

## CHAPTER 16

### Zoning

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## **ARTICLE I**

### **General Provisions**

#### **Sec. 16-1. Title.**

This Chapter may be known and cited as the Town Zoning Code or the Town Zoning Ordinance. (Ord. 209 Art. I §1, 1981; Ord. 435 §1, 1996)

#### **Sec. 16-2. Purpose.**

(a) The provisions of this Chapter are the minimum requirements for the protection of the public health, safety, comfort, convenience, order, prosperity and welfare. It is the intent of this Chapter to achieve the foregoing by regulating uses of land to prevent congestion of roads and streets; to minimize danger and loss from fire, flood and natural hazards; to prevent overcrowding of land and buildings; to avoid excessive concentration of population; to provide off-street parking; to maintain access to light and air; to preserve natural drainage ways and natural resources in a manner compatible with reasonable use of land; to protect and increase the tax base to pay for necessary community services and facilities; to foster economic development and thereby provide employment; to segregate conflicting uses of land; and to provide a reasonable use for all privately owned property consistent with the goals and policies of the comprehensive plan as developed and adopted to date.

(b) Furthermore, the Town takes note of its limited capability to service new growth and hereby seeks to protect the citizens from adverse offensive noise, dust, odors, heat, glare, smoke, air pollution, water pollution, crowding of buildings and abnormal vehicular traffic. (Ord. 209 Art. I §2, 1981)

#### **Sec. 16-3. Scope.**

(a) This Chapter applies within the corporate limits of the Town now and hereafter established.

(b) The provisions of this Chapter shall not annul or abrogate any lawful permit or use lawfully established on the effective date of the ordinance codified herein. (Ord. 209 Art. I §3, 1981)

#### **Sec. 16-4. Authority.**

This Chapter is authorized by Chapter 31, Article 23, C.R.S. (Ord. 209 Art. I §4, 1981)

#### **Sec. 16-5. Word usage.**

As used in this Chapter, the phrase used for includes arranged for, designed for, maintained for and occupied for. (Ord. 209 Art. XI §1, 1981; Ord. 435 §1, 1996)

#### **Sec. 16-6. Definitions.**

As used in this Chapter the following words shall be interpreted and defined in accordance with the provisions set forth in this Section:

*Accessible year around* means an area that can be accessed for its designated purpose regardless of weather circumstances. Such an area shall be graded sufficiently to be accessible for its intended purpose and shall be able to be maintained clear of snow and debris.

*Alley* means a minor right-of-way dedicated to public use, which gives a secondary means of vehicular access to the back or side of properties otherwise abutting a street. An alley may be used for public utility purposes. An alley shall be twenty (20) feet wide unless platted otherwise.

*Animal hospital* means a veterinary hospital where animals are brought for medical and surgical treatment to be held during the time of such treatment. All facilities for holding the animals on the premises shall be housed in a completely enclosed building and used incidental to such medical and surgical services only.

*Bed and breakfast* means a portion of a residence used for rental of five (5) or less bedrooms, access to a bathroom, and provision of limited meal service. A bed and breakfast shall provide at least one (1) additional off-street parking space for each room available to rent, shall not provide for cooking in any of the rooms rented, shall not allow guests to stay for more than seven (7) consecutive days, and the bedrooms and bathrooms used by the guests shall not occupy more than twenty-five percent (25%) of the residence in which the bed and breakfast is located.

*Boardinghouse or roominghouse* means a building other than a hotel, cafe or restaurant where, for direct or indirect compensation, lodging and/or meals are provided for three (3) or more boarders and/or roomers exclusive of the occupant's family.

*Building* means any structure built for the shelter or enclosure of persons, animals, chattels, property or substances of any kind, excluding fences. To qualify as one (1) building for the purposes of this Chapter, all portions, additions or extensions shall be connected by an attachment that is an enclosed part of the building, and which is usable by the occupants thereof.

*Building, accessory* means a detached, smaller building from the principal building on the lot which is:

- a. Integrally related to the principal use on the lot;
- b. Subordinate in size and use and clearly incidental to the principal building or use of the lot;
- c. Customarily incidental to the principal building or use of the lot;
- d. Located on the same lot as the principal building;
- e. Used only at the same time as the principal building use is active and operational;
- f. Not detrimental or an alteration of the character of the area in which the building is located; and
- g. Not used for living or sleeping quarters.

*Building height* means the vertical distance measured from the average natural grade within the building footprint to the uppermost point of the roof of the building. Average natural grade is one-half (½) the sum of the highest point and the lowest point that is within the building footprint.

*Building, principal* means the main building on a lot as distinguished from a subordinate or accessory building.

*Business and professional office* means the office of an engineer, dentist, doctor, attorney, real estate broker, insurance broker, architect or other similar professional persons; and any office used primarily for accounting, correspondence, research, editing or administration.

*Cafe, restaurant or cafeteria* means a commercial eating establishment where snacks or meals are vended for consumption indoors on the premises.

*Child care center* means a facility that:

- a. Is not a residence;
- b. Is licensed by the State, and;
- c. Is maintained for the whole or part of a day for the care of more than six (6) children under the age of sixteen (16) years not related to the owner, operator or manager thereof, whether such facility is operated with or without compensation for such care and with or without stated educational purposes pursuant to Section 26-6-102(1)(6), C.R.S.

The term includes facilities commonly known as day care centers, day nurseries, nursery schools, kindergartens, preschools, play groups, day camps, summer camps and centers for developmentally disabled children; except that the term shall not apply to any kindergarten maintained in connection with a public, private or parochial elementary school system. The term shall not include any facility licensed as a day care home under the provisions of this Chapter. The term does not include any such facilities which may serve as the primary residence of said children on a twenty-four-hour basis, in which case such a facility shall be regulated as a group home or group living quarters.

*Clinic* means offices for one (1) or more physicians, surgeons, dentists or other practitioners of the healing arts, but does not include rooms for the abiding of patients.

*Club* means any nonprofit membership organization, including a lodge catering exclusively to members, and whose facilities are limited to meeting, eating and recreational uses and whose activities are not conducted principally for monetary gain.

*Club, for profit* means any establishment catering exclusively to members and whose facilities are used for meeting, eating and recreational uses and whose activities are conducted principally for monetary gain. Activities on the premises may include the consumption of legal drugs and alcohol, provided that all licenses, permits and other approvals necessary for such consumption at the particular location to be lawful are obtained and maintained and that all other laws, rules and regulations applicable to such consumption at the particular location are met.

*Commercial amusement* means an enterprise whose main purpose is to provide the general public with an amusing or entertaining activity, where tickets are sold or fees collected at the activity. Commercial amusements include miniature golf courses, arcades, Ferris wheels, children's rides, roller coasters, skating rinks, ice rinks, bowling alleys, pool parlors and similar activities.

*Commercial mobile radio service (CMRS) facility* means unmanned facility consisting of antennas, equipment and equipment storage shelter and/or cabinet(s) used for the reception, switching and/or transmission of wireless telecommunications including, but not limited to, paging enhanced specialized mobile radio, personal communication services, cellular telephone and similar technologies.

*Common open space* means a parcel of land, an area of water or a combination of both land and water, within any site designated as a planned unit development. Common open space does not include streets, alleys, parks, off-street parking and loading areas, public open space or other facilities dedicated by the developer for public use. Common open space shall be substantially free of structures, but may contain such improvements that are approved as part of the planned unit development and are appropriate for the recreation of residents of the planned unit development.

*Common property* means a parcel or parcels of land, together with the improvements thereon, the use and enjoyment of which are shared by the owners and occupants of the individual building sites in planned unit development or other described land areas.

*Comprehensive development plan* means the comprehensive plan for the Town which has been officially adopted to provide long-range development policies for the Town and which includes, among other things, the plan for land use, land subdivisions, circulation and public facilities.

*Density* means the number of dwelling units per acre of land devoted to housing and related open space.

*District* means an area or areas within the limits of the Town for which the regulations and requirements governing use, lot and bulk of building and premises are uniform.

*Drive-in establishment* means an establishment which is designed to provide, wholly or in part, service to customers while they remain in their automobiles parked upon the premises.

*Dwelling, multi-unit or multifamily* means a building used by two (2) or more families living independently of each other in separate dwelling units, but does not include hotels, motels or resorts.

*Dwelling, single-family* means a detached principal building other than a mobile home designed for or used as a dwelling exclusively by one (1) family as an independent living unit.

*Dwelling unit* means one (1) or more rooms with internal connections including bathroom and kitchen facilities designed, occupied or intended for occupancy as separate quarters for the exclusive use of a single family for living, cooking and sanitary purposes. Multiple dwelling units exist if any of the following conditions exist:

- a. There is more than one (1) meter for any utility;
- b. There is more than one (1) address to the property;
- c. There is more than one (1) kitchen in the building;
- d. There are separate external entrances to rooms which could be used as separate dwelling units;
- e. There is a physical separation between rooms in the dwelling unit, capable of being locked, such that a room or rooms on each side of the separation could be used as a dwelling unit;
- f. There are rooms with no internal connections.

*Easement* means authorization by a property owner for the use by the public, a corporation or persons of any designated part of his or her property for specific purposes.

*Employees* means all persons, including proprietors, working on the premises during the largest shift at peak season.

*Equipment storage shelter* means unmanned accessory structure or cabinets used for freestanding facilities or, when necessary, roof- or building-mounted facilities to house CMRS equipment. Said shelters and/or cabinets shall not exceed three hundred fifty (350) square feet for each facility.

*Expansion* and *remodeling* mean work performed to increase the finished or usable square footage of the structure or increase the footprint of the structure and includes, but is not limited to, installing new or enlarging existing windows, adding decks over thirty (30) inches high, finishing the basement, converting the garage or other uninhabitable space to habitable space or constructing an accessory structure.

*Family* means an individual or two (2) or more persons related by blood or marriage, or an unrelated group of not more than four (4) persons living together in a dwelling unit.

*Family care home* means a facility for child care in a place of residence of a family or person for the purpose of providing family care and training for a child under the age of sixteen (16) years who is not related to the head of such home, and such facility is licensed pursuant to Section 26-6-102(4), C.R.S. The term includes any family care home receiving a child for regular twenty-four-hour care and any home receiving a child from any State-operated institution for child care or from any child placement agency.

*Fence* means a freestanding 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.

*Freestanding facility* means a CMRS facility that consists of a stand-alone support structure, antennas and associated equipment storage shelter.

*Frontage* means that portion of a lot, parcel, tract or block abutting upon a street or other right-of-way.

*Garage, private* means an accessory building or accessory portion of the main building designed for the shelter or storage of motor vehicles owned or operated by occupants of the main building only.

*Garage, public* means a garage, other than a private garage, used for the housing or care of motor vehicles, or where such vehicles are equipped for operation, repaired or kept for remuneration, hire or sale.

*Guest house* means an accessory building to a single-family dwelling unit which is serviced through the same utility meters or connections as the principal use and is intended for occupancy only by guests of the family residing in the single-family residence. The guests may not pay compensation for the use of the guest house and may not stay in the guest house for more than thirty (30) consecutive days, and kitchen facilities shall not be allowed. The same guests residing in the guest house for more than thirty (30) days in any one-year period shall be prima facie evidence of an intent by the occupant of the single-family dwelling to circumvent this provision.

*Guest room* means a room in a hotel, apartment hotel, motel or tourist home offered to the public for compensation, used only for transient occupancy, and in which no provision is made for cooking.

*Hedge* means a fence or boundary formed by a dense row of shrubs or low trees.

*Home occupation* means an occupation carried on in the dwelling or accessory building by members of the family occupying the dwelling, and/or one (1) on-site employee; provided that the residential character of the building is maintained and the occupation is conducted in such a manner as not to infringe upon the right of neighboring residents to enjoy a peaceful occupancy of their homes.

*Homeowners' association* means an incorporated, nonprofit organization operating under recorded land agreements through which:

- a. Each lot and/or homeowner in a planned unit development or other described land area is automatically a member;
- b. Each lot is automatically subject to charge for a proportionate share of the expenses for the organization's activities, such as maintaining a common property; and
- c. Such charge, if unpaid, becomes a lien against the property.

*Hospital* means any building or portion thereof used for diagnosis, treatment and care of human ailments; but does not include medical clinics, rest homes and retirement homes.

*Hotel* means an establishment that provides temporary lodging in guest rooms and in which meals, entertainment and various personal services for the public may or may not be provided.

*Kennel* means a lot or building in which four (4) or more dogs or cats at least six (6) months of age are kept commercially for board, propagation or sale.

*Laboratory* means a building or portion of a building devoted to experimental studies or testing and analysis of materials.

*Lot* means a portion or parcel of land (whether a portion of a platted subdivision or otherwise) occupied or intended to be occupied by a building or use and its accessories, together with such yards as are required under the provisions of this Chapter, having not less than the minimal area, usable open space and off-street parking spaces required by this Chapter for a lot in the district in which such land is situated, and having frontage on a street. A lot must be an integral unit of land held under unified ownership in fee or in co-tenancy, or under legal control tantamount to such ownership. A lot shall not include a tract.

*Lot area* means the total horizontal area within the lot lines of a lot.

*Lot, corner* means a lot of which at least two (2) adjacent sides abut for their full length upon a street.

*Lot coverage* means the percentage of the total lot area available for bulk or buildings.

*Lot depth* means the average horizontal distance between front and back rear lot lines.

*Lot, double frontage* means a lot which runs through a block from street to street and which has nonintersecting sides abutting on two (2) or more streets or other rights-of-way.

*Lot, interior* means a lot other than a corner lot.

*Lot line, front* means the property line dividing a lot from the right-of-way of the street. For a corner lot, the shortest street right-of-way line shall be considered as the front line. For a double frontage lot, the local street right-of-way line shall be considered as the front lot line, or, if both streets are local streets, the lot line to the front of a structure or abutting structures as established by architectural detail and plan shall be considered as the front lot line.

*Lot line, rear* means the property line opposite the front lot line.

*Lot line, side* means any lot line other than a front or rear lot line.

*Lot width* means the distance on a horizontal plane between the side lot lines of a lot, measured at right angles to the line establishing the lot depth at the established building setback line.

*Maintenance.* See the definition of *repair* and *maintenance* below.

*Maximum employment* means the average number of persons employed on the primary shift during the annual peak production period.

*Microcell facility* means CMRS facility used to provide increased capacity in high-call demand areas or to improve coverage in areas of weak coverage.

*Mineral processing* means facilities for processing ores and minerals to extract salable components and store unusable components (tailings) in settling ponds and landfill. Includes unit operations such as crushing, grinding, flotation, gravity and magnetic separation and pumping.

*Mixed use* means a multi-use structure containing a mixture of commercial and/or office uses combined with residential uses. For a multi-level structure, the street level shall be used for commercial and/or office uses only. For a single-level structure in the CBD and GC zoning districts, at least thirty percent (30%) of the total use shall be commercial and/or office uses, including all of the street frontage.

*Mobile home* is defined in Section 16-121 of this Chapter.

*Mobile home park* is defined in the mobile home ordinance of the Town.

*Motel* means a hotel which usually is arranged in such a manner that individual guest rooms are directly accessible from an automobile parking area.

*Nonconforming lot* means any parcel of land, held in separate ownership from adjoining properties, that does not conform to the minimum lot area or any other lot requirement required by this Chapter, prior to the effective date of the ordinance codified herein or any predecessor or amendment thereto.

*Nonconforming situation* means the situation when, on the effective date of this Chapter, an existing lot or structure or use of an existing lot or structure does not conform to one (1) or more of the regulations applicable to the district in which the lot or structure is located. Among other possibilities, a nonconforming situation may arise because a lot does not meet minimum square footage requirements, because structures exceed maximum height limitations, because the relationship between existing buildings and the land (in such matters as density and setback requirements) is not in conformity with this Chapter, or because land or buildings are used for purposes made unlawful by this Chapter. Nonconforming signs shall not be regarded as nonconforming situations for purposes of this Chapter but shall be governed by the provisions of Chapter 18, Article V.

*Nonconforming structure or use* means a lawful existing structure or use at the time the ordinance codified herein or any amendments thereto became effective which does not conform to the requirements of the district in which it is located.

*Off-street loading space* means an accessible year around space located outside of a public street or alley for the discharge of passengers, or a space directly accessible year around to the building it serves for bulk pickups and deliveries by delivery vehicles.

*Off-street parking area* means any parking area located wholly off a public street or alley within the limits of one (1) or more lots in which the parking use is permitted and that results in no net loss of established or potential public parking.

*Open space* means land which is free of structures which are not directly related to the function of the open space.

*Outlot* means an area of a plat set apart for uses different than the uses on the lots on the plat. Unless specifically stated otherwise on the plat, no buildings shall be allowed on an outlot, and an outlot shall be considered a portion of the plat set aside by the owner for open space purposes for the benefit of the property owners of the remainder of the property on the plat.

*Parking space* means a rectangular area of private property owned by or under the permanent control of the applicant containing no less than one hundred eighty (180) square feet with maneuvering and access space accessible year-round of twenty (20) feet in length and nine (9) feet in width.

*Permitted use* means a use specifically allowed in one (1) or more of the various districts without the necessity of obtaining a use permit.

*Personal service shop* means an establishment for the purpose of supplying limited personal services such as, but not limited to, barber shops, shoe shops, boot shops or beauty shops.

*Planned unit development* means a project of a single owner or a group of owners acting jointly, involving a related group of residences, businesses or industries and associated uses, planned as a single entity and therefore subject to development and regulation as one (1) land-use unit rather than as an aggregation of individual buildings located on separate lots. The planned unit development includes usable, functional open space for the mutual benefit of the entire tract; and is designed to provide variety and diversity through the variance of normal zoning and subdivision standards so that maximum long-range benefits can be gained, and the unique feature of the development or size preserved and enhanced while still being in harmony with the surrounding neighborhood. Approval of a planned unit development does not eliminate the requirements of subdividing.

*Planning Commission* means the officially appointed Planning Commission of the Town.

*Premises* means a general term which means part or all of any lot, parcel or tract, or part or all of any building, or structure or group of buildings or structures located thereon.

*Private horse stables* means any area wherein a horse, mule and/or donkey is maintained for private, noncommercial recreation.

*Private utility* means any utility other than a municipally owned and operated utility, including telephone, electric and gas utilities, and other privately owned and operated utilities.

*Property line* means the boundary of any lot, parcel or tract as the same is described in the conveyance of such property to the owner and does not include the streets or alleys upon which said lot, parcel or tract abuts.

*Public hearing* means a meeting called by a public body for which public notice has been given and which is held in a place at which the general public may attend to hear issues and to express their opinions.

*Public horse stables* means any area wherein a horse, mule and/or donkey is maintained for public, commercial, recreation for hire or boarding for hire.

*Rate*, as pertains to mineral processing, means the amount of ore or other raw material delivered to the processing site on a daily basis.

*Remodeling*. See the definition of *expansion* and *remodeling* above.

*Repair* and *maintenance* mean work performed that does not increase the finished or usable square footage of the structure and does not increase the footprint of the structure to include repairs to existing roofing, siding, windows, plumbing fixtures, electrical fixtures, flooring, walls or building supports. Repair and maintenance do not include any work performed to expand or remodel the structure.

*Repeater facility* means CMRS facility that extends coverage of a cell.

*Retail* means sale to the ultimate consumer for direct consumption and/or use and not for resale.

*Rights-of-way, public* means all streets, roadways, sidewalks and alleys, and all other areas reserved for present or future use by the public, as a matter of right, for the purpose of vehicular or pedestrian travel.

*Roof-, structure- or building-mounted facility* means CMRS facility in which antennas are mounted to an existing structure, on a roof of a building or on the building face. The facility will include both antennas and related equipment. The equipment may be located in the existing structure, or within an unmanned equipment storage shelter. Facilities within this category may include microcell or repeater facilities.

*Rooming unit* means a room within a principal structure which provides minimal housing accommodations for a roomer, is arranged primarily for sleeping and study, and in which may be included a private bath; but such a room shall not include any kitchen equipment such as a refrigerator, sink or cooking device.

*Salvage yard* means any lot, parcel or tract used for the storage, keeping, sale or abandonment of salvage items and/or for the permanent dismantling, demolition or abandonment of automobiles, or other salvage items or parts thereof.

*Screening* means decorative fencing, evergreen hedges or earth berms maintained for the purpose of concealing from view the area behind such screening.

*Service station* means a building or premises on or in which the principal use is the retail sale of gasoline, oil or other fuel for motor vehicles; and which may include, as an incidental use only, facilities used for the polishing, greasing, washing or other cleaning or light servicing of motor vehicles, convenience store or tire sales; but which may not include liquefied petroleum gas distribution facilities, facilities for major repairs of motor vehicles, or rental operations.

*Setback line* means a line or lines designating the area outside of which buildings may not be erected.

*Shopping center* means a composite arrangement of shops and stores, developed as an integral unit, which provide a variety of goods and services to the general public.

*Sign* is as defined in the sign code of the Town.

*Small wind turbine* means a wind energy conversion system consisting of wind turbines, towers and associated control or conversion electronics, which has a rated capacity of twenty (20) kilowatts or less.

*Special review use* means a use which, although not permitted outright in a particular district, may be permitted by the Planning Commission and the Board of Trustees in accordance with the standards and procedures set out in this Chapter.

*State-licensed group home* means a home licensed by the State which services not more than eight (8) developmentally disabled persons (person having cerebral palsy, multiple sclerosis, mental retardation, autism or epilepsy) and appropriate staff.

*Street* means the entire width between the boundary lines of every way which provides for public use for the purpose of vehicular and pedestrian traffic and placement of utilities; and includes the terms road, highway, lane, place, avenue and alley or other similar designations.

*Street, arterial* means any street serving major traffic movements which is designed primarily as a traffic carrier between cities or between various sections of the Town, which forms part of a network of through streets, and which provides service and access to abutting properties only as a secondary function.

*Street, collector* means any street designed primarily to gather traffic from local or residential streets and carry it to the arterial system.

*Street, freeway* means any divided street or highway with complete access control and grade-separated interchange with all other public streets and highways. For the purposes of this Chapter, the term freeway includes the term expressway.

*Street, frontage* means a local street lying parallel to and adjoining an arterial street or freeway right-of-way, which provides access to abutting properties and protection from through traffic.

*Street, local* means any street other than an arterial, collector or freeway street.

*Structural alteration* means any change to the supporting members of a structure including foundations, bearing walls, partitions, columns, beams or girders; or any structural change in the roof.

*Structure* means anything constructed or erected with a fixed location from the ground above grade, but does not include poles, lines, cables or other transmission or other distribution facilities of public utilities.

*Townhouse* means one (1) of a group of not fewer than three (3) nor more than twelve (12) attached dwelling units, each dwelling unit located on a separate lot. No single group shall exceed two hundred forty (240) feet in length.

*Travel campers*, also to include facilities referred to as *campers*, *camp trailers* or *travel trailers*, means a living unit designed for temporary occupancy and equipped for use with wheels or mounted on motorized vehicles for the purposes of relocation by highway transportation.

*Use* means the purpose for which land or a structure is designed, arranged, intended, occupied or maintained.

*Use, accessory* means a subordinate use of a building, other structure or tract of land or a subordinate building or other structure subordinate to the principal use of a lot which is:

- a. Integrally related to the principal use on the lot;
- b. Subordinate and clearly incidental to the principal use of the lot;
- c. Customarily incidental to the principal use of the lot;
- d. Located on the same lot as the principal use;
- e. Used only at the same time as the principal building is active and operational; and
- f. Not detrimental or an alteration of the character of the area in which the use is located.

The maximum square footage of the portion of a lot used for an accessory use shall be determined based on the above criteria; however, in no event shall the square footage of the portion of the lot used for the accessory use exceed twenty-five percent (25%) of the square footage of the principal use which is active and operated at the same time as the accessory use of the accessory use. There shall be no more than two (2) accessory uses on one (1) lot.

*Use, principal* means the main use of land or of a structure as distinguished from a subordinate or accessory use.

*Variance* means a legal modification of applicable zoning district provisions, such as yard, lot area or width, use, building, setback and off-street parking and loading regulations, granted due to the peculiar conditions existing within a single piece of property.

*Vision clearance area* means a triangular area on a lot at the intersection of two (2) streets or a street and a railroad, two (2) sides of which are lot lines measured from the corner intersection of the lot lines to a distance specified in the regulations. The third side of the triangle is a line across the corner of the lot joining the ends of the other two (2) sides. Where the lot lines and intersections have rounded corners, the lot lines will be extended in a straight line to a point of intersection. The vision clearance area contains no planting, walls, structures or temporary or permanent obstructions exceeding two and one-half (2½) feet in height measured from the top of the curb or existing grade unless said structures or obstructions are more than eighty percent (80%) open.

*Wind tower* means the monopole or guyed monopole structure that supports a small wind turbine.

*Wind turbine* means the blades and associated mechanical and electrical conversion components whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity.

*Wireless facilities* means a commercial mobile radio service facility, an equipment storage shelter, a freestanding facility, a microcell facility, a repeater facility and any appurtenances thereto.

*Yard* means an open space on a lot which is unobstructed from the ground upward except as otherwise provided in this Chapter.

*Yard, front* means the yard between the side lot lines and measured horizontally at right angles from the front lot line to the principal structure.

*Yard, rear* means the yard extending between the side lot lines and measured horizontally at right angles to the rear lot line from the rear lot line to the nearest point of the principal structure.

*Yard, side* means the yard between a principal structure and the side lot line, measured horizontally at right angles to the side lot line from the side lot line to the nearest point of the main principal structure. (Ord. 209 Art. XI §1, 1981; Ord. 422 §§4 6, 1996; Ord. 435 §1, 1996; Ord. 453 §1, 1997; Ord. 455 §1, 1997; Ord. 507 §1, 1999; Ord. 645 §§1, 2, 2008; Ord. 648 §8, 2008; Ord. 680 §2, 2010; Ord. 722 §1, 2013; Ord. 725 §9, 2013)

#### **Sec. 16-7. Interpretation and application.**

After the effective date of the ordinance codified herein, no structure or premises shall be used or occupied, and no structure or portion thereof shall be erected, moved, constructed, reconstructed, extended, enlarged or altered contrary to the provisions of this Chapter. No portion of a lot area, open space, off-street parking space or yard required about or in connection with any building for the purposes of complying with this Chapter may be included as a portion of a lot area, open space, off-street parking area or yard similarly required for any other building or its use. (Ord. 209 Art. I §5, 1981)

#### **Sec. 16-8. Application of overlapping regulations.**

Whenever a provision of this Chapter or any provision of any other law, ordinance, resolution, rule or regulation of any kind contain any restrictions covering any of the same subject matter, whichever restrictions are more restrictive or impose higher standards or requirements shall govern. All uses and all locations and bulk permitted under the terms of this Chapter shall be in conformity with all other provisions of law. (Ord. 209 Art. I §6, 1981; Ord. 435 §1, 1996)

#### **Sec. 16-9. Zoning map; district boundaries established.**

The location and boundaries of the districts designated in this Chapter are established as shown on the map entitled "Zoning District Map of the Town of Nederland" dated November 17, 1981, signed by the Mayor and the Town Clerk, and hereafter referred to as the zoning map. (Ord. 209 Art. I §7, 1981)

**Sec. 16-10. Zoning map adopted; amendment procedure.**

- (a) The zoning map and all the notations thereon are made part of this Chapter.
- (b) A signed copy of the zoning map containing the zoning districts designated at the time of the adoption of this Chapter shall be maintained without change on file in the office of the Town Clerk.
- (c) Changes made in district boundaries or other matter portrayed on the zoning map shall be made in accordance with the provisions of this Chapter. Changes shall be entered on the zoning map promptly after the amendment has been approved by the Board of Trustees. A copy of each amended map shall be kept permanently on file by the Town Clerk. (Ord. 209 Art. I §8, 1981)

**Sec. 16-11. Extension of processing deadlines.**

If, in the sole discretion of the Zoning Administrator, an application submitted pursuant to this Chapter is of sufficient complexity to require more than routine review and evaluation, the Zoning Administrator, Planning Commission and/or Board of Trustees, or, if the receipt of information necessary to review and evaluation is not available in a timely manner, the Zoning Administrator may extend the deadlines established herein for public hearing and/or action by the Planning Commission and/or Board of Trustees and must provide the Planning Commission and/or Board of Trustees documentation of all relevant issues discussed with the applicant. Unless otherwise agreed to by the applicant, the time frame for review by the Town shall not exceed six (6) months. (Ord. 382 §5, 1994; Ord. 645 §3, 2008)

**Secs. 16-12—16-30. Reserved.**

**ARTICLE II**

**District Regulations**

**Sec. 16-31. District categories.**

In order to implement the purposes and provisions of this Chapter, the Town hereby establishes the following zoning districts:

(1) Forestry (F). The forestry district is established to conserve forest resources, protect the environment, preserve open space and accommodate very low density residential units on lots five (5) acres in size or larger. This district may also accommodate open space oriented uses and activities such as horse stables, crop and animal production, and campgrounds and recreation as well as resource-oriented uses and activities such as mineral extraction.

(2) Mountain residential (MR). The mountain residential district is established to accommodate residential and related uses on one (1) acre or larger lots. While oriented toward steep mountain topography, it may be established anywhere in the Town to maintain a low density, mountain residential character while permitting economically feasible urban services.

(3) Low density residential (LDR). The low density residential district is established to accommodate low density residential neighborhoods with lots at least sixteen thousand (16,000)

square feet in size. This district provides a combination of the large lot character of the MR district and the development economics of the MDR district.

(4) Medium density residential (MDR). The medium density residential district is established to accommodate residential and related uses at suburban density requiring a minimum lot size of eight thousand (8,000) square feet. As is the case in the F, MR and LDR districts, the dominant form of housing to be permitted in the MDR district is single-family detached unless the appropriateness of other housing forms is demonstrated through an approved planned unit development plan.

(5) High density residential (HDR). The high density residential district is established to accommodate residential and related uses at urban densities requiring a minimum lot size of four thousand (4,000) square feet. Again, single-family detached units are preferable in this district; however, multifamily units may be approved through the special review or planned unit development procedures of this Chapter.

(6) Neighborhood commercial (NC). The neighborhood commercial district is established to accommodate residential and a limited range of commercial uses. Those commercial uses deemed to have significant incompatibility with existing or potential residential uses, or for which the use will cause a significant increase in traffic volume on secondary residential streets, shall not be permitted.

(7) Central business district (CBD). The central business district is established to accommodate a limited range of commercial uses in an intensely developed core commercial area. To this end, front and side yard setbacks are not applicable in the CBD district; however, trash and fire access shall be provided in the rear yards.

(8) General commercial (GC). The general commercial district is established to accommodate a wide range of commercial uses including many uses deemed inappropriate in the NC and CBD districts.

(9) Industrial (I). The industrial district is established to accommodate light industrial uses, mineral processing uses and industrial uses of a commercial nature which for aesthetic and safety reasons are deemed inappropriate in the commercial districts and mineral processing.

(10) Public. Public areas in which public and semi-public facilities and uses are located, including, without limitation, governmental and educational uses. (Ord. 209 Art. II §1, 1981; Ord. 246 §1, 1983; Ord. 435 §1, 1996; Ord. 645 §4, 2008; Ord. 650 §1, 2008)

### **Sec. 16-32. Use groups.**

(a) This Section provides for grouping of similar uses into use groups. In each zoning district, use groups permitted outright are designated "Y," use groups permitted by special review are designated "R" and use groups prohibited are designated "N."

(b) Any use that is not specifically permitted in this Section shall be deemed to be a prohibited use. If a question arises as to whether a specific use does or does not fall within the expressed use categories, application may be made to the Planning Commission for a determination as to whether a

specific use is permitted. Any decision by the Planning Commission may be reviewed by the Board of Trustees within thirty (30) days of the decision of the Planning Commission.

(c) Use group table.

USE GROUPS	DISTRICTS						
	F	MR LDR MDR HDR	NC	CBD	GC	I	P <sup>7</sup>
<i>Agricultural Use Groups</i>							
Crop production	Y	Y	Y	N	Y	Y	R
Animal production	Y	R	N	N	N	N	N
Private home stables	R	<sup>1</sup>	N	N	N	N	N
Public horse stables	R	N	N	N	R	N	R

"N" = use groups prohibited

"R" = use groups permitted by special review

"Y" = use groups permitted outright

USE GROUPS	DISTRICTS						
	F	MR LDR MDR HDR	NC	CBD	GC	I	P <sup>7</sup>
<i>Agricultural Use Groups (Cont'd)</i>							
Outdoor kennels	R	N	N	N	N	N	N
Fish hatchery	R	N	N	N	N	R	R
<i>Educational and Child Care Use Groups</i>							
Private, elementary and secondary schools, State-licensed group homes for the developmentally disabled, child care centers	R	R	R	N	R	N	N
<i>Residential Use Groups</i>							
Single-family dwelling units	Y	Y	Y	N <sup>2</sup>	N <sup>2</sup>	N <sup>2</sup>	Y <sup>8</sup>
Multi-family dwelling units	N	R <sup>3</sup>	R	N	N	N	N
Mobile homes, boarding and rooming houses and rest, nursing and retirement homes	N	<sup>4</sup>	N	N	N	N	N
Family care home	N	N	R	R	R	R	N
<i>Mixed Uses<sup>6</sup></i>	N	N	R	R	R	R	N
<i>Commercial Use Groups</i>							
Club	N	N	R	Y	Y	N	N

Club, for profit	N	N	R	R	R	N	N
Enclosed retail, eating and drinking	N	N	R	Y	Y	N	N
Office, financial, medical, personal service establishments	N	N	Y	Y	Y	Y	N
Outdoor sales, eating and drinking, or other outdoor commercial activities or establishments	N	N	R	R	R	N	N
Hotels and motels	N	N	R	R	R	N	N
Campgrounds and resort cabins	R	N	N	N	N	N	R
Commercial uses, including but not limited to animal hospitals, enclosed kennels, car washes, cleaning and laundry plants, cold storage lockers, building material and equipment dealers, wholesaling services, construction trades	N	N	R	R	R	N	N
Motor vehicle sales and repair	N	N	R	N	R	R	N
Fuel sales and storage	N	N	N	N	R	R	N
Service stations	N	N	R	R	R	R	N
Sexually oriented businesses	N	N	N	N	N	R	N

"N" = use groups prohibited

"R" = use groups permitted by special review

"Y" = use groups permitted outright

<i>USE GROUPS</i>	<i>DISTRICTS</i>						
	<i>F</i>	<i>MR LDR MDR HDR</i>	<i>NC</i>	<i>CBD</i>	<i>GC</i>	<i>I</i>	<i>P<sup>7</sup></i>
<i>Industrial Use Groups</i>							
Commercial/industrial uses, including but not limited to building contractor's yards and transportation centers	N	N	N	N	R	R	N
Medical clinics	N	N	R	R	R	N	R
Small wind turbines	R	R	R	R	R	R	R
Warehousing and facilities for the manufacturing, fabrication, processing or assembly of products, provided that such facilities are completely enclosed; processing of minerals and ores at a rate of 100 tons per day or less, provided that noisy and/or dusty stationary equipment is enclosed	N	N	N	N	N	R	N
All other facilities for the manufacturing, fabrication, processing or assembly of products; processing of minerals and ores at the rate of more than 100 tons per day	N	N	N	N	N	R	N
Salvage yards, impound lots, saw mills and mineral extraction	R	N	N	N	R	R	N
Commercial/industrial uses, including but not limited to small warehouses; and storage facilities	N	N	N	N	N	Y	R

Research facilities	N	N	R	R	R	R	R
<i>Public, Quasi-Public Use Groups</i>							
Parks oriented toward lots and passive recreation	Y	Y	Y	Y	Y	Y	Y <sup>5</sup>
Outdoor recreational facilities, including but not limited to lighted tennis courts, playfields and stadiums	R	R	R	N	R	R	Y <sup>5</sup>
Elementary and secondary schools	R	R	R	N	N	N	R
Trade and business schools	N	N	R	N	Y	Y	R
Churches, chapels, temples and synagogues	R	R	R	R	R	R	N
Cemeteries	Y	R	N	N	N	N	R
Halfway houses and community homes	R	R	R	N	N	N	N
State-licensed group homes for the developmentally disabled, child care centers	R	N	N	N	N	N	N
Hospitals and mortuaries	N	N	R	N	R	N	R
Municipal offices and shops	Y	Y	Y	Y	Y	Y	R

"N" = use groups prohibited  
 "R" = use groups permitted by special review  
 "Y" = use groups permitted outright

<i>USE GROUPS</i>	<i>DISTRICTS</i>						
	<i>F</i>	<i>MR LDR MDR HDR</i>	<i>NC</i>	<i>CBD</i>	<i>GC</i>	<i>I</i>	<i>P<sup>7</sup></i>
<i>Public, Quasi-Public Use Groups (cont'd)</i>							
Municipal facilities and uses operated by the Town, including offices, water and sewer services, shops, law enforcement, community center or any other public facilities operated by any governmental or quasi-governmental services requested by the Town	Y <sup>5</sup>	Y <sup>5</sup>	Y <sup>5</sup>	Y <sup>5</sup>	Y <sup>5</sup>	Y <sup>5</sup>	R
Municipal water and sewer facilities	R	R	R	R	R	R	R
<i>Marijuana Establishment Use Groups:</i>							
Marijuana cultivation facility	Y	R <sup>9</sup>	R	R	Y	Y	N
Marijuana product manufacturing facility	N	N	N	N	Y	Y	N
Marijuana testing facility	N	R <sup>9</sup>	R	Y	Y	Y	N
Retail marijuana store	N	N	R	Y	Y	N	N
Medical marijuana center	N	N	Y	Y	Y	N	N
Medical marijuana optional premises for cultivation	N	N	Y	R	Y	Y	N
Medical marijuana infused product facility	Y	N	N	Y	Y	Y	N

"N" = use groups prohibited  
 "R" = use groups permitted by special review  
 "Y" = use groups permitted outright

Footnotes:

- <sup>1</sup> Private horse stables shall be permitted in the MR district only by special review. They shall not be permitted in the LDR, MDR or HDR districts.
- <sup>2</sup> One dwelling unit shall be permitted per property (contiguous properties in single ownership shall constitute one property) so long as the residential use is clearly incidental to the principal use.
- <sup>3</sup> Multi-family units proposed for development on a parcel or parcels that total 1 acre or more in size shall be required to meet the requirements of Section 16-152 of this Chapter.
- <sup>4</sup> These uses shall be permitted only in the HDR district through special review and as otherwise regulated by local ordinances and state statutes.
- <sup>5</sup> There must be a public hearing prior to issuing a building permit for any new facilities relying upon this use group.
- <sup>6</sup> For a multi-level structure, all of the street frontage on the street level, including at least 30% of the use abutting the street, shall be used for commercial and/or office uses only. For a single-level structure in the CBD and GC zoning districts, at least 30% of the total use shall be commercial and/or office uses, including all of the street frontage.
- <sup>7</sup> Uses permitted in this zone district must be publicly owned.
- <sup>8</sup> Caretaker units only.
- <sup>9</sup> A marijuana cultivation facility is permitted in the residential zoning areas as a home occupation, under the special review use permit process.

(Ord. 209 Art. II §2, 1981; Ord. 263 §1, 1985; Ord. 382 §1, 1994; Ord. 435 §1, 1996; Ord. 569 §1, 2003; Ord. 570 §1, 2003; Ord. 621 §1, 2006; Ord. 634 §3, 2007; Ord. 645 §5, 2008; Ord. 650 §2, 2008; Ord. 680 §3, 2010; Ord. 720 §3, 2013; Ord. 722 §2, 2013)

**Sec. 16-33. Yard and bulk requirements.**

**Zoning Districts and Requirements**

<i>Yard and Bulk Items</i>	<i>F</i>	<i>MR</i>	<i>LDR</i>	<i>MDR</i>	<i>HDR</i>	<i>NC</i>	<i>CBD</i>	<i>GC</i>	<i>I</i>	<i>P</i>
Minimum lot area per lot and per dwelling unit (sq. ft.)	5 acres <sup>3</sup>	1 acre	16,000	8,000	4,000	4,000 <sup>4</sup>	0	8,000	8,000	0
Minimum lot width (ft.)	330	150	100	70	40	40	0	40	40	0
Maximum lot coverage (% of lot area)	10	15	20	30	40	40	N/A	40	40	100
Minimum setback from a street for all uses (ft.) <sup>1</sup>	50	30	30	25	20	25	0	25	25	0
Minimum front yard setback for all uses (ft.) <sup>1</sup>	50	30	30	25	20	25	0	25	25	0
Minimum side yard setback from an interior lot line										
Principal uses (ft.)	30	20	15	10	5	5	5	10	10	0
Accessory uses (ft.)	10	10	10	5	5	5	0 or 10	5	5	0
Minimum rear yard setback										
Principal uses (ft.)	50	40	40	25	15	15	15	15	15	0
Accessory uses (ft.)	10	10	10	5	5	5	10	5	5	0
<i>Structure Criteria</i>										

Maximum building height <sup>2</sup>										
Principal uses (ft.)	35	35	35	35	35	35	35	35	35	35
Accessory uses (ft.)	25	25	25	20	20	20	20	20	20	25

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- <sup>1</sup> Or, in the case of a principal structure only, an established setback line.
- <sup>2</sup> Measured to the uppermost point of the roof. See Section 16-6(9).
- <sup>3</sup> One acre equals 43,560 square feet.
- <sup>4</sup> Minimum lot area per dwelling unit may be reduced to 2,000 sq. ft. upon approval of the Board of Trustees in the Neighborhood Commercial District through the Planned Unit Development provisions of this Chapter. See Article IV.

(Ord. 209 Art. II §3, 1981; Ord. 246 §§2, 3, 1983; Ord. 327, 1991; Ord. 645 §6, 2008; Ord. 650 §3A, 2008)

**Secs. 16-34—16-50. Reserved.**

**ARTICLE III**

**Special Review Uses**

**Sec. 16-51. Purpose.**

Although each zoning district is primarily intended for a predominant type of use (such as dwellings in residential districts), there are a number of uses which may or may not be appropriate in a particular district depending upon, for example, the location, nature of the proposed use, character of surrounding development, traffic capacities of adjacent streets and potential environmental effects. These factors may dictate that the circumstances of development should be individually reviewed. It is the purpose of this Article to provide review of such uses so that the Town is assured that such uses are compatible with their locations and surrounding land uses and will further the purposes of the Article and the Comprehensive Plan. (Ord. 209 Art. III §1, 1981; Ord. 645 §7, 2008)

**Sec. 16-52. Application.**

(a) An application for approval of a special review use may be filed by a person having an interest in the property for which the special review use is requested, with the written consent of the owner, and shall be made on a form provided by the Town. The application must be submitted electronically, along with two (2) full size copies and include the following:

- (1) A complete site plan illustrating:
  - a. Adjacent land uses and location of adjacent structures, including all adjacent natural features that will be impacted by the use.
  - b. Boundary and size of site.
  - c. Building location, height and setbacks.

- d. Off-street parking and loading areas.
- e. Points of ingress and egress.
- f. Service and refuse areas.
- g. Signs and exterior lighting.
- h. Fencing, landscaping and screening.
- i. Compliance with performance standards.
- j. Anticipated utility requirements.
- k. North arrow reference.

(2) A time schedule for development.

(3) Explanation of how the project furthers the purposes of the Comprehensive Plan.

(4) Other information the applicant believes will support the application.

(b) The applicant shall furnish a list of the names and addresses of owners of property located within three hundred (300) feet of the subject site.

(c) Upon review of the application, the Planning Commission may determine that additional information is critical to its evaluation of the application. The applicant shall be responsible for furnishing such additional information if so requested.

(d) The applicant shall pay a nonrefundable special review use application fee set forth in Section 4-151 of this Code to the Town upon submission of the application to cover processing costs of the Town. In addition to the fee, the Town may bill the applicant for costs incurred by the Town for necessary legal, planning, engineering and other technical review of the application. Said costs shall be paid in full prior to final consideration of the application by the Board of Trustees. The cost of an election and any legal fees incurred by the Town related to such election shall be paid by the Town should an appeal to the electorate be initiated through citizen referendum petition.

(e) The Board of Zoning Adjustment shall determine all uses which are not specifically listed in Section 16-32(c). (Ord. 209 Art. III §2, 1981; Ord. 382 §2, 1994; Ord. 552 §3, 2001; Ord. 645 §8, 2008; Ord. 725 §10, 2013)

**Sec. 16-53. Coordination with planned unit development plan approval.**

If the proposed special review use is submitted as part of a planned unit development plan, the provisions of this Article shall be met through approval of the planned unit development plan. Whichever restrictions are more restrictive or impose higher standards or requirements shall govern. (Ord. 209 Art. III §3, 1981; Ord. 645 §9, 2008)

**Sec. 16-54. Processing of application.**

(a) The applicant shall submit the complete application to the Zoning Administrator. Upon finding the application complete, the Zoning Administrator shall submit the application to the Planning Commission along with documentation of all issues discussed and any proposed agreements suggested up to that point.

(b) Within thirty (30) days of receipt of the application from the Zoning Administrator, the Planning Commission shall hold a public hearing to consider the application. Public notice of the hearing shall be published in a newspaper of general circulation within the Town at least fifteen (15) days prior to such hearing. Additionally, owners of property within three hundred (300) feet of the subject property shall be notified of the public hearing by first class mail and the property shall be posted at least fifteen (15) days prior to the hearing along the part of such property fronting on a street.

(c) Within thirty (30) days following the public hearing or within such time as is mutually agreed by the Planning Commission and the applicant, the Planning Commission shall either recommend approval of the application, with or without conditions, or denial of the application to the Board of Trustees.

(d) Within thirty (30) days of receipt of the Planning Commission recommendation, the Board of Trustees shall approve the application with or without conditions, or deny the application.

(e) An approved special review use shall not be conducted until the Zoning Administrator has issued a special review use certificate. The certificate shall be issued only after the applicant has entered into an agreement with the Town specifying that all conditions imposed by the Board of Trustees will be completed and that the use and improvements will be in accordance with the approved application site plan and development schedule. The agreement shall be recorded in the office of the County Clerk and Recorder. (Ord. 209 Art. III §4, 1981; Ord. 645 §10, 2008; Ord. 725 §11, 2013)

**Sec. 16-55. Approval criteria and conditions.**

(a) A special review use application shall be approved only if the Board of Trustees finds that the application:

- (1) Is eligible for a special review under Section 16-32 of this Chapter;
- (2) Is generally compatible with adjacent land uses;
- (3) Meets all requirements of Section 16-52 above, is in compliance with this Chapter and minimizes potential adverse impact of the special review use on adjacent properties and traffic flow;
- (4) Is consistent with the Comprehensive Plan; and
- (5) The Town has the capacity to serve the proposed use with water, sewer, fire and police protection.

(b) In considering an application for a special review use, the Board of Trustees may impose conditions on the application to ensure compliance with Subsection (a) above.

(c) All provisions of a special review use shall be recorded in a development agreement. Such agreement shall not be final until the agreement is approved by the Board of Trustees and fully executed by all parties. (Ord. 209 Art. III §5, 1981; Ord. 382 §4, 1994)

**Sec. 16-56. Approved site plans part of zoning map; expiration.**

(a) All approved site plans for special review uses, including modifications and conditions, shall be endorsed by the Board of Trustees and made a part of the zoning district map.

(b) Any use approved by special review that is not operated on the property for more than one (1) year shall be deemed expired and the property may not again be used for such use unless approved in accordance with this Chapter. (Ord. 209 Art. III §6, 1981; Ord. 435 §1, 1996)

**Sec. 16-57. Alterations of special review uses.**

(a) No special review use or site or nonconforming use or site which would have required a special review use may be altered unless such alteration is approved in accordance with the procedures applicable to approval of a special review use as set out in this Article.

(b) Upon transfer of ownership within the same use, the new owner must agree to and be bound by all provisions documented in the development agreement before the SRU certificate is transferred. (Ord. 209 Art. III §7, 1981; Ord. 382 §3, 1994; Ord. 645 §11, 2008)

**Sec. 16-58. Special review uses existing prior to effective date.**

Any continuous use which existed prior to the effective date of the initial ordinance codified herein shall continue as an approved special review use upon written request of the owner or manager or similar representative of such use. In the case of such written request, the request shall be endorsed by the Board of Trustees and made a permanent part of the zoning district map. (Ord. 209 Art. III §8, 1981; Ord. 645 §12, 2008)

**Sec. 16-59. Court appeals.**

Any person applying to the courts for a review of any decision made under the terms of this Article shall apply for review within thirty (30) days after the date of decision and shall be required to pay the cost of preparing a transcript of proceedings. (Ord. 209 Art. III §9, 1981)

**Sec. 16-60. Designation of additional special review uses.**

(a) In addition to those areas designated as special review uses in Section 16-32, any commercial, industrial or public and quasi-public uses conducted in structures with a floor area of ten thousand (10,000) square feet or larger are hereby designated as special review uses.

(b) Other special review uses include any extension of a structure beyond the roof line which exceeds the building height limit for the zoning district, including but not limited to chimneys, tanks, church spires, belfries, monuments, fire and hose towers, observation towers, transmission towers,

flagpoles, commercial radio and television towers, masts, aerials, cooling towers, elevator shafts, ranch and farmer accessory uses and other similar projects. (Ord. 382 §5, 1994; Ord. 435 §1, 1996; Ord. 645 §13, 2008)

**Sec. 16-61. Review of special review uses for cause.**

(a) Upon the Town receiving a written complaint alleging that one (1) or more terms or conditions of a special review use permit or special review use agreement have been or are being violated, or that a special review use is being operated in a manner that violates this Code, or upon request by the Board of Trustees, the Zoning Administrator shall promptly investigate the alleged violation. To conduct his or her investigation, the Zoning Administrator shall have all powers provided by this Code, including but not limited to those set forth in Section 16-271.

(b) If the Zoning Administrator concludes there is cause to believe a violation of one (1) or more terms or conditions of a special review use agreement or a special review use permit or this Code have been violated, then the matter shall be set for a "show cause" hearing before the Board of Trustees. As used in this Section, cause shall be defined as a reasonable belief based on articulable facts.

(c) Notice shall be provided by the Town Clerk to the holder of the special review use permit of the "show cause" hearing, advising him or her of the date, time and place of the hearing and specifying the terms and conditions or Code provisions alleged to have been violated. Such notice shall be hand-delivered or mailed by certified mail, return receipt requested, to the holder of the special review use permit at the address indicated in the permit unless the holder of the special review use permit has previously advised the Town Clerk in writing of some other address at which he or she desires to be notified. The date for such hearing shall be no less than thirty (30) days after the date of the notice, unless there is an immediate threat to the public health, safety or welfare, in which case the hearing may be set forthwith.

(d) At the "show cause" hearing, the Town shall bear the burden of establishing the violation of the terms or conditions or provisions in question by the holder of the special permit by a preponderance of the evidence.

(e) If, as a result of such hearing, the Board of Trustees determines that the holder of the special review use permit has failed to comply with one (1) or more of the terms or conditions of the special review use permit or agreement or has operated in a manner that violates this Code, then the Board of Trustees shall have the following options, in the discretion of the Board of Trustees:

(1) Terminate the special review use permit and agreement, in which event the use of the property under the special review use permit shall cease.

(2) Suspend the special review use permit until the holder is again in compliance with the terms and conditions or provisions in question. No use shall be made of the property during such suspension.

(3) Modify the special review use agreement on such terms and conditions as the Board of Trustees deems appropriate, including but not limited to restricting the uses that may be made of

the property or the portions of the property on which such uses may be made or adding additional terms or conditions to the agreement or permit. (Ord. 575 §1, 2003; Ord. 591, 2004)

**Secs. 16-62—16-70. Reserved.**

## **ARTICLE IV**

### **Supplemental Regulations**

**Sec. 16-71. District boundaries.**

Unless otherwise specified, district boundaries are lot lines or the centerline of streets, alleys, railroad rights-of-way or such lines extended. (Ord. 209 Art. IV §1, 1981)

**Sec. 16-72. Accessory buildings and uses.**

An accessory building and use is a subordinate use of a building, other structure or tract of land, or subordinate building or other structure:

- (1) Which is clearly incidental to the use of the principal building, other structure or use of land;
- (2) Which is customary in connection with the principal building, other structure or use of land; or
- (3) Which is ordinarily located on the same lot with the principal building, other structure or use of land. (Ord. 209 Art. IV §2, 1981)

**Sec. 16-73. Exceptions to yard requirements.**

The following exceptions to the front yard requirement for dwellings abutting local streets, not including collector or arterial streets, are authorized for a lot in any district:

- (1) If there are dwellings on both abutting lots with front yards of less than the required depth for the district, the front yard for the lot need not exceed the average front yard of the abutting dwellings.
- (2) If there is a dwelling on one (1) abutting lot with a front yard of less than the required depth for the district, the front yard for the lot need not exceed a depth one-half (½) way between the depth of the abutting lot and the required front yard depth. (Ord. 209 Art. IV §3, 1981)

**Sec. 16-74. Projections from buildings.**

Cornices, eaves, canopies, sunshades, gutters, chimneys, flues, belt courses, leaders, sills, pilasters, lintels, ornamental features and other similar architectural features may project not more than three (3) feet into a required yard or into required open space as established by coverage standards. (Ord. 209 Art. IV §5, 1981)

**Sec. 16-75. Principal buildings on same lot.**

No part of a principal building shall be located closer than ten (10) feet to any other principal building on the same lot. (Ord. 209 Art. IV §6, 1981)

**Sec. 16-76. Home occupations.**

(a) A home occupation shall be allowed as a permitted accessory use, provided that all of the following conditions are met:

(1) Such use shall be conducted entirely by members of the family occupying the dwelling and/or one (1) on-site employee.

(2) Such use shall be clearly incidental and secondary to the use of the dwelling for dwelling purposes and shall not change the character thereof.

(3) The total area used for such purposes shall not exceed one-half ( $\frac{1}{2}$ ) the floor area of the user's dwelling unit; accessory structures and attached garages may not be considered under this provision.

(4) There shall be no exterior advertising other than identification of the home occupation. Such identification sign shall not exceed six (6) square feet and shall comply with all other requirements of this Code. Any other method of advertising shall not solicit or direct persons to the address.

(5) There shall be no offensive impacts in violation of this Code, such as noise, vibration, smoke, dust, odors, heat or glare noticeable at or beyond the property line.

(6) There shall be no exterior storage on the premises of material, customer property or equipment used as a part of the home occupation.

(7) Off-street parking shall be provided to accommodate the parking needs of the home occupation; home occupations shall not generate traffic which significantly affects the residential character of an area and shall not generate more trips per day (TPD) than the standard for a single-family dwelling unit (SFDU) – ten (10) trips per day is the average TPD for a SFDU.

(8) The structure with the home occupation is in the F, MR, LDR, MDR or HDR zone.

(9) The home occupation shall not include:

a. A use prohibited in the zone district.

b. An animal hospital.

c. A restaurant.

d. A bed and breakfast.

e. A group home.

- f. An auto repair shop.
- g. A nursing home/convalescent home.
- h. A barber shop/salon.
- i. An excavating or heavy equipment rental.
- j. A mortuary.
- k. A use which requires a special review or a conditional use permit in the zone district.

(10) In the event that there is a requested home occupation that is not clearly permitted or prohibited, the Planning Commission shall review and recommend and the Board of Trustees shall finally determine whether the particular home occupation is consistent with this Section for classification as a home occupation.

(b) Prior to enforcement of this Section through the Municipal Court, the alleged violator shall receive notice as follows:

(1) A written statement to the Zoning Administrator by a citizen explaining what provisions of this Section the property owner is allegedly violating; and

(2) If the Zoning Administrator determines that there is a violation of this Section, the Zoning Administrator shall provide a written warning to the property owner and the occupant by certified mail and by posting on the door of the property of the violation and that the violator has thirty (30) days to bring the home occupation into compliance or discontinue the home occupation. (Ord. 209 Art. IV §7, 1981; Ord. 435 §1, 1996; Ord. 454 §1, 1997; Ord. 645 §14; Ord. 725 §12, 2013)

**Sec. 16-77. Temporary uses.**

The following uses of land are permitted in each zoning district (unless restricted to particular zoning districts) subject to the applicable regulations of the district in which the use is permitted, and to the specific regulations and time limits which follow:

(1) Christmas tree sales in any nonresidential district for a period not to exceed forty-five (45) days. Display of Christmas trees need not comply with the yard and setback requirements of this Chapter, provided that no tree shall be displayed within a vision clearance area.

(2) Contractors' office quarters and equipment sheds accessory to a construction project, to continue only during the duration of such project, but not exceeding six (6) months and subject to renewal under the discretion of the Zoning Administrator.

(3) Real estate offices incidental to new housing developments to continue only until the sale or lease of all lots in the development, but not exceeding one (1) year and subject to renewal under the discretion of the Zoning Administrator. (Ord. 209 Art. IV §8, 1981; Ord. 220 §2, 1982)

**Sec. 16-78. Performance standards.**

(a) Smoke. No use shall be permitted in any district unless it conforms to the standards established by the State Department of Public Health's rules and regulations pertaining to smoke emission.

(b) Particulate matter. No operation shall be conducted unless it conforms to the standards established by the State Department of Public Health's rules and regulations pertaining to emission of particulate matter.

(c) Dust, odor, gas, fumes, glare or vibration. No operation shall be conducted unless it conforms to the standards established by the State Department of Public Health's rules and regulations pertaining to emission of dust, odor, gas, fumes, glare or vibration.

(d) Radiation hazards and electrical disturbances. No operation shall be conducted unless it conforms to the standards established by the State Department of Public Health's rules and regulations pertaining to radiation control.

(e) Noise. No operation shall be conducted unless it conforms to the standards established by the State Department of Public Health's rules and regulations pertaining to noise.

(f) Water pollution. No operation shall be conducted unless it conforms to the standards established by the State Department of Public Health's rules and regulations pertaining to water pollution.

(g) Public nuisance from marijuana establishments. The Town has a zero impact, zero tolerance policy regarding public nuisance from the operations of marijuana establishments. (See Section 7-37 of this Code.) (Ord. 209 Art. IV §9, 1981; Ord. 720 §3, 2013)

**Sec. 16-79. Exterior lighting.**

Any light used for the illumination of parking areas, off-street loading areas or any other purpose must be arranged in such a manner as to meet the following conditions:

(1) Lights must be shielded and directed downward so that the beams, rays of light or indirect radiance will not shine into surrounding areas or buildings;

(2) Neither the direct nor the reflected light from any light source may shine onto a roadway or create a traffic hazard to operators of motor vehicles on public thoroughfares;

(3) No beacon lights or blinking, flashing or fluttering lights or other illuminated device which has a changing light intensity, brightness or color shall be permitted in any district. (Ord. 209 Art. IV §10, 1981; Ord. 645 §15, 2008)

**Sec. 16-80. Vision clearance areas.**

(a) A vision clearance area shall contain no plantings, walls, structures or temporary or permanent obstructions exceeding two and one-half (2½) feet in height, measured from the top of the curb or existing grade unless said structure or obstructions are more than eighty percent (80%) open.

(b) The minimum distance establishing the size of the vision clearance area shall be thirty (30) feet, except that at intersections including an alley, the minimum distance shall be fifteen (15) feet.

(c) Vision clearance areas shall not be required in a Public district nor in the area designated as the Central Business District. (Ord. 209 Art. IV §11, 1981; Ord. 650 §3B, 2008)

**Sec. 16-81. Tailing ponds.**

(a) Tailing ponds shall be so located as to leave at least a twenty-five-foot-wide open space area between the base of the containing dam and the edge of the closest stream.

(b) Tailing ponds shall not be filled higher than the highest level of the adjacent property at the property line.

(c) Tailing ponds shall conform in design, and construction and operation to all applicable state statutes.

(d) Upon abandonment, tailing ponds shall be planted with native grasses, shrubs and trees. (Ord. 209 Art. IV §12, 1981)

**Sec. 16-82. Rental of rooming units.**

The renting of rooming units to one (1) or two (2) persons not members of the family residing in the same dwelling unit may be permitted as an accessory use, provided that the following conditions are met:

(1) Rooming units must not be more than one-third ( $\frac{1}{3}$ ) of the total floor area of the dwelling unit;

(2) The dwelling unit must have only one (1) meter for each utility; and

(3) Adequate off-street parking must be provided for the roomers, in addition to that required for the dwelling unit. (Ord. 209 Art. IV §13, 1981)

**Sec. 16-83. Swimming pools.**

A swimming pool may be permitted in any district as an accessory use subject to the following additional requirements:

(1) Every swimming pool must be completely surrounded by a fence or wall not less than forty-two (42) inches in height with no openings large enough to permit children to pass through other than gates or doors that can be fastened to protect against entry. A dwelling house or accessory building may be used as part of such required enclosure.

(2) All gates or doors opening through such enclosures must be equipped with a self-closing and self-latching device for keeping the gate or door securely closed at all times when not in actual use.

(3) The property owner has entered into an agreement with the Town regarding the discharge of water from the pool to the sewer system of the Town and addressing the volume of water that may be placed in or discharged from the pool during any twenty-four-hour period. The agreement shall provide sufficient protection to the Town so that the pool does not overextend the water or sewer system of the Town. (Ord. 209 Art. IV §14, 1981; Ord. 435 §1, 1996)

**Sec. 16-84. Drive-in facilities.**

(a) Any use permitted in a zoning district which intends to conduct a portion or all of its business with persons desiring to remain in their automobiles, or which allows products to be consumed on the premises outside the principal building, and which is not subject to the special review provisions of Article III or is not a part of a planned unit development under Article VI must submit a site plan including screening to be reviewed and approved by the Planning Commission.

(b) In reviewing and approving the site plan for such a use, the Planning Commission must be satisfied that the traffic circulation on and adjacent to the site is arranged so that internal and external pedestrian and vehicular movements are compatible and traffic hazards are minimized. (Ord. 209 Art. IV §15, 1981)

**Sec. 16-85. Salvage yards.**

Salvage yards shall be screened from view by natural terrain, dense foliage and/or adequate fencing that complies with Subsection 16-89(b). (Ord. 209 Art. IV §17, 1981; Ord. 645 §16, 2008)

**Sec. 16-86. Recreational vehicles.**

The following regulations shall apply in all residential districts to the storage and use of travel trailers, tent trailers, pick-up campers on coaches, motorized dwellings, boats and boat trailers, snow vehicles, cycle trailers, utility trailers and vans, horse trailers and vans, and similar vehicular equipment:

(1) Such vehicular equipment shall not be stored or parked closer than eighteen (18) inches to any proposed or existing public sidewalk and in no instance shall it project into the public right-of-way.

(2) Any such vehicular equipment which exceeds thirty (30) inches in height shall not be parked in a vision clearance area.

(3) Travel trailers, tent trailers, pick-up campers or coaches, motorized dwellings and/or vans shall not be used for living or housekeeping purposes except when located in an approved mobile home park or in a campground providing adequate sanitary facilities, and no business shall be conducted within such equipment parked or stored unless the Zoning Administrator has given approval.

(4) Travel trailers, tent trailers, detached pick-up campers or coaches, boats and boat trailers, cycle trailers, utility trailers and vans, horse trailers and vans which are parked and stored out-of-doors shall be adequately blocked and/or tied down or otherwise secured so that such vehicles do not roll off the lot and are not otherwise moved about by high winds.

(5) No vehicular equipment regulated by this Section shall be stored out-of-doors on a residential lot unless it is in condition for safe and effective performance of the functions for which it was intended. (Ord. 209 Art. IV §17, 1981)

**Sec. 16-87. Mobile homes.**

Mobile homes shall be located only in mobile home parks and as otherwise specified in Article V of this Chapter. (Ord. 209 Art. IV §18, 1981)

**Sec. 16-88. Density increase.**

The minimum lot area per dwelling unit stated in Section 16-33 of this Chapter for the NC District may be decreased to two thousand (2,000) square feet upon approval of the Board of Trustees if the applicant has met the following:

- (1) The project has been processed as a planned unit development;
- (2) The project site is at least eight thousand (8,000) square feet in size;
- (3) At least twenty-five percent (25%) of the project site is landscaped open space (excluding parking);
- (4) The Town may require project site planning, including landscaping and building design by certified professionals; and
- (5) The applicant has paid the additional costs incurred by the Town for extraordinary review of the application, including the services of outside contractors. (Ord. 246 §4, 1983; Ord. 645 §17, 2008)

**Sec. 16-89. Fences.**

(a) It shall be unlawful for any person to construct or erect any fence within the limits of the Town exceeding six (6) feet in height except as specifically stated herein.

(b) A fence exceeding six (6) feet in height may be constructed or erected only for the purpose of screening legally existing junk yards, outdoor storage yards and other legally existing uses involving the outside storage of machinery, equipment, material and automobiles. However, no such fence shall exceed eight (8) feet in height. Upon approval by the Board of Trustees, municipal facilities and certain public facilities may exceed height restrictions for safety or land use reasons, but in no circumstance should said fences exceed heights allowed in Section 16-33 of this Chapter, under Structure Criteria.

(c) It shall be unlawful for any person to construct or erect any fence exceeding four (4) feet in height within fifteen (15) feet of any lot line bordering upon any street or road, or within the Central Business District.

(d) It shall be unlawful for any person to construct or erect any fence in the Central Business District of a material that is of a combustible, environmentally unsafe or toxic or hazardous material of any kind.

(e) It shall be unlawful for any person to construct or erect any fence exceeding three (3) feet in height within one hundred (100) feet of the center of any intersection of two (2) or more streets or roads.

(f) Any fence erected or constructed hereafter which exceeds the heights set forth above shall constitute a public nuisance.

(g) For the purpose of this Section, the height of the fence shall be measured from grade to the top of the highest point of the fence. Grade shall be determined on that portion of the property on which each portion of the fence is to be constructed or erected, as said grade exists on the date of the ordinance codified herein, or as such grade exists on the date a permit for construction is applied for, whichever grade is lower.

(h) Any person violating any provision of this Section shall be guilty of a misdemeanor and may be punished by a fine up to one thousand dollars (\$1,000.00) per day or one (1) year in jail or both.

(i) Each twenty-four-hour period during which a violation of this Section occurs shall be a separate violation.

(j) In addition to other remedies, the Board of Trustees may enforce the provisions of this Section by seeking injunctive relief and abatement in a court of competent jurisdiction to compel removal of any fence erected in violation of this Section. (Ord. 342, 1992; Ord. 600 §1, 2005)

**Sec. 16-90. Wireless facilities.**

Any applicant to erect wireless facilities within the Town shall address the following site selection and design criteria as part of its application. Any such application shall be reviewed by the Town following the same procedure as applicable for a special review use. (Ord. 453 §2, 1997)

**Sec. 16-91. Site selection criteria.**

Site selection criteria are listed as a means of directing a site applicant to evaluate existing conditions at and adjacent to a subject site. It is the applicant's responsibility to address these criteria in a project description narrative.

(1) Screening potential of existing vegetation, structures and topographic feature.

(2) Compatibility with adjacent land uses.

(3) Opportunities to mitigate visual impact.

(4) Availability of suitable existing structures for antenna mounting.

(5) No telecommunications facility owner or lessee or employee thereof shall act to exclude or attempt to exclude any other telecommunications service provider from the same location. A telecommunications facility owner or lessee or employee thereof shall cooperate in good faith to achieve co-location of antennas with other telecommunications service providers.

(6) Co-location of CMRS facilities with existing facilities structures or buildings is strongly encouraged. If co-location is not proposed, the applicant must present a justification why this is so.

(7) Availability of utilities and access.

(8) No antenna owner or lessee shall fail to comply with current applicable Federal Communications Commission regulations prohibiting localized interference with reception of television and radio broadcasts.

(9) No CMRS facility may be located on a single-family detached, duplex, triplex or fourplex building. (Ord. 453 §2, 1997)

**Sec. 16-92. Wireless facility design criteria.**

All siting must be accompanied by a site development plan (SDP) as required in the Town's zoning ordinance. Landscaping requirements of the Nederland Design Policies in Section III, Commercial, Office, Retail and Industrial uses, will apply to any leasehold site area that contains a CMRS facility and its associated accessory uses. Building- or roof-mounted facilities need not meet the landscaping requirements unless the accessory equipment storage shelter is located external to the building.

(1) CMRS facilities shall be designed to be compatible with surrounding buildings and/or uses in the area of those planned for the area. This may be accomplished through the use of compatible architectural elements such as color, materials, texture, scale of facilities in relation to the surrounding development and character of the area. CMRS facilities shall be integrated, through their location and design, into the natural setting and structural environment of the area.

(2) CMRS facilities shall preserve or enhance the existing character of the topography and vegetation. Existing vegetation, if any, and if suitable with natural features should be preserved or improved.

(3) Roof- and building-mounted antennas shall be completely screened and/or compatibly colored to complement the building to which they are attached.

(4) Structures or cabinets sheltering accessory equipment on the same site shall be compatible or blend with surrounding built or natural environment.

(5) A variety of screening techniques should be considered depending on site conditions. Techniques include, but are not limited to: landscaping, berming, screening and fencing where appropriate.

(6) The height of any support structure for a freestanding, microcell, repeater or antenna CMRS facility shall conform to the height limit of the subject zone district. Support structures for antennas of a CMRS facility needing to exceed the height of the subject zone district must obtain a special exception use permit as part of the SDP approval.

(7) Whenever an antenna is attached to a building roof, the height of the antenna shall not be more than fifteen (15) feet over the height of the building. If the building is constructed to the height limit of the applicable zone district, an additional fifteen (15) feet of antenna height is permissible.

(8) Microcell and repeater CMRS facilities may have no more than four (4) whip or panel antennas per facility, one (1) microwave antenna a maximum of three (3) feet in diameter, eighteen (18) square feet of exposed panel antenna surface area and fifteen (15) feet of whip antenna length.

(9) CMRS facilities shall meet the following minimum setbacks from all property lines, whichever is the greatest:

- a. The setback for a principal building within the applicable zone district;
- b. Twenty-five percent (25%) of the facility height, including antennas; or
- c. The facility height, including antennas, adjacent to residential uses and/or residentially zoned property. (Ord. 453 §2, 1997)

**Sec. 16-93. Recognition of lot splits created prior to 1972.**

Parcels of property meeting all six (6) of the requirements below shall be recognized as legal lots as defined in Sections 16-6 and 17-4 of this Code:

- (1) The parcel to be recognized as a lot was created prior to 1972 from a lot prior to 1972;
- (2) The portions of the lot as originally platted are not owned by the same person or entity at any time after February 10, 1998;
- (3) The size of each portion of the existing lot meets the minimum lot size requirements for the zoning district in which the lot is located;
- (4) There are no improvements constructed over any of the platted lot lines or created division lines;
- (5) The recognition of the divisions of the lot does not deprive any one (1) of the portions of the lot of access to a public street; and
- (6) Any utilities serving any improvements on the lot are in easements for the benefit of the property served by the utilities. (Ord. 474 §1, 1998)

**Sec. 16-94. Variances for lot splits created prior to 1972 which do not meet minimum lot size requirement for zoning district.**

(a) Upon application of a property owner, the Board of Zoning Adjustment may grant a variance to allow building on a lot that has been illegally split that does not meet all of the criteria of Section 16-93 above only under all of the following circumstances:

(1) The property owner submits an application on a form provided by the Town that contains at a minimum the information required by Subsection 16-52(a) and the footprint of the building sought to be constructed on the property; and

(2) The property is to be used only for a single-family dwelling.

(b) The Board of Zoning Adjustment may issue a variance allowing construction of the single-family dwelling as submitted in the application if it finds all of the following factors exist:

(1) All of the criteria for a variance contained in Paragraph 16-232(a)(1) are found to exist;

(2) The parcel that is the subject of the application meets all of the criteria of Section 16-93 of this Code except Paragraph (3); and

(3) The residence to be constructed and all appurtenances thereto, including the driveway, can be constructed in compliance with all applicable standards of the Town, including, but not limited to, design standards, yard and bulk requirements, accessibility, utility and excavation requirements and driveway standards.

(c) Any variance granted pursuant to this Section shall expire within one (1) year of the date of issuance, unless the property owner has obtained a building permit within such year period, and diligently pursues issuance of a certificate of occupancy. (Ord. 482 §1, 1998)

**Sec. 16-95. Commercial uses on East First Street.**

On East First Street between Colorado Highway 119 and Snyder Street, all street-level storefronts shall be used for retail commercial uses only, with the term retail defined as any business that collects retail sales tax, and any levels other than the street level shall be used for residential, commercial and/or office uses. (Ord. 622, 2006)

**Sec. 16-96. Small wind turbines.**

(a) Small wind turbines are permitted as a special review use in those zone districts designated by the use group table set forth in Subsection 16-32(c) of this Chapter. The requirements set forth in this Section are in addition to, and not in lieu of, those special review use requirements set forth in Article III of this Chapter. Applications for a small wind turbine tower shall be processed in accordance with Article III.

(b) Setbacks. Small wind turbines shall meet the following minimum setbacks from all property lines, whichever is the greatest:

(1) The setback for a principal building within the applicable zone district; or

(2) Twenty-five percent (25%) of the overall wind turbine height, measured at the highest-reaching point of any part of the turbine.

(c) Exemptions from setbacks. A small wind turbine may be exempt from the setback requirements of Subsection (b) above when the adjacent property upon which also is located a wind

turbine that is participating in a unified wind energy project or study with the applicant, as evidenced by a written instrument, such as a lease or access/easement agreement.

(d) Distance from environmental areas. Small wind turbines shall be located a minimum of two thousand five hundred (2,500) feet from all important bird areas, as identified by the local Audubon Society, and a minimum of one thousand five hundred (1,500) feet from all state-identified wetlands. Distance shall be measured in a straight line, regardless of topographical features, from the base of the small wind turbine to the nearest boundary of such area or wetland. These minimum distances may be altered to be greater or lesser at the discretion of the Board of Trustees, based on topography, land cover, land uses and any other factors that the Board of Trustees reasonably determines influences the flight patterns of resident birds.

(e) Sound level. A small wind turbine shall not exceed fifty (50) decibels, except during short-term events such as severe wind storms and utility outages. Sound shall be measured in accordance with Section 10-265 of this Code.

(f) Visual impacts. Small wind turbines will necessarily have visual impact on surrounding properties and the community due to the height necessary for such facilities to access wind resources. The intent of this Subsection is to reduce visual impacts without restricting the applicant's access to wind resources.

(1) Color and surface treatment of the turbine shall minimize visual disruption to surrounding properties, such as flicker and reflection, through techniques such as using nonreflective colors and colors that blend with the surrounding environment.

(2) The turbine and any associated structures shall, to the extent reasonably feasible, use materials, colors, textures, screening and landscaping that will blend the structures into the natural setting and existing environment.

(3) Where wind characteristics permit, small wind turbines shall be set back from the tops of visually prominent ridgelines to minimize the visual contrast apparent from any public access.

(4) The tower shall not significantly impair a scenic vista or scenic corridor as identified in the Comprehensive Plan.

(5) A small wind turbine shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind turbine.

(6) A small wind turbine shall not significantly obstruct the predominant view of the surrounding neighborhood. For purposes of this Paragraph, *predominant view* means the scenic view of the landscape as seen from a residence or business, or the accessory area of a residence or business, such as a deck, garden or family gathering area.

(g) Height restrictions. The overall height of a small wind turbine, as measured at the highest-reaching point of any part of the turbine, shall not exceed sixty (60) feet. The minimum distance

from ground level to the lowest-reaching point of any moving part of the small wind turbine shall be fifteen (15) feet.

(h) Submittal requirements. In addition to the requirements of Section 16-52 of this Chapter, an application to locate a small wind turbine shall include the following:

(1) Small wind turbine system specifications and drawings, including manufacturer and model, rotor diameter, tower height and tower type: freestanding or guyed, all elevation views or a photo or three-dimensional rendering from a certified engineer or qualified, by recognized agencies, as meeting established standards and recommended business practices, and/or determined by the American Wind Energy Association's (AWEA) Small Wind Turbine Committee as commercially available with multiple publicly accessible operational installations in the U.S.

(2) Mechanical wind brake required. (Ord. 680 §4, 2010)

### **Sec. 16-97. Chicken hens.**

As an accessory use to a residential use in all zone districts, chicken hens are permitted as pet animals, subject to the following standards:

(1) The chicken hens must be provided with a covered predator-resistant chicken house that is constructed of materials complementary to existing structures on the lot and properly ventilated and designed to be easily accessed, cleaned and maintained. The chicken house must have an attached outdoor enclosure area (chicken run) which, together with the area of the house, provides a minimum of four (4) square feet per chicken. The combined total area of the chicken house and the chicken run may not exceed two hundred (200) square feet. Chicken houses shall be a maximum of seven (7) feet tall, measured to the highest point of the structure.

(2) Neither a chicken house nor a chicken run may be located less than six (6) feet from any other structure nor less than ten (10) feet from any abutting property line.

(3) Chicken houses and runs must be regularly maintained in a manner to control dust, odor and waste and to prevent such areas from constituting a public nuisance or health hazard. The accumulation of organic material furnishing food for flies is prohibited. All manure and waste products shall be adequately composted or regularly collected and kept in tightly covered predator-, rodent- and insect-resistant receptacles and disposed of at least once a week in a manner approved by the Town Administrator or his or her designee.

(4) No person may own or keep a rooster or other type of fowl, other than a chicken hen, in any zone district.

(5) The breeding, selling and trading of chicken hens and their offspring as a commercial enterprise is prohibited. The keeping of chicken hens permitted by this Section is as an accessory use to a principal residential use, not as a home occupation or other commercial purpose.

(6) A chicken hen permit is required to keep chicken hens, in accordance with Chapter 6 of this Code. (Ord. 694 §2, 2011)

**Secs. 16-98—16-120. Reserved.**

## **ARTICLE V**

### **Mobile Homes**

#### **Sec. 16-121. Definition.**

For the purposes of this Article, *mobile home* shall mean any unit designed for occupancy which has been constructed at a location other than the location upon which it is proposed to be situated, and which is designed for conveyance upon the public streets or highways, including but not limited to those structures commonly referred to as trailers, mobile homes and doublewides. (Ord. 98 §1, 1964; Ord. 148 §1, 1977)

#### **Sec. 16-122. Trailers prohibited outside trailer courts.**

(a) It shall be unlawful for any person to use or maintain any trailer, with or without wheels, as a residence, office, store or manufactory within the Town limits; provided, however, that such trailers may be maintained in a trailer court or camp equipped with proper sanitary and other facilities for the use of the inhabitants of such trailers and maintained for the use of four (4) or more such trailers except as provided in Subsection (b) below, and provided further that persons using and maintaining such trailers in the Town limits on or before May 12, 1964, shall be permitted to so use and maintain such trailers at the place where now located.

(b) A temporary construction residential trailer may be allowed to be placed on a lot during construction of a single-family dwelling unit for up to ninety (90) days at the determination of the Board of Trustees with the following conditions:

- (1) Proper water and sewer plant investment fees shall be paid prior to the trailer being placed on the lot;
- (2) A building permit must be approved and paid prior to the trailer being placed on the lot;
- (3) The trailer may be no larger than twenty-five (25) feet long, must hook up to sewer or septic, and must be placed with a minimum setback of five (5) feet from any property line; and
- (4) An extension of the ninety-day limit may be granted by the Board of Trustees upon a finding that construction activity has been expeditiously attempted. (Ord. 98 §2, 1964; Ord. 244 §1, 1983; Ord. 645 §18, 2008)

#### **Sec. 16-123. Mobile homes prohibited outside mobile home courts authorized by Town.**

(a) It shall be unlawful for any person to use or maintain any mobile home, with or without wheels and other tires necessary for conveyance over the public streets and highways, as a residence, office, store, manufactory or other building, within the Town; provided, however, that such mobile homes may be maintained in approved mobile home courts or mobile home camps equipped with proper sanitary and other facilities for the use of the inhabitants of such mobile homes, provided that such courts or camps are authorized by the Board of Trustees, except as provided in Subsection (b) below; provided further that persons using and maintaining such mobile homes in the Town limits on

or before May 12, 1964, shall be permitted to so use and maintain mobile homes at the place where now located. A mobile home shall be considered a nonconforming building to which Article VII of this Chapter applies if legally located prior to the effective date of this Code.

(b) A temporary construction residential mobile home may be allowed to be placed on a lot during construction of a single-family dwelling unit for up to ninety (90) days at the determination of the Board of Trustees with the following conditions:

(1) Proper water and sewer plant investment fees shall be paid prior to the trailer being placed on the lot;

(2) A building permit must be approved and paid prior to the trailer being placed on the lot;

(3) The trailer may be no larger than twenty-five (25) feet long, must hook up to sewer or septic or provide adequate sewage removal and must be placed with a minimum setback of five (5) feet from any property line; and

(4) An extension of the ninety-day limit may be granted by the Board of Trustees upon a finding that construction activity has been expeditiously attempted. (Ord. 148 §2, 1977; Ord. 220 §1, 1982; Ord. 244 §2, 1983; Ord. 435 §1, 1996; Ord. 645 §19, 2008)

**Sec. 16-124. Penalty.**

Any person violating any of the provisions of this Article shall, on conviction, be fined as set forth in Section 1-72 of this Code. (Ord. 98 §3, 1964; Ord. 148 §4, 1977; Ord. 435 §1, 1996)

**Secs. 16-125—16-150. Reserved.**

**ARTICLE VI**

**Planned Unit Development**

**Sec. 16-151. Purpose.**

The purpose of this Article is to encourage flexibility in the development of land in order to promote its most appropriate use; to improve the design, character and quality of new development; to facilitate the adequate and economical provisions of streets and utilities; and to preserve the natural and scenic features of open areas. (Ord. 209 Art. V §1, 1981)

**Sec. 16-152. Scope.**

(a) Single-family residential development proposals exceeding six (6) units on lots of contiguous ownership, all multi-family or mobile home residential development proposals on a parcel or parcels totaling one (1) acre or more in size and all commercial, industrial, public and quasi-public development proposals on a parcel or parcels totaling one (1) acre or more in size shall be processed in accordance with the planned unit development procedures of this Article.

(b) The yard and bulk requirements stated in Article II shall not apply to planned unit developments, except that, if a PUD is proposed for an area currently zoned for residential use, the

minimum lot area of the current zoning district will be utilized in determining residential density. These requirements shall be controlled by the criteria and standards of this Article and as shown on the approved planned unit development plan.

(c) Uses permitted in a planned unit development shall be approved only after such uses are found, after review, to not be in conflict with the surrounding neighborhood and to conform to the Comprehensive Plan.

(d) A zoning change is required for planned unit developments and the area included in each approved planned unit development shall be indicated on the zoning map.

(e) The Town shall determine appropriate uses, densities and yard and bulk requirements for each planned unit development based on (i) the criteria set forth above, (ii) the impact of the proposed development on traffic flow, utilities, schools and Town resources and (iii) the preservation of the natural scenic features of surrounding areas. (Ord. 209 Art. V §2, 1981; Ord. 246 §5, 1983; Ord. 382 §6, 1994; Ord. 645 §20, 2008)

#### **Sec. 16-153. Coordination with subdivision regulations.**

It is the intent of this Article that subdivision review under the subdivision regulations be carried out simultaneously with the review of a planned unit development under this Article. (Ord. 209 Art. V §3, 1981)

#### **Sec. 16-154. Preliminary application.**

(a) A preliminary application for approval of a planned unit development may be filed by a person having an interest in the property for which the planned unit development is requested and shall be made on a form provided by the Town. The application must include twelve (12) copies of the following:

(1) A preliminary development plan illustrating:

- a. Adjacent land uses;
  - b. Boundary and size of site;
  - c. Existing topographic character of the land at a contour interval of two (2) feet if the slope is less than ten percent (10%) (spot elevations may be required if the land is too flat for contours) and five (5) feet if the slope is greater than ten percent (10%);
  - d. Proposed land uses and their respective acreage;
  - e. The character of the proposed development and the proposed number of dwelling units, if applicable;
  - f. The location of proposed streets and bicycle/pedestrian paths;
  - g. The location and size of proposed public and semi-public uses, both dedicated and other;
- and

h. Areas of potential hazard such as one-hundred-year floodplain, rock slides, subsidence or other similar hazards and mineral areas of economically feasible extraction value.

(2) A written statement including:

a. An explanation of the character of the planned unit development and the manner in which it has been planned to take advantage of the planned unit development regulations;

b. A statement of the present ownership and legal description of all the land included within the planned unit development; and

c. A general indication of the anticipated development schedule.

(3) Other information the applicant believes will support the preliminary application.

(b) The applicant shall furnish a list of the names and addresses of owners of property located within three hundred (300) feet of the subject site.

(c) Upon review of the application, the Planning Commission may determine that additional information is critical to its evaluation of the application. The applicant shall be responsible for furnishing such additional information if so requested.

(d) The applicant shall pay a nonrefundable preliminary planned unit development application fee set forth in Section 4-151 of this Code to the Town upon submission of the application to cover processing costs of the Town. In addition to the fee, the Town shall bill the applicant for costs incurred by the Town for necessary legal, planning, engineering and other technical review of the application. Said costs shall be paid in full prior to final consideration of the preliminary application. The cost of an election and any legal fees incurred by the Town related to such election shall be paid by the Town should an appeal to the electorate be initiated through citizen referendum petition. (Ord. 209 Art. V §4, 1981; Ord. 382 §7, 1994; Ord. 552 §2, 2001)

#### **Sec. 16-155. Final application.**

(a) The final application shall be filed within one (1) year of approval of the preliminary application unless the applicant and Planning Commission mutually agree, in writing, to an extension of the filing deadline. The application shall be made on a form provided by the Town and shall include twelve (12) copies of the following:

(1) A final plan illustrating:

a. Boundary, overall size and a legal description of the site;

b. Proposed topographic character of the land at a contour interval of two (2) feet if the slope is less than ten percent (10%) (spot elevations may be required if the land is too flat for contours) and five (5) feet if the slope is greater than ten percent (10%);

c. The proposed land uses and their respective acreage;

- d. The location and size or building envelopes of all buildings, structures and improvements;
- e. The architectural character of all buildings and structures including their maximum height;
- f. The density and type of dwellings, if applicable;
- g. The internal vehicular circulation system including arterial collector and local street design, right-of-way widths, curb cuts, turning movement and access control;
- h. Pedestrian and bicycle circulation system;
- i. Off-street parking areas, loading areas and service areas, including refuse disposal;
- j. Areas which are to be dedicated for public use or reserved as common open space;
- k. The location and design of proposed signs and exterior lighting plan;
- l. Areas of known hazard such as one-hundred-year floodplain, rock slides, subsidence or other similar hazards and mineral areas of potentially economically feasible extraction value;
- m. A landscape plan illustrating size, type and location of plant materials and an irrigation plan, if applicable;
- n. Anticipated utility requirements; and
- o. Development phasing.

(2) A written statement including:

- a. An explanation of the character of the planned unit development and the manner in which it has been planned to take advantage of the planned unit development regulations;
- b. A statement of the present ownership and legal description of all the land included within the planned unit development; and
- c. A brief statement describing the environmental impact of the planned unit development with specific reference to the performance standards identified in this Chapter.

(b) The applicant shall pay a nonrefundable final planned unit development application fee to the Town upon submission of the application to cover processing costs of the Town. Said fee shall be equal to the zoning amendment fee. In addition to the fee, the Town shall bill the applicant for costs incurred by the Town for necessary legal, planning, engineering and other technical review of the application. Said costs shall be paid in full prior to final consideration of the final plat. The cost of an election and any legal fees incurred by the Town related to such election shall be paid by the Town should an appeal to the electorate be initiated through citizen referendum petition. (Ord. 209 Art. V §5, 1981; Ord. 246 §6, 1983; Ord. 382 §8, 1994)

**Sec. 16-156. Processing of preliminary application.**

(a) The applicant shall submit the complete preliminary application to the Zoning Administrator. Upon finding the application complete, the Zoning Administrator shall submit the preliminary application to the Planning Commission.

(b) Within thirty (30) days of receipt of the preliminary application from the Zoning Administrator, the Planning Commission shall hold a public hearing to consider the application. Public notice of the hearing shall be published in a newspaper of general circulation within the Town at least fifteen (15) days prior to such hearing. Additionally, owners of property within three hundred (300) feet of the subject property shall be notified of the public hearing by first-class mail and the property shall be posted at least fifteen (15) days prior to the hearing along the part of such property fronting on a street.

(c) Within thirty (30) days following the public hearing or within such time as is mutually agreed by the Planning Commission and the applicant, the Planning Commission shall either approve the application, with or without conditions, or deny the application.

(d) The applicant may take a disputed decision of the Planning Commission to the Board of Trustees for review. If, in the Board of Trustees' sole discretion, the finding of the Planning Commission may have been in error, the Board of Trustees shall refer the application back to the Planning Commission for reassessment.

(e) Approval of the preliminary application shall be valid for one (1) year. A one-year extension of approval time may be granted by the Planning Commission upon written request by the applicant. (Ord. 209 Art. V §6, 1981)

**Sec. 16-157. Processing of final application.**

(a) All or any portion of an approved preliminary application may be submitted for final application approval. In the case of a partial submission, the approval of the remaining portion of the preliminary application shall automatically gain an extension of one (1) year.

(b) The applicant shall submit the completed final application to the Zoning Administrator. Upon finding the application is complete, the Zoning Administrator shall submit the final application to the Planning Commission.

(c) Within thirty (30) days of receipt of the final application from the Zoning Administrator, the Planning Commission shall hold a public hearing to consider the application. Public notice of the hearing shall be published in a newspaper of general circulation within the Town at least fifteen (15) days prior to such hearing. Additionally, owners of property within three hundred (300) feet of the subject property shall be notified of the public hearing by first-class mail and the property shall be posted at least fifteen (15) days prior to the hearing along the part of such property fronting a street.

(d) Within thirty (30) days following the public hearing or within such time as is mutually agreed by the Planning Commission and the applicant, the Planning Commission shall either approve the application, with or without conditions, or deny the application and recommend the same to the Board of Trustees.

(e) Within thirty (30) days of receipt of the Planning Commission recommendation, the Board of Trustees shall approve the application, with or without conditions, or deny the application.

(f) No improvements for an approved planned unit development plan shall be constructed until the Zoning Administrator has issued a planned unit development certificate. The certificate shall be issued only after the applicant has entered into an agreement with the Town specifying that all conditions imposed by the Board of Trustees will be completed and that the use and improvements will be in accordance with the approved final application. The agreement shall be recorded in the office of the County Clerk and Recorder. (Ord. 209 Art. V §7, 1981; Ord. 435 §1, 1996)

**Sec. 16-158. Approval criteria and conditions.**

(a) A planned unit development application shall be approved only if the Board of Trustees finds that:

- (1) The application is generally compatible with adjacent land uses;
- (2) The application is consistent with the Comprehensive Plan;
- (3) The Town has the capacity to serve the proposed use with water, sewer, fire and police protections;
- (4) The number of dwelling units permitted by the underlying zoning districts is not exceeded by the planned unit development plan; and
- (5) The planned unit development utilizes the natural character of the land, includes compatible land uses, provides for fire and police protection, off-street parking, vehicular, pedestrian and bicycle circulation and outdoor recreation; is of overall compatible architectural design; achieves adequate screening, buffering and aesthetic landscaping; avoids development of areas of potential hazard; ensures compliance with the performance standards; and meets all other provisions of this Chapter.

(b) In considering an application for a planned unit development, the Board of Trustees may impose conditions on the final application to ensure compliance with this Article.

(c) All provisions of a planned unit development shall be recorded in a development agreement. Such agreement shall not be final until the agreement is approved by the Board of Trustees and fully executed by all parties. (Ord. 209 Art. V §8, 1981; Ord. 382 §9, 1994; Ord. 645 §25, 2008)

**Sec. 16-159. Approved plans to be made part of zoning map.**

All approved planned unit development plans, including modifications and conditions, shall be endorsed by the Board of Trustees and made a permanent part of the zoning map. (Ord. 209 Art. V §9, 1981)

**Sec. 16-160. Alterations of approved planned unit development plans.**

No approved planned unit development plan shall be altered unless the final development plan is amended and approved in accordance with the procedures applicable to the approval of a final

application as set out in this Article, except that minor changes in the location, siting or character of buildings and structures may be authorized by the Zoning Administrator if required by engineering or other circumstances not foreseen at the time the final development program was approved. (Ord. 209 Art. V §10, 1981)

**Sec. 16-161. Court appeals.**

Any person applying to the courts for a review of any decision made under the terms of this Article shall apply for review within thirty (30) days after the date of decision and shall be required to pay the cost of preparing a transcript of proceedings. (Ord. 209 Art. V §11, 1981)

**Secs. 16-162—16-180. Reserved.**

**ARTICLE VII**

**Nonconforming Uses, Structures and Lots**

**Sec. 16-181. Continuation of nonconforming uses or structures.**

(a) A nonconforming nonresidential use may be continued; provided, however, that, if a nonconforming nonresidential use is discontinued for a period of one (1) year, regardless of intent to resume active operations, the structure or tract of land where such nonconforming use previously existed shall thereafter be occupied and used only for a conforming use.

(b) A nonconforming structure may continue to be occupied; provided, however, that, if a nonconforming structure is destroyed or damaged in any manner to the extent that the cost of restoration to its condition before the occurrence shall exceed seventy-five percent (75%) of the actual building valuation as determined by the records of the Boulder County Assessor, it shall be restored only to a conforming structure. If a nonconforming structure is damaged less than seventy-five percent (75%) of the actual building valuation as determined by the records of the Boulder County Assessor, it may be repaired or restored, provided that any such repair or restoration is started within twelve (12) months and is completed within eighteen (18) months from the date of partial destruction.

(c) If a nonconforming structure is moved for any reason for any distance whatsoever, it shall thereafter conform to the regulations of the district in which it is located after it is moved.

(d) A nonconforming residential use in a conforming structure that has been damaged or destroyed in excess of seventy-five percent (75%) of its actual building valuation, as determined by the records of the Boulder County Assessor, may be continued if the structure is repaired or restored under the following conditions:

(1) The damage or destruction was not caused directly or indirectly by an intentional act of the owner of the property or the structure or any agent or representative of such owner as determined by the appropriate governmental agency; and

(2) Restoration of the structure is commenced within six (6) months after the date on which the structure was destroyed and completed within eighteen (18) months after the date on which the

restoration was commenced. (Ord. 209 Art. VI §1, 1981; Ord. 382 §10, 1994; Ord. 455 §2, 1997; Ord. 709 §1, 2012)

**Sec. 16-182. Change of nonconforming use.**

A nonconforming use may be changed only to a conforming use. (Ord. 209 Art. VI §2, 1981; Ord. 455 §3, 1997; Ord. 709 §1, 2012)

**Sec. 16-183. Expansion or enlargement of nonconforming use or structure.**

(a) A nonconforming use shall not be expanded unless the expanded use conforms with the provisions of this Chapter.

(b) A nonconforming structure may be altered or expanded provided that all new construction is compliant with this Chapter and the provisions of Chapter 18 of this Code.

(c) A nonconforming use shall not be extended throughout any part of a building which was arranged or designed for such use prior to the enactment of this Chapter.

(d) If a nonconforming use ceases for a period of twelve (12) months, such use shall not thereafter be reestablished and future use shall be in conformity with the provisions of the current zoning regulations. Single-family residential units in all zoning districts are exempt from this provision when used as a residence only.

(e) The hours of operation, lighting, traffic flows, parking lighting, noise and similar characteristics of a nonconforming use shall not be altered to adversely impact adjacent properties. (Ord. 209 Art. VI §3, 1981; Ord. 382 §11, 1994; Ord. 709 §1, 2012)

**Sec. 16-184. Nonconforming lots of record.**

(a) In any district, principal and customary accessory buildings may be erected on any legally existing single lot of record which existed prior to the effective date of the ordinance codified herein. Such lot must have been in separate ownership and not of continuous frontage with other lots under the same ownership. This provision shall apply even though such lot fails to meet the requirements of the district in which it is located for area, width or both area and width; provided however, that the requirements of the district for minimum yard dimensions shall be met unless a variance to said requirements has been granted by the Board of Zoning Adjustment.

(b) If two (2) or more legally existing lots, or combinations of legally existing lots and portions of lots with continuous frontage in single ownership, are of record prior to the effective date of the ordinance codified herein, and part or all of said lots do not meet the requirements of the district in which they are located as to area, width or both minimum area and width, for the purposes of this Chapter, the lands shall be considered to be an undivided parcel. No portion of said parcel shall be sold or used in a manner which diminishes compliance with the lot width and area requirements established by this Chapter unless a variance permitting such lots to be considered and regulated as nonconforming lots of record in separate ownership is granted by the Board of Zoning Adjustment.

(c) Provisions of Subsection (b) above shall not apply to lots in the Mountain Residential (MR) Zoning District, provided that each lot which is created by the nonapplication of said Section is at least twenty thousand (20,000) square feet in area. (Ord. 209 Art. VI §4, 1981; Ord. 288 §1, 1988; Ord. 709 §1, 2012)

**Sec. 16-185. Construction on nonconforming lots.**

(a) A conforming structure existing on a nonconforming lot may continue to be occupied; provided, however, that if a nonconforming structure is destroyed or damaged in any manner to the extent that the cost of restoration to its condition before the occurrence shall exceed seventy-five percent (75%) of the actual building valuation as determined by the records of the Boulder County Assessor, it may be repaired or restored under the following conditions:

(1) The damage or destruction was not caused directly or indirectly by an intentional act of the owner of the property or the structure or any agent or representative of such owner as determined by the appropriate governmental agency;

(2) Restoration of the structure is commenced within six (6) months after the date on which the structure was destroyed and completed within eighteen (18) months after the date on which the restoration was commenced; and

(3) A building permit is obtained for the work to be performed, and all work is performed in accordance with all applicable ordinances, rules, regulations and laws.

(b) A structure on a nonconforming lot may be altered or expanded provided that all new construction is compliant with this Chapter and the provisions of Chapter 18 of this Code. (Ord. 455 §4, 1997; Ord. 709 §1, 2012)

**Secs. 16-186—16-199. Reserved.**

**ARTICLE VIII**

**Off-Street Parking and Loading**

**Sec. 16-200. Purpose.**

The intent of this Article is to prescribe provisions, criteria and standards for off-street parking and loading areas. The Town recognizes that inadequate off-street parking and loading areas may lead to traffic congestion, parking violations in adjacent streets and loss of economic opportunities, as well as unauthorized parking in adjacent lots. Excessive parking and loading areas may waste money and valuable space for development or open space and increase the potential for drainage problems. This Article seeks to balance the public and the private needs for off-street parking and loading areas. (Ord. 645 §22, 2008)

**Sec. 16-201. General requirements.**

(a) At the time of erection of a new structure or at the time of enlargement or change of use of an existing structure, off-street parking spaces and loading areas shall be as provided in this Article.

(b) Where square feet are specified, the area measured shall be the floor area primary to the functioning of the particular use of property and shall exclude stairwells; elevator shafts; hallways; ornamental balconies; space occupied by heating, air-conditioning or other utility equipment; and space devoted to off-street parking or loading.

(c) The number of employees of a new or expanding business shall be estimated in a manner approved by the Planning Commission, and the number of employees of an established business shall be determined from an examination of employment information presented by the applicants.

(d) Loading areas shall be of adequate size and design to facilitate all loading activities off a public right-of-way.

(e) Shared off-street parking. When there are opportunities to support parking demand through shared off-street parking for compatible uses (such as a movie theater and an office building), a parking study and shared parking agreements shall be used to demonstrate the adequacy of the parking supply as a substitute for standard parking requirements. Shared parking agreement, as used in this Section, means an agreement that is recorded against the real property that is used in whole or in part to provide the parking spaces that are required pursuant to Section 16-202 below (the "parking property"), which agreement limits the use of the parking property to parking for the land development activity that is generating the need for the required parking spaces, until such time as the owner provides other real property for the required parking spaces that meets the requirements of this Chapter or makes a payment to the Commercial Parking Fund pursuant to Section 16-211 of this Article. The shared parking agreement shall be in the form of the standard parking agreement provided by the Town and shall be approved by the Town Attorney prior to recording.

(f) Snow storage area required. Snow storage areas shall be provided for all parking lots. The amount of snow storage area shall be equal to or exceed ten percent (10%) of the total area of required parking spaces. Snow storage areas shall be located so as to not drain onto adjacent properties. Such areas may utilize excess parking spaces above the number required.

(g) Any existing use which does not comply with the off-street parking requirements of this Article shall be considered a nonconforming use.

(h) No bicycle parking spaces are required in the F, MR, LDR, MDR, HDR and NC districts. In all other zoning districts, at least three (3) bicycle parking spaces or ten percent (10%) of the required off-street parking spaces, whichever is greater, are required. (Ord. 209 Art. VII §1, 1981; Ord. 422 §§1, 2, 3, 1996; Ord. 645 §23, 2008; Ord. 666 §2, 2008)

**Sec. 16-202. Parking standards designated for each use.**

The year-round accessible off-street parking space requirements for each use shall be as listed below. *Space*, as used in this Section, shall mean an off-street parking space. In the CBD, applicants shall meet their off-street parking requirement by either providing parking behind or under the building or by making a payment into the Commercial Parking Fund for each nonprovided space.

<i>Use</i>	<i>Required Parking (must be outside of rights-of-way)</i>
Single-family detached	2 spaces per unit
Multi-family (including studio apartments)	1 space per bedroom, with an extra space per every 4 units for other purposes
<i>All of the Following Uses Require 1 Parking Space Per Two Employees on Duty:</i>	
Hotels/motels/boarding houses/hostels	1 space per bedroom
Nursing home or hospital	1 space per 10 beds
Places of public assembly: Church Library Preschool/day care/kindergarten/elementary school or intermediate school High school/vocational or commercial school	1 per 4 seats 1 per 400 sq. ft. 1 drop-off space per 10 students or a drop-off lane 1 per 4 students in attendance
Commercial amusements: Stadium, arena, theatre, auditorium, conference center, meeting room, entertainment center Bowling alley	1 space per 4 seats 4 spaces per alley
Commercial: retail	1 per 300 sq. ft.
Commercial: service or repair shops or a retail store handling exclusively bulky merchandise such as automobiles and furniture	1 per 300 sq. ft.
Offices, including medical/dental offices and clinics	1 per 300 sq. ft.
Eating and drinking establishments	1 per 4 seats
Mortuaries	1 per 4 seats
Industrial: storage, wholesale, manufacturing	To be determined through the SRU or PUD process
Multi-use/mixed use	To be determined through the SRU or PUD process using this table as a guideline

(Ord. 645 §24, 2008)

**Sec. 16-203. Maintenance restrictions.**

(a) The provision and maintenance of off-street parking and loading spaces is a continuing obligation of the property owner.

(b) No building permit or other permit shall be issued until plans are presented that show property that is and will remain available for exclusive use as off-street parking and loading space.

(c) The subsequent use of property for which the building permit is issued shall be conditional upon the unqualified continuance and availability of the amount of parking and loading space required by this Article.

(d) Should the owner or occupant of any lot or building change the use to which the lot or building is put, thereby increasing off-street parking or loading requirements, it shall be unlawful and

a violation of this Article to begin or maintain such altered use until such time as the increased off-street parking or loading requirements are complied with. (Ord. 209 Art. VII §3, 1981)

**Sec. 16-204. Reserved.**

**Sec. 16-205. Board of Trustees may increase or reduce number of required parking spaces.**

(a) The Board of Trustees may increase or decrease the required number of off-street parking spaces in consideration of the following factors:

- (1) Probable number of cars owned by occupants of dwellings in the planned unit development;
- (2) Parking needs of any nondwelling uses;
- (3) Varying time periods of use; and
- (4) Whatever joint use of common parking areas is proposed.

(b) Regardless of a reduction in off-street parking spaces by the Board of Trustees, adequate space and site design shall be provided to accommodate the standard number of spaces for the proposed use. (Ord. 209 Art. VII §6, 1981)

**Sec. 16-206. Location of spaces.**

Required parking spaces shall be located not farther than three hundred (300) feet from the building or use they are required to serve, measured in a straight line from the building. (Ord. 209 Art. VII §7, 1981)

**Sec. 16-207. Parking spaces not to be used for storage.**

Required parking spaces shall be available for the parking of operable passenger automobiles of residents, customers, patrons and employees only, and shall not be used for the storage of vehicles, materials or refuse containers or for the parking of trucks used in conducting the business or use. (Ord. 209 Art. VII §8, 1981; Ord. 645 §26, 2008)

**Sec. 16-208. Setbacks.**

Except as provided in Subparagraph 16-202(1)a, required parking in loading spaces shall be set back five (5) feet from the front lot line to achieve access definition through the use of driveways and landscaping. (Ord. 209 Art. VII §9, 1981; Ord. 246 §7, 1983)

**Sec. 16-209. Plans required for building permit.**

A plan, drawn to scale, indicating how the off-street parking and loading requirements, excluding single dwelling unit areas, are to be fulfilled shall accompany an application for a building permit. The plan shall show all elements necessary to indicate that the requirement is being fulfilled, including the following:

- (1) Delineation of individual parking and loading spaces;
- (2) Circulation area necessary to serve spaces;
- (3) Access to streets and property to be served;
- (4) Grading, drainage, surfacing and subgrading details; and
- (5) Other pertinent details. (Ord. 209 Art. VII §10, 1981)

**Sec. 16-210. Design standards.**

Parking lots containing more than twenty (20) spaces shall be designated as special review uses. Adequate drainage facilities shall be provided. Curb or wheel stops may be provided. (Ord. 209 Art. VII §11, 1981; Ord. 698 §1, 2011)

**Sec. 16-211. Payments to Commercial Parking Fund.**

In lieu of meeting the minimum off-street parking requirements set forth in this Article, the owner of a use may agree to contribute to the Commercial Parking Fund by payment of two thousand five hundred dollars (\$2,500.00) for each off-street space not provided by the owner. In the event that the building existed at the location on March 5, 1996, the owner shall be required to provide off-street parking for the new use in excess of the required spaces which have been required by the former use of the building. (Ord. 422 §8, 1996; Ord. 666 §3, 2008)

**Secs. 16-212—16-230. Reserved.**

## **ARTICLE IX**

### **Board of Zoning Adjustment**

**Sec. 16-231. Organization.**

(a) There is hereby created a Board of Zoning Adjustment, to be known as "The Board of Zoning Adjustment of the Town of Nederland, Colorado," hereinafter referred to in this Article as "Board."

(b) The membership of the Board shall consist of five (5) qualified electors of the Town. One (1) member may be a member of the Planning Commission and all shall be residents of the Town. The terms of office shall be for five (5) years, with terms to expire on June 1. To initiate staggered terms, the two (2) terms of the Board which expire June 1, 1995, shall be filled for four- and five-year terms respectively. Two (2) of the terms to expire June 1, 1996, shall be extended to June 1997 and June 1998, respectively. All terms thereafter shall be five-year terms. It is the intent of the Board of Trustees to encourage diversity of participation on the Board of Zoning Adjustment by avoiding overlapping of membership between the Board and other boards and commissions of the Town.

(c) The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant any matter upon which it is required to pass under this Chapter, or to affect any variation in this Chapter. Every decision of such Board shall be subject, however, to review by certiorari by the

District Court. Such appeal may be taken by any person aggrieved or by an officer, department, board or bureau of the Town. (Ord. 209 Art. VIII §1, 1981; Ord. 299 §3, 1988; Ord. 386 §1, 1994; Ord. 406 §1, 1995; Ord. 645 §28, 2008; Ord. 725 §13, 2013)

**Sec. 16-232. Powers of Board.**

(a) The Board shall hear and decide appeals from and review any order, requirement, decision or determination made by any administrative official charged with the enforcement of this Chapter. It shall also hear and decide all matters referred to it and the following matters as required under this Chapter:

(1) Hear and decide applications for variances where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Chapter. The Board has the power to vary or modify the application of the regulations or provisions of this Chapter relating to the use, construction or alteration of buildings or structures, or the use of land, so that the spirit of this Chapter is observed, public safety and welfare secured and substantial justice done, provided that the Board finds that all of the following criteria have been satisfied:

a. That there are unique physical circumstances or conditions, such as irregularity, narrowness, shallowness or size of the lot, or exceptional topographical or other physical conditions peculiar to the affected property;

b. That, because of such physical circumstances or conditions, the property cannot reasonably be developed in conformity with the provisions of this Chapter;

c. That such unnecessary hardship has not been created by the applicant;

d. That the variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located nor substantially or permanently impair the appropriate use or development of adjacent property; and

e. That the variance, if granted, is the minimum variance that will afford relief and is the least modification possible of this Chapter's provisions which are in question.

(2) Hear and decide such other matters as the Board of Trustees may by ordinance provide.

(b) Where feasible, the Board may vary or modify the application of this Chapter for the purpose of considering access to sunlight and wind for renewable energy devices and achieving sustainability criteria adopted by the Board of Trustees.

(c) Under no circumstances shall the Board grant a variance that would have the effect of increasing the density of use than would otherwise apply to the parcel. (Ord. 209 Art. VIII §2, 1981; Ord. 435 §1, 1996; Ord. 548 §1, 2001; Ord. 706 §1, 2012)

**Sec. 16-233. Procedure.**

In addition to any requirements the Board may adopt by rule, the Board shall conduct hearings and make decisions in accordance with the following requirements:

(1) Applications and notices of appeal to the Board shall be submitted to the Zoning Administrator. Upon receipt of the application or notice of appeal, along with an application fee as set forth in the Town's fee schedule, the Zoning Administrator shall at once transmit to the Board all the papers constituting the basis or record upon which the application or notice of appeal was based. Appeals from decisions of any administrative official charged with the enforcement of this Chapter shall be taken within thirty (30) days of such order, requirement, decision or determination.

(2) The Board shall set a reasonable hearing date, notify all involved parties (which in the case of a variance application shall include owners of property adjacent to the lot for which a variance is requested) of the hearing date by first class mail, and hear the application. Upon hearing, any party may appear in person or by agent or attorney.

(3) Within a reasonable time from the hearing, the Board shall render its written decision. The Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises and to that end has all the powers of the officer from whom the appeal is taken.

(4) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal has been filed with him or her that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Trustees or by the District Court on application, on notice to the officer from whom the appeal is taken, and on due cause shown. (Ord. 209 Art. VIII §3, 1981; Ord. 645 §29, 2008; Ord. 665 §3, 2008)

**Sec. 16-234. Alternate members.**

The Board of Trustees may appoint up to three (3) alternate Board of Zoning Adjustment members to sit as a member of the Board only in the event that a permanent member cannot hear an appeal or a variance request because of an absence or conflict of interest. In no event shall the number of Board members and alternates hearing any appeal or variance exceed five (5). The term of an alternate shall be two (2) years. The Board of Trustee liaison to the Board may serve as one (1) of the three (3) alternate members if so designated by the Board of Trustees, in which event his or her term shall coincide with his or her term on the Board of Trustees. (Ord. 477 §1, 1998; Ord. 697 §1, 2011)

**Secs. 16-235—16-250. Reserved.**

**ARTICLE X**

**Amendment**

**Sec. 16-251. General.**

The Board of Trustees may, from time to time, on its own motion, on application of any person of interest, or on application of the Planning Commission or Board of Zoning Adjustment, amend, supplement or repeal the regulations and provisions of this Chapter. (Ord. 209 Art. IX §1, 1981)

**Sec. 16-252. Application.**

(a) An application for amendment of this Chapter not involving the rezoning of land shall be made on a form provided by the Town and shall include:

- (1) The specific amendment being requested;
- (2) The reasons for the amendment request; and
- (3) Other information the applicant believes will support the application.

(b) An application for amendment of this Chapter involving the rezoning of land shall be made on a form provided by the Town and shall include:

- (1) A map delineating said parcel, the requested zoning and the zoning of the adjacent properties;
- (2) The legal description of property for which amendment is requested;
- (3) The reasons for the rezoning request;
- (4) Other information the applicant believes will support the application;
- (5) A list of the names and addresses of owners of property located within three hundred (300) feet of the subject site; and

(6) Payment of a nonrefundable zoning amendment application fee to the Town upon submission of the application to cover processing costs of the Town. Said fee is set forth in Section 4-151 of this Code. In addition to the fee, the applicant shall pay for all actual costs incurred by the Town in reviewing and processing the application. A deposit of one thousand dollars (\$1,000.00) for such costs shall be submitted with the application. Said costs shall be paid in full prior to final consideration of the application by the Planning Commission. The cost of an election and any legal fees incurred by the Town related to such election shall be paid by the Town should an appeal to the electorate be initiated through citizen referendum petition. (Ord. 209 Art. IX §2, 1981; Ord. 246 §8, 1983; Ord. 382 §12, 1994; Ord. 435 §1, 1996)

**Sec. 16-253. Processing of application.**

(a) The applicant shall submit the complete application to the Zoning Administrator. Upon finding the application complete, the Zoning Administrator shall submit the application to the Planning Commission.

(b) Within thirty (30) days of receipt of the application from the Zoning Administrator, the Planning Commission shall hold a public hearing to consider the application. Public notice of the hearing shall be published in a newspaper of general circulation within the Town at least fifteen (15) days prior to such hearing. Additionally, if the application involves the rezoning of land, owners of property within three hundred (300) feet of the subject property shall be notified of the public hearing by first class mail and the property shall be posted at least fifteen (15) days prior to the hearing along

the part of such property fronting on a street. The applicant shall be responsible for obtaining the correct names and addresses of the adjacent property owners at the expense of the applicant.

(c) Within thirty (30) days following the public hearing or within such time as is mutually agreed by the Planning Commission and the applicant, the Planning Commission shall either recommend approval of the application, with or without modifications, or denial of the application to the Board of Trustees.

(d) Upon receipt of the Planning Commission recommendation, the Board of Trustees shall act on the recommendation. (Ord. 209 Art. IX §3, 1981; Ord. 435 §1, 1996; Ord. 725 §14, 2013)

**Sec. 16-254. Exception; general revision.**

When said zoning map is in any way to be changed or amended incidental to or as a part of a general revision of the Zoning Code or Comprehensive Plan, whether such revision is made by repeal of the existing Chapter and enactment of a new Zoning Code or otherwise, said notice in this Article by posting and mailing shall not be required. (Ord. 209 Art. IX §4, 1981)

**Sec. 16-255. Policy and standards for zoning changes.**

(a) For the purpose of establishing and maintaining sound, stable and desirable development within the Town, the rezoning of land is to be discouraged. Rezoning should only be considered if:

- (1) The land to be rezoned was zoned in error and as presently zoned is inconsistent with the policies and goals of the Comprehensive Plan;
- (2) The area for which rezoning is requested has changed or is changing to such a degree that it is in the public interest to encourage a redevelopment of the area;
- (3) The proposed rezoning is necessary in order to provide land for a community-related use which was not anticipated at the time of the adoption of the Comprehensive Plan, and such rezoning will be consistent with the policies and goals of the Comprehensive Plan.

(b) This declaration of policy for rezoning shall not control a rezoning of newly annexed land. (Ord. 209 Art. IX §5, 1981)

**Sec. 16-256. Minimum size of parcel.**

No amendment changing the zoning classification of any lot, parcel or tract of land shall be adopted unless such lot, parcel or tract has seventy-five (75) feet of frontage on a public street, has seven thousand five hundred (7,500) square feet of area, or abuts on a lot, parcel or tract of land that has the same zoning classification as that which is proposed for the property which is the subject of the proposed amendment. (Ord. 209 Art. IX §6, 1981)

**Sec. 16-257. Approval of amendment to zoning map.**

In granting amendment to the zoning map, upon application by a property owner, the Board of Trustees may require the dedication of additional street right-of-way where an officially adopted street plan indicates a need for increased width or where the nature of the proposed development

warrants increased street width, and the Board of Trustees may require permanent screen strips or other devices to minimize conflict with residential land use. (Ord. 209 Art. IX §7, 1981)

**Sec. 16-258. Records of amendments.**

The Zoning Administrator shall maintain a record of amendments to the text and map of this Chapter in a form convenient for use of the public. (Ord. 209 Art. IX §8, 1981)

**Secs. 16-259—16-270. Reserved.**

**ARTICLE XI**

**Enforcement, Penalty and Liability**

**Sec. 16-271. Enforcement.**

(a) There is hereby created an office known as Zoning Administrator who shall be responsible to administer and enforce all zoning laws of the Town. He or she shall have all responsibilities and powers conferred upon the Zoning Administrator under this Chapter.

(b) In the event that the Zoning Administrator and Building Official positions are not assigned to the same individual, issuance of building permits and certificates of occupancy by the Building Official shall require approval by the Zoning Administrator prior to issuance.

(c) The Zoning Administrator is hereby empowered to cause any building, other structure or tract of land to be inspected and examined, and to order in writing the remedying of any condition found to exist therein or thereat in violation of any provisions of this Chapter. Additionally, the Building Official is hereby empowered to withhold or revoke a permit or issue a stop work order for any building being constructed in violation of any provisions of this Chapter.

(d) The Town Attorney, acting on behalf of the Board of Trustees, may maintain an action for an injunction to restrain any violation of this Chapter. (Ord. 209 Art. X §1, 1981)

**Sec. 16-272. Violations.**

(a) If the Zoning Administrator finds or if any person files with him or her a complaint in writing alleging that any of the provisions of this Chapter are being violated, he or she shall immediately investigate, and when necessary give written notice to the person responsible to cease such violations forthwith.

(b) Written notice may be delivered in person or by certified mail to the violator or to any person in charge of property where the violation is occurring.

(c) If the violation which is the subject of the notice delivered by the Zoning Administrator is not remedied within a reasonable time, to be determined by said official, action may be brought against the party or parties in violation pursuant to this Chapter.

(d) In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of this Chapter, the

Zoning Administrator and the Town Attorney may institute any appropriate action or proceedings to prevent such unlawful erection, construction, maintenance or use to restrict, correct or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.

(e) The granting of any permit under this Chapter shall not authorize the holder of the permit to construct or use his or her property in such a manner as to violate any provision of any other ordinance of the Town or any law of the State. (Ord. 209 Art. X §2, 1981; Ord. 382 §13, 1994)

**Sec. 16-273. Penalty.**

The following penalties, set forth in full herein, shall apply to this Chapter:

(1) It is unlawful for any person to violate any of the provisions stated or adopted in this Chapter.

(2) Every person convicted of a violation of any provision stated or adopted in this Chapter shall be punished as set forth in Section 1-72 of this Code. (Ord. 209 Art. X §3, 1981; Ord. 382 §14 1994; Ord. 435 §1, 1996)

**Sec. 16-274. Liability for damages.**

This Chapter shall not be construed to hold the Town responsible for any damage to persons or property by reason of the inspection or reinspection authorized herein or failure to inspect or reinspect or by reason of issuing a building permit as herein provided. (Ord. 209 Art. X §4, 1981)

**Secs. 16-275—16-290. Reserved.**

**ARTICLE XII**

**Sexually Oriented Businesses**

**Sec. 16-291. Purpose and intent.**

The purpose and intent of this Article is to regulate sexually oriented businesses to promote the health, safety and general welfare of the citizens of the Town and to establish reasonable and uniform regulations to prevent the deleterious location and design of sexually oriented businesses within the Town, thereby reducing or eliminating the adverse secondary effects from such sexually oriented businesses. The provisions of this Article are not intended to impose a limitation or restriction on the content of any communicative materials, including sexually oriented materials. It is not the intent of this Article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment or the Colorado Constitution or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent or effect of this Article to condone or legitimize the distribution of obscene material. (Ord. 632 §1, 2007; Ord. 648 §4, 2008)

**Sec. 16-292. Definitions.**

Words and phrases used in this Article shall have the following meanings ascribed to them:

*Adult arcade* means any commercial establishment to which the public is permitted or invited where, for any form of consideration, one (1) or more still or motion picture projectors, slide projectors or similar machines, or other image- or virtual reality-producing machines, for viewing by five (5) or fewer persons per machine at any one (1) time, are used regularly to show films, motion pictures, video cassettes, slides or other photographic, digital or electronic reproductions describing, simulating or depicting specified sexual activities or specified anatomical areas.

*Adult bookstore, adult novelty store or adult video store* means a commercial establishment that, as one (1) of its principal business purposes, offers for sale or rental for any form of consideration any one (1) or more of the following:

- a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations, however produced, that depict or describe specified sexual activities or specified anatomical areas; or
- b. Instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities.

*Adult cabaret* means a nightclub, bar, restaurant, concert hall, auditorium or other commercial establishment that features:

- a. Persons who appear nude or in a state of nudity or semi-nudity; or
- b. Live performances that are characterized by the exposure of specified anatomical areas or by the exhibition of specified sexual activities.

*Adult motel* means a hotel, motel or similar commercial establishment that offers accommodations to the public for any form of consideration and provides patrons with closed-circuit television transmission, films, motion pictures, video cassettes, slides or other media productions, however produced, which are characterized by the depiction or description of specified sexual activities or specified anatomical areas, and which commercial establishment has a sign visible from the public right-of-way which advertises the availability of this adult type of media production.

*Adult motion picture theater* means a commercial establishment that is distinguished or characterized by the showing, for any form of consideration, of films, motion pictures, video cassettes, slides or similar photographic reproductions, on more than one hundred (100) days per year, that have an "X" rating or that have an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

*Adult theater* means a theater, concert hall, auditorium or similar commercial establishment that, for any form of consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by an emphasis on exposure of specified anatomical areas or by specified sexual activities.

*Employee* means a person who works or performs in and/or for a sexually oriented business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business.

*Establishment of a sexually oriented business* means and includes any of the following:

- a. The opening or commencement of any such business as a new business;
- b. The conversion of an existing business into a sexually oriented business;
- c. The addition of a different sexually oriented business to any other existing sexually oriented business; or
- d. The relocation of a sexually oriented business.

*Foyer* means an architectural element of a building that consists of an entry hall or vestibule that is completely enclosed and contains one (1) door to provide access to areas outside of the building and a separate door to provide access to areas inside of the building.

*Licensee* means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a sexually oriented business license.

*Licensing Officer* means the Town Clerk or his or her designee.

*Manager* means an operator, other than a licensee, who is employed by a sexually oriented business to act as a manager or supervisor of employees or is otherwise responsible for the operation of the business.

*Nude model studio* means any place where a person who appears in a state of nudity or displays specified anatomical areas is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculpted, photographed or similarly depicted by other persons.

*Nudity or state of nudity* means:

- a. The appearance of human bare buttocks, anus, male genitals, female genitals or the areola or nipple of the female breast; or
- b. A state of dress which fails opaquely and fully to cover human buttocks, anus, male or female genitals, pubic region or areola or nipple of the female breast.

*Operator* means and includes the owner, license holder, custodian, manager, operator or person in charge of any licensed premises.

*Peep booth* means a room, semi-enclosure or other similar area located within a licensed premises wherein a person may view representations of specified anatomical areas or specified sexual activities.

*Person* means an individual, proprietorship, partnership, corporation, limited liability company, association or other legal entity.

*Premises or licensed premises* means any premises that require a sexually oriented business license and that are classified as a sexually oriented business, including parking lots and sidewalks immediately adjacent to the structure containing the sexually oriented business.

*Principal business purpose* means as to any establishment, having as a substantial or significant portion of its stock in trade the items listed in Subparagraphs a. and b. of the definition of adult bookstore, adult novelty store or adult video store above and having on the premises at least thirty percent (30%) of the establishment's display space occupied by the display of the items described therein.

*Principal owner* means any person owning, directly or beneficially:

a. Any membership or partnership interest in a limited liability company or limited liability partnership if such person has any legal control or authority over the management or operation of the entity; or

b. In the case of any other legal entity, five percent (5%) or more of the ownership interests in the entity, except for shareholders, but including such shareholders who are corporate officers or directors or who otherwise have any legal control or authority over the management or operation of the entity.

*Public park* means an area of land owned by a governmental entity and intended to be used for recreational purposes, but not including any such land that contains no improvements and is intended only for open space purposes and not including any such land that is intended for use only for pathway purposes.

*Semi-nude or semi-nudity* means a state of dress in which clothing covers no more than the genitals, pubic region and areola of the female breasts, as well as portions of the body covered by supporting straps or devices, which supporting straps or devices are used to support or enable the wearing of such clothing.

*Sexually oriented business* means an adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, nude model studio or other commercial establishment that has, as a substantial or significant portion of its stock in trade the items listed in Subparagraphs a. and b. of the definition of adult bookstore, adult novelty store or adult video store and having on the premises at least thirty percent (30%) of the establishment's display space occupied by the display of the items described therein. A commercial establishment may have other principal business purposes that do not involve the depicting or describing of specified sexual activities or specified anatomical areas and still be categorized as a sexually oriented business. Such other business purposes will not serve to exempt such commercial establishments from being categorized as a sexually oriented business so long as one (1) of its principal business purposes is the offering for sale or rental for consideration the specified materials that depict or describe specified sexual activities or specified anatomical areas. The term commercial establishment includes clubs, fraternal organizations, social organizations, civic organizations or other similar organizations with paid memberships. The definition of sexually oriented business shall not include an establishment where a medical practitioner, psychologist, psychiatrist or similar professional person licensed by the State engages in medically approved and recognized sexual therapy.

*Specified anatomical areas*, as used herein, means and includes any of the following:

- a. Human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areola, that are not completely and opaquely covered; or
- b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

*Specified criminal acts* means sexual crimes against children, sexual abuse, sexual assault or crimes connected with another sexually oriented business, including but not limited to distribution of obscenity, prostitution or pandering.

*Specified sexual activities* means and includes any of the following:

- a. The fondling or other intentional touching of human genitals, pubic region, buttocks, anus or female breasts;
- b. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;
- c. Masturbation, actual or simulated;
- d. Human genitals in a state of sexual stimulation, arousal or tumescence; or
- e. Excretory functions as part of or in connection with any of the activities set forth in Subparagraphs a. through d. of this definition.

*Transfer of ownership or control of a sexually oriented business* means and includes any of the following:

- a. The sale, lease or sublease of the business;
- b. The transfer of securities that constitute a controlling interest in the business, whether by sale, exchange or similar means; or
- c. The establishment of a trust, management arrangement, gift or other similar legal device that transfers ownership or control of the business, including a transfer by bequest or operation of law. (Ord. 632 §1, 2007; Ord. 648 §4, 2008)

**Sec. 16-293. Interior lighting regulations.**

(a) The interior portion of the premises of a sexually oriented business to which patrons are permitted access shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place (including peep booths) at an illumination of not less than five (5.0) foot-candles as measured at the floor level.

(b) It shall be the duty of the licensee and employees present on the premises to ensure that the illumination described above is maintained at all times that any patron is present on the premises. (Ord. 632 §1, 2007; Ord. 648 §4, 2008)

**Sec. 16-294. Locations of sexually oriented businesses and design of same.**

(a) It shall be unlawful to operate or cause to be operated a sexually oriented business outside of the industrial zone.

(b) It shall be unlawful to operate or cause to be operated a sexually oriented business within the industrial zone within two hundred (200) feet of:

- (1) Any church.
- (2) Any school meeting all requirements of the compulsory education laws of the State.
- (3) An existing dwelling.
- (4) A public park.
- (5) A licensed child care facility.

(c) It shall be unlawful to cause or permit the operation, establishment or maintenance of a sexually oriented business within one hundred (100) feet of any other sexually oriented business.

(d) All exterior windows in a sexually oriented business shall be opaque to such an extent that interior objects viewed from outside shall be so obscure as to be unidentifiable. Exterior windows in sexually oriented businesses shall not be used for any display or sign except for a sign that complies with the requirements of Section 16-303 of this Article.

(e) All doors for ingress and egress to a sexually oriented business, except emergency exits used only for emergency purposes, shall be located on the front of the sexually oriented business. For purposes of this Subsection, the front of a sexually oriented business shall be deemed to be that facade of the building that faces the front lot line of the lot or parcel on which the business is located. Every sexually oriented business shall have a foyer at every point of ingress or egress, except for emergency exits. In the case of a sexually oriented business having more than one (1) front lot line, the sexually oriented business shall be oriented such that the front of the business faces away from the nearest of any of the land uses listed in Subsection (b) above. (Ord. 632 §1, 2007; Ord. 648 §4, 2008)

**Sec. 16-295. Measurement of distances.**

(a) The distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business or, in the case of a sexually oriented business operating within a condominium estate or leasehold estate, from the closest airspace boundary of such condominium estate or from the closest wall of such leasehold estate.

(b) The distance between any sexually oriented business and any church, school, dwelling, public park or child care facility shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior structural wall of the sexually oriented business to the nearest property line of the premises of a church, school, dwelling, public park or child care facility. If the premises where the sexually oriented business is conducted are comprised of a condominium estate or leasehold estate, such distance shall be measured in a straight line, without regard to intervening

structures or objects, from the nearest airspace boundary of the condominium estate or the nearest wall of the leasehold estate used as part of the premises where the sexually oriented business is conducted to the nearest property line of the premises of a church, school, dwelling, public park or child care facility. (Ord. 632 §1, 2007; Ord. 648 §4, 2008)

**Sec. 16-296. Stage required in adult cabaret and adult theater.**

Any adult cabaret or adult theater shall have one (1) or more separate areas designated as a stage in the diagram submitted as part of the application for the sexually oriented business license. Entertainers shall perform only upon a stage. The stage shall be fixed and immovable and located inside the building in which the adult use operates. No seating for the audience shall be permitted within three (3) feet of the edge of the stage. No members of the audience shall be permitted upon the stage or within three (3) feet of the edge of the stage. (Ord. 632 §1, 2007; Ord. 648 §4, 2008)

**Sec. 16-297. Conduct in sexually oriented businesses.**

(a) No licensee, manager or employee mingling with the patrons of a sexually oriented business or serving food or drinks shall be in a state of nudity or intoxication. It is a defense to any prosecution for a violation of this Subsection that an employee of a sexually oriented business exposed any specified anatomical area only during the employee's bona fide use of a restroom or during the employee's bona fide use of a dressing room that is accessible only to employees.

(b) No licensee, manager or employee shall encourage or knowingly permit any person upon the premises to touch, caress or fondle the genitals, pubic region, buttocks, anus or breasts of any person.

(c) Any physical contact between a patron and employees is strictly prohibited.

(d) Commission of any specified sexual activity or any specified criminal act as defined in this Article, as well as permitting the commission of such acts and activities, is strictly prohibited.

(e) Display of specified anatomical areas, as defined in this Article, as well as permitting the display of such areas, is strictly prohibited. (Ord. 632 §1, 2007; Ord. 634 §1, 2007; Ord. 648 §4, 2008)

**Sec. 16-298. Unlawful acts.**

It shall be unlawful for a licensee, manager or employee to violate any of the requirements of this Chapter or knowingly to permit any patron to violate the requirements of this Article. (Ord. 632 §1, 2007; Ord. 648 §4, 2008)

**Sec. 16-299. Exemptions.**

The provisions of this Article regulating nude model studios do not apply to:

(1) A college, junior college or university supported entirely or partly by taxation;

(2) A private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or

(3) A business located in a structure that has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and where no more than one (1) nude model is on the premises at any one (1) time. (Ord. 632 §1, 2007; Ord. 648 §4, 2008)

**Sec. 16-300. Regulation of peep booths.**

It shall be unlawful for any person to operate or cause to be operated a sexually oriented business with peep booths. (Ord. 632 §1, 2007; Ord. 648 §4, 2008)

**Sec. 16-301. Hours of operation.**

It shall be unlawful for a sexually oriented business to be open for business or for the licensee, manager or any employee of a licensee to allow patrons upon the licensed premises from 2:00 a.m. to 8:00 a.m. (Ord. 632 §1, 2007; Ord. 648 §4, 2008)

**Sec. 16-302. Minimum age.**

(a) Except for such employees as may be permitted by law, it shall be unlawful for any person under the age of twenty-one (21) years to be upon the premises of a sexually oriented business that operates pursuant to a type A sexually oriented business license. It shall be unlawful for any person under the age of eighteen (18) years to be upon the premises of a sexually oriented business.

(b) It shall be unlawful for the licensee, manager or any employee of the licensee to allow anyone under the age of twenty-one (21) years, except for such employees as may be permitted by law, to be upon the premises of a sexually oriented business operated pursuant to a type A sexually oriented business license. It shall be unlawful for the licensee, manager or any employee of the licensee to allow anyone under the age of eighteen (18) years upon the premises of a sexually oriented business. (Ord. 632 §1, 2007; Ord. 648 §4, 2008)

**Sec. 16-303. Signs for sexually oriented businesses.**

In addition to complying with all other sign regulations of this Code, a sexually oriented business shall display a sign, clearly visible and legible at the entrance to the business, that gives notice of the adult nature of the sexually oriented business and of the fact that the premises is off limits to minors or those under the age of twenty-one (21) years, as the case may be. No sign for a sexually oriented business shall contain flashing lights, words, lettering, photographs, silhouettes, drawings or pictorial representations that emphasize specified anatomical areas or specified sexual activities. (Ord. 632 §1, 2007; Ord. 648 §4, 2008)

**Secs. 16-304—16-320. Reserved.**