

## Draft Amendments to Zoning Ordinance Text per S1032A

Proposed amendments are identified below in red type, with text to be removed ~~struck~~ and text to be added underlined.

### ARTICLE 4 DEFINITIONS

#### § 400 DEFINITIONS.

- (A) The word **PERSON** includes a group of persons, firm, association, organization, partnership, trust, company or corporation as well as an individual.
- (B) The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.
- (C) The word **SHALL** is mandatory; the word **MAY** is permissive.
- (D) Citations included in definitions refer to Rhode Island General Law (R.I. Gen. Laws).
- (E) For purposes of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ABUTTER.** One whose property abuts, that is, adjoins at a border, boundary, or point with no intervening land.

**ACCESSORY EQUIPMENT STRUCTURE.** An unstaffed building, box, cage or other structure used to house and protect equipment necessary for processing wireless telecommunications signals. Associate equipment may include air conditioning and emergency generators.

**ACCESSORY FAMILY DWELLING UNIT.** An accessory dwelling unit for the sole use of one or more members of the family of the occupant or occupants of the principal residence, but not needing to have a separate means of ingress and egress.

**ACCESSORY USE.** A use of land or a building, or portion thereof, customarily incidental and subordinate to the principal use of the land or building. An accessory use may be restricted to the same lot as the principal use. An accessory use shall not be permitted without the principal use to which it is related.

**AGGRIEVED PARTY.** An aggrieved party, for purposes of this chapter, shall be:

- (a) Any person(s) or entity or entities who can demonstrate that their property will be injured by a decision of any officer or agency responsible for administering the zoning ordinance of a city or town; or
- (b) Anyone requiring notice pursuant to this chapter.

**AGRICULTURAL AWARENESS PROGRAM.** An educational or recreational program, which is clearly incidental and subordinate to the primary agricultural use, that enables non-farm residents, including children, to reconnect to the rural character of the land. Such programs may include farm or garden tours, seminars and lectures; petting zoos or children's farms; hay rides; corn mazes; and similar activities.

**AGRICULTURAL LAND.** As defined in R.I. Gen. Laws § 45-22.2-4, land suitable for agriculture by reason of suitability of soil or other natural characteristics or past use for

agricultural purposes. **AGRICULTURAL LAND** includes that defined as prime farm land or additional farm land of statewide importance for Rhode Island by the Soil Conservation Service of the United States Department of Agriculture.

**AGRICULTURAL OPERATIONS.** Any commercial enterprise which has as its primary purpose horticulture, viticulture, viniculture, floriculture, forestry, dairy farming, or aquaculture, or the raising of livestock, furbearing animals, poultry or bees, or as such definition may be amended from time to time in R.I. Gen. Laws § 2-23-4, entitled "The Rhode Island Right to Farm Act."

**AGRICULTURAL PRODUCTS.** Cultivated or raised plant and animal life that has been harvested or processed for consumption, including feed and forage; floriculture and nursery products; grains; herbs; vegetables; fruits and nuts; viticulture; honey; eggs; dairy; cattle; sheep; poultry; game and game birds; and fiber for clothing.

**AIRPORT HAZARD AREA.** Any area of land or water upon which an airport hazard might be established as provided in R.I. Gen. Laws § 1-3-2.

**ANTENNA.** Any exterior transmitting or receiving device mounted on a communications tower or other structure and used in communications that radiate or capture electromagnetic wave, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.

**ANTENNA, POLE-MOUNTED.** An antenna attached to or upon an electric transmission or distribution pole of 12 kVolts or greater, a street light, a traffic signal or similar facility located within the public right-of-way or a utility easement. A pole-mounted antenna shall not be considered a communications tower.

**APPLICANT.** An owner or authorized agent of the owner(s) submitting an application or appealing an action of any official, board or agency.

**APPLICATION.** The completed form or forms and all accompanying documents, exhibits, and fees required of an applicant by an approving authority for development review, approval, or permitting purposes.

**BASIC NUMBER OF LOTS/UNITS.** The number of lots or units to be allowed in a proposed conservation subdivision/land development project, equal to the maximum number of lots which could reasonably be expected to be developed upon the parcel in a conventional subdivision.

**BUFFER.** Land which is maintained in either a natural or landscaped state and is used to screen and/or mitigate the impacts of development on surrounding areas, properties or rights-of-way.

**BUILDABLE AREA.** That portion of a lot bounded by the required front, side and rear yards, within which principal structures may be sited.

**BUILDING.** Any structure used or intended for supporting or sheltering any use or occupancy.

**BUILDING ENVELOPE.** The three-dimensional space within which a structure is permitted to be built on a lot and which is defined by regulations governing building setbacks, maximum height and bulk; by other regulations; and/or any combination thereof.

**BUILDING HEIGHT.** For a vacant parcel of land, building height shall be measured from the average existing grade elevation where the foundation of the structure is proposed. For an existing structure, building height shall be measured from average grade taken from the

outermost four corners of the existing foundation. In all cases, building height shall be measured to the top of the highest point of the existing or proposed roof or structure. This distance shall exclude spires, chimneys, flag poles, and the like. For any property or structure located in a special flood hazard area, as shown on the official FEMA Flood Insurance Rate Maps (FIRMs), or depicted on the Rhode Island Coastal Resources Management Council (CRMC) Suggested Design Elevation Three Foot Sea Level Rise (CRMC SDE 3 SLR) Map as being inundated during an 100 year storm, the greater of the following amounts, expressed in feet, shall be excluded from the building height calculation:

- (a) The base flood elevation on the FEMA FIRM plus up to five feet of any utilized or proposed freeboard, less the average existing grade elevation; or
- (b) The suggested design elevation as depicted on the CRMC SDE 3 SLR Map during an 100 year storm, less the average existing grade elevation. CRMC shall reevaluate the appropriate suggested design elevation map for the exclusion every ten years, or as otherwise necessary.

**BUILDING-MOUNTED FACILITY.** A wireless telecommunications facility that:

- (a) Is located in or on an existing building;
- (b) Utilized one or more antennas and/or accessory equipment mounted on the roof or exterior of the building; and
- (c) Does not qualify as a disguised facility.

**BULK MATERIALS.** Unpackaged, inorganic and organic solid matter, capable of releasing visible fugitive dust, including sand, gravel, stone, soil, aggregate, seashells, wood chips, mulch, reclaimed concrete, asphalt or road materials, or other like material.

**CAMPGROUNDS.** One or more lots used for seasonal, overnight residential occupancy in permanent or semi-permanent structures, such as cabins, tents with tent platforms, or similar shelters; and further provided that a campground may include any necessary permanent structures accessory to the principal use.

**CEMETERY.** A burial ground, memorial park and/or site where human remains are buried or entombed.

**CLEANING AND DYEING PLANT.** An industrial facility which uses cleaning or other chemical processes to clean clothing or other materials. Such facilities may include processes which change the color of the materials.

**CLUB (NONPROFIT).** A corporation subject to the provisions of R.I. Gen. Laws, Title 7, Chapter 6, owning, hiring or leasing of a building or space in a building of such extent and character as may be suitable and adequate for the reasonable and comfortable accommodation of its members, and whose affairs are conducted by a board of directors, executive committee or other similar body chosen by the members, offices, agents or employees profit from the distribution or sale of beverages to the members of the club or to its guests beyond the amount of such reasonable salary or wages as may be fixed and voted each year by the directors or other governing body.

**CLUSTER DEVELOPMENT.** A site planning technique that concentrates buildings in specific areas on the site to allow the remaining land to be used for recreation, common open space, and/or preservation of environmentally, historically, culturally, or other sensitive features and/or structures. The techniques used to concentrate buildings and may include, but are not

limited to, reduction in lot areas, setback requirements, and/or bulk requirements, with the resultant open land being devoted by deed restrictions for one or more uses. Under cluster development, there is no increase in the number of lots permitted under conventional development, except as provided, including incentive bonuses for certain types or conditions of development.

**CO-LOCATION.** The erection of more than one antenna, for different wireless telecommunications providers, on a single communications tower or on an existing structure which already supports one or more antennas.

**COLUMBARIUM.** A structure with recesses for cremation remains urns.

**COMMON OWNERSHIP.** Either:

(a) Ownership by one or more individuals or entities in any form of ownership of two or more contiguous lots; or

(b) Ownership by any association. Such ownership may also include a municipality of one or more lots under specific development techniques.

**COMMUNICATIONS TOWER(S).** A structure designed and used only to support one or more antennas and related equipment for the reception and/or transmission of electromagnetic waves. A tower used solely for amateur radio communications by a licensed amateur radio operator shall not be subject to this chapter.

**COMMUNITY RESIDENCE.** A home or residential facility where children and/or adults reside in a family setting and may or may not receive supervised care. This shall not include halfway houses or substance abuse treatment facilities. This shall include, but not be limited to the following:

(a) Whenever six or fewer children or adults with retardation reside in any type of residence in the community, as licensed by the state pursuant to R.I. Gen. Laws Title 40.1, Chapter 24. All requirements pertaining to local zoning are waived for these community residences;

(b) A group home providing care or supervision, or both, to not more than eight persons with disabilities, and licensed by the state pursuant to R.I. Gen. Laws Title 40.1, Chapter 24;

(c) A residence for children providing care or supervision, or both, to not more than eight children including those of the care giver and licensed by the state pursuant to R.I. Gen. Laws Title 42, Chapter 72.1;

(d) A community transitional residence providing care or assistance, or both, to no more than six unrelated persons or no more than three families, not to exceed a total of eight persons, requiring temporary financial assistance, and/or to persons who are victims of crimes, abuse, or neglect, and who are expected to reside in that residence not less than 60 days nor more than two years. Residents will have access to and use of all common areas, including eating areas and living rooms, and will receive appropriate social services for the purpose of fostering independence, self-sufficiency, and eventual transition to a permanent living situation.

**COMPREHENSIVE PLAN.** The plan adopted and approved pursuant to R.I. Gen. Laws § 45-22-2 and to which any zoning adopted pursuant to this chapter shall be in compliance.

**CONGREGATE HOUSING.** Housing which includes common use areas and may include common dining and recreational areas. **CONGREGATE HOUSING** includes nursing homes, assisted living facilities and other similar facilities with common dining and recreational areas.

**CONSERVATION DEVELOPMENT.** A site planning technique which bases the layout of building lots on the natural characteristics of the land and reduces lot sizes so that the remaining land can be used for recreation, common open space, and/or preservation of environmentally, historically and culturally sensitive features and/or structures. The number of lots permitted is equal to what is allowed under conventional development.

**CRYPT, LAWN.** A mausoleum structure wholly under ground.

**DAY CARE CENTER.** Any other day care center which is not a family day care home.

**DAY CARE, FAMILY DAY CARE HOME.** Any home, other than the individual's home, in which day care in lieu of parental care or supervision is offered at the same time to six or fewer individuals who are not relatives of the care giver, but may not contain more than a total of eight individuals receiving day care.

**DENSITY, RESIDENTIAL.** The number of dwelling units per unit of land.

**DEVELOPABLE LAND AREA.** For the purpose of calculating the minimum lot size required by district dimensional regulations, or of calculating the maximum number of units, maximum lot coverage, or maximum density permitted in accordance with any development standards contained in the chapter, the terms **LAND, LAND AREA, LOT SIZE,** and **LOT AREA** or any such similar term shall mean **DEVELOPABLE LAND AREA**, which is defined as follows. **DEVELOPABLE LAND AREA** is the total gross land area of the parcel proposed for development LESS the total of the following.

(a) Freshwater wetlands as defined in R.I. Gen. Laws Title 2, Chapter 1, as amended, and in any rules and regulations adopted pursuant thereto. Provided, however, that any setback requirement from the edge of a wetland, as so defined in R.I. Gen. Laws Title 2, Chapter 1, shall not be included in the calculation of wetland area.

(b) The floodway of a stream or flood plain of any other body of water as calculated on the basis of a 100-year frequency storm.

(c) Coastal shoreline systems as defined by Section 120.0-2A.1. of the Rhode Island Coastal Resources Management Program, as amended February, 1982, or subsequent amendments thereto, as follows:

1. Beaches and barrier beaches;
2. Cliffs, ledges and bluffs;
3. Coastal wetlands;
4. Sand dunes; and
5. All directly associated contiguous areas which are necessary to preserve the integrity of such features.

(d) Any public or private street or street right-of-way.

(e) Existing water surfaces.

(f) Areas required for stormwater retention/detention under drainage, of this chapter.

(g) Areas required for utility easements of public utilities.

**DEVELOPMENT.** The construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure; any mining, excavation, landfill or land disturbance; any change in use, or alteration or extension of the use, of land.

**DEVELOPMENT, PLANNED.** A land development project, as defined herein, developed according to plan as a single entity containing one or more structures and/or uses with appurtenant common areas.

**DEVELOPMENT PLAN REVIEW.** The process whereby authorized local officials review the site plans, maps, and other documentation of a development to determine the compliance with the stated purposes and standards of this chapter.

**DISGUISED FACILITY.** A wireless telecommunications facility that is so designed, constructed and located that it and all associated equipment are completely screened from public view. Disguised facilities may be located in or on existing structures, such as clock towers, belfries, steeples, and the like, or may be new structures designed to closely resemble trees or permitted freestanding structures, such as flag poles or light standards. When located on an existing building in a GB, OB, LI, or OP district, a wireless telecommunications facility shall be considered a disguised facility even though it has:

(a) One or more antennas not greater than four inches in diameter and extending above the roof not more than six feet; or

(b) One or more sectionized panel antennas mounted on the side of a building and camouflaged by color, size and/or shape to blend in with the building as much as possible.

**DISTRICT.** See **ZONING USE DISTRICT.**

**DORMITORY, INSTITUTIONAL.** A structure used for housing purposes by persons generally unrelated to each other by blood or marriage but associated by reason or participation in the activities of a medical, religious, commercial or educational organization. Such institutional dormitories are characterized by the provision of sleeping accommodations and may or may not contain common kitchen, dining or recreation facilities.

**DRAINAGE SYSTEM.** A system for the removal of water from land by drains, grading, or other appropriate means. These techniques may include runoff controls to minimize erosion and sedimentation during and after construction or development, the means for preserving surface and groundwater, and the prevention and/or alleviation of flooding.

**DRIVE-UP RESTAURANT.** A permanent structure, licensed for the preparation, service and consumption of food and beverages, where patrons may be served in their vehicles or at outside seating facilities.

**DRIVE-UP WINDOW.** See § [717](#).

**DWELLING.** Any building, or part thereof, that is used or occupied for human habitation, including dwelling premises, opportunities and facilities belonging to the dwelling or usually enjoyed therewith.

**DWELLING, SINGLE-FAMILY.** A building used exclusively for occupancy by one family.

**DWELLING, TWO-FAMILY.** A building used exclusively for occupancy by two families living independently of each other.



**DWELLING UNIT.** A structure or portion thereof providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation, and containing a separate means of ingress and egress.

**EXTRACTIVE INDUSTRY.** The extraction of minerals, including: solids, such as coal and ores; liquids, such as crude petroleum; and gases, such as natural gases. The term also includes quarrying; well operation; milling, such as crushing, screening, washing, and floatation; and other preparation customarily done at the extraction site or as a part of the extractive activity.

**FALL ZONE.** The calculated area of the land surrounding a communications tower or any of its attachments which may be affected by debris should the tower structure collapse.

**FAMILY.** A person or persons related by blood, marriage, or other legal means. (Also see **HOUSEHOLD**).

**FARM GUEST HOUSE.** An owner-occupied single-family dwelling offering guest rooms without kitchen facilities for rent on a daily or weekly basis, provided the dwelling is located on a parcel of at least two acres primarily devoted to an agricultural use permitted under § [602](#).

**FARM (LARGE).** Agricultural land consisting of one or more contiguous parcels totaling ten acres or more in area, together with principal and accessory buildings, upon which agricultural operations are conducted.

**FARM-PROMOTION ACCESSORY USE.** An accessory use which is not customarily incidental to a use permitted as an agricultural use under § [602](#) but which tends to preserve and/or promote the use of land for farming and is clearly incidental and subordinate to the primary agricultural use. Farm-promotion accessory uses include: equipment and trade fairs, farmers' markets, mobile food establishments, farm guest houses, livestock sales and auctions, and, when conducted in a farm setting, arts and crafts shows, banquets, corporate functions, and weddings.

**FARM-RELATED ACCESSORY USE, TRADITIONAL.** An accessory use customarily incidental to a use permitted as an agricultural use under § [602](#), regardless of whether it is located on the same lot as the principal use.

**FARM (SMALL).** Agricultural land consisting of one or more contiguous parcels totaling less than ten acres in area, together with principal and accessory buildings, upon which agricultural operations are conducted.

**FARMER'S MARKET.** An area, which may include a structure, used by growers or producers of agricultural products to display and sell their products.

**FLOATING ZONE.** An unmapped zoning district adopted within the ordinance which is established on the zoning map only when an application for development, meeting the zone requirements, is approved.

**FLOODPLAINS or FLOOD HAZARD AREA.** As defined in R.I. Gen. Laws § 45-22.2-4, an area that has a 1% or greater chance of inundation in any given year, as delineated by the Federal Emergency Management Agency pursuant to the National Flood Insurance Act of 1968, as amended P.L. 90-448. 42 U.S.C. 4011 et seq.

**FREEBOARD.** A factor of safety expressed in feet above the base flood elevation of a flood hazard area for purposes of floodplain management. Freeboard compensates for the many

unknown factors that could contribute to flood heights such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

**GARAGE.** A detached accessory building or portion of a main building, used for the storage of self-propelled vehicles.

**GAS STATION/MINI-MART.** Use of a property for the dispensing of gasoline or other fuels from one or more pump islands, covered by a canopy either detached from, or attached to, the principal building which may be used for the sale of food, beverages, dairy products and related items, with no seating on the premises.

**GASOLINE SERVICE STATION (MINOR REPAIRS ONLY).** A building or premises, or portion thereof, arranged, intended or designed to be used for the sale of gasoline or other motor vehicle, airplane or motorboat fuel, oils and accessories for the use of motor vehicles, and the rendering of services such as lubrication, washing and minor repairs including the sale of food and beverages where such service facilities are incidental to such principal filling station uses, but not including body or fender work or major repairs.

**GRAVE, CREMATION.** A grave or crypt containing cremation remains for a single person.

**GRAVE, DOUBLE.** Two single crypts side by side.

**GRAVE, TRADITIONAL.** An interment right for a single person's human remains.

**GRAVEL PROCESSING.** Any processing of more than ten cubic yards per day of soil, loam, sand, gravel, stone, clay, shale, or other earth material, and which utilizes mechanical equipment used for processing, screening, or washing of gravel or earth materials. **GRAVEL PROCESSING** shall include, without limitation, the reprocessing of concrete, asphalt, road materials, and other reclaimed or previously processed materials in order to use or reuse such materials. **GRAVEL PROCESSING** does not include the manufacturing or chemical processing of materials into finished goods.

**GREENHOUSE.** A building with a roof and sides largely made of glass or other clear material, in which the temperature and humidity can be regulated for the cultivation of plants.

**GROSS LEASABLE AREA/GROSS LEASABLE FLOOR AREA (GLFA).** The total floor area of a commercial or industrial building designed for occupancy and exclusive use by a tenant, including mezzanines and upper floors, if any, and excluding stairs, elevator shafts, air shafts, public toilets, utility and mechanical equipment areas which are used solely for the maintenance of the building.

**GROUND-MOUNTED SOLAR ENERGY SYSTEM.** A solar energy system, consisting of photovoltaic panels, support structures, and other equipment which is structurally mounted on the ground and is not roof-mounted, and is used to convert solar energy to electricity, including but not limited to supplying electricity to the local grid or directly to a commercial or residential consumer(s). A solar carport or canopy shall be considered a ground-mounted solar energy system.

**GROUNDWATER.** Groundwater and associated terms, as defined in R.I. Gen. Laws § 46-13.1-3.

**HALFWAY HOUSE.** A residential facility for adults or children who have been institutionalized for criminal conduct and who require a group setting to facilitate the transition to a functional member of society.

**HARDSHIP.** See [Article 9](#) and R.I. Gen. Laws § 45-24-41.



**HISTORIC DISTRICT or HISTORIC SITE.** As defined in R.I. Gen. Laws § 45-22.2-4, **HISTORIC DISTRICT** means one or more historic sites and intervening or surrounding property significantly affecting or affected by the quality and character of the historic site or sites, and has been registered, or is deemed eligible to be included on the State Register of Historical Places pursuant to R.I. Gen. Laws § 45-45-5. **HISTORIC SITE** means any real property, man-made structure, natural object, or configuration, or any portion or group of the foregoing which has been registered, or is deemed eligible to be included, on the state register of historic places pursuant to R.I. Gen. Laws § 42-45-5.

**HOME OCCUPATION.** Any activity customarily carried out for gain by a resident, conducted as an accessory use in the resident's dwelling unit, subject to the following conditions:

- (a) The activity is carried on by a member of the family residing in the dwelling unit;
- (b) The activity is clearly incidental and secondary to the use of the dwelling unit for residential purposes; and
- (c) Conforms to the following conditions:
  1. No person who is not a resident member of the family shall be employed in the home occupation;
  2. There shall be no exterior display, no exterior sign, no exterior storage of materials and no other exterior indication of the home occupation or variation from the residential character of the principal building;
  3. No vibration, dust, odors, heat or glare or offensive noise shall be produced;
  4. No traffic shall be generated by such home occupation in greater volumes than would normally be expected from a single dwelling unit in a residential neighborhood; and
  5. Any parking required for the conduct of such home occupation shall be provided off the street.

**HOTEL.** Any structure containing ten or more separate rooms for sleeping, offered to the public for compensation, in which ingress and egress to and from all rooms, made through an inside lobby but not including hospitals, convalescent homes or other charitable or religious institutions.

**HOTEL, EXTENDED STAY.** A hotel or motel which has as its primary clientele, guests who stay for a week or more and which offers facilities to facilitate extended stays.

**HOUSEHOLD.** One or more persons living together in a single dwelling unit with common access to, and common use of, all living and eating areas and all areas and facilities for the preparation and storage of food within the dwelling unit. **HOUSEHOLD UNIT** shall be synonymous with the term **DWELLING UNIT** for determining the number of such units allowed within any structure on any lot in a zoning district. An individual household shall consist of any one of the following:

- (a) A family, which may also include servants and employees living with the family; or
- (b) A person or group of unrelated persons living together not to exceed four.

**INCENTIVE ZONING.** The process whereby the town may grant additional development capacity in exchange for the developers provision of a public benefit or amenity as specified in local ordinances.

**INDOOR ROLLERBLADE AND SKATEBOARDING FACILITIES.** Interior building areas of between 5,000 and 20,000 square feet in size, where rollerblading, indoor performance bicycling and skateboarding are allowed on courses with ramps, pools and similar areas. Such uses are not permitted in any Office Business (OB) District.

**INFRASTRUCTURE.** Facilities and services needed to sustain residential, commercial, industrial, institutional and other activities.

**LAND DEVELOPMENT PROJECT.** A project in which one or more lots, tracts or parcels of land are to be developed or redeveloped as a coordinated site for a single use, complex of uses, units or structures including, but not limited to, planned and/or cluster development for residential, commercial, institutional, recreational, open space and/or mixed uses, as may be provided for in this chapter.

**LARGE SOLAR ENERGY SYSTEMS.** A ground-mounted solar energy system greater than 1,000 square feet as calculated per § [725](#).

**LINE, STREET.** A lot line separating a lot from an adjacent street.

**LIVESTOCK FARM.** A farm of at least two acres substantially devoted to breeding and raising animals such as dairy cows, poultry, game and game birds, beef cattle, sheep, horses and bees.

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

**LOT, EITHER:**

(a) The basic development unit for determination of lot area, depth, and other dimensional regulations; or

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

**LOT, THROUGH.** A lot which fronts upon two parallel streets or which fronts upon two streets which do not intersect at the boundaries of the lot.

**LOT AREA.** The total area within the boundaries of a lot, excluding any street right-of-way, usually reported in acres or square feet.

**LOT BUILDING COVERAGE.** That portion of the lot that is or may be covered by buildings and accessory buildings.

**LOT DEPTH.** The distance measured from the front lot line to the rear lot line. For lots where the front and rear lot lines are not parallel, the lot depth is an average of the depth.

**LOT FRONTAGE.** That portion of a lot abutting a street.

**LOT LINE.** A line of record bounding a lot, which divides one lot from another lot or from a public or private street or any other public or private space and shall include:

(a) *Front:* The lot line separating a lot from a street right-of-way;

(b) *Rear:* The lot line opposite and most distant from the front lot line, or in the case of triangular or otherwise irregularly shaped lots, an assumed line at least ten feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line; and

(c) *Side*: Any lot line other than a front or rear lot line. On a corner lot, a side lot line may be a street lot line.

**LOT OF RECORD.** A parcel of land lawfully recorded in the office of the Town Clerk of the Town of Middletown.

**LOT WIDTH.** The horizontal distance between the side lines of a lot measured at right angles to its depth along a straight line parallel to the front lot line at the minimum front setback line.

**MAUSOLEUM.** Aboveground entombment sites which contain concrete or stone crypts in which caskets are stored.

**MEMORIAL PARK.** A burial ground or cemetery which allows only flat grave markers.

**MERE INCONVENIENCE.** See R.I. Gen. Laws § 45-24-41 and [Article 9](#).

**MIXED RESIDENTIAL AND COMMERCIAL USES.** The use of any structure or group of structures on a single lot of record for both residential and commercial purposes, provided, however, this definition shall not include accessory uses, customary home occupation or an office for use by a resident of the premises. The commercial use so mixed must be a use either permitted in the zone in which the lot is situated, authorized by the Zoning Board of Review or granted by the Town Council. Commercial uses as used in this definition are all uses listed in § [602](#) under the following general classifications: Retail Commercial, Personal Services, Business Services, Professional Services.

**MIXED USE.** A mixture of land uses within a single development, building or tract.

**MOBILE FOOD ESTABLISHMENT (“MFE”).** A food service operation that is operated from a movable motor-drive or propelled vehicle, portable structure, or watercraft that can change location. **MOBILE FOOD ESTABLISHMENTS** specifically include, but are not limited to, food trucks, food carts, ice cream trucks/carts, and lemonade trucks/carts.

**MOBILE HOME PARK.** A lot upon which two or more mobile homes, occupied for residential, non-transient purposes, are located.

**MODIFICATION.** Permission granted and administered by the Zoning Officer of the town and pursuant to the provisions of this chapter, contained herein, to grant a dimensional variance other than lot area requirements from this chapter to a limited degree as determined by this chapter ~~but not to exceed 25% of each of the applicable dimensional requirements~~.

**MOTEL.** A series of attached, semidetached or detached one- or two-story units containing bedroom, bathroom and closet space where each unit has an individual entrance from outside the building to serve each such unit and are designed primarily for transient automobile and vehicular travelers.

**MOTEL, EXTENDED STAY.** A motel which has, as its primary clientele, guests who stay for a week or more and which offers facilities to facilitate extended stays.

**MULTIFAMILY DWELLING PROJECT.** A large-scale complex of two or more multifamily dwelling structures, or three or more single-family or two-family buildings containing a total of more than five dwelling units, upon a single lot, which are planned, developed and managed as a unit, with required open space and accessory uses. Permitted accessory uses include storage, laundry and drying facilities, refuse collection, recreation facilities, off-street parking and related accessory uses which are intended primarily for the use of residents of the building

and their guests. Residential use may be for rental apartments, condominiums or time-share estates.

**MULTIFAMILY DWELLING STRUCTURE.** A multifamily dwelling in a single principal building upon a single lot, used principally for residential purposes and housing three or more dwelling units. Permitted accessory uses include storage, laundry and drying facilities, refuse collection, recreation facilities, off-street parking and related accessory uses which are intended primarily for the use of residents of the building and their guests.

**NONCONFORMANCE.** A building, structure, or parcel of land, or use thereof, lawfully existing at the time of the adoption of this chapter and not in conformity with the provisions of this chapter or amendment. Nonconformance shall be of only two types:

(a) *Nonconforming by use.* A lawfully established use of land, building or structure which is not a permitted use in that zoning district. A building or structure containing more dwelling units than are permitted by the use regulations of a zoning ordinance shall be nonconforming by use; or

(b) *Nonconforming by dimension.* A building, structure or parcel of land not in compliance with the dimensional regulations of this chapter. Dimensional regulations include all regulations of this chapter other than those pertaining to the permitted uses. A building or structure containing more dwelling units than are permitted by the use regulations of a zoning ordinance shall be nonconforming by use; a building or structure containing a permitted number of dwelling units by the use regulations of this chapter, but not meeting the lot area per dwelling unit regulations, is nonconforming by dimension.

**OFFICE (FOR USE BY A RESIDENT OF THE PREMISES).** The use as a professional office in a building in which the proprietor, manager, owner or tenant maintains a full-time residence and which employs no more than one person or associate not a resident of the premises.

**OFFICE, GENERAL PROFESSIONAL.** A commercial establishment in which the principal use is a personal or professional service. Included without limitation in this definition of office are medical, insurance, finance, law, real estate, engineering or similar professional services. Specifically excluded from this definition is the sale of products stored on the premises at wholesale or retail, warehousing operations or service and/or repair activities.

**OUTDOOR STORAGE OF BULK MATERIALS.** Open storage of bulk materials with a height of five feet or more and a total surface area of 600 or more square feet for more than 24 hours; excluding the temporary storage of construction materials reasonably required for construction work on the premises pursuant to a valid building permit. **OUTDOOR STORAGE OF BULK MATERIALS** shall not be permitted as a principal use in any zoning district, but only as an accessory use as set forth in § 602.

**OVERLAY DISTRICT.** A district established in a zoning ordinance that is superimposed on one or more districts or parts of districts that imposes specified requirements in addition to, but not less than, those otherwise applicable for the underlying zone.

**PARK.** An open space set aside for the purpose of passive recreation including those open space areas permitted within cluster and condominium developments.

**PERFORMANCE STANDARDS.** A set of criteria or limits relating to elements which a particular use or process either must meet or may not exceed.

**PERMITTED USE.** A use by right which is specifically authorized in a particular zoning district.

**PLANNING BOARD.** The official planning agency of the municipality whether designated as the plan commission, planning commission, plan board or as otherwise known.

**PREAPPLICATION CONFERENCE.** A review meeting of a proposed development held between applicants and reviewing agencies, as permitted by law and municipal ordinance, before formal submission of an application for a permit or for development approval.

**PRINCIPAL or MAIN USE.** The specific primary purpose for which a lot of land or structure is used.

**PRODUCT STAND.** A stand or structure for the display and sale of agricultural products.

**RESIDENTIAL CARE AND ASSISTED LIVING FACILITY.**

(a) A facility that provides personal assistance, lodging and meals excluding, however, any establishment or facility licensed pursuant to R.I. Gen. Laws Title 23, Chapter 17 and those facilities licensed by, or under the jurisdiction of, the Department of Mental Health, Retardation and Hospitals, or the Department of Children, Youth and Families.

(b) Residential care and assisted living facilities include Alzheimer Special Care Units (ASCU) which are residential care and assisted living facilities that lock, secure, segregate or provide a special program or a special unit for residents with a diagnosis of probable Alzheimer's or related disorder, to prevent or limit access by a resident outside the designated or separated area and that advertises or markets the facility as providing specialized Alzheimer's and/or dementia care services.

(c) All residential care and assisted living facilities shall make available to residents daily meals in a communal setting, housekeeping services, 24-hour personal assistance, recreational facilities and transportation services. All residential care and assisted living facilities shall be licensed under R.I. Gen. Laws Title 23, Chapter 17.4.

**REST, RETIREMENT, CONVALESCENT OR NURSING HOME.** A structure used for provision of medical care or supervision of residents of the premises and further subject to the provisions of R.I. Gen. Laws Title 5, Chapter 45.

**RIDING ACADEMY OR SCHOOL.** A structure or premises used to:

- (a) Board and care for horses;
- (b) Give instruction or training in riding, jumping and/or showing horses; and
- (c) Rent horses for riding.

**ROOMING HOUSE.** A single-family dwelling in which the principal resident rents not more than two rooms, without kitchen facilities and with or without provision of meals, to not more than two persons per room.

**SENIOR INDEPENDENT LIVING FACILITIES.** A form of residential development consisting of townhouse style dwelling units, and significant on-site facilities and services designed to meet the physical and social needs of persons 55 years of age or older, and to provide housing for persons 55 years of age or older. Occupancy of the dwelling units must be restricted such that at least 80% of the units are occupied by at least one person 55 years of age or older per unit within the development. Senior independent living facilities shall be developed in accordance



with the provisions of [Article 22](#), and shall not be subject to the provisions of [Article 15](#) or [Article 19](#).

**SETBACK LINE OR LINES.** A line or lines parallel to a lot line at the minimum distance of the required setback for the zoning district in which the lot is located that establishes the area within which the principal structure must be erected or placed.

**SHOPPING CENTER, LARGE SCALE.**

(a) A grouping of three or more commercial establishments, primarily retail in nature, planned, developed and managed as a unit, located on a single lot or contiguous lots and containing a total of 20,000 square feet or more of gross leasable floor area; or any single commercial establishment that is primarily retail in nature and meets the requirements of this definition for location and size.

(b) A large scale shopping center may be developed either for rental of individual units or for sale of condominium units or a combination of both.

**SHOPPING CENTER, SMALL SCALE.**

(a) A grouping of three or more commercial establishments primarily retail in nature, planned, developed and managed as a unit, located on a single lot or contiguous lots and containing less than 20,000 square feet total of gross leasable floor area (GLFA).

(b) A small scale shopping center may be developed for rental of individual units or for sale of condominium units or a combination of both.

**SIGN.** See § [1202](#) for definitions for signs.

**SITE PLAN.** The development plan for one or more lots on which is shown the existing and/or the proposed conditions of the lot.

**SMALL SOLAR ENERGY SYSTEMS.** A ground-mounted solar energy system less than or equal to 1,000 square feet as calculated per § [725](#).

**SOLAR CARPORT OR CANOPY.** A type of ground-mounted solar energy system in which a carport or canopy structure is constructed over a parking lot, driveway, walkway, or agricultural activity supporting a solar photovoltaic panel or panels.

**SOLID WASTE COMPACTION AND TRANSFER STATION.** A facility where solid waste materials are collected and compacted for transfer and disposal to a site or sites beyond the boundaries of the town.

**SPECIAL USE.** A regulated use, which is permitted pursuant to the special use permit issued by the authorized governmental entity, pursuant to R.I. Gen. Laws § 45-24-42, formerly referred to as a special exception.

**STREET.** A public way established or maintained under public authority, a private way open for public uses and a private way platted or laid out for ultimate public use whether or not constructed.

**STRUCTURE.** A combination of materials to form a construction for use, occupancy or ornamentation, whether installed on, above or below, the surface of land or water.

**SUBSTANDARD LOT OF RECORD.** Any lot lawfully existing at the time of adoption or amendment of a zoning ordinance not in conformance with the dimensional and/or area provisions of that ordinance.

**SUPERMARKET.** A retail business providing primarily food, along with other products, and containing 5,000 square feet or more of gross leasable floor area.

**TOWER.** See **COMMUNICATIONS TOWER.**

**TOWNHOUSE.** A type of multifamily dwelling containing not less than three nor more than six dwelling units, each having a completely separate entrance at ground level.

**USE.** The purpose or activity for which land or buildings is designed, arranged or intended, or for which land or buildings is occupied or maintained.

**VARIANCE.** Permission to depart from the literal requirements of a zoning ordinance. An authorization for the construction or maintenance of a building or structure, or for the establishment or maintenance of a use of land which is prohibited by a zoning ordinance. There shall be only two categories of variance:

(a) *Use variance.* Permission to depart from the use requirements of a zoning ordinance where the applicant for the requested variance has shown by evidence upon the record that the subject land or structure cannot yield any beneficial use if it is to conform to the provisions of that zoning ordinance.

(b) *Dimensional variance.* Permission to depart from the dimensional requirements of a zoning ordinance, ~~where the applicant for the requested relief has shown, by evidence upon the record, that there is no other reasonable alternative way to enjoy a legally permitted beneficial use of the subject property unless granted the requested relief from the dimensional regulations. However, the fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief. (Also known as a **REGULATORY VARIANCE**)~~ under the applicable standards set forth in §45-24-41 RIGL.

**WATERS.** As defined in R.I. Gen. Laws § 46-12-1(b).

**WATERSHED PROTECTION DISTRICT.** A district superimposed over any other zoning district established by this chapter. The Watershed Protection District is established to protect, preserve and maintain the quality and quantity of surface and ground water utilized by the town.

**WETLAND, COASTAL.** As defined in R.I. Gen. Laws § 45-22.2-4. A salt marsh bordering on the tidal waters of the state and contiguous uplands extending no more than 50 yards inland.

**WETLAND, FRESHWATER.** A marsh, swamp, bog, pond, river, river or stream flood plain or back area subject to flooding or storm flowage; emergent or submergent plant community in any body of fresh water; or area within 50 feet of the edge of a bog, marsh, swamp, or pond, as defined in R.I. Gen. Laws § 2-1-20.

**WIRELESS TELECOMMUNICATION SERVICES.** Licensed wireless telecommunications services including cellular, personal communication services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), paging and similar service that are marketed to the general public.

**WIRELESS TELECOMMUNICATIONS FACILITY.** A communications tower and/or antenna, together with related equipment used to provide wireless telecommunications services.

**YARD.** A space on the same lot with a main building, open, unoccupied and unobstructed by buildings or structures from the ground to the sky, except as otherwise provided in this chapter.

**YARD, FRONT.** The area between a street line and a line parallel thereto drawn through the nearest point of a main structure, extending between side lot lines.

**YARD, REAR.** A yard extending across the full width of the lot between the rearmost main building and the rear lot line, the depth of which shall be the least distance between the rear lot line and the rear of such main building.

**YARD, SIDE.** A yard between the main building and the side lot line, extending from the front yard or front lot line where no front yard is required, to the rear yard. The width of the required side yard shall be measured horizontally from the nearest point of the side lot line toward the nearest part of the main building.

**YIELD PLAN.** Plan of a conventional subdivision or land development used to demonstrate development potential, including the basic number of lots to be allowed in a conservation subdivision plan, based on the zoning and development requirements of the underlying zoning district.

**ZONING CERTIFICATE.** A document signed by the Zoning Officer, as required in this chapter, which acknowledges that a use, structure, building or lot either complies with or is legally nonconforming to the provisions of this chapter or is an authorized variance or modification therefrom.

**ZONING MAP.** The map or maps which are a part of this chapter and which delineate the boundaries of all mapped zoning districts within the physical boundary of the town.

**ZONING ORDINANCE.** An ordinance enacted by the legislative body of the town pursuant to R.I. Gen. Laws § 45-24 and in the manner providing for the adoption of ordinances in the town's home rule charter, which sets forth regulations and standards relating to the nature and extent of uses of land and structures, which is consistent with the comprehensive plan of the town as defined in R.I. Gen. Laws § 45-22.2, which includes a zoning map and which complies with the provisions of R.I. Gen. Laws § 45-24.

**ZONING USE DISTRICTS.** The basic unit in zoning, either mapped or unmapped, to which a uniform set of regulations applies, or a uniform set of regulations for a specified use. The districts include, but are not limited to: agricultural, commercial, industrial, institutional, open space and residential. Each district may include sub-districts. Districts may be combined.

(Ord. passed 10-30-06; Am. Ord. 08-05, passed 5-19-08; Am. Ord. passed 8-3-09; Am. Ord. passed 8-3-09; Am. Ord. 2012-4, passed 5-21-12; Am. Ord. 2012-16, passed 9-17-12; Am. Ord. 2018-7, passed 3-19-18; Am. Ord. 2018-15, passed 9-4-18; Am. Ord. 2019-3, passed 2-19-19; Am. Ord. 2021-02, passed 3-15-21 ; Am. Ord. 2021-15, passed 10-18-21; Am. Ord. 2021-16, passed 10-18-21 )

## **§ 805 NONCONFORMING LOT OF RECORD.**

(A) An unimproved lot or parcel having a lot width or lot area which is less than required by district dimensional regulations, may be considered buildable for a use permitted as a matter of right or by special use permit under § 602, regardless of the lot width or area, provided such lot or parcel of land was shown on a plat or on a deed duly recorded prior to December 18, 1985, ~~except that in the case of two-family dwelling development where the standards of § 603 are not met, a special use permit shall be required.~~

~~(B) Nothing in this section shall be construed to exempt a nonconforming lot of record from complying with the maximum percentage of lot coverage of principal and accessory buildings, as contained in district dimensional regulations for the zoning district in which such lot is located. Notwithstanding the failure of that lot or those lots to meet the dimensional and/or quantitative requirements, and/or road frontage or other access requirements, applicable in the district, a substandard lot of record shall not be required to seek any zoning relief based solely on the failure to meet minimum lot size requirements of the district in which such lot is located. The setback, frontage, and/or lot width requirements for a structure under this section shall be reduced and the maximum building coverage requirements shall be increased by the same proportion as the lot area of the substandard lot is to the minimum lot area requirement of the zoning district in which the lot is located. All proposals exceeding such reduced requirement shall proceed with a modification request under § 45-24-46 RIGL or a dimensional variance request under § 45-24-41RIGL, whichever is applicable.~~

(Ord. passed 10-30-06)

## **§ 902 SPECIAL USE PERMITS.**

The Zoning Board shall hear and decide requests for special use permits in accordance with the terms of this chapter, according to the following provisions:

(A) A use, categorized as a special use in [Article 6](#) and elsewhere in this chapter, shall be permitted by the Zoning Board following a public hearing if, in the opinion of the Board, such use in its proposed location meets the following requirements:

(1) It will not result in a significant diminution of property values in the surrounding area of the district;

(2) It will not create a nuisance in the neighborhood;

~~(3) It will be compatible with the Comprehensive Community Plan of the Town of Middletown;~~

~~(43)~~ That the granting of such special use permit will not be detrimental to or substantially or permanently injure the appropriate use of property in the surrounding area or district;

~~(54)~~ That the granting of such special use permit will not result in hazardous conditions or conditions inimical to the public health, safety or welfare.

(5) The use will comply with the following criteria subject to its use category:

(a) Agricultural (Commercial greenhouse over 20,000sf)

- No significant negative impacts to ground or surface water quality.
- Will not produce glare impacting abutting properties and streets.
- Will comply with applicable standards of Article 27B – Outdoor lighting

(b) Residential (single- or two-family dwelling, family day care home)

- Will not cause significant negative traffic or parking impacts in the neighborhood

(c) Residential (Motel or hotel, multi-family including Multi-family dwelling structure, Multifamily dwelling project, Senior independent living facilities, Congregate housing, Rest, retirement, convalescent or nursing homes, Residential care and assisted living facility)

- Will not cause significant negative traffic or parking impacts in the neighborhood.
- If applicable, will comply with standards of Article 14 – Motels and Hotels
- If applicable, will comply with development standards of Article 15 – Multi-family Dwellings
- If applicable, will comply with development standards of Article 21 – Residential Care and Assisted Living Facilities
- If applicable, will comply with development standards of Article 22 – Senior Independent Living Facilities
- Will comply with commercial development design standards of Article 5 of the Rules and Regulations Regarding the Subdivision and Development of Land.

(d) Manufacturing/Industrial (Earth removal, quarries, sand and gravel lots, Storage of bottled gas, oil or other liquid petroleum products, Other extractive and industrial non-manufacturing not elsewhere classified, Salvage yard operation, Handicraft/Custom Manufacturing or small-scale craft or artisan-oriented production of goods, Food and beverage and related products, Brewery/distillery, Lumber and wood products including furniture and fixtures; Plastics molding, extrusion and/or assembly of plastic parts; Rubber, leather, stone, clay or glass products, Fabricated metals products, Boat building and repairing, Gravel processing)

- No significant negative impacts to ground or surface water quality.
- Will comply with applicable requirements and standards of Article 27 - Commercial and Industrial Performance Standards
- Will comply with commercial development design standards of Article 5 of the Rules and Regulations Regarding the Subdivision and Development of Land

(e) Commercial/Office/Institutional (Restaurant, Research or development offices, Sales and service offices for fuel oil and bottled gas dealers, Miscellaneous professional services not otherwise classified, Emergency counseling service or drop-in center, Church or other place of worship, Library or museum, Day nursery school, kindergarten or other agency giving day care, Clubs, lodges, social and community centers, Professional or musical schools, Solar Energy System, Gasoline or electric vehicle station, Automotive repair, service and garages, vehicle body shop, Miscellaneous repair shops and related services, Vehicle washing establishment, Vehicle or equipment rentals, Miscellaneous personal services not otherwise classified, Miscellaneous business services not otherwise classified, Bank or financial institution, Hospital/medical center or clinic, Trade school, private vocational school, Membership athletic clubs, Licensed kennels, Auto detailing, shopping center, Mortuary or funeral home, Wholesale distribution establishments, Warehousing, self-storage, General merchandise retailing activities, Private college or university, preparatory school, elementary or secondary school, Crematorium, Laundry or dry cleaners)

- No significant negative impacts to ground or surface water quality.



- Will not cause significant negative traffic or parking impacts in the neighborhood.
- Will comply with applicable requirements and standards of Article 27 - Commercial and Industrial Performance Standards.
- Will comply with commercial development design standards of Article 5 of the Rules and Regulations Regarding the Subdivision and Development of Land

(f) Cannabis-related (Compassion Center, Cannabis Retailer, Cannabis Product Manufacturer, Cannabis Cultivation Center, Non-Residential Cooperative Cultivation, Residential Cooperative Cultivation, Cannabis Testing Provider)

- Will comply with applicable requirements and standards of Section 727 – Cannabis Related Uses.
- Will not cause significant negative traffic or parking impacts in the neighborhood.
- Will comply with commercial development design standards of Article 5 of the Rules and Regulations Regarding the Subdivision and Development of Land
- (g) Recreational (Amusement parks, Miniature golf, driving range, pitch and putt, Campgrounds, Riding academies and schools, Drive-in theater, Tennis/other outdoor court games, Swimming pools, water slides, other water-based amusements, Boat liveryes, Stadia and fairgrounds, Motion picture/performing arts theaters, Video and amusement arcades, Billiard and pool parlors, Skating rinks. Indoor roller blade and skateboarding facility)
  - Demonstrates conformity with Town’s Ordinance on Noise, Chapter 130, Sections 130.75 – 130.91
  - No significant negative impacts to ground or surface water quality.
  - Will not cause significant negative traffic or parking impacts in the neighborhood.
  - Will comply with commercial development design standards of Article 5 of the Rules and Regulations Regarding the Subdivision and Development of Land

(h) Transportation/Communications/Utility (Highway and transportation services, Airports and heliports, Commercial dock or pier, Commercial off-street parking, Electric power substation, High voltage electric transmission towers, Sewage treatment plant, Solid waste transfer station, Wind turbine for generation of electricity, Building-mounted communications facilities, Communication tower, Disguised communications facilities, Pole-mounted antennas)

- No significant negative impacts to ground or surface water quality.
- Will not cause significant negative traffic or parking impacts in the neighborhood.
- Will comply with applicable requirements and standards of Article 27 - Commercial and Industrial Performance Standards.
- Will comply with commercial development design standards of Article 5 of the Rules and Regulations Regarding the Subdivision and Development of Land

(B) In granting a special use permit, the Zoning Board of Review may grant one or more dimensional variances under § [903](#).

(Ord. passed 10-30-06)

### **§ 903 VARIANCES.**

(A) In granting a variance, the Zoning Board of Review shall require that evidence to the satisfaction of the following standards be entered into the record of the proceedings:

(1) That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not ~~primarily~~ due to a physical or economic disability of the applicant; ~~and~~ excepting those physical disabilities addressed in § 45-24-30(a)(16) RIGL;

(2) That the hardship is not the result of any prior action of the applicant ~~and does not result primarily from the desire of the applicant to realize greater financial gain; and~~

(3) That the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this chapter or the Comprehensive Plan upon which this chapter is based; ~~and~~

~~—(4) That the relief to be granted is the least relief necessary.~~

(~~5~~4) The Zoning Board of Review shall, in addition to the above standards, require that evidence be entered into the record of the proceedings showing that:

(a) In granting a use variance the subject land or structure cannot yield any beneficial use if it is required to conform to the provisions of this chapter. Nonconforming use of neighboring land or structures in the same district and permitted use of lands or structures in an adjacent district shall not be considered in granting a use variance; and

(b) In granting a dimensional variance, that the hardship which will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere inconvenience, meaning that relief sought is minimal to a reasonable enjoyment of the permitted use to which the property is proposed to be devoted. The fact that a use may be more profitable or that a structure may be more valuable after the relief is fronted shall not be grounds for relief.

(c) Dimensional variances granted in conjunction with a special use permit shall be supported by independent evidence on the record satisfying each of the requirements for a dimensional variance, and the Board shall vote on each dimensional variance before voting on the special use permit.

(Ord. passed 10-30-06)

### **§ 906 MODIFICATION**

(A) The zoning enforcement officer is authorized to grant modification permits. The maximum percent allowed for a modification is twenty-five percent (25%) of the dimensional requirements specified in the zoning ordinance. Modifications that are

fifteen percent (15%) or less of the dimensional requirements specified in the zoning ordinance shall be permitted.

(B) A modification does not permit moving of lot lines.

(C) Within ten (10) days of the receipt of a request for a modification, the zoning enforcement officer shall make a decision as to the suitability of the requested modification based on the following determinations:

(1) The modification requested is reasonably necessary for the full enjoyment of the permitted use;

(2) If the modification is granted, neighboring property will neither be substantially injured nor its appropriate use substantially impaired;

(3) The modification requested is does not require a variance of a flood hazard requirement, unless the building is built in accordance with applicable regulations; and

(4) The modification requested does not violate any rules or regulations with respect to freshwater or coastal wetlands.

(A)(D) Upon an affirmative determination, in the case of a modification of five percent (5%) or less, the zoning enforcement officer shall have the authority to issue a permit approving the modification, without any public notice requirements. In the case of a modification of greater than five percent (5%), the zoning enforcement officer shall notify, by first class mail, all property owners abutting the property which is the subject of the modification request, and shall indicate the street address of the subject property in the notice, and shall publish in a newspaper of local circulation within the city or town that the modification will be granted unless written objection is received within fourteen (14) days of the public notice. If written objection is received within fourteen (14) days, the request for a modification shall be scheduled for the next available hearing before the zoning board of review on application for a dimensional variance following the standard procedures for variances, including notice requirements provided for under this chapter. If no written objections are received within fourteen (14) days, the zoning enforcement officer shall grant the modification. The zoning enforcement officer may apply any special conditions to the permit as may, in the opinion of the officer, be required to conform to the intent and purposes of the zoning ordinance. The zoning enforcement officer shall keep public records of all requests for modifications, and of findings, determinations, special conditions, and any objections received. Costs of any notice required under this subsection shall be borne by the applicant requesting the modification.