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**[HISTORY: Adopted by the Board of Trustees of the Village of Middleport 3-7-1955. Amendments noted where applicable.]**

## GENERAL REFERENCES

Flood damage prevention — See Ch. 102.

Mobile homes and trailers — See Ch. 127.

**ARTICLE I  
General Provisions****§ 200-1. Enactment; purpose.**

The Board of Trustees of the Village of Middleport hereby enacts the following chapter regulating and restricting the location, construction and use of buildings, structures and the use of land of the Village of Middleport in the Towns of Royalton and Hartland, Niagara County, New York, and for said purposes dividing the Village of Middleport into districts.

**§ 200-2. Title.**

This chapter shall be known and may be cited as the “Village of Middleport, New York, Zoning Ordinance.”

**ARTICLE II  
Terminology****§ 200-3. Word usage.**

Words used in the present tense include the future tense. The singular includes the plural. The word “person” includes a corporation as well as an individual. The word “lot” includes the word “plot” or “parcel.” The term “shall” is always mandatory. The word “used” or “occupied,” as applied to any land or building, shall be construed to include the words “intended, arranged or designed to be used or occupied.”

**§ 200-4. Definitions.**

For the purposes of this chapter, certain terms or words used herein shall be interpreted or defined as follows:

**ACCESSORY USE** — A use incidental to the principal use of a building. In buildings restricted to residence use, the office of a professional man, customary family occupations and workshops not conducted for compensation shall be deemed accessory uses.

**ALTERATIONS, STRUCTURAL** — Any change in the supporting members of a building such as bearing walls, columns, beams or girders.

**APARTMENT HOUSE** — A building arranged, intended or designed to be occupied by three or more families living independently of each other.

**AREA, BUILDING** — The total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings exclusive of uncovered porches, terraces and steps.

**AREA, NET SITE** — The total area within the property lines excluding external streets.

**AUTO COURT** — A building or group of buildings, whether detached or in connected units, used as individual sleeping or dwelling units designed primarily for transient automobile travelers and providing for accessory off-street parking facilities. The term "auto court" includes buildings designated as tourist courts, motor lodges, motels and similar appellations.

**BASEMENT** — A story partly below the ground level but having at least  $\frac{2}{3}$  of its height above the average land level immediately adjacent to the building.

**BUILDING** — Any structure having a roof supported by columns or by walls and intended for the shelter, housing or enclosure of persons, animals or chattel.

**BUILDING, ACCESSORY** — A supplemental building the use of which is incidental to that of a main or principal building and located on the same lot therewith.

**BUILDING, DETACHED** — A building surrounded by open space on the same lot.

**BUILDING, FRONT LINE OF** — The line of that face of the building nearest the front line of the lot. This face includes sun parlors and covered porches, whether enclosed or unenclosed, but does not include steps.

**BUILDING, HEIGHT OF** — The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat roofs; to the deck line of mansard roofs; and to the mean height between eaves and ridge for gable, hip and gambrel roofs.

**BUILDING, MAIN** — A building in which is conducted the principal use of the lot on which it is located.

**CAMP** — One or more tents, vehicles, buildings or structures, together with the tract of land appertaining thereto, established or maintained as living quarters for temporary occupancy by 10 or more people.

**COVERAGE** — That percentage of the plot or lot area covered by the building area.

**DWELLING** — A building designed or used as the living quarters for one or more families.

**DWELLING, ONE-FAMILY** — A detached building designed for or occupied exclusively by one family.

**DWELLING, MULTIPLE** — A dwelling which is either rented, leased, let or hired out to be occupied or is occupied as the temporary or permanent residence or home of three or more families living independently of each other.

**DWELLING, TWO-FAMILY** — A building designed for or occupied exclusively by two families living independently of each other.

**FAMILY** — One or more persons occupying the premises and living as a single housekeeping unit.

**FILLING STATION** — Buildings or premises or a portion thereof arranged, intended or designed to be used for the retail sale of gasoline or other motor vehicle or motor boat fuel.

**GARAGE** — An accessory building intended or designed to be used for the storage of noncommercial motor vehicles.

**GARAGE, PUBLIC** — Any garage not a private garage, and which is used for storage, repair, rental, servicing or supplying of gasoline or oil to motor vehicles.

**HOME OCCUPATION** — An occupation for gain or support conducted only by members of a family residing on the premises and conducted entirely within the dwelling, provided that no article or services are sold or offered for sale except such as may be produced by members of the immediate family residing on the premises. For the purpose of this chapter, the operation of a mortuary is not a home occupation.

**HOTEL** — A building containing rooms intended or designed to be used or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests and where only a general kitchen and dining room are provided within the building or in an accessory building.

**HOUSE TRAILER** — Any portable or mobile vehicle used or designed to be used for living purposes and with its wheels, rollers or skids in place.

**JUNKYARD** — The use of more than 200 square feet of the area of any lot, whether inside or outside a building, or the use of any portion of that half of any lot that joins any street for the storage, keeping or abandonment of junk, including scrap metals or other scrap materials or the dismantling, demolition or abandonment of automobiles or other vehicles or machinery or parts thereof.

**LAUNDERETTE** — A business premises equipped with individual clothes washing machines for the use of retail customers, exclusive of laundry facilities provided as an accessory use in an apartment or apartment hotel.

**LINE, STREET** — The dividing line between the street and the lot.

**LODGING HOUSE** — A building in which three or more rooms are rented and in which no table board is furnished.

**LOT** — A parcel of land occupied or capable of being occupied by one building, and the accessory buildings or uses customarily incidental to it, including such open spaces as are required by this chapter.

**LOT, CORNER** — A parcel of land at the junction of and fronting on two or more intersecting streets.

**LOT, DEPTH OF** — A mean horizontal distance between the front and rear lot lines, measured in the general direction of its side lot lines.

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

**LOT, WIDTH OF** — The mean width measured at right angles to its depth.

**NONCONFORMING USE** — A structure or land at the time of the enactment of this chapter lawfully occupied by a use that does not conform to the regulations of the district in which it is situated.

**NURSING OR CONVALESCENT HOME** — Any dwelling with less than 15 sleeping rooms where persons are housed or lodged and furnished with meals and nursing care for hire.

**PARKING SPACE** — An off-street space available for the parking of one motor vehicle and having an area of not less than 300 square feet inclusive of passageways and driveways appurtenant thereto and giving access thereto, and having direct access to a street or alley.

**PLAT** — A map, plan or layout of a section or subdivision indicating the location and boundaries of individual properties.

**QUARRY, SAND PIT, GRAVEL PIT AND/OR TOPSOIL STRIPPING** — A lot or land or part thereof used for the purpose of extracting stone, sand, gravel or topsoil for sale, as an industrial operation, and exclusive of the process of grading a lot preparatory to the construction of a building for which application for a building permit has been made.

**SANITARIUM or SANATORIUM** — A private hospital, whether or not such facility is operated for profit.

**SIGN** — Any device for visual communication that is used for the purpose of bringing the subject thereof to the attention of the public, but not including any flag, badge or insignia of any government or government agency, or of any civic, charitable, religious, patriotic, fraternal or similar organization.

**SIGN, ADVERTISING** — A sign which directs attention to a business, commodity, service or entertainment conducted, sold or offered elsewhere than on the premises and only incidentally on the premises if at all.

**SIGN, BUSINESS** — A sign which directs attention to a business or profession conducted on the premises. A "for sale" sign or a "to let" sign relating to the property on which it is displayed shall be deemed a business sign.

**STORY** — That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between any floor and the ceiling next above it.

**STORY, HALF** — A story under a gable, hip or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than two feet above the floor of such story.

**STORY, HEIGHT OF** — The vertical distance from the top surface of the floor next above. The height of the topmost story is the distance from the top surface of the floor to the top surface of the ceiling joists.

**STREET, GRADE** — The officially established grade of the street upon which a lot fronts or in its absence the established grade of other street upon which the lot abuts, at the midpoint of the frontage of the lot thereon. If there is no officially established grade, the existing grade of the street at such midpoint shall be taken as the street grade.

**STREET LINE** — The line which is the boundary line between a lot and a street or highway. Where the street line is not readily determinable, computations to determine the street or highway line shall be made from the center of the existing pavement, which shall be deemed the center of the street or highway for purposes of this chapter.

**STRUCTURE** — A combination of materials other than a building to form a construction that is safe and stable and includes among other things stadiums, platforms, radio towers, sheds, storage bins, fences and display signs.

**THEATER, MOVING-PICTURE** — A building or part of a building devoted to the showing of moving pictures on a paid admission basis.

**THEATER, OUTDOOR DRIVE-IN** — An open lot or part thereof, with its appurtenant facilities, devoted primarily to the showing of moving pictures or theatrical productions, on a paid admission basis, to patrons seated in automobiles or on outdoor seats.

**TOURIST CABINS** — A group of buildings, including either separate cabins or a row of cabins, which:

- A. Contain living and sleeping accommodations for transient occupancy; and
- B. Have individual entrances.

**TOURIST HOME** — A dwelling in which overnight accommodations are provided or offered for transient guests for compensation.

**TRAILER** — A vehicle:

- A. Used for living or sleeping purposes; and
- B. Standing on wheels or on rigid supports.

**TRAILER CAMPS** — A land or floor area occupied or designed for occupancy by two or more trailers or camp cars in use for living purposes.

**USE** — The specific purpose for which land or a building is designed, arranged, intended or for which it is or may be occupied or maintained. The term “permitted use” or its equivalent shall not be deemed to include any nonconforming use.

**WAY** — A street or alley or other thoroughfare or easement permanently established for passage of persons or vehicles.

**YARD** — An unoccupied space open to the sky, on the same lot with a building or structure.

### ARTICLE III District Regulations

#### § 200-5. Establishment of districts; Zoning Map; boundaries.

- A. For the purpose of promoting the public health, safety, morals and general welfare of the community, the Village of Middleport is hereby divided into the following types of districts:

- (1) R-1 District: One- and Two-Family Residential Districts.
  - (2) R-2 District: More than Two-Family Residential Districts.
  - (3) B-1 Districts: Business Districts.
  - (4) F-1 Districts: Factory or Industrial Districts.
  - (5) I-1 Districts: I-2, Light Industrial Districts. [Added 4-15-2002 by L.L. No. 4-2002]
- B. Said districts are defined as shown on a map entitled "Zoning Map of the Village of Middleport 2001" prepared by Wendel-Duchscherer and certified by the Village Clerk of the Village of Middleport, which map accompanies and, with all explanatory matter thereon, is hereby made a part of this chapter. [Added 4-15-2002 by L.L. No. 5-2002]
- C. Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the Zoning Map, and if no distance is given on said map, such dimension shall be determined by the use of the scale shown on said Zoning Map.

**§ 200-6. Application of regulations.**

After the date when this chapter becomes effective, no building or premise, or any part thereof, shall be used or maintained for any purposes other than the uses permitted therefor by this chapter, no building or part of a building shall be erected, enlarged, altered or maintained except in conformity with the provisions of this chapter and no building or part of a building shall be used or maintained if erected, enlarged or altered other than in conformity with the provisions of this chapter.

**§ 200-7. R-1 One- and Two-Family Residential District.**

The following regulations shall apply to all R-1 Districts:

A. Uses permitted.

- (1) One- and two-family dwellings.
- (2) Churches or similar places of worship, parish houses and convents.
- (3) Public parks, public playgrounds and recreational areas operated by membership organizations for the benefit of their members and not for gain.
- (4) Schools and institutions of higher education and libraries and municipal buildings.
- (5) Customary agricultural operations; provided, however, that no storage of manure or odor- or dust-producing substance or use shall be permitted within 100 feet of any property line.
- (6) Customary home occupations, provided that there shall be no external evidence of such occupations except a small announcement or professional sign not over two square feet in area.
- (7) Other customary accessory uses and buildings, provided that such uses are incidental to the principal use and do not include any activity commonly conducted as a

business. Any accessory building shall be located on the same lot with the principal building and shall not be used for residence purposes.

- B. Building height limit. No building shall be erected to a height in excess of 35 feet.
- C. Width and area of lot. The minimum width of a lot shall be 75 feet and the minimum area 7,500 square feet, the depth of the lot for making such computation to begin at the street line adjacent to the lot.
- D. Percentage of lot coverage. All buildings, including accessory buildings, shall not cover more than 30% of the area of the lot.
- E. Yards required. Each lot shall have front, side and rear yards not less than the depth or width following:
  - (1) Front yard depth: 35 feet from the street line.
  - (2) Side yard depth: one side yard shall have not less than six feet, and the sum of the widths of both side yards shall be not less than 16 feet.
  - (3) Rear yard: not less than 30 feet.
- F. No motor vehicle shall be parked, stopped or left standing between the curb or paved edge of any street, road or highway, and the front facade, as extended to the side boundaries, of the main dwelling located on any lot or parcel of land located in a residential district. This provision shall not apply to vehicles parked in driveways leading to garages or areas on the side or rear of the dwelling for parking of vehicles. Whenever this subsection shall cause undue hardship because of the lack of parking room in existing dwellings, the owner or occupant thereof may apply for a permit from the Zoning Enforcement Officer, on forms provided by him, for parking in designated areas. Such permit shall be granted only where existing property lines and building locations prevent parking in accordance with the terms of this subsection. [Amended 6-16-1986 by L.L. No. 3-1986<sup>1</sup>]
- G. Where existing construction has established a different setback on any street, not less than the average setback of buildings already in existence shall be used.

#### § 200-8. R-2 More than Two-Family Residential Districts.

The following regulations shall apply to all R-2 Districts:

- A. Uses permitted.
  - (1) All uses permitted in R-1 Districts.
  - (2) Multiple residences for nontransients, subject to the regulations and provisions of the New York State Multiple Residence Law. One- and two-family dwellings in existence at the time of the enactment of this chapter may be altered or enlarged for multiple dwelling use, except that existing conforming yards shall not be reduced to a width or depth less than required by this section and nonconforming yards shall not be reduced

<sup>1</sup> Editor's Note: This local law also repealed former Subsection G, regarding regulation of R-1 Districts, which immediately followed this subsection.



to a width or depth less than required by this section, and nonconforming yards shall not be further reduced in width or depth; and, provided, further, that there shall be not less than 1,500 square feet of lot area for each family occupying such dwelling.

- B. Building height limit shall be three stories, but not exceeding 40 feet.
- C. Required lot area. No dwelling shall be established on a lot having an area or width less than specified for one-family residences in the R-1 Residential Districts.
- D. Percentage of lot coverage. All buildings, including accessory buildings, shall not cover more than 40% of the area of the lot.
- E. Yards required. Yards of the following minimum depth shall be required:
  - (1) Front yard: 35 feet.
  - (2) Side yard: each  $\frac{1}{3}$  the height of the building.
  - (3) Rear yard: depth equal to the height of the building.
- F. Automobile storage or parking space. In connection with every multiple-family dwelling there shall be provided automobile storage or parking space equal to not less than 300 square feet for each family unit in such dwelling; provided, however, that no front yard shall be used for the open-air parking or storage of any motor vehicle.

**§ 200-9. B-1 Business Districts.**

The following regulations shall apply to all B-1 Districts:

- A. Uses permitted.
  - (1) All uses permitted in any residential district subject to all the provisions specified for such residential districts.
  - (2) Stores and shops for the conducting of any retail business.
  - (3) Personal service shops, including hand laundries.
  - (4) Banks, offices and studios.
  - (5) Shops for custom work and shops for making articles or products to be sold at retail on the premises.
  - (6) Restaurants, cafes, tea rooms and similar establishments.
  - (7) Theaters, assembly halls, billiard or pool parlors, bowling alleys and any public recreation use.
  - (8) Lodging house, motels, hotels and tourist homes.
  - (9) Motor vehicle sales and service.
  - (10) Garage or filling stations.
  - (11) Undertaking establishments.

- (12) Bus passenger stations, telegraph offices, express offices, electric substations and printing plants.
  - (13) Wholesale businesses. Storage in bulk of, or warehouse for, such material as building material, contractor's equipment, clothing, cotton, drugs, dry goods, feed, food, furniture, hardware, ice, machinery, metals, oil and petroleum in quantities less than tank car lots, paint and paint supplies, pipe, rubber, shop supplies, tobacco or wood.
  - (14) Accessory buildings and accessory uses.
- B. Building height limit. No building shall be erected to a height in excess of 35 feet.
- C. Required lot area. Any building used for residence purposes shall have a lot area and lot width equal to that required in the least restricted residence district for the same type of dwelling.
- D. Percentage of lot coverage. Any building used for residential purposes, including accessory buildings, shall not cover more than 40% of the area of the lot.
- E. Yards required.
- (1) Front yard: none required.
  - (2) Side yards: Any building used for residence purposes shall have side yards as specified for such dwellings in R-1 Residence District.
  - (3) Rear yard: not less than 30 feet.

#### § 200-10. F-1 Factory or Industrial Districts.

The following regulations shall apply to all F-1 Districts:

- A. Uses permitted.
- (1) Wholesale trades and businesses and the processing of food products; factories, mills and similar uses for the processing, preparation for use, and/or fabrication of wood, metal, concrete and similar materials; warehousing of commodities; junk industry or motor vehicle wrecking operations and similar uses when conducted within a structure and under license when provided by Village local law; any industrial use or trade which is not, by reason of emission of noise, dirt, odors or vibrations, noxious or dangerous to health, safety or general welfare when authorized by the Board of Appeals as a variance, after public hearing, and subject to such conditions, restrictions and safeguards as may be deemed necessary by said Board of Appeals for the purpose of protecting the health, safety, morals or the general welfare of the residents of the Village, except that such authorization, by the Board of Appeals, shall not be required for the expansion or extension of present industrial uses within the Industrial District in accord with the Industrial District requirements; agricultural operations; public utilities and services; transportation terminals and storage facilities; motor vehicle fabrications, servicing and storing.
  - (2) House trailer courts or house trailer parks when laid out, constructed and serviced in a manner consistent with the provisions of the regulations established by the New York

State Department of Health for such areas, except that the area provided for each house trailer or other similar vehicle shall be not less than 2,000 square feet and that there shall be a yard of not less than 15 feet in width or depth between any area occupied by such use and an adjacent property or street line.

- B. Uses prohibited. All other uses are prohibited; provided, however, that any use may be permitted if approved by the Board of Appeals after public hearings and subject to such conditions, restrictions and safeguards as may be deemed necessary by said Board and upon the securing of a permit therefor.
- C. Building height limit: no restriction.
- D. Yards required.
  - (1) Each lot shall have a front yard of not less than 25 feet in depth.
  - (2) There shall be a side yard along the side of every lot in an F-1 District of not less than 10 feet; provided, however, that if the lot borders a residence district on a side yard, said side yard shall have a side yard of a width not less than the minimum width required in said adjacent residence district.
  - (3) There shall be a rear yard on every lot of an F-1 District of not less than 25 feet.
  - (4) Every building or portion thereof which is designed, intended to be used for or is used for dwelling purposes, shall comply with the front, side and rear yard requirements of the R-2 Districts.
- E. Lot area and percentage of lot coverage for dwellings. All regulations as to required lot area and percentage of lot coverage which are prescribed for R-2 Residential Districts shall apply to all dwellings hereafter erected in any F-1 District.

**§ 200-10.1. I-1 Light Industrial Districts. [Added 4-15-2002 by L.L. No. 4-2002]**

The following regulations shall apply to all I-1 Districts:

- A. Intent. The intent of the Light Factory or Light Industrial District is to provide areas within the Village for the location of light industrial, manufacturing, assembly, compounding, processing, fabrication and packaging facilities, wholesale warehouses and storage facilities and research, development and laboratory facilities and certain compatible uses. This district is for selective uses that do not adversely impact the environment and quality of life of the residents and property owners of the Village or create an impact that is injurious to public health, safety or general welfare.
- B. Uses permitted.
  - (1) Uses of a light industrial nature are permitted, which involves only the manufacture, processing, assembly, packaging or storage of previously refined materials, provided that at no time will such use result in or cause:
    - (a) Dissemination of dust, smoke, smog, observable gas, fumes or odors or other atmosphere pollution, objectionable noise, glare or vibration.

- (b) A hazard of fire or explosion or chemical or nuclear pollution or other physical hazard to any adjacent building or to any plant growth on any land adjacent to the site or to any person working on the site, or working or living adjacent thereto.
  - (2) Office buildings for executive, engineering and administrative purposes; scientific or research laboratories devoted to research, design and/or experimentation in the processing and fabricating incident thereto; the indoor warehousing and/or storage of goods and products, such as building materials, farm supplies and the like, which may be stored or sold from the premises to the general public; facilities for printing and/or publishing; essential services; and facilities for testing and development of processes planned for use in production elsewhere, stores and shops for the conducting of any retail business (except motor vehicles sales), personal service shops, banks, restaurants and similar establishments, theaters and assembly halls for a public recreation use, lodging house, motels, hotels, undertaking establishments.
- C. Uses prohibited. All other uses are prohibited; including, but not limited to, the junk industry or motor vehicle wrecking operations; and any heavy industry, and motor vehicle sales.
- D. Permitted accessory uses. The following are permitted accessory uses in the Light Factory and Light Industrial Use Districts:
  - (1) Garages and storage buildings which are necessary to store any vehicles, equipment or materials on the premises, used in connection with the principal use.
  - (2) Signs in accordance with this chapter.
  - (3) Off-street parking and loading.
  - (4) Other reasonable accessory uses incidental to the permitted principal use.
- E. Additional restrictions.
  - (1) All industrial processes and other uses shall take place within an enclosed building.
  - (2) Storage of materials out-of-doors shall not be permitted.
- F. Yards required.
  - (1) Each lot shall have a front yard of not less than 25 feet in depth.
  - (2) There shall be a side yard along the side of every lot in an F-2 District of not less than 10 feet; provided, however, light factory or light industrial uses shall be located so as to be a minimum of 50 feet from any property line abutting a nonindustrial district. This fifty-foot buffer strip shall be perpetually maintained with plantings to provide a visual screen between the industrial use and the adjoining nonindustrial use.
  - (3) There shall be a rear yard on every lot of an I-1 District of not less than 25 feet.

ARTICLE IV  
Other Regulations

**§ 200-11. Supplementary regulations.**

The provisions of this chapter shall be subject to such exceptions, additions or modifications as herein provided by the following supplementary regulations.

A. Uses.

- (1) Accessory uses. No part of an accessory structure in a side yard shall be in front of the front building line of the principal building, and said accessory structure shall have a side yard not less than required for the principal building. An accessory structure in the rear yard, to the rear of the rear line of the principal building, shall not be closer to the side or the rear property line than three feet, except for a lot in the R-2 District existing at the time of the enactment of this chapter, where it appears to be a practical difficulty to erect and use an accessory structure not closer to the side or rear property line than three feet, the Building Inspector may vary the location of such accessory building so as to permit the erection of such accessory building not closer than one foot to a side or rear property line.
- (2) Reduction of lot size. No lot on which a structure existed at the date of the enactment of this chapter shall be reduced in width or area so that any required open space will be less than prescribed in the regulations pertaining to the district in which said lot is located. The limitations imposed by this chapter, however, shall not prohibit the issuance of a permit for the erection of buildings or structures on any lot having at the time of the enactment of the chapter, a width or area smaller than required under this chapter. When the requirements for width or depth of yards are not met and undue hardship is imposed by regulations applicable to such existing lots, the Board of Appeals shall vary the application to conform the case as nearly as practicable to the intent and purposes of the chapter. For the purpose of this chapter, when two or more vacant lots are in a single ownership, they shall be construed as being a single lot.

**§ 200-12. Nonconforming buildings and uses.**

The lawful use of any building or land existing at the time of the enactment of this chapter may be continued although such use does not conform with the provisions of this chapter.

- A. Restoration. No building damaged by fire or other causes to the extent of more than 75% of its full value, computed on the last preceding Village assessment roll, shall be repaired or rebuilt except in conformity with the regulations of this chapter.
- B. Cessation. Notwithstanding any other provisions of this chapter, any automobile wrecking yard or other junkyard in existence in any Residential District at the date of enactment of this chapter shall at the expiration of two years from such date become a prohibited and unlawful use and shall be discontinued.
- C. Changes. Once changed to a conforming use, no building or land shall be permitted to revert to a nonconforming use. A nonconforming use may be changed to a use of the same

or higher classification, and when so changed to a higher classification, such use thereafter shall not be changed to a lower classification.

- D. Extension. A nonconforming use shall not be extended, but the extension of a lawful use to any portion of the nonconforming building which existed prior to the enactment of this chapter shall not be deemed the extension of such nonconforming use.
- E. Alterations. A nonconforming building may not be reconstructed or structurally altered during its life to an extent exceeding an aggregate cost 40% of the assessed value of the building unless said building is changed to a conforming use.
- F. Dismantled vehicles. When two or more abandoned or dismantled vehicles are allowed to remain on a premises for a period of 30 days, such act shall be considered a use of said premises for industrial purposes and a violation of this chapter, except when said vehicles are located in an industrial district and the provisions pertaining to industrial uses are complied with.
- G. House trailers, house cars or similar vehicles. The use of house trailers, house cars or other similar vehicles for residence purposes is prohibited in all use districts, except as provided for in the F-1 Industrial District.
- H. Size of rooms. A permit shall not be issued for the construction or placing of a building or structure to be used for residence purposes unless said building or structure shall have at least one living room which shall have at least 132 square feet of floor space. Such living room shall be at least eight feet in its horizontal dimension.
- I. Cellars. It shall be unlawful to occupy all or any part of a cellar for sleeping purposes.

**§ 200-13. Special use permits. [Added 6-20-1988 by L.L. No. 1-1988]**

- A. The Village Board of the Village of Middleport may direct the issuance of a special use permit authorizing the use of a premises for a purpose not otherwise permitted in a Residential (R-1 and R-2) District, a Business (B-1) District or an Industrial (F-1) District under this chapter where it finds that the general welfare of the community will be substantially served thereby.
- B. In granting a special use permit pursuant to this section, the Board may establish such conditions as a part of said permit as it deems necessary to protect the character of, and to maintain the peace, tranquillity and general well being of the neighborhood in which the use is permitted. The Board may, but shall not be required to, limit the duration of said permit. The determination of the Village Board on an application for a special use permit pursuant to this section shall be final.
- C. Prior to the granting or denial of a special use permit pursuant to this section, a public hearing shall be held upon not less than 10 days notice published once in the official newspaper of the Village of Middleport, and the proposed use shall be referred to the Zoning Board of Appeals for review and comment.<sup>2</sup>

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<sup>2</sup> Editor's Note: Former Subsection D, regarding fees for a special permit, was repealed 3-21-1994 by L.L. No. 3-1994.

**§ 200-13.1. (Reserved)****§ 200-13.2. (Reserved)****§ 200-13.3. (Reserved)****§ 200-13.4. (Reserved)****§ 200-13.5. Site plan review. [Added 4-15-2002 by L.L. No. 3-2002]**

- A. When required; exceptions. Site plan review and approval shall be required for all uses, buildings and structures requiring a building permit prior to the issuance of a building permit or certificate of occupancy. This section shall not apply to one- or two-family dwellings and their permitted accessory structures and uses.
- B. Procedure for review and approval. Where site plan review is required, the enforcement officer of this chapter shall refer the application, site plan and supporting data to the Village Board. The Board shall review the application, site plan and supporting data and, at a regular meeting of the Board, after determining that all requirements have been met, shall approve, approve with modification or disapprove the site plan. Approval of any site plans so deemed shall remain in effect for a period of not more than one year unless a successful application for a building permit has been made within that period or an extension has been granted by the Board.
- C. Submission of site plan and supporting data. The property owner or his agent shall submit five copies of a site plan and supporting data prepared by and bearing the official seal and signature of a licensed architect, landscape architect, civil engineer or land surveyor, which shall include the following information, presented in drawn form at a scale approved by the enforcement officer of this chapter and accompanied by a written text:
  - (1) Survey of the property, showing existing topographic features, including contours, large trees, buildings, structures, streets, property lines, utility easements, rights-of-way and land use, and the zoning and ownership of surrounding property.
  - (2) A site plan showing proposed lots, blocks, building locations and land use areas.
  - (3) Traffic circulation, parking and loading spaces and pedestrian walks.
  - (4) Landscaping plans, including site grading, drainage, existing and proposed landscape materials, including trees and shrubs, and their locations, identification of those materials to be removed, existing and proposed structures and all greenspace areas designed as part of the site environment. Natural site features and vegetation shall be preserved and integrated into the proposed site wherever feasible.

- (5) Preliminary engineering plans, including street improvements, storm drainage system, public utility extensions, water supply, sanitary sewer facilities, outdoor lighting and the location of existing and proposed fire hydrants.
- (6) Preliminary architectural drawings for buildings to be constructed.
- (7) Construction sequence and time schedule for completion of each phase for buildings, parking spaces and landscaped areas.
- (8) In addition to the required site plan and supporting data indicated above, the Village Board may require a property owner or his agent to provide additional supporting data or plans the Board deems necessary and pertinent to carry out its responsibility for site plan review as provided in this chapter.

D. Criteria for review recommendations.

- (1) The Village Board shall review the site plan and supporting data and take into consideration the following:
  - (a) Harmonious relationship between proposed uses and existing uses.
  - (b) Maximum safety of vehicular circulation between the site and street network.
  - (c) Adequacy of interior and exterior traffic circulation and parking and loading facilities, with particular attention to vehicular and pedestrian safety.
  - (d) Adequacy of landscaping and setbacks in regard to achieving maximum compatibility with and protection of adjacent property and land uses.
  - (e) Aesthetic considerations.
  - (f) Compliance with other Village laws and ordinances.
  - (g) Density of improvements of the site.
- (2) Should changes or additional facilities be required by the Village Board, approval of the site plan shall be conditional upon satisfactory compliance by the property owner with the changes or additions. The Board may withhold approval until required site plan changes have been made and filed.
- (3) In cases where any action of the Zoning Board of Appeals is required, the site plan shall be the subject of a preliminary review by the Village Board, in accordance with the review procedure set forth above, before action is taken by the Zoning Board of Appeals. After such action by the Zoning Board of Appeals, the Village Board shall conduct a final review of the site plan.
- (4) The Village Board may take the following actions with respect to a submitted site plan:
  - (a) Approve; or
  - (b) Approve with modifications; or
  - (c) Deter action until required modifications have been presented.



- E. Required improvements. In furtherance of the purposes of this section and to assure public safety and general welfare, the Village Board shall require the following improvements:
- (1) The designation of pedestrian walkways or sidewalks for the safe and convenient movements of patrons from store to store within the site and with adjoining sites.
  - (2) The dedication of rights-of-way and easements for all facilities to be publicly maintained for the full frontage of the lot or parcel prior to the issuance of any certificate of occupancy.
  - (3) The construction of all off-site curbs, gutters, sidewalks and road widening or construction as necessary to satisfy the criteria as set forth in Subsection D.
  - (4) The construction of curbs, gutters and drives which will permit vehicular travel on the site and connection to end from adjacent parking areas and properties.
  - (5) Screening, fencing, walls, berms and screen plantings adequate to screen views in accordance with requirements of this section for adjacent prospective, contrasting development of less intensity and state highways of limited access. Designated plantings and landscaping shall be in accordance with the approved schedule and annually maintained by the property owner.
  - (6) Adequate sewer, water and stormwater drainage facilities in accordance with Village regulations, including lines, connections, retention facilities, valves, hydrants and other facilities.
- F. Performance bond as condition of approval. The Village Board may require, as a condition of site plan approval, that the property owner file a performance bond, in such amount as determined by the Village Engineer, to insure that the proposed development will be built in compliance with accepted plans.
- G. Site plan revisions. A property owner wishing to make any changes in an approved site plan shall submit a revised site plan to the Village Board for review and approval.

## ARTICLE V

### Administration and Enforcement

#### § 200-14. Enforcement; building permits; certificates of occupancy.

This chapter shall be enforced by the Village Clerk, or such appropriate officer as the Village Board may from time to time appoint, who shall perform such duty in addition to his or her present duties without additional compensation. No building permit or certificate of occupancy shall be issued by him or her, except where the provisions of this chapter have been complied with.

#### A. Building permits.

- (1) No building or structure shall be erected, added to or structurally altered until a permit therefor has been issued by the Village Clerk, or such other enforcement officer as the Board of Trustees may hereafter designate. Except upon a written order of the Board of Appeals, no such building permit or certificate of occupancy shall be issued for any

building where said construction, addition or alteration or use thereof would be in violation of any of the provisions of this chapter.

- (2) There shall be submitted with all applications for building permits two copies of a layout or plot plan drawn to scale showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of the building and accessory buildings to be erected, and such other information as may be necessary to determine and provide for the enforcement of this chapter.
- (3) One copy of such layout or plot plan shall be returned when approved by said enforcement officer together with such permit to the applicant upon the payment of a fee of \$1.

**B. Certificate of occupancy.**

- (1) No land shall be occupied or used and no building hereafter erected, altered or extended shall be used or changed in use until a certificate of occupancy shall have been issued by the Zoning Enforcement Officer, stating that the building or proposed use thereof complies with the provisions of this chapter.
- (2) No nonconforming use shall be maintained, renewed, changed or extended without a certificate of occupancy having first been issued by said enforcement officer.
- (3) All certificates of occupancy shall be applied for coincident with the application for a building permit. Said certificate shall be issued within 10 days after the erection or alteration has been approved as complying with the provisions of this chapter.
- (4) The Enforcement Officer shall maintain a record of all certificates and copies shall be furnished, upon request, to any person having a proprietary or tenancy interest in the building affected.
- (5) Subject to such conditions as the Board of Appeals may deem advisable to impose, a temporary certificate of occupancy for not more than six months for a part of a building may be issued by the Enforcement Officer with the approval of the Board of Appeals.

**§ 200-15. Interpretation; conflicts with other laws.**

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, adopted for the promotion of the public health, morals, safety or the general welfare. Whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the most restrictive or those imposing the higher standards, shall govern.

**§ 200-16. Board of Appeals.**

A Board of Appeals is hereby created. Said Board shall consist of three members, and said members shall be appointed by the Board of Trustees in accordance with the provisions of the Village Law. The Board shall elect a chairman from its membership, shall appoint a secretary, shall prescribe rules for the conduct of its affairs consistent with the provisions of the Village

Law and sha<sup>ll</sup> have powers and duties as granted to Boards of Appeal in the Village Law of the State of New York, and as specified in this chapter.

**§ 200-17. Amendments.**

All amendments to this chapter shall be in accordance with the provisions of the Village Law applicable thereto. Any proposed amendment shall be submitted to the Board of Appeals for report and recommendation prior to any action thereon by the Board of Trustees. If the Board of Appeals recommends against the enactment of any proposed amendment, it shall become effective only by a favorable vote of all the members of the Board of Trustees.

**§ 200-18. Penalties for offenses.**

A violation of this chapter is a misdemeanor punishable by a fine not exceeding \$100 and on each day that such violation continues after notice thereof shall be considered a separate offense.

(Cont'd on page 20015)