Locations

A business whose only windows are above the first story of a building may display the official name, logo or purpose of the business provided the letters do not exceed seven (7) inches in height. The coverage limitations of Section 130.11(D) shall not apply to the windows herein described.

(L) Automobile Service Stations

1. Additional Regulation Necessary

Automobile service stations are hereby declared to be a business which requires certain additional regulations regarding signs.

2. Information on Gasoline Pumps

Matter appearing on gasoline pumps as they were purchased or installed shall not be considered as signs for purposes of this ordinance.

3. Price and Service Information at Pump Areas

In addition to all other signs permitted by this ordinance, an automobile service station may display one (1) sign, not larger than nine (9) square feet, above each pump island stating whether the area is a "self service" or "full service" area and the current price per gallon of the gasoline sold at the station. No element of the cost to the customer of the gasoline shall be omitted from statement of the price per gallon.

4. Automobile Service Station Signable Area

Service stations which include interior facilities for the servicing of automobiles or a supplementary business shall be treated as consisting of two (2) buildings, each with its own signable area, with the limitation that no more than two (2) signable areas can be established per building regardless of the number of streets on which the business has frontage. One (1) of such buildings shall be that part of the service station structure in which the principal entrance to the station office is located. The other of such buildings shall be that part of the service station structure in which the automotive service or supplementary facilities are located.

(M) Illumination of Signs, Buildings, and Areas

The use of unshielded lights, including incandescent light bulbs hung or strung on poles, wires, or any other type of support, to illuminate buildings, outdoor sales areas, or outdoor storage areas, is prohibited, except

that during the month of December the use of such lighting for areas in which Christmas trees are offered for sale is not prohibited and the use of such lighting in connection with carnivals is not prohibited.

(N) Outdoor Advertising Sign Structure (OASS)

1. Permitted Zoning Districts

Outdoor advertising sign structures (OASS) shall be permitted in the Highway Corridor Overlay District only.

2. Stacked Sign Structures

Stacked outdoor advertising sign structures shall be prohibited. All outdoor advertising sign structures must be ground or support standard mounted.

3. OASS Size

An outdoor advertising sign structure shall be a maximum of three hundred (300) square feet per face.

4. Height

An outdoor advertising sign structure shall be a maximum of thirty (30) feet in height as measured from the adjacent street grade to the highest point of the OASS.

5. OASS Spacing

Outdoor advertising sign structures shall be spaced a minimum of a two thousand five hundred (2,500) foot radius apart from any other outdoor advertising sign structure and at least fifty (50) feet apart from another ground sign and five hundred (500) feet from adjacent residential zoning districts.

Back to back outdoor advertising sign structures shall have a minimum separation angle of forty-five (45°) degrees.

6. OASS Minimum Yard Requirements

Front and Corner Side Yards: A distance of one-half (1/2) the subject property's zoning district requirement for either transitional buffer yard, front yard, or corner side yards, whichever is greater; however, in no case shall the OASS obstruct visibility from a driveway to an abutting street or vice versa.

Side Yard: A distance of one hundred (100) feet.

Rear Yard: None.

7. OASS Landscaping

The foundation of outdoor advertising sign structures shall be landscaped with plant material. The landscape design shall be subject to review by the Zoning Administrator.

(O) External Illumination of Signs

1. Whenever external illumination is used for a sign, the source of light shall be located, shielded and directed in such a manner that the light is not directly visible from any surrounding public street or private residence.
2. Any receptacle or device used to provide external illumination for a wall sign shall not protrude more than twelve (12) inches from the face of the sign.
3. Brightness Limitations
  - (a) In no case shall the lighting intensity of any sign, whether resulting from internal illumination or external illumination exceed seventy-five (75) foot candles when measured with a standard light meter perpendicular to the face of the sign at a distance equal to the narrowest dimension of the sign.
  - (b) The lighting intensity of all signs is further subject to the provisions regarding glare as set forth in the Zoning Ordinance of the Town .

(P) Maintenance

All signs, canopies and awnings shall be kept and maintained in a safe, neat and orderly condition and appearance, and shall be repainted or otherwise maintained periodically by the owner to prevent corrosion or deterioration caused by weather, age or any other conditions, and to keep the same in a safe, neat and orderly condition and appearance.

(Q) Administration and Enforcement

1. Enforcement Officer

The Zoning Administrator is hereby designated as the enforcement officer for this ordinance. In furtherance of his authority as such enforcement officer, he shall have the following duties and powers:

- He shall review plans and specifications submitted by persons desiring to erect, alter or move signs;
- He shall issue sign permits;
- He shall conduct inspections of signs and issue notices of non-compliance when required; and
- He shall maintain all records necessary to the appropriate administration and enforcement of this ordinance, including applications for variations and appeals.

2. Requests for Review

Any resident of the Town must file a written request on forms provided by the Town with the Zoning Administrator requesting a review of one (1) or more existing permanent signs as identified in the request. In each such case, the Zoning Administrator shall inspect such sign or signs for the purpose of determining compliance with the provisions of this ordinance, provided that no existing permanent sign need be reviewed more than once. The Zoning Administrator shall report his findings to the Board of Zoning Appeals Plan Commission to the person filing the request sending any required notice to the property owner examined.

3. Notices of Violation

The Zoning Administrator shall notify each owner of an existing permanent sign found to be in violation of any provision of this ordinance pursuant to inspections made. The notice shall be by certified or registered mail and shall refer to each Section of this ordinance under which a violation has been found to exist and the notice shall describe the features found to be deficient.

4. Effect of Notice

Each existing permanent sign which is the subject of a notice given under this Section shall thereupon be classified as a non-conforming sign subject to amortization pursuant to 130.11(R).

5. Appeals and Variances

The owner of a sign with respect to which a notice has been given under this Section may file for an appeal of the administrative decision of the Zoning Administrator or may file for a variance in order to retain the sign. Such appeals must be filed not later than 30 days after the date of the notice.

(a) Any person aggrieved by an administrative order, requirement, decision or determination made under this ordinance by the Zoning Administrator may appeal therefrom to the Board of Zoning Appeals. The procedure on appeals shall be similar to that prescribed in the Newburgh Zoning Ordinance for appeals from administrative decisions. The decision of the Board of Zoning Appeals shall be final.

(b) Variance

Any person may request a variance from the provisions of this ordinance. Requests for variance shall be filed with the Zoning Administrator who may refer them to the Site Review Advisory Committee to conduct a technical review and make a recommendation to the Zoning Board of Appeals. If the Site Review Advisory Committee recommends that a variance be granted, its recommendation shall be accompanied by findings that particular hardship or practical difficulties would occur if no variation were granted, and that the sign for which the variation is recommended will not be materially inconsistent with the objectives of this ordinance.

6. Signs Allowed Only by Special Permit

Certain types of signs shall only be allowed by conditional permit granted by the Board of Zoning Appeals upon having reviewed and approved of the characteristics of the proposed signs. Such conditional permits are required because these categories of signs are of such a nature that their construction and operation may give rise to unique problems with respect to their impact upon neighboring properties.

7. Types of Signs allowed by Conditional Permit

The following types of signs will be allowed by conditional permit only:

- (a) Historic signs;
- (b) Projecting signs;
- (c) Residential ground signs;
- (d) Certain illuminated signs listed in the Table of Basic Design Elements;
- (e) Signs governed by "local sign regulations"; and

(f) Murals and works of art painted or affixed to an exterior surface.

8. Conditional Permit Standards

The following standards shall be the criteria by which the Board of Zoning Appeals evaluates the suitability of proposed signs to be granted by special permit:

- (a) That the proposed location does not block the view of other signs in the area;
- (b) That the size does not unduly infringe upon the health, safety or welfare of persons occupying or moving through the surrounding area; and
- (c) That the sign is materially consistent with the objectives of this ordinance.

9. Administration of Conditional Permit

Regulations for procedure and for hearings shall be the same as that outlined for Conditional Uses (see Section 130.2).

(R) Existing Permanent Non-conforming Signs Subject to Amortization

All non-conforming signs shall be removed or brought into compliance within seven (7) years of the effective date of this ordinance.

(S) Removal of Certain Signs

1. Obsolete Signs

Any on-premise sign, retractable canopy or awning, whether existing on, or erected after the effective date of this ordinance, which advertises a business no longer being conducted or a product no longer being sold in or from the premises to which the sign relates, shall be taken down and removed by the owner, agent or person having the beneficial use of the building, structure or premises upon which such sign is found. Removal shall be effected within sixty (60) days after written notice from the Zoning Administrator. If such a sign is not removed after such twenty (20) day period, the Zoning Administrator is authorized to cause the sign to be removed forthwith. Any expense incidental thereto shall be paid by the owner, agent or person having the beneficial use of the building, structure or premises on which such sign is found. All signs nonconforming to the previous Town of Newburgh Sign Ordinance shall be removed.

2. Unsafe Signs

If the Building Inspector finds that any sign, outdoor advertising sign structure, retractable canopy or awning is unsafe, or is a menace to the public, he shall give written notice to the person displaying such sign. Correction of the condition which causes the Building Inspector to give such notice shall be effected within fifteen (15) days after receipt of the notice. If such condition is not corrected after such fifteen (15) day period, the Building Inspector is authorized to cause the sign to be removed forthwith at the expense of the person displaying the sign. Notwithstanding the foregoing provisions, the Building Inspector is authorized to cause any sign, retractable canopy or awning to be removed summarily and without notice whenever he finds that such a sign, canopy or awning is an immediate peril to persons or property.

(I) Local Sign Regulations

1. Submission of Regulations

A shopping center or any association of merchants doing business within a specific area within the Town, a university or hospital having a multi-building campus, or an industrial or office park may establish regulations for such shopping center, campus, office or industrial park area. Such regulations (hereinafter called "local sign regulations") may be submitted to the Site Review Advisory Committee for review and forwarded to the Board of Zoning Appeals for a Public Hearing and recommendation to the Town Council. If, and to the extent that, local sign regulations are approved by the Town Council, such local sign regulations shall be observed by the persons affected in lieu of compliance with this Ordinance. These regulations may be submitted by inclusion in a PUD application.

2. Conditions for Approval

No local sign regulations will be approved unless the regulations are binding upon all persons in the university campus, shopping center, office or industrial park, or the specific area within the Town to which the regulations are intended to apply.

3. Approval Procedure

Persons desiring to obtain approval of local sign regulations pursuant to this Section shall submit the regulations to the Zoning Administrator, together with any additional material requested by the Zoning Administrator. The Zoning Administrator shall review the regulations and may transmit them to the Site Review Advisory Committee for recommendation to the Board of Zoning Appeals, with their comments and recommendations as to whether approval should or should not be granted under this Section.

4. Private Signage Agreements

Nothing in this Section or elsewhere in this ordinance shall prevent any building owner or association of merchants from establishing by lease or other form of agreement sign regulations which are more stringent than those set forth in this ordinance.

130.12: DEFINITIONS

**ABUTTING PROPERTY OWNER:** Official owner of record, whose property is contiguous to the subject property; any property which would touch at any point the subject property ignoring all right-of-ways, easements, alleys, and the like.

**ACCESSORY BUILDING, STRUCTURE OR USE:** An accessory building, structure or use is one which:

- a) Is subordinate to and serves a principal building or principal use; and
- b) Is subordinate in building area, intensity of use, or purpose to the principal building or principal use served; and
- c) Contributes to the comfort, convenience, necessity of occupants of the principal building or principal use served; and
- d) Is located on the same zoning lot as the principal building or principal use served, with the single exception of such accessory off-street parking facilities as are permitted to locate elsewhere than on the same zoning lot with the building or use served.
- e) Is prohibited prior to the establishment of the primary use except where authorized by the zoning administrator.

**ADJACENT:** Nearby, but not necessarily touching or abutting.

**ALLEY:** A public or private right-of-way designed to serve as a secondary means of access to the side or rear of those properties whose principal frontage is on a street.

**ALLOWABLE VARIANCE:** Variations from the regulations of the zoning ordinance which meet the standards established in 130.2 but not including any variance for use change. (Note: A use change may, when appropriate, be obtained with a rezoning amendment, not a variation).

**ALTERATION:** Alteration shall mean any change in size, shape, character, occupancy, or use of a building or structure.

**AMBULATORY CARE CENTER:** An establishment where patients are admitted for surgical treatment on an out-patient basis with related diagnostic and laboratory facilities.

**AMORTIZATION:** The process by which, upon official notification by the Zoning Administrator of a nonconforming status, nonconforming uses and structures must be discontinued or made to conform to requirements of the ordinance at the end of a specified period of time.

**ANSI:** American National Standards Institute, or its successor bodies.

**APARTMENT:** (See, DWELLING, APARTMENT)

**APPAREL STORES:** Stores selling new clothing for men, women or children at retail.

**AUTOMOBILE SALES:** The sale of new and used automobiles and other motor vehicles in operating condition; the storage of automobiles and other motor vehicles in operating condition; but not including storage

of trucks of more than five (5) tons in weight or buses; and the repair and servicing of such vehicles, but not including body work, painting, or motor rebuilding, unless specifically permitted by the zoning district regulations.

**AUTOMOBILE SERVICE STATION:** An automobile service station is any building or premises used for dispensing, sale, or offering for sale any automotive fuels or oils, having pumps and storage tanks, battery, tire, minor repairs and other similar services are rendered, if rendered wholly within lot lines. The sale of automobiles, trailers, vans, recreational vehicles or trucks is not permitted. The unenclosed storage of automobiles, trucks, trailers or other motor vehicles for purposes other than awaiting repair shall be prohibited.

**AWNING:** A roof-like cover that is temporary in nature and that projects from the wall of a building for the purpose of shielding a doorway or window from the elements.

**BANNER:** A temporary form of signage used to advertise a special event; designed for short-term use and typically suspended from a structure with rope or wire. Permissible banners shall not exceed, in size, two hundred (200) square feet.

**BASEMENT:** A story partly underground and having one-half its height below the average level of the adjoining ground. A basement shall be counted as a story if subdivided and used for a dwelling or business.

**BERM:** A berm is an earthen mound utilized for buffer, landscape and aesthetic purposes.

**BLOCK:** A block is a tract of land bounded by street rights-of-way, or by a combination of street rights-of-way and public parks, cemeteries, railroad and utility rights-of-way, bulkhead lines or shorelines of waterways, or corporate boundary lines.

**BOARD OF ZONING APPEALS:** Board of Zoning Appeals of the Town of Newburgh.

**BOARDING/ROOMING HOUSE, BED AND BREAKFAST, DORMITORY, FRATERNITY OR SORORITY HOUSE:** A private establishment that provides sleeping rooms for rent for set terms, generally by the week or month, in which meals may be provided on a communal basis, but in which cooking is prohibited in individual sleeping rooms.

**BUFFERING AREAS:** Areas reserved for the purpose of creating open space at the perimeter of a parcel to be developed. In the reserved areas no improvements are permitted except for the purpose of direct vehicular access to the site and landscaping and/or screening. Vehicular access ways shall not be computed as part of the required buffering area.

**BUILDABLE AREA:** Buildable area is that area remaining on a lot or parcel after all yard requirements have been complied with and such remaining area may be built upon provided it meets all applicable requirements.

**BUILDING ENVELOPE:** An area that encompasses all structures on a lot or parcel of common ownership.

**BUILDING HEIGHT:** The vertical distance measured from the sidewalk level or its equivalent established grade opposite the middle of the front of the building to the highest elevation of the roof in the case of a slant or flat roof; to the deck line of a mansard roof; and to the mean height level between eaves and ridge of a gable, hip or gambrel roof; provided that where buildings are set back from the street line, the height of the building shall be measured from the average elevation of the finished lot grade at the front of the building.

**BUILDING LINE:** The line nearest the front of and across a zoning lot, establishing the minimum open space to be provided between the front line of a building or structure and the street right-of-way.

**BUILDING, DETACHED:** A detached building is one surrounded by open space on the same lot.

**BUILDING, PRINCIPAL:** A building in which the dominant use of the lot is conducted

**BUILDING, TEMPORARY:** A temporary building is a structure designed, built, created or occupied for short and/or intermittent periods of time and shall include tents, lunch wagons, dining cars, trailers and other roofed structures on wheels or other supports used for residential business, mercantile, storage, commercial, industrial, institutional, assembly, educational or recreational purposes. For the purpose of this definition, "roof" shall include an awning or other similar covering whether or not it is permanent in nature.

**BUILDING:** Any permanently anchored structure used or intended for supporting or sheltering any use or occupancy. When a building is divided into separate parts by unpierced walls, each part shall be deemed a separate building.

**BULK:** Bulk is the term used to determine the size of lots; the size and placement of buildings or structures, and the location of same with respect to one another, and includes the following:

- a) Size and height of buildings;
- b) Location of exterior walls at all levels in relation to lot lines, streets or to other buildings;
- c) Gross floor area of buildings in relation to lot area (floor area ratio);
- d) All open spaces allocated to buildings;
- e) Amount of lot areas and lot width provided per dwelling unit.

**BUSINESS:** Any occupation, employment, or enterprise which occupies time, attention, labor and/or materials for compensation whether or not merchandise is exhibited or sold, or services are offered.

**CANOPY:** Any structure, mobile or stationary, attached to and deriving its support from framework or posts or other means independent of a connected structure for the purpose of shielding a platform, stoop or sidewalk from the elements, or a roof-like structure of permanent nature which projects from the wall of a structure and overhangs the public way.

**CAR WASH:** An establishment that provides washing and cleaning of passenger or recreational vehicles by hand, by use of automated equipment operated by one (1) or more attendants, or by self-service facilities.

**CELLAR:** A story having more than one-half of its height below the curb level or below the average grade of the adjoining ground. A cellar shall not be counted as a story for the purpose of height measurement.

**CERTIFICATE OF APPROPRIATENESS:** A certification authorized by the Plan Commission authorizing plans for construction, reconstruction, alteration, the moving, rehabilitation or demolition, in whole or in part, of a building or structure which is located within the Town Core Overlay District .

**CERTIFICATE OF OCCUPANCY:** A certificate to occupy a structure as issued by the Building Inspector.

**CHILD CARE CENTER:** Any child care facility receiving more than eight (8) children for fewer than twenty-four (24) hours per day unattended by parent or legal guardian.

A child care center shall constitute the primary use of a structure and may not be housed in an accessory structure. This use is considered a commercial operation in which non-household employees are allowed.

**CHILD CARE HOME:** A child care home is a facility located in a single household residence which receives not more than eight (8) children for fewer than twenty-four (24) hours per day unattended by parent or legal guardian. The maximum of 8 children includes the family's natural or adopted children under the age of 16 and those children who are in the home under full-time care. Activities may include educational training; however, non-household employees shall not be allowed.

**CLINIC, IN-PATIENT:** An establishment where patients are admitted for study or treatment on an in-patient bases by two or more licensed physicians or dentists and their professional associates practicing medicine or dentistry together.

**CLINIC, OUT-PATIENT:** An establishment where patients are admitted for study or treatment on an out-patient bases by two or more licensed physicians or dentists and their professional associates practicing medicine or dentistry together.

**CLUB, OR LODGE, PRIVATE:** A club or lodge, private, is a group or association of persons who are bona fide members paying dues, which owns, hires or leases a building or portion thereof; the use of such premises being restricted to members and their guests. It shall be permissible to serve food and meals on such premises, provided adequate dining room space and kitchen facilities are available. The sale of alcoholic beverages to members and their guests shall be allowed provided it is secondary and incidental to the promotion of some other common objective of the organization.

**CLUB, PRIVATE (NON-PROFIT):** A "private club" is a non-profit association of persons, who are bona fide members paying annual dues, which owns, hires, or leases a building, or portion thereof; the use of such premises being restricted to members and their guests. The affairs and management of such "private club" are conducted by a board of directors, executive committee, or similar body chosen by the members at their annual meeting. It shall be permissible to serve food and meals on such premises, providing adequate dining room space and kitchen facilities are available. The sale of alcoholic beverages to members and their guest shall be allowed provided it is secondary and incidental to the promotion of some other common objective of the organization,, and further provided that such sale of alcoholic beverages is in compliance with the applicable Federal, State, and County laws.

**CLUSTERING:** Clustering permits the siting of structures which may be independent of existing lot lines on a parcel of land which is based on a plan.

**COMMERCIAL SIGN DISTRICT:** An area of the Town located in zoning districts C1, C2, C3 and C4, and any associated overlay districts according to the Official Zoning Map of the Town of Newburgh.

**COMMUNITY EVENT:** An event of community wide interest sponsored by a governmental agency or a not-for-profit corporation or association. Such event does not include any activity for the economic benefit of particular business.

**CONGREGATE HOUSING:** Institutional housing consisting of apartments, rooms, medical service facilities, and dining services for residents who require such housing because of age or medical condition.

**CONSTRUCTION:** On-site erection, fabrication, installation, alteration, demolition or removal of any structure, facility, or addition thereto, including all related activities, but not restricted to, clearing of land, earth moving, blasting and landscaping.

**CONVALESCENT, NURSING OR REST HOME:** An establishment for the care of the aged or infirm, or a place of rest for those suffering bodily disorders. Such home does not contain equipment for surgical care or for the treatment of disease or injury.

**CONVENIENCE RETAIL CENTER:** A neighborhood oriented shopping center or free-standing enterprise designed to serve patrons on a short term drop-in-basis, typically containing, but not limited to, a small food and sundries store, drug store, carry-out food service, hairdresser or barber, or dry cleaning pick-up store. Liquor sales and gasoline sales are expressly prohibited.

**COUNCIL:** The Town Council of Newburgh.

**CURB LEVEL:** Curb level is the level of the established curb in front of the building measured at the center of such front. Where a building faces on more than one street, the curb level shall be the average of the levels of the curbs at the center of the front line on each street. Where no curb has been established, the mean level of land immediately adjacent to the building shall be considered the curb level.

**DAYTIME HOURS:** 7:00 a.m. to 7:00 p.m., local time.

**db(A):** Decibels as read on the sound level meter when set for the A-weighted filter. The A-weighted filter approximates the sensitivity of the human ear as to frequency response.

**DEMOLITION:** Any act or process which destroys in part or in whole a structure.

**DENSITY BONUSES:** The granting of the allowance of additional density in a development in exchange for the provision by the developer of other desirable amenities from a public perspective, e.g., public open space, plazas, art, landscaping, etc.

**DEVELOPMENT COMMITMENT:** A written commitment filed by a developer of a proposed development project which specifies the terms and conditions a master development plan, easements, landscape and buffering plans, use restrictions and other development details which may be beyond or instead of normal requirements of the zoning or subdivision ordinance and may result from conditions imposed by review bodies as a condition for development approval. **DEVELOPER COMMITMENTS** are recorded as deed restrictions which run with the property as a condition of title.

**DISTRICT:** Any specifically described area of the Town as indicated by the Official Zoning Map of the Town of Newburgh to which these regulations apply and shown on a official map maintained by the Zoning Administrator.

**DISTRICT, OVERLAY:** An overlay district is a second set of regulations applied to any part or all of a zoning district (as defined for the term **DISTRICT**) or any number of districts. The overlay district regulations may relax or further restrict the number or types of uses allowed as well as the way permitted activities operate within the overlay district boundaries. Such districts are mapped on the Town's official Zoning Map.

**DISTRICT, UNDERLYING:** An underlying district is the term referring to a zoning district (as defined for the term **DISTRICT**) when it is affected by an overlay district.

**DORMITORY:** A building or part of a building operated by an institution and containing a room or rooms forming one or more habitable units which are used or intended to be used by residents of the institution for living and sleeping, but not for cooking or eating purposes.

**DRIVE-IN (DRIVE-THROUGH) RESTAURANT:** A restaurant which is laid out and equipped to serve food and beverage to patrons in automobiles.

**DRIVEWAY:** A driveway is a pathway for motor vehicles from a street to a permitted accessory building used for service purposes or for access to the principal structure on a zoning lot.

**DWELLING UNIT, MULTIPLE-HOUSEHOLD:** A multiple-household dwelling unit is a building, or portion thereof, consisting of three (3) or more dwelling units with varying arrangements of entrances and party walls. The definition of multiple-household dwelling unit may include, but shall not be limited to the following terms: apartment, condominium, cooperative, quadraminium, three-flat and triplex.

**DWELLING UNIT, SINGLE-HOUSEHOLD ATTACHED:** An attached single-household dwelling unit is a building consisting of dwelling units each of which is attached by a common vertical wall to one other dwelling unit with each dwelling unit having a separate entrance. An attached single-household dwelling unit shall include the terms "townhouse" and "rowhouse".

**DWELLING UNIT, SINGLE-HOUSEHOLD DETACHED:** A single-household detached dwelling unit is a building containing a single dwelling unit only, which is separated from all other dwelling units by open space.

**DWELLING UNIT, TWO-HOUSEHOLD:** A two-household dwelling unit is a building consisting of two (2) dwelling units which may either be attached, side-by-side, or one above the other, with each dwelling unit having a separate or combined entrance or entrances.

**DWELLING UNIT:** One or more rooms including a kitchen or kitchenette, located within a residence providing complete living facilities for one household or containing facilities and equipment for living, sleeping, cooking and eating.

**DWELLING, MODULAR UNIT:** A factory-fabricated transportable building designed to be used by itself or to be incorporated with similar units at a building site into a modular structure that will be a finished building in a fixed location on a permanent foundation.

**DWELLING:** A building, or portion thereof, designed or used exclusively for residential occupancy, including single-household dwellings, two-household dwellings or multiple-household dwellings, but not including hotels or motels.

**EXTERIOR ARCHITECTURAL APPEARANCE:** Includes the architectural character, general composition, and general arrangement of the exterior of a structure, including the kind, color, and texture of the building material and the type and character of all windows, doors, light fixtures, signs and appurtenant elements, visible from public streets and thoroughfares.

**EXTERNAL ILLUMINATION:** Illumination of a sign which is effected by a source of light which is not contained within the sign itself.

**FACADE:** The portion of any exterior elevation on the building extending from grade to top of the parapet, wall or eaves and the entire width of the building elevation.

**FAMILY CARE FACILITY:** A non-medical facility for the housing of no more than eight (8) unrelated persons (inclusive of residential staff), who, due to advanced age, handicap, impairment due to chronic illness, or status as a minor who is unable to live with parents or guardians, require assistance and/or supervision, and who reside together in a family-type environment as a single housekeeping unit. Excluded from the definition of family care facilities are homes in which residents are criminal offenders or former criminal offenders. Excluded from this definition are persons whose disability arises from current use or addiction to a controlled substance as this term is used in the United States Code and Indiana Statutes.

**FAMILY:** A "family" consists of one or more persons each related to the other by blood, marriage, or adoption (including foster children), together with such relatives of the representatives of the respective spouses who are living with the family in a single dwelling and maintaining a common household. A family may also be composed of not to exceed four (4) persons not so related, provided that such unrelated persons live in a single dwelling and maintain a common household and a single housekeeping unit. A family includes any domestic servants and not more than one (1) gratuitous guest residing with said family; such servants shall be included in the unrelated persons attained by this definition, and shall not be in addition thereto.

**FENCE:** A free-standing structure of metal, masonry, composition or wood or any combination thereof resting on or partially buried in the ground and rising above ground level, and used for confinement, screening or partition purposes.

**FILLING STATION:** See AUTOMOTIVE SERVICE STATION

**FINDING OF FACT:** Information obtained with respect to a matter or a statement or a writing made by any person or entity required to make a "finding" under the terms of this ordinance.

**FLOOR AREA RATIO (FAR):** The number obtained by dividing the floor area of a building or other structure by the gross area of the site on which the building or structure is located. When more than one (1) building or structure is located on a lot, then the floor area ratio is determined by dividing the total floor area of all the buildings or structures by the gross area of the site.

**FLOOR AREA:** The sum of the gross horizontal areas of the several floors of the building measured from the exterior faces of the exterior walls or from the center line of walls separating two buildings, computed as follows:

- a) For Determining Floor Area Ratio. The sum of the following areas:
  - 1) the ground floor area when any portion of the basement or ground floor used for a dwelling, business, or commercial purpose except for home occupation;
  - 2) elevator shafts and stairwells at each floor;
  - 3) floor space (including any basement floor space) used for mechanical equipment (except equipment, open or enclosed, located on the roof);
  - 4) penthouses;
  - 5) attic space having headroom of seven feet, ten inches or more;

- 6) interior balconies and mezzanines;
  - 7) enclosed porches; and
  - 8) floor area devoted to accessory uses. Space devoted to off-street parking or loading shall not be included in the floor area. The floor area of structures devoted to bulk storage of materials shall be computed by counting each ten feet of height, or fraction thereof, as being equal to one floor.
- b) For Determining Off-Street Parking and Loading Requirements. The sum of the following areas:
- 1) floor space devoted to the principal use of the premises, including accessory storage areas located within selling or working space such as counters, racks, or closets;
  - 2) any basement floor area devoted to retailing activities; and
  - 3) floor area devoted to the production or processing of goods or to business or professional offices. For this purpose, floor area shall not include space devoted primarily to storage purposes (except as otherwise noted herein), off-street parking or loading facilities, including aisles, ramps and maneuvering space, or basement floor area other than area devoted to retailing activities, the production or processing of goods, or business or professional offices.

**FOOD STORES:** Stores which sell foods, fresh or frozen, and other items commonly sold in connection therewith and including, but not limited to, stores commonly referred to as dairy stores, delicatessens, fruit markets, grocery stores, health food stores, nut shops and supermarkets. Sales must be made at retail on the premises, but not for consumption on the premises.

**FRONT VS. REAR ON THROUGH LOT:** Any parcel of real estate which is contiguous with more than one street shall have only one front. If no dwelling unit exists on the parcel, then the front shall be designated on the drawing accompanying the application for a building permit. If a dwelling unit already exists on a parcel, then the front of such parcel shall be determined by the street address of the dwelling unit.

**FRONTAGE:** All property on one side of a street or place between two (2) intersecting streets which cross or terminate at the other, measured along the line of the street; or, if the street has a dead end, then all of the property abutting on one side between an intersecting street and the dead end of the street.

**GARAGE, PRIVATE:** A detached accessory building or portion of the main building used only for the storage of motor driven vehicles which are the property of and for the private use of the occupants of the lot on which the private garage is located. If the occupants of the lot have fewer vehicles than the storage spaces contained in said garage, the unrequired spaces may be used by, or rented to others. Not more than one of the vehicles may be a commercial vehicle of not more than three-quarter ton capacity.

**GARAGE, PUBLIC:** Any premises, except those described as a private or storage garage, used for the storage or care of self-propelled vehicles, or where any such vehicles are equipped for operation, repaired or kept for remuneration, hire or sale.

**GARAGE, STORAGE:** A storage garage is any building used for the storage only of motor vehicles pursuant to previous arrangements and not to transients, and where no equipment, parts, fuel, grease or oil is sold and vehicles are not equipped, services, repaired, hired or sold.

**GROSS FLOOR AREA** (for determining off-street PARKING and loading Requirements): The sum of the gross horizontal area of the floor(s) of a building, excluding floor area devoted to permanent storage; floor area devoted to off-street parking and loading facilities, including aisles and maneuvering space; basement floor area other than the area devoted to retailing activity, production or processing of goods, or business or professional offices; mechanical rooms; stairwells; and shafts devoted to elevators, wiring or mechanical equipment.

**GROUP CARE FACILITY:** A residential facility which is the same as a Family Care Facility except that it may house six (6) persons

**GUEST, PERMANENT:** A permanent guest is a person who occupies or has the right to occupy a hotel or apartment hotel accommodation as his domicile and place of permanent residence.

**HALFWAY HOUSE:** A non-medical residential facility for the housing of no more than eight (8) unrelated persons (inclusive of residential staff) who due to status as a minor, criminal offender, person on work release program, parole, or probation, are unable to live with parents or guardians and require assistance or supervision. The residents live together in a family type environment as a single housekeeping unit. (See also FAMILY CARE FACILITY).

**HANDICAP:** Physical or mental impairment which limits one or more of a person's life activities; or a record of having such impairment; or being regarded as having such impairment. However, the definition of handicap does not include the current use of or addiction to a controlled substance.

**HEIGHT OF SIGN:** The vertical distance measured from the adjacent street grade to the highest point of the sign.

**HISTORICAL SIGNIFICANCE:** The quality of significance in American history, architecture, archaeology, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, material, workmanship, feeling, and association and;

- a) That are associated with events that have made a significant contribution to the broad patterns of Newburgh's history; or
- b) That are associated with the lives of persons significant in Newburgh's past; or
- c) That embody the distinctive characteristics of a type, period, or method of construction, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- d) That have yielded or may be likely to yield information important in prehistory or history.

**HOME OCCUPATION:** Home occupation is any occupation or profession engaged in by the occupant of a dwelling at or from the dwelling, where such home occupation is incidental and secondary to the use of the dwelling for dwelling purposes and which complies with the provisions of Section 130.6.

**HOSPITAL:** A hospital is any institution, place, building, or agency, public or private, whether organized for profit or not, devoted primarily to the maintenance and operation of facilities for the diagnosis and treatment or care of two (2) or more unrelated persons admitted for overnight stay or longer in order to obtain medical, including obstetric, psychiatric and nursing, care of illness, disease, injury, infirmity, or deformity. The term "hospital" with regard to length of stay shall also include:

- a) Any facility which is devoted primarily to providing psychiatric and related services and program for the diagnosis and treatment or care of two (2) or more unrelated persons suffering from emotional or nervous disease; and
- b) All places where pregnant females are received, cared for, or treated during delivery irrespective of the number of patients received.

The term "hospital", includes general and specialized hospitals, tuberculosis sanitarium, mental or psychiatric hospitals and sanitarium, and includes maternity homes, lying-in homes, and homes for unwed mothers in which aid is given during delivery.

**HOTEL:** A building occupied as the more or less temporary abiding place of individuals, who are lodged with or without meals, and in which there are more than fifteen sleeping rooms usually occupied separately and no provision is made for cooking in any individual room or apartment.

**HOUSEHOLD:** A housekeeping unit living in a common dwelling unit. Households may be either a family or a non-family unit. A non-family household shall comprise no more than four (4) unrelated (by birth or marriage) individuals.

**HYPERMARKET:** A large-scale (minimum of roughly 100,000 square feet) self-service retail store selling food, drugs, household merchandise, clothing and a variety of other retail goods. The store may, in some cases, include limited medical services such as a dentist's office.

**IMPERVIOUS LOT COVERAGE:** The percentage of a lot's area covered by any building or structure or any impermeable surface other than water bodies.

**IMPROVEMENTS:** Any building, structure, parking facility, fence, gate, wall, work of art, underground utility service or other object constituting a physical betterment of real property, or any part of such betterment.

**IMPROVEMENT LOCATION PERMIT:** An Improvement Location Permit is a certificate issued by the Zoning Administrator certifying that any proposed use, building, or structure to be located on a zoning lot is in accordance with all of the regulations of this ordinance.

**IMPULSIVE SOUND:** Either a single pressure peak or a single burst (multiple pressure peaks) for a duration less than one second.

**INDUSTRIAL DISTRICT:** I1 districts.

**INDUSTRIAL SIGN DISTRICT:** I1 districts.

**INGRESS AND EGRESS:** The principal vehicular access into and out of the proposed development.

**INTENSITY:** The level of activity associated with an individual use or group of uses. Measure of intensity reflects the type of activity, the area required for the exercise of the activity, the traffic generation as indicated in the Institute of Traffic Engineering handbook on Trip Generation and its updates, the number of patrons in a given time frame, the service requirements for logistical purposes and associated environmental impacts.

**INTERESTED PERSON:** Any person who occupies or holds an interest in real estate which is the subject of a zoning decision, and anyone who occupies or owns property within 250 feet of such real estate. Service of

notice to interested persons may be made by mail or personal service on the last assessee of record and upon all occupants.

**INTERNAL ILLUMINATION:** Illumination of a sign which is effected by a source of light which is contained within the sign itself. Any sign in which light becomes visible by shining through a translucent surface shall be considered a sign in which internal illumination is used.

**ITEM OF INFORMATION:** For purposes of calculating permitted information on a sign, an Item Of Information refers to a single word, number or symbol.

**JUNKYARD:** A junkyard is an open area where junk, waste, scrap, discarded or salvaged materials are bought, sold, exchanged, stored, baled, packed, disassembled, or handled, including but not limited to scrap iron and other metals, paper, rages, rubber tires, and bottles. A junkyard includes automobile wrecking or salvage yards, house wrecking yards, used lumber yards and places or yards for storage of salvaged house-wrecking and structural steel materials and equipment, but does not include uses established entirely within enclosed buildings.

**KENNEL:** Any premises used for the commercial breeding, boarding, grooming, or bathing of dogs, cats, and/or other small domesticated household pets (not farm animals), or for the breeding or keeping of dogs for racing purposes.

**LABORATORY, MEDICAL OR SCIENTIFIC:** A building or group of buildings in which facilities for medical or scientific research, investigation, testing or experimentation are located, and in which no more than fifteen percent (15%) of a building so occupied may be used for ancillary manufacturing, fabricating, processing, assembly, storage, repair, or service facilities.

**LANDSCAPED AREA:** Land that has been decoratively or functionally altered by contouring and planting shrubs, trees or vines, and with a living or nonliving ground cover.

**LODGING HOUSE (INCLUDING BOARDING AND ROOMING HOUSE):** A lodging house is a residential building, or portion thereof; other than a motel or hotel, containing lodging rooms which accommodate persons who are not members of the keeper's family. Lodging with or without meals is provided for compensation on a weekly or monthly basis.

**LOT AREA OR SIZE:** The total horizontal area included within the lot lines of a lot

**LOT COVERAGE:** Lot coverage is that portion or percentage of a lot permitted to be covered by structures.

**LOT DEPTH:** Lot depth is the mean horizontal distance between the front lot line and the rear lot line of a lot, measured within the lot boundaries.

**LOT FRONTAGE:** The length of the front line of a lot

**LOT LINE, FRONT:** Rear lot line is the lot line most nearly parallel to and most remote from the front lot line. If the rear lot line as determined above shall be less than ten (10) feet in length, such rear lot line shall be

determined to be a line which is not less than ten (10) feet in length, which line shall be parallel to and at the maximum distance from the front lot line.

**LOT LINE, REAR:** The lot line that is most distance from, and is, or is most nearly, parallel to, the front lot line. If a rear lot line is less than fifteen (15) feet long lying wholly within the lot, parallel to the front lot line, then the Zoning Administrator may interpret this ordinance to include portions of the side yards as the rear lot line where such interpretation is consistent with the requirements set forth in this ordinance. If a zoning lot has two or more front lot lines, the owner or developer shall designate the yard which is to be the rear yard.

**LOT LINE:** Lot line is a property boundary line of any lot held in single or separate ownership; except that where any portion of the lot extends into the abutting street or alley, the lot line shall be deemed to be the street or alley line.

**LOT OF RECORD:** A lot which is a part of a subdivision, the map of which has been recorded in the office of the county recorder of deeds of Warrick County.

**LOT TYPES:** The terminology used in this ordinance with reference to lot types is as follows:

- a) **Corner Lot:** A lot located at the intersection of two or more streets.
- b) **Interior Lot:** A lot other than a corner lot with only one frontage on a street other than an alley.
- c) **Through Lot:** A lot other than a corner lot with frontage on more than one street other than an alley. Through lots with frontage on two streets require that front yards shall be provided on both streets, provided, however, if the lot is comparatively level, the number of dwelling units that may be constructed facing either street shall be computed by using one-half of the total area of the lot; if the lot has a substantial change in elevation, the area of the level portion shall determine how many dwelling units may be constructed fronting on the street adjoining the level portion of the lot.
- d) **Zoning Lot:** A single unified tract of land located within a single block which at the time of filing for a building permit, is designated by its owner or developer as a tract to be used, developed or built upon as a unit under single or unified ownership or control. Such lot shall have frontage on a street; shall be of at least sufficient size to meet minimum zoning requirements for use, coverage and area; shall provide such yards and other open spaces as herein required; and may consist of: (1) a single lot or record; (2) a portion of a lot of record; (3) a combination of complete lots of record; (4) a parcel of land described by a metes and bounds description; provided that in no case of division or combination shall any residual lot or parcel be created which does not meet the requirements of this ordinance.

**LOT WIDTH:** The distance on a horizontal plane between the side lot lines measured at right angles to the lot depth at the established front building line.

**LOT, CORNER:** A corner lot is one situated at the intersection of two (2) or more streets, where the interior angle of such intersection coterminous with the right-of-way lines of such streets does not exceed one hundred thirty-five (135) degrees.

**LOT, REVERSED CORNER:** A corner lot, the rear of which abuts upon the side of another lot, whether across an alley or not.

**LOT:** A single parcel of land which is legally described and recorded as such, or which is one or more numbered lots or parts of such lots legally described and recorded as a part of a recorded subdivision plat. A lot is one or more contiguous lots or parts of lots of record comprising the tract of land which is designated by the

owner at the time of application for a building or sign permit as the site to be used, developed or built upon as a unit. Therefore, a lot may or may not coincide with a single lot of record.

**MANUFACTURED HOME:** A dwelling unit fabricated in an off-site manufacturing facility for installation or assembly at the building site, bearing a seal certifying that it is built in compliance with the Federal Manufactured Housing Construction and Safety Standards Code (1974 USC 5401 et. seq.).

**MARQUEE:** Marquee shall mean any permanent roof like structure extending from part of the wall or building but not supported by the ground and constructed of durable material such as metal or glass. Such structure may overhang a public way but shall not overhang a public right-of-way.

**MEDICAL CENTER:** An institution providing health service and medical or surgical care on an in-patient basis or out-patient basis to persons suffering from illness, disease, injury, deformity, or other abnormal physical or mental conditions and including, as an integral part of the institution, related facilities such as laboratories or training facilities.

**MOBILE HOME:** A single household residential unit with all of the following characteristics: (a) designed for long-term occupancy, and containing sleeping accommodations, a flush toilet, a tub or shower bath and kitchen facilities with plumbing and electrical connections provided for attachments to outside systems; (b) designed to be transported after fabrication on its own wheels; (c) arriving at the site where it is to be occupied as a dwelling complete, conventionally designed to include major appliances, and ready for occupancy except for minor and incidental unpacking and assembly operations, location on foundation supports, connection to utilities and the like; (d) designed for removal to and installation or erection on other sites.

**MOTEL:** (See "Hotel-Motel")

**MOTOR VEHICLE:** A motor vehicle is every device, in, upon or by which any person or property is or may be transported or drawn upon a road or highway except devices moved by human power, devices used exclusively upon stationary rails or tracks and snowmobiles. For this act, motor vehicles are divided into two (2) divisions.

**MUNICIPALITY:** Municipality shall mean the Town of Newburgh.

**MURAL:** Painting, or other art work applied to or made integral with a wall surface which is of significance primarily because of its artistic quality rather than because of the message it communicates.

**NEON TUBE ILLUMINATION:** Illumination effected by a light source consisting of a neon tube which is bent to form letters, symbols, or other shapes.

**NIGHTTIME HOURS:** 7:00 p.m. to 7:00 a.m., local time.

**NOISE POLLUTION:** A level of noise which subjects those in close proximity to such decibel levels that impair their health, general welfare and enjoyment of their property for its intended use.

**NONCONFORMING USE:** See USE, NON-CONFORMING

**OCTAVE BAND SOUND PRESSURE LEVEL:** The sound pressure level for the sound being measured contained within the specified octave band. The reference pressure is twenty (20) micronewtons per square meter.

**OFF-PREMISE SIGN:** A sign which advertises goods, services or facilities which are not available on the premises where the sign is located. The foregoing definition includes (but is not limited to) outdoor advertising sign structures.

**OFF-STREET LOADING AND UNLOADING SPACE:** An open hard-surface area of land, other than a street, driveway, or public way, the principal use of which is for standing, loading and unloading of motor trucks, tractors and trailers, to avoid undue interference with the public use of streets and alleys. Such space shall not be less than twelve (12) feet in width, thirty (30) feet in length for short berths and fifty (50) feet in length for long berths and fifteen (15) feet in height, exclusive of access aisles and maneuvering space.

**OFF-STREET PARKING SCHEDULE:** General off-street parking requirements, as delineated in Section 130.10 of the Zoning Ordinance; the schedule indicates the number of parking spaces required per use.

**OFFICE SIGN DISTRICT:** Those parts of the Town which are located in zoning base districts O1 or O2 and any associated overlay districts, according to the Official Zoning Map.

**OPEN SPACE:** Open space is all land or water areas which is not occupied by buildings, roads, parking or private open areas. It includes park land and play areas, community garden plots, storm water detention/retention facilities and service areas which may be dedicated to the public or may be designated or reserved for the sole use and enjoyment of the people having a common proprietary interest in the development. Land required to remain as open space by this chapter may be used for recreation, resource protection, underground utility, amenity and buffer area purposes. Where the open space is part of the park land or school dedication the entire parcel so dedicated shall be considered as open space.

**ORNAMENTAL TREE:** A tree which generally reaches a mature height of between ten (10) and twenty-five (25) feet. Such trees provide seasonal color and interest, screening and visual enhancement at intermediate elevations.

**OVERNIGHT FACILITY:** A building accessory to medical facilities, in which rooms or suites are reserved to provide sleeping accommodations for temporary guests.

**OWNER:** The owner as shown on the records of the Warrick County Recorder's office on the date of the filing of an application for development approval.

**PARCEL:** A parcel is a continuous area of real property which is legally described and accurately drawn on the plat of such property.

**PARKING AREA:** An open hard-surface area of land, other than a street, driveway, or public way, the principal use of which is for the storage (parking) of passenger automobiles or commercial vehicles under two-ton capacity by the public, whether for compensation or not, or as an accommodation to clients or customers. (See Town Engineering Design Standards)

**PARKING AREA, PRIVATE:** A private parking area is an open, hard-surfaced area, other than a public way or street, designed, arranged and made available for the storage of private passenger automobiles only, of

occupants of the building or buildings for which the parking area is developed and is accessory. Private parking areas shall comply with requirements of Section 130.10.

**PARKING AREA, PUBLIC:** A public parking area is an open, hard-surfaced area, other than a public way or street, intended to be used for the temporary, daily, or off-street parking of passenger automobiles and commercial vehicles under one and one-half (1-1/2) tons rated capacity, and available to the public, whether for compensation, free, or as an accommodation to clients or customers.

**PARKING LOT:** An improved surface upon which passenger vehicles are parked, and at which a fee may be charged.

**PARKING SPACE, AUTOMOBILE:** Hard surfaced space within a parking area or a building of not less than one hundred fifty-seven and one-quarter (157.25) square feet [eight and one-half (8-1/2) feet by seventeen and one-half (17-1/2) feet, and a vertical clearance of at least seven (7) feet], exclusive of access drives, aisles, ramps, columns, or office and work area, for the storage of one passenger automobiles or commercial vehicles under two-ton capacity.

**PARKWAY TREES:** Trees which are planted in the public right-of-way.

**PARTY WALL:** A wall which is common to but divides contiguous buildings.

**PEDESTRIAN SIGN:** A sign intended primarily for viewing by pedestrian traffic, displayed as a wall sign, window sign or window display.

**PERFORMANCE STANDARD:** A criterion established to control noise, odor, smoke, toxic or noxious matter, vibration, fire and explosive hazards, and glare or heat generated by, or inherent in uses of land or buildings.

**PERSON:** An individual, partnership, corporation, joint stock association, or joint venture, and includes any trustee, receiver, assignee or personal representative.

**PLACE:** An open unoccupied space other than a street or alley, permanently reserved as the principal means of access to abutting property.

**PLAN COMMISSION:** The Plan Commission as established in the Newburgh Zoning Ordinance.

**PLANNED DEVELOPMENT:** A parcel or tract of land, initially under single ownership or control to be developed as a unified project and single entity which contains two or more principal buildings and more than one principal use - the plan for which does not correspond in lot size, bulk or type of dwelling, density, lot coverage or required open space to the regulations in any one district established by this zoning ordinance.

**PLANNED UNIT DEVELOPMENT:** Planned unit development means a parcel of land or contiguous parcels of land of a size sufficient to create its own character, controlled by a single landowner or by a group of landowners in common agreement as to control, to be developed as a single entity, the character of which is compatible with adjacent parcels, and the intent of the zoning district or districts in which it is located; the developer or developers may be granted relief from specific land-use regulations and design standards and may be awarded certain premiums in return for assurances of an overall quality of development, including any specific features which will be of exceptional benefit to the Town as a whole and which would not otherwise be required by the zoning ordinance.

The areas of planned unit development shall remain under one ownership or unified control unless safeguards are provided that, in the opinion of the Town attorney, will provide the continuation of the

original planned development concept and any modification as recommended by the plan commission and approved by the Town Council.

**PRACTITIONER:** A person licensed by the State of Indiana to practice medicine or other healing arts.

**PRE-CODE:** Uses established prior to April 1, 1931.

**PREFERRED FREQUENCIES:** Those frequencies in Hertz preferred for acoustical measurements which, for the purposes of this regulation, consist of the following set of values: 20, 25, 31.5, 40, 50, 63, 80, 100, 125, 160, 200, 250, 315, 400, 500, 630, 800, 1000, 1250, 1600, 2000, 2500, 3150, 4000, 5000, 6300, 8000, 10,000, 12,500.

**PREMISES:** A distinct portion of real estate, land or lands with or without buildings or structures. It may or may not have the same meaning as "lot", "building" or "structure".

**PRINCIPAL STRUCTURE:** A structure in which a principal use of the lot on which the structure is located is conducted.

**PRINCIPAL USE:** The main use of land or structures as distinguished from a subordinate or accessory use.

**PROJECTING SIGN:** A sign other than a wall sign which projects from and is supported by a wall of the building or structure.

**PROPRIETARY INTEREST:** Private ownership of a given plot of land.

**QUASI-PUBLIC USES:** Land or building uses that combine a public and private function, such as museums and parks.

**RECYCLING CENTER:** An establishment primarily engaged in the storage, sale, dismantling, or other processing of used or waste materials which are not intended for re-use in their original forms, such as automotive wrecking yards, metal salvage yards, or paper, glass, or plastic salvage yards.

**REHAB FACILITIES:** A building or portion thereof where a group of persons are admitted for periods of more than one day for the primary purpose of taking a program of physical rehabilitation.

**REPLACEMENT COST:** The cost to build a structure which has been destroyed or partially destroyed with a new structure which conforms to modern building standards and which is otherwise substantially similar to the structure which was destroyed or partially destroyed. Calculation of the replacement cost shall be based on the most current Building Valuation Data Report as published in the most current copy of BOCA - The Building Official and Code Administration Magazine.

**RESIDENTIAL CLUSTER DEVELOPMENT:** A development which allows various dwelling unit types including single-household detached, single-household attached and stacked units, a flexibility of dwelling unit placement which encourages the preservation of natural open space.

**RESIDENTIAL DISTRICT OR ZONE:** Any one or all of the A1, RL, R1, R2, R3, R4 districts.

**RESIDENTIAL DISTRICT SPECIAL USE SIGN:** A freestanding ground or wall sign, approved by the Town Council, located on a property that has been granted a special use in a residential district by the Town Council. Residential district special use signs may be a maximum of twenty (20) square feet and have a maximum height of five (5) feet.

**RESIDENTIAL SIGN DISTRICT:** Those parts of the Town which are located in zoning base districts A1, RL, R2, R3, R4, and any associated overlay districts according to the Official Zoning Map are designated as Residential Sign Districts.

**RESTAURANT, STANDARD:** Any restaurant facility where the consumption of food, frozen desserts, or beverages within a motor vehicle parked upon the premises, or at other facilities outside of the restaurant building is posted as being prohibited and such prohibition is strictly enforced by the restaurant

**ROOF LINE:** This shall mean either the edge of the roof or the top of the parapet which ever should be joined forms the top line of the building silhouette and, where a building has several roof levels, this roof or parapet shall be the one belonging to that portion of the building on whose wall the sign is located.

**ROOMING HOUSE/BED AND BREAKFAST:** Any building in which three or more persons either individually or as families are housed or lodged for compensation with or without meals. A boarding house or furnished room house shall be deemed a "rooming house".

**SATELLITE ANTENNA, PRIVATE:** Any accessory structure capable of receiving, for the sole benefit of the principal use, radio or television signals from a transmitter or a transmitter relay located in planetary orbit. This definition includes but is not limited to, satellite receivers, satellite dish antennas, direct broadcast systems (DBS), and television reception only systems (TVROS).

**SATELLITE DISH ANTENNA:** A device or instrument, designed for television or other electronic communications signal broadcast or relayed from an earth satellite. It may be a solid, open mesh, or bar-configured structure, typically eight feet in diameter, in the shape of a shallow dish or parabola.

**SERVICE ORGANIZATION SIGN:** A sign which identifies a service organization which regularly functions within the Town such as the Rotary Club, the Kiwanis Club and the like.

**SETBACK:** A setback is a line parallel to the dedicated right-of-way line, or parallel to the private street edge of pavement, at a distance from it as regulated by this ordinance. This is a line over which no part of any building may extend.

**SHADE TREE:** A tree with a broad spreading canopy which generally reaches a mature height in excess of 30 feet. Provides for screening, shade and visual enhancement at higher elevations.

**SHORT FORM COMPLAINT:** Standard form "ticker" citation or summons form adopted by the Zoning Administrator which conforms to the rules of the Indiana Supreme Court.

**SHRUB CLUSTER:** A group of at least five (5) individual shrubs. Shrubs shall be spaced so that they achieve a full continuous mass within five (5) years of planting.

**SIGHT TRIANGLE:** The imaginary triangular area formed at a street corner by projecting the curb lines of the two intersecting streets to where the two projected lines would cross. From that intersecting point one

measures twenty-five (25) feet back along both curbs and then the two (2) end points are then connected. Within this imaginary triangle, no visual obstructions taller than three (3) feet are allowed.

**SIGN:** Any object, device, display or structure, or part thereof, situated outdoors or indoors, that is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, illumination or projected images.

**SIGN, HISTORIC:** Any sign which is significant because it is part of a structure, or site which is important because of its historic significance, or which is it self significant because it is important, famous, or decisive in history.

**SINGLE-HOUSEHOLD ATTACHED STRUCTURE:** A group of two (2) or more dwelling units attached by a wall, which is one or more stories in height, with each dwelling unit accessible by its own separate exterior entrance at grade level.

**SINGLE-HOUSEHOLD DETACHED STRUCTURE:** A freestanding single-household dwelling unit

**SITE REVIEW ADVISORY COMMITTEE:** An administrative and technical review body.

**SNIPE SIGN:** Any non-governmental sign of any material whatsoever that is attached in any way to a utility pole, tree, or any object located or situated on public right-of-way. No Snipe Signs shall be allowed in the Town of Newburgh.

**STORY:** That portion of a building included between the surface of any floor and the surface of the floor next above it, then the space between such floor and the ceiling next above it.

**STORY, HALF:** A story under a gable, hip or gambrel roof, the wall plates of which at least two (2) opposite exterior walls are not more than two (2) feet above the floor of such story

**STREET:** A thoroughfare which affords the principal means of access to abutting property

**STRUCTURAL ALTERATION:** A "structural alteration" is any change, other than incidental repairs, which would prolong the life of the supporting members of a building, such as the addition, removal, or alteration of bearing walls, columns, beams, girders, or foundations.

**STRUCTURE:** Anything constructed or erected with a fixed location on the ground. Without limitation to the foregoing, a structure shall include buildings, fences, walls and signs.

**SUPERMARKET:** A self-serve retail market selling foods and a limited selection of household merchandise.

**TEMPORARY USE:** A use established for a fixed period of time with the intent to discontinue such use upon the expiration of such time; and does not involve the construction or alteration of any permanent structure.

**THOROUGHFARE:** A major street passing through a busy business and/or commercial area. A thoroughfare is characterized by lots whose rear yards abut a residential district

**TOWNHOUSE:** A group or row of three (3) or more attached single-household dwelling units extending from the basement to the roof and facing upon a street or place as herein defined.

**TRAFFIC IMPACT ANALYSIS:** A study and analysis of how a given use, plan or development will affect traffic in the surrounding area (circulation patterns, amount of vehicles generated, amount of trips generated, etc.)

**TRANSITIONAL BUFFER YARD:** A landscaped yard which provides increased compatibility between incompatible land uses.

**TRANSITIONAL LOT:** A specified lot or lots, adjoining a specified lot, or lots, in another district. The "transitional" identification is used when special transitional regulations are applied to deal with possible conflicts of uses at district boundaries. Transitional buffer yards may be imposed at these locations to act as a buffer between uses.

**UNDER CANOPY SIGN:** A sign suspended beneath a canopy, ceiling, roof, or marquee. The lower edge of the under canopy sign shall be a minimum of nine (9) feet above the surface of the ground. The sign size shall be limited to a maximum eighteen (18) inches of depth, and the sign length shall be no longer than 75% of the depth of the canopy, ceiling, roof, or marquee to which the sign is attached.

**USE:** Any purpose for which a structure or a tract of land may be designed, arranged, intended, maintained, or occupied; also, any activity, occupation, business or operation carried on, or intended to be carried on, in a structure or on a tract of land.

**USE, NONCONFORMING:** Any use of land, building, or structures which use is not permitted in the zoning district in which such use is located.

**USE, PERMITTED:** Any building, structure, or use which complies with the applicable regulation of the ordinance governing permitted uses in the zoning districts in which such building, structure, or unit is located

**USE, PRIMARY:** The main use of the land, building or structure as distinguished from a subordinate or accessory use.

**USE, PRINCIPAL:** A principal use is the main use of land or buildings as distinguished from a subordinate or accessory use. The principal use may be either a permitted or special use.

**USE, CONDITIONAL:** A conditional use is a use, either public or private, which because of its unique characteristics, cannot be properly classified as a permitted use in a particular district or districts. After due consideration, in each case, of the impact of such use upon neighboring land and of the public need for a particular use at the particular location, such "conditional use" may or may not be granted, subject to the terms of this chapter.

**VARIATION:** All variations authorized by this ordinance which are not minor variations shall be considered major variations

**VARIATION, MAJOR:** All variations authorized by this ordinance which are not minor variations shall be considered major variations.

**VARIATION, MINOR:** Minor variations are variations from height, yard, bulk, lot area, and fence height provisions of this ordinance that are less than 20% of the required standard. For example, a variation from a required 20 foot yard setback in an amount of not less than four feet is a minor variation.

**VISITOR:** Any individual present at the site of the home occupation for commercial reasons related to the home occupation other than actual residents of the dwelling unit, governmental officials and employees. The term shall include clients, patrons, pupils, suppliers, sales persons, delivery persons, etc.

**WALL SIGN:** A sign fastened to the wall of a building or structure in such a manner that the wall becomes the supporting structure for, or forms the background surface of, the sign.

**WAREHOUSE:** A warehouse is a structure, or part thereof, or area used principally for the storage of goods and merchandise.

**WINDOW DISPLAY:** One or more signs in a display window which are incorporated with a display or merchandise or relating to services offered but which are not affixed to any window.

**WINDOW SIGN:** A sign which is affixed to, or in contact with the glass surface of a window or the glass surface of a door, and is visible from the public street.

**WORK OF ART:** An object other than a sign which is valued primarily for its decorative or illustrative qualities.

**YARD:** An existing or required open space on the same lot with a principal building, and lying along the adjoining lot lines, open, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided herein. In measuring a yard for the purpose of determining the width of a side yard, the depth of the front yard or the depth of the rear yard, the mean horizontal distance between the lot line and the main building shall be used.

- a) Yard, front - The minimum horizontal distance between the property line and any buildings, or any projection thereof, other than the projection of the usual steps or entrance way and extending for the full width of the lot.
- b) Yard, corner side - The minimum yard required on corner lots between any building and the property line adjacent to the street upon which the lot has the greater lineal dimension. This yard may be observed when no other lots with frontage on this street have, or have the ability to have, a building fronting on this street.
- c) Yard, rear - A space, unoccupied, except by a building of accessory use as herein provided extending for the full width of the lot between the area lot line and the extreme rear line of the principal building. On corner lots, the rear yards shall be considered as parallel to the street upon which the lot has its least dimension. On interior lots, the rear yard shall in all cases be at the opposite end of the lot from the front yard.
- d) Yard, side - A yard between any building and the side line of the lot and extending from the front lot line to the rear yard line.

**ZONING ADMINISTRATOR:** Appointed official of the Town of Newburgh who performs duties of Zoning Administrator as they are defined in this and other ordinances.

**ZONING COMPLIANCE CERTIFICATE:** A certificate issued by the Zoning Administrator certifying that a lot, structures thereon, and a proposed use complies with the requirements of this ordinance. SAME AS IMPROVEMENT LOCATION PERMIT.

**ZONING EXCEPTION CERTIFICATE:** A Zoning Exception Certificate may be issued by the Zoning Administrator for any zoning lot which has a non-conforming use or structure which may be maintained because relief has been granted from any of the provisions of this code due to one or more of the following:

- a) its establishment as a lawful, non-conforming building;
- b) its establishment as a lawful special use;
- c) the granting of a variation by the Board of Zoning Appeals; or
- d) court action

**ZONING MAP:** A delineation of the boundaries of areas or divisions of the Town for the purpose of regulating, limiting and determining the height and bulk of buildings, the intensity of the use of lot area, the areas of open spaces about the surrounding buildings for the purpose of classifying, regulating and restricting the location of trades and industries, and buildings designed for specified industrial, business and residential uses, and which map is attested to and is on file in the office of the Town clerk.