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Chapter 1

GENERAL PROVISIONS

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[HISTORY: Adopted by the Town Board of the Town of Westmoreland as indicated in article histories. Amendments noted where applicable.]

ARTICLE I Adoption of Code

[Adopted 2-11-2013 by L.L. No. 2-2013]

§ 1-1. Legislative intent.

In accordance with Subdivision 3 of § 20 of the Municipal Home Rule Law, the local laws, ordinances and certain resolutions of the Town of Westmoreland, as codified by General Code, and consisting of Chapters 1 through 180, together with an Appendix, shall be known collectively as the "Code of the Town of Westmoreland," hereafter termed the "Code." Wherever reference is made in any of the local laws, ordinances and resolutions contained in the "Code of the Town of Westmoreland" to any other local law, ordinance or resolution appearing in said Code, such reference shall be changed to the appropriate chapter title, chapter number, article number or section number appearing in the Code as if such local law, ordinance or resolution had been formally amended to so read.

§ 1-2. Continuation of existing provisions.

The provisions of the Code, insofar as they are substantively the same as those of local laws, ordinances and resolutions in force immediately prior to the enactment of the Code by this local law, are intended as a continuation of such local laws, ordinances and resolutions and not as new enactments, and the effectiveness of such provisions shall date from the date of adoption of the prior local law, ordinance or resolution. All such provisions are hereby continued in full force and effect and are hereby reaffirmed as to their adoption by the Town Board of the Town of Westmoreland, and it is the intention of said Board that each such provision contained within the Code is hereby reaffirmed as it appears in said Code. Only

such provisions of former local laws and ordinances as are omitted from this Code shall be deemed repealed or abrogated by the provisions of § 1-3 below.

§ 1-3. Inconsistent enactments repealed.

Except as provided in § 1-4, Enactments saved from repeal; matters not affected, below, all local laws and ordinances or parts of local laws and ordinances inconsistent with the provisions contained in the Code adopted by this local law are hereby repealed; provided, however, that such repeal shall only be to the extent of such inconsistency, and any valid legislation of the Town of Westmoreland which is not in conflict with the provisions of the Code shall be deemed to remain in full force and effect.

§ 1-4. Enactments saved from repeal; matters not affected.

The repeal of local laws and ordinances provided for in § 1-3 of this local law shall not affect the following classes of local laws, ordinances, rights and obligations, which are hereby expressly saved from repeal:

- A. Any right or liability established, accrued or incurred under any legislative provision of the Town of Westmoreland prior to the effective date of this local law or any action or proceeding brought for the enforcement of such right or liability.
- B. Any offense or act committed or done before the effective date of this local law in violation of any legislative provision of the Town of Westmoreland or any penalty, punishment or forfeiture which may result therefrom.
- C. Any prosecution, indictment, action, suit or other proceeding pending or any judgment rendered prior to the effective date of this local law brought pursuant to any legislative provision of the Town of Westmoreland.
- D. Any agreement entered into or any franchise, license, right, easement or privilege heretofore granted or conferred by the Town of Westmoreland.
- E. Any local law or ordinance of the Town of Westmoreland providing for the laying out, opening, altering, widening, relocating, straightening, establishing grade, changing name, improvement, acceptance or vacation of any right-of-way, easement, street, road, highway, park or other public place within the Town of Westmoreland or any portion thereof.
- F. Any local law or ordinance of the Town of Westmoreland appropriating money or transferring funds, promising or guaranteeing the payment of money or authorizing the issuance and delivery of any bond of the Town of Westmoreland or other instruments or evidence of the Town's indebtedness.
- G. Local laws or ordinances authorizing the purchase, sale, lease or transfer of property or any lawful contract, agreement or obligation.
- H. The levy or imposition of special assessments or charges.
- I. The annexation or dedication of property.

- J. Any local law or ordinance relating to salaries and compensation.
- K. Any local law or ordinance amending the Zoning Map.
- L. Any local law or ordinance relating to or establishing a pension plan or pension fund for Town employees.
- M. Any local law or ordinance or portion of a local law or ordinance establishing a specific fee amount for any license, permit or service obtained from the Town.
- N. Any local law adopted subsequent to 2-13-2012.

§ 1-5. Severability.

If any clause, sentence, paragraph, section, article, chapter or part of this local law or of any local law, ordinance or resolution included in this Code now or through supplementation shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section, article, chapter or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 1-6. Copy of Code on file.

A copy of the Code, in loose-leaf form, has been filed in the office of the Town Clerk of the Town of Westmoreland and shall remain there for use and examination by the public until final action is taken on this local law; and, if this local law shall be adopted, such copy shall be certified by the Town Clerk of the Town of Westmoreland by impressing thereon the Seal of the Town, and such certified copy shall remain on file in the office of said Town Clerk to be made available to persons desiring to examine the same during all times while said Code is in effect. The enactment and publication of this local law, coupled with the availability of a copy of the Code for inspection by the public, shall be deemed, held and considered to be due and legal publication of all provisions of the Code for all purposes.

§ 1-7. Amendments to Code.

Any and all additions, deletions, amendments or supplements to any of the local laws, ordinances and resolutions known collectively as the "Code of the Town of Westmoreland" or any new local laws, ordinances or resolutions, when enacted or adopted in such form as to indicate the intention of the Town Board to be a part thereof, shall be deemed to be incorporated into such Code so that reference to the Code shall be understood and intended to include such additions, deletions, amendments or supplements. Whenever such additions, deletions, amendments or supplements to the Code shall be enacted or adopted, they shall thereafter be printed and, as provided hereunder, inserted in the loose-leaf book containing said Code as amendments and supplements thereto. Nothing contained in this local law shall affect the status of any local law, ordinance or resolution contained herein, and such local laws, ordinances or resolutions may be amended, deleted or changed from time to time as the Town Board deems desirable.

§ 1-8. Code book to be kept up-to-date.

It shall be the duty of the Town Clerk to keep up-to-date the certified copy of the book containing the Code of the Town of Westmoreland required to be filed in the office of the Town Clerk for use by the public. All changes in said Code and all local laws, ordinances and resolutions adopted by the Town Board subsequent to the enactment of this local law in such form as to indicate the intention of said Board to be a part of said Code shall, when finally enacted or adopted, be included therein by temporary attachment of copies of such changes, local laws, ordinances or resolutions until such changes, local laws, ordinances or resolutions are printed as supplements to said Code book, at which time such supplements shall be inserted therein.

§ 1-9. Sale of Code book; supplementation.

Copies of the Code, or any chapter or portion of it, may be purchased from the Town Clerk, or an authorized agent of the Clerk, upon the payment of a fee to be set by resolution of the Town Board. The Clerk may also arrange for procedures for the periodic supplementation of the Code.

§ 1-10. Penalties for tampering with Code.

Any person who alters or tampers with the Code of the Town of Westmoreland in any manner whatsoever which will cause the legislation of the Town of Westmoreland to be misrepresented thereby, or who violates any other provision of this local law, shall be guilty of an offense and shall, upon conviction thereof, be subject to a fine of not more than \$250 or imprisonment for a term of not more than 15 days, or both.

§ 1-11. Changes in previously adopted legislation; new provisions.

- A. In compiling and preparing the local laws, ordinances and resolutions for publication as the Code of the Town of Westmoreland, no changes in the meaning or intent of such local laws, ordinances and resolutions have been made, except as provided for in Subsection B hereof. In addition, certain grammatical changes and other minor nonsubstantive changes were made in one or more of said pieces of legislation. It is the intention of the Town Board that all such changes be adopted as part of the Code as if the local laws, ordinances and resolutions had been previously formally amended to read as such.
- B. In addition, the amendments and/or additions as set forth in Schedule A attached hereto and made a part hereof are made herewith, to become effective upon the effective date of this local law. (Chapter and section number references are to the local laws, ordinances and resolutions as they have been renumbered and appear in the Code.)¹

1. Editor's Note: In accordance with § 1-11B, the chapters, parts and sections which were added, amended, adopted or deleted by this local law are indicated throughout the Code by a footnote referring to Chapter 1, General Provisions, Article I. During routine supplementation, footnotes indicating amendments, additions or deletions will be replaced with the following history: "Amended (added, deleted) 2-11-2013 by L.L. No. 2-2013. Schedule A, which contains a complete description of all changes, is on file in the Village offices."

C. Nomenclature. Throughout the Code the following terms are updated as indicated:

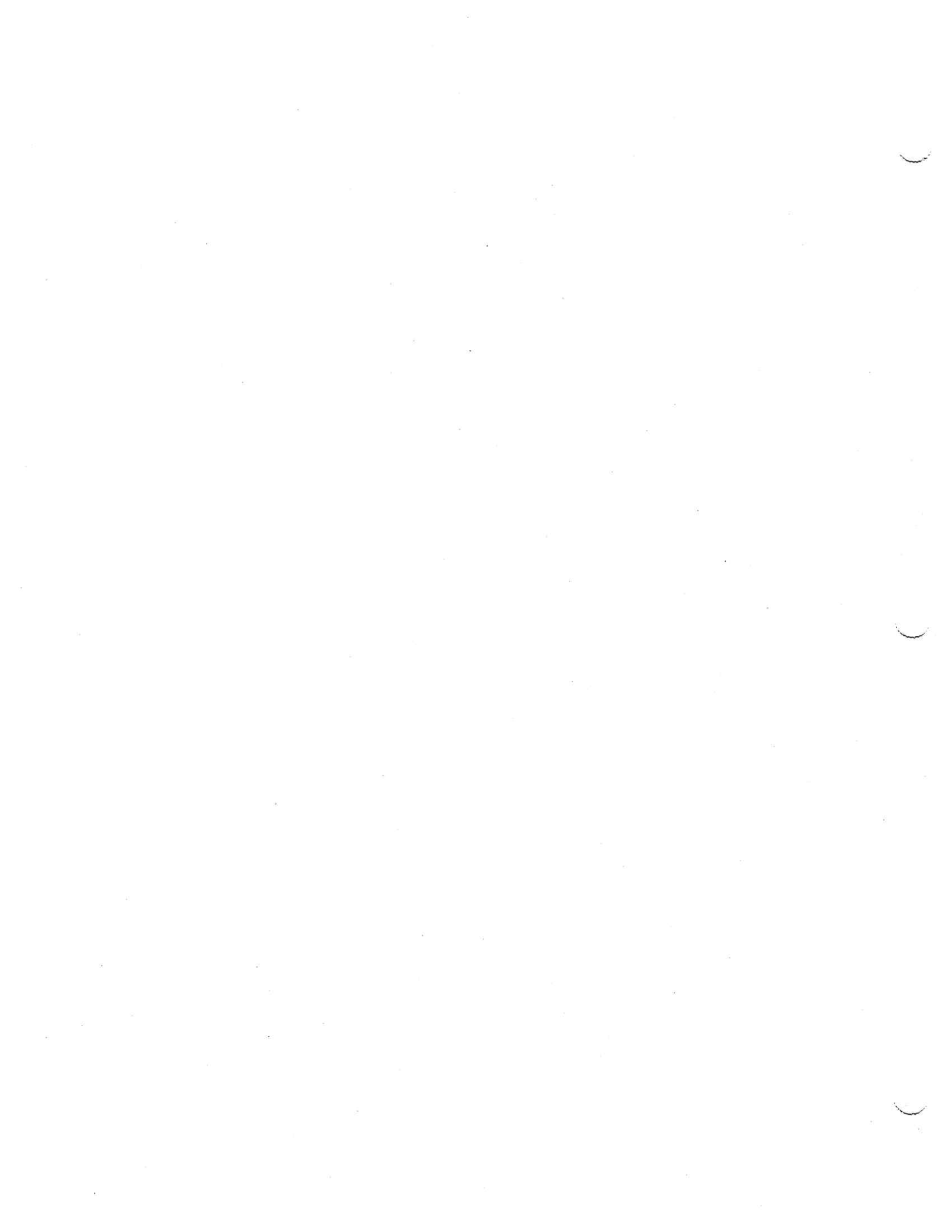
- (1) "Soil Conservation Service (SCS)" is changed to "Natural Resources Conservation Service (NRCS)."
- (2) "State Board of Equalization and Assessment" is changed to "Commissioner of Taxation and Finance."

§ 1-12. Incorporation of provisions into Code.

The provisions of this local law are hereby made Article I of Chapter 1 of the Code of the Town of Westmoreland, such local law to be entitled "General Provisions, Article I, Adoption of Code," and the sections of this local law shall be numbered §§ 1-1 to 1-13, inclusive.

§ 1-13. When effective.

This local law shall take effect immediately upon filing with the Secretary of State of the State of New York.



Chapter 108

FLOOD DAMAGE PREVENTION

ARTICLE I Statutory Authorization and Purpose

- § 108-1. Findings.
- § 108-2. Statement of purpose.
- § 108-3. Objectives.

ARTICLE II Definitions

- § 108-4. Word usage; terms defined.

ARTICLE III General Provisions

- § 108-5. Applicability.
- § 108-6. Basis for establishing areas of special flood hazard.
- § 108-7. Interpretation and conflict with other laws.
- § 108-8. Penalties for offenses.
- § 108-9. Warning and disclaimer of liability.

ARTICLE IV Administration

- § 108-10. Designation of local administrator.
- § 108-11. Floodplain development permit.
- § 108-12. Application for permit.
- § 108-13. Duties and responsibilities of local administrator.

ARTICLE V Construction Standards

- § 108-14. General standards.
- § 108-15. Standards for all structures.
- § 108-16. Standards for residential structures.
- § 108-17. Standards for nonresidential structures.
- § 108-18. Standards for manufactured homes and recreational vehicles.

ARTICLE VI Variance Procedure

- § 108-19. Appeals board.
- § 108-20. Conditions for variances.

[HISTORY: Adopted by the Town Board of the Town of Westmoreland 7-8-2013 by L.L. No. 4-2013.¹ Amendments noted where applicable.]

GENERAL REFERENCES

1. Editor's Note: This local law also superseded former Ch. 108, Flood Damage Prevention, adopted 3-16-1987 by L.L. No. 1-1987, as amended.

Building code administration and enforcement — See Ch. 86.
Unsafe buildings — See Ch. 90.

Storm sewers — See Ch. 149.
Stormwater management — See Ch. 152.
Zoning — See Ch. 180.

ARTICLE I Statutory Authorization and Purpose

§ 108-1. Findings.

The Town Board of the Town of Westmoreland finds that the potential and/or actual damages from flooding and erosion may be a problem to the residents of the Town of Westmoreland and that such damages may include destruction or loss of private and public housing, damage to public facilities, both publicly and privately owned, and injury to and loss of human life. In order to minimize the threat of such damages and to achieve the purposes and objectives hereinafter set forth, this chapter is adopted.

§ 108-2. Statement of purpose.

It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- A. Regulate uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- B. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- C. Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of floodwaters;
- D. Control filling, grading, dredging and other development which may increase erosion or flood damages;
- E. Regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands; and
- F. Qualify for and maintain participation in the National Flood Insurance Program.

§ 108-3. Objectives.

The objectives of this chapter are:

- A. To protect human life and health;
- B. To minimize expenditure of public money for costly flood control projects;
- C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

- D. To minimize prolonged business interruptions;
- E. To minimize damage to public facilities and utilities such as water and gas mains; electric, telephone, and sewer lines; streets; and bridges located in areas of special flood hazard;
- F. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- G. To provide that developers are notified that property is in an area of special flood hazard; and
- H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

ARTICLE II Definitions

§ 108-4. Word usage; terms defined.

- A. Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.
- B. As used in this chapter, the following terms shall have the meanings indicated:

APPEAL — A request for a review of the local administrator's interpretation of any provision of this chapter or a request for a variance.

AREA OF SHALLOW FLOODING — A designated AO, AH or VO Zone on a community's Flood Insurance Rate Map (FIRM) with a one-percent or greater annual chance of flooding to an average annual depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD — Is the land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. This area may be designated as Zone A, AE, AH, AO, A1-A30, A99, V, VO, VE, or V1-V30. It is also commonly referred to as the "base floodplain" or "one-hundred-year floodplain." For purposes of this chapter, the term "special flood hazard area (SFHA)" is synonymous in meaning with the phrase "area of special flood hazard."

BASE FLOOD — The flood having a one-percent chance of being equaled or exceeded in any given year.

BASEMENT — That portion of a building having its floor subgrade (below ground level) on all sides.

BUILDING — See "structure."

CELLAR — Has the same meaning as "basement."

CRAWL SPACE — An enclosed area beneath the lowest elevated floor, 18 inches or more in height, which is used to service the underside of the lowest elevated floor. The elevation of the floor of this enclosed area, which may be of soil, gravel, concrete or other material, must be equal to or above the lowest adjacent exterior grade. The enclosed crawl space area shall be properly vented to allow for the equalization of hydrostatic forces which would be experienced during periods of flooding.

DEVELOPMENT — Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations or storage of equipment or materials.

ELEVATED BUILDING — A nonbasement building 1) built, in the case of a building in Zones A1-A30, AE, A, A99, AO, AH, B, C, X, or D, to have the top of the elevated floor, or in the case of a building in Zones V1-30, VE, or V, to have the bottom of the lowest horizontal structure member of the elevated floor, elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the flow of the water, and 2) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-A30, AE, A, A99, AO, AH, B, C, X, or D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwaters. In the case of Zones V1-V30, VE, or V, "elevated building" also includes a building otherwise meeting the definition of "elevated building," even though the lower area is enclosed by means of breakaway walls that meet the federal standards.

FEDERAL EMERGENCY MANAGEMENT AGENCY — The federal agency that administers the National Flood Insurance Program.

FLOOD BOUNDARY AND FLOODWAY MAP (FBFM) — An official map of the community published by the Federal Emergency Management Agency as part of a riverine community's Flood Insurance Study. The FBFM delineates a regulatory floodway along watercourses studied in detail in the Flood Insurance Study.

FLOOD ELEVATION STUDY — An examination, evaluation and determination of the flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

FLOOD HAZARD BOUNDARY MAP (FHBM) — An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been designated as Zone A but no flood elevations are provided.

FLOOD INSURANCE RATE MAP (FIRM) — An official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY — See "flood elevation study."

FLOOD or FLOODING —

- (1) A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - (a) The overflow of inland or tidal waters;
 - (b) The unusual and rapid accumulation or runoff of surface waters from any source.
- (2) "Flood" or "flooding" also means the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in (1) above.

FLOODPLAIN or FLOOD-PRONE AREA — Any land area susceptible to being inundated by water from any source. (See definition of "flooding.")

FLOODPROOFING — Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODWAY — Has the same meaning as "regulatory floodway."

FUNCTIONALLY DEPENDENT USE — A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, and ship repair facilities. The term does not include long-term storage, manufacturing, sales, or service facilities.

HIGHEST ADJACENT GRADE — The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

HISTORIC STRUCTURE — Any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (a) By an approved state program as determined by the Secretary of the Interior;
or
 - (b) Directly by the Secretary of the Interior in states without approved programs.

LOCAL ADMINISTRATOR — Is the person appointed by the community to administer and implement this chapter by granting or denying development permits in accordance with its provisions. This person is often the Building Inspector, Code Enforcement Officer, or employee of an engineering department.

LOWEST FLOOR — Lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter.

MANUFACTURED HOME — A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term does not include a recreational vehicle.

MANUFACTURED HOME PARK OR SUBDIVISION — A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MEAN SEA LEVEL — For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, the North American Vertical Datum of 1988 (NAVD 88), or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

MOBILE HOME — Has the same meaning as "manufactured home."

NEW CONSTRUCTION — Structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by the community and includes any subsequent improvements to such structure.

ONE-HUNDRED-YEAR FLOOD or 100-YEAR FLOOD — Has the same meaning as "base flood."

PRINCIPALLY ABOVE GROUND — That at least 51% of the actual cash value of the structure, excluding land value, is above ground.

RECREATIONAL VEHICLE — A vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projections;
- (3) Designed to be self-propelled or permanently towable by a light-duty truck; and

- (4) Not designed primarily for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

REGULATORY FLOODWAY — The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height as determined by the Federal Emergency Management Agency in a Flood Insurance Study or by other agencies as provided in § 108-13B.

START OF CONSTRUCTION — The date of permit issuance for new construction and substantial improvements to existing structures, provided that actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement is within 180 days after the date of issuance. The actual "start of construction" means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns. Permanent construction does not include land preparation (such as clearing, excavation, grading, or filling), or the installation of streets or walkways, or excavation for a basement, footings, piers or foundations, or the erection of temporary forms, or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE — A walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

SUBSTANTIAL DAMAGE — Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT — Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the start of construction of the improvement. The term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

VARIANCE — A grant of relief from the requirements of this chapter which permits construction or use in a manner that would otherwise be prohibited by this chapter.

VIOLATION — The failure of a structure or other development to be fully compliant with the community's floodplain management regulations.

ARTICLE III
General Provisions

§ 108-5. Applicability.

This chapter shall apply to all areas of special flood hazard within the jurisdiction of the Town of Westmoreland, Oneida County.

§ 108-6. Basis for establishing areas of special flood hazard.

- A. The areas of special flood hazard for the Town of Westmoreland, Community Number 360565, are identified and defined on the following documents prepared by the Federal Emergency Management Agency:
- (1) Flood Insurance Rate Map Panel Numbers: 36065C0545F, 36065C0565F, 36065C0566F, 36065C0567F, 36065C0568F, 36065C0569F, 36065C0682F, 36065C0701F, 36065C0702F, 36065C0703F, 36065C0704F, 36065C0706F, 36065C0707F, 36065C0708F, 36065C0709F, 36065C0715F, 36065C0716F, and 36065C0726F, whose effective date is, September 27, 2013, and any subsequent revisions to these map panels that do not affect areas under our community's jurisdiction.
 - (2) A scientific and engineering report entitled "Flood Insurance Study, Oneida County, New York, All Jurisdictions," dated September 27, 2013.
- B. The above documents are hereby adopted and declared to be a part of this chapter. The Flood Insurance Study and/or maps are on file at the Town Clerk's Office, 100 Station Road, Westmoreland, New York 13490.

§ 108-7. Interpretation and conflict with other laws.

- A. This chapter includes all revisions to the National Flood Insurance Program through October 27, 1997, and shall supersede all previous laws adopted for the purpose of flood damage prevention.
- B. In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, adopted for the promotion of the public health, safety, and welfare. Whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances, the most restrictive, or that imposing the higher standards, shall govern.

§ 108-8. Penalties for offenses.

No structure in an area of special flood hazard shall hereafter be constructed, located, extended, converted, or altered and no land shall be excavated or filled without full compliance with the terms of this chapter and any other applicable regulations. Any infraction of the provisions of this chapter by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the

permit, shall constitute a violation. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined no more than \$250 or imprisoned for not more than 15 days or both. Each day of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the Town of Westmoreland from taking such other lawful action as necessary to prevent or remedy an infraction. Any structure found not compliant with the requirements of this chapter for which the developer and/or owner has not applied for and received an approved variance under Article VI will be declared noncompliant, and notification shall be sent to the Federal Emergency Management Agency.

§ 108-9. Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the Town of Westmoreland, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

ARTICLE IV
Administration

§ 108-10. Designation of local administrator.

The Code Enforcement Officer is hereby appointed local administrator to administer and implement this chapter by granting or denying floodplain development permits in accordance with its provisions.

§ 108-11. Floodplain development permit.

- A. Purpose. A floodplain development permit is hereby established for all construction and other development to be undertaken in areas of special flood hazard in this community for the purpose of protecting its citizens from increased flood hazards and insuring that new development is constructed in a manner that minimizes its exposure to flooding. It shall be unlawful to undertake any development in an area of special flood hazard, as shown on the Flood Insurance Rate Map enumerated in § 108-6, without a valid floodplain development permit. Application for a permit shall be made on forms furnished by the local administrator and may include, but not be limited to, plans, in duplicate, drawn to scale and showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing.
- B. Fees. All applications for a floodplain development permit shall be accompanied by an application fee of \$50. In addition, the applicant shall be responsible for reimbursing the Town of Westmoreland for any additional costs necessary for review, inspection and

approval of this project. The local administrator may require a deposit of no more than \$500 to cover these additional costs.

§ 108-12. Application for permit.

The applicant shall provide the following information as appropriate. Additional information may be required on the permit application form.

- A. The proposed elevation, in relation to mean sea level, of the lowest floor (including basement or cellar) of any new or substantially improved structure to be located in Zones A1-A30, AE or AH, or Zone A if base flood elevation data are available. Upon completion of the lowest floor, the permittee shall submit to the local administrator the as-built elevation, certified by a licensed professional engineer or surveyor.
- B. The proposed elevation, in relation to mean sea level, to which any new or substantially improved nonresidential structure will be floodproofed. Upon completion of the floodproofed portion of the structure, the permittee shall submit to the local administrator the as-built floodproofed elevation, certified by a professional engineer or surveyor.
- C. A certificate from a licensed professional engineer or architect that any utility floodproofing will meet the criteria in § 108-15C, Utilities.
- D. A certificate from a licensed professional engineer or architect that any nonresidential floodproofed structure will meet the floodproofing criteria in § 108-17, Standards for nonresidential structures.
- E. A description of the extent to which any watercourse will be altered or relocated as a result of proposed development. Computations by a licensed professional engineer must be submitted that demonstrate that the altered or relocated segment will provide equal or greater conveyance than the original stream segment. The applicant must submit any maps, computations or other material required by the Federal Emergency Management Agency (FEMA) to revise the documents enumerated in § 108-6, when notified by the local administrator, and must pay any fees or other costs assessed by FEMA for this purpose. The applicant must also provide assurances that the conveyance capacity of the altered or relocated stream segment will be maintained.
- F. A technical analysis, by a licensed professional engineer, if required by the local administrator, which shows whether proposed development to be located in an area of special flood hazard may result in physical damage to any other property.
- G. In Zone A, when no base flood elevation data are available from other sources, base flood elevation data shall be provided by the permit applicant for subdivision proposals and other proposed developments (including proposals for manufactured home and recreational vehicle parks and subdivisions) that are greater than either 50 lots or five acres.

§ 108-13. Duties and responsibilities of local administrator.

Duties of the local administrator shall include, but not be limited to the following.

- A. Permit application review. The local administrator shall conduct the following permit application review before issuing a floodplain development permit:
- (1) Review all applications for completeness, particularly with the requirements of § 108-12, Application for permit, and for compliance with the provisions and standards of this chapter.
 - (2) Review subdivision and other proposed new development, including manufactured home parks to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is located in an area of special flood hazard, all new construction and substantial improvements shall meet the applicable standards of Article V, Construction Standards and, in particular, § 108-14A, Subdivision proposals.
 - (3) Determine whether any proposed development in an area of special flood hazard may result in physical damage to any other property (e.g., stream bank erosion and increased flood velocities). The local administrator may require the applicant to submit additional technical analyses and data necessary to complete the determination. If the proposed development may result in physical damage to any other property or fails to meet the requirements of Article V, Construction Standards, no permit shall be issued. The applicant may revise the application to include measures that mitigate or eliminate the adverse effects and resubmit the application.
 - (4) Determine that all necessary permits have been received from those governmental agencies from which approval is required by state or federal law.
- B. Use of other flood data.
- (1) When the Federal Emergency Management Agency has designated areas of special flood hazard on the community's Flood Insurance Rate Map (FIRM) but has neither produced water surface elevation data (these areas are designated Zone A or V on the FIRM) nor identified a floodway, the local administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, including data developed pursuant to § 108-12G, as criteria for requiring that new construction, substantial improvements or other proposed development meet the requirements of this chapter.
 - (2) When base flood elevation data are not available, the local administrator may use flood information from any other authoritative source, such as historical data, to establish flood elevations within the areas of special flood hazard, for the purposes of this chapter.
- C. Alteration of watercourses.
- (1) Notification to adjacent communities and the New York State Department of Environmental Conservation prior to permitting any alteration or relocation of a watercourse, and submittal of evidence of such notification to the Regional Administrator, Region II, Federal Emergency Management Agency.

- (2) Determine that the permit holder has provided for maintenance within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

D. Construction stage.

- (1) In Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, upon placement of the lowest floor or completion of floodproofing of a new or substantially improved structure, obtain from the permit holder a certification of the as-built elevation of the lowest floor or floodproofed elevation, in relation to mean sea level. The certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by same. For manufactured homes, the permit holder shall submit the certificate of elevation upon placement of the structure on the site. A certificate of elevation must also be submitted for a recreational vehicle if it remains on a site for 180 consecutive days or longer (unless it is fully licensed and ready for highway use).
- (2) Any further work undertaken prior to submission and approval of the certification shall be at the permit holder's risk. The local administrator shall review all data submitted. Deficiencies detected shall be cause to issue a stop-work order for the project unless immediately corrected.

E. Inspections. The local administrator and/or the developer's engineer or architect shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions and enable said inspector to certify, if requested, that the development is in compliance with the requirements of the floodplain development permit and/or any variance provisions.

F. Stop-work orders.

- (1) The local administrator shall issue, or cause to be issued, a stop-work order for any floodplain development found ongoing without a development permit. Disregard of a stop-work order shall subject the violator to the penalties described in § 108-8.
- (2) The local administrator shall issue, or cause to be issued, a stop-work order for any floodplain development found noncompliant with the provisions of this chapter and/or the conditions of the development permit. Disregard of a stop-work order shall subject the violator to the penalties described in § 108-8.

G. Certificate of compliance.

- (1) In areas of special flood hazard, as determined by documents enumerated in § 108-6, it shall be unlawful to occupy or to permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the local administrator stating that the building or land conforms to the requirements of this chapter.
- (2) A certificate of compliance shall be issued by the local administrator upon satisfactory completion of all development in areas of special flood hazard.

- (3) Issuance of the certificate shall be based upon the inspections conducted as prescribed in Subsection E, Inspections, and/or any certified elevations, hydraulic data, floodproofing, anchoring requirements or encroachment analyses which may have been required as a condition of the approved permit.
- H. Information to be retained. The local administrator shall retain and make available for inspection, copies of the following:
- (1) Floodplain development permits and certificates of compliance;
 - (2) Certifications of as-built lowest floor elevations of structures, required pursuant to Subsection D(1) and (2), and whether or not the structures contain a basement;
 - (3) Floodproofing certificates required pursuant to Subsection D(1), and whether or not the structures contain a basement;
 - (4) Variances issued pursuant to Article VI, Variance Procedures; and
 - (5) Notices required under Subsection C, Alteration of watercourses.

ARTICLE V Construction Standards

§ 108-14. General standards.

The following standards apply to new development, including new and substantially improved structures, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in § 108-6.

- A. Subdivision proposals. The following standards apply to all new subdivision proposals and other proposed development in areas of special flood hazard (including proposals for manufactured home and recreational vehicle parks and subdivisions):
- (1) Proposals shall be consistent with the need to minimize flood damage;
 - (2) Public utilities and facilities such as sewer, gas, electrical and water systems shall be located and constructed so as to minimize flood damage; and
 - (3) Adequate drainage shall be provided to reduce exposure to flood damage.
- B. Encroachments.
- (1) Within Zones A1-A30 and AE; on streams without a regulatory floodway, no new construction, substantial improvements or other development (including fill) shall be permitted unless:
 - (a) The applicant demonstrates that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any location; or

- (b) The Town of Westmoreland agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Town of Westmoreland for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Town of Westmoreland for all costs related to the final map revision.
- (2) On streams with a regulatory floodway, as shown on the Flood Boundary and Floodway Map or the Flood Insurance Rate Map adopted in § 108-6, no new construction, substantial improvements or other development in the floodway (including fill) shall be permitted unless:
- (a) A technical evaluation by a licensed professional engineer shows that such an encroachment shall not result in any increase in flood levels during occurrence of the base flood, or,
 - (b) The Town of Westmoreland agrees to apply to the Federal Emergency Management Agency (FEMA) for a conditional FIRM and floodway revision, FEMA approval is received and the applicant provides all necessary data, analyses and mapping and reimburses the Town of Westmoreland for all fees and other costs in relation to the application. The applicant must also provide all data, analyses and mapping and reimburse the Town of Westmoreland for all costs related to the final map revisions.

§ 108-15. Standards for all structures.

The following standards apply to new development, including new and substantially improved structures, in the areas of special flood hazard shown on the Flood Insurance Rate Map designated in § 108-6.

- A. Anchoring. New structures and substantial improvement to structures in areas of special flood hazard shall be anchored to prevent flotation, collapse, or lateral movement during the base flood. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.
- B. Construction materials and methods.
 - (1) New construction and substantial improvements to structures shall be constructed with materials and utility equipment resistant to flood damage.
 - (2) New construction and substantial improvements to structures shall be constructed using methods and practices that minimize flood damage.
 - (3) Enclosed areas.
 - (a) For enclosed areas below the lowest floor of a structure within Zones A1-A30, AE or AH, and also Zone A if base flood elevation data are available, new and substantially improved structures shall have fully enclosed areas below the lowest floor that are usable solely for parking of vehicles,

building access or storage in an area other than a basement and which are subject to flooding, designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria:

- [1] A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and
 - [2] The bottom of all such openings no higher than one foot above the lowest adjacent finished grade.
- (b) Openings may be equipped with louvers, valves, screens or other coverings or devices provided they permit the automatic entry and exit of floodwaters. Enclosed areas subgrade on all sides are considered basements and are not permitted.

C. Utilities.

- (1) New and replacement electrical equipment, heating, ventilating, air conditioning, plumbing connections, and other service equipment shall be located at least two feet above the base flood elevation or be designed to prevent water from entering and accumulating within the components during a flood and to resist hydrostatic and hydrodynamic loads and stresses. Electrical wiring and outlets, switches, junction boxes and panels shall be elevated or designed to prevent water from entering and accumulating within the components unless they conform to the appropriate provisions of the electrical part of the Building Code of New York State or the Residential Code of New York State for location of such items in wet locations;
- (2) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
- (3) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters. Sanitary sewer and storm drainage systems for buildings that have openings below the base flood elevation shall be provided with automatic backflow valves or other automatic backflow devices that are installed in each discharge line passing through a building's exterior wall; and
- (4) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

§ 108-16. Standards for residential structures.

- A. Elevation. The following standards apply to new and substantially improved residential structures located in areas of special flood hazard, in addition to the requirements in § 108-14A, Subdivision proposals, and § 108-14B, Encroachments, and § 108-15, Standards for all structures.

- (1) Within Zones A1-A30, AE and AH and also Zone A if base flood elevation data are available, new construction and substantial improvements shall have the lowest floor (including basement) elevated to or above two feet above the base flood elevation.
- (2) Within Zone A, when no base flood elevation data are available, new construction and substantial improvements shall have the lowest floor (including basement) elevated at least three feet above the highest adjacent grade.
- (3) Within Zone AO, new construction and substantial improvements shall have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as two feet above the depth number specified in feet on the community's Flood Insurance Rate Map enumerated in § 108-6 (at least two feet if no depth number is specified).
- (4) Within Zones AH and AO, adequate drainage paths are required to guide floodwaters around and away from proposed structures on slopes.

§ 108-17. Standards for nonresidential structures.

The following standards apply to new and substantially improved commercial, industrial and other nonresidential structures located in areas of special flood hazard, in addition to the requirements in § 108-14A, Subdivision proposals, and § 108-14B, Encroachments, and § 108-15, Standards for all structures.

- A. Within Zones A1-A30, AE and AH, and also Zone A if base flood elevation data are available, new construction and substantial improvements of any nonresidential structure shall either:
 - (1) Have the lowest floor, including basement or cellar, elevated to or above two feet above the base flood elevation; or
 - (2) Be floodproofed so that the structure is watertight below two feet above the base flood elevation, including attendant utility and sanitary facilities, with walls substantially impermeable to the passage of water. All structural components located below the base flood level must be capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
- B. Within Zone AO, new construction and substantial improvements of nonresidential structures shall:
 - (1) Have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as two feet above the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified); or
 - (2) Together with attendant utility and sanitary facilities, be completely floodproofed to that level to meet the floodproofing standard specified in Subsection A(2).
- C. If the structure is to be floodproofed, a licensed professional engineer or architect shall develop and/or review structural design, specifications, and plans for construction. A

floodproofing certificate or other certification shall be provided to the local administrator that certifies the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of Subsection A(2) including the specific elevation (in relation to mean sea level) to which the structure is to be floodproofed.

- D. Within Zones AH and AO, adequate drainage paths are required to guide floodwaters around and away from proposed structures on slopes.
- E. Within Zone A, when no base flood elevation data are available, the lowest floor (including basement) shall be elevated at least three feet above the highest adjacent grade.

§ 108-18. Standards for manufactured homes and recreational vehicles.

The following standards in addition to the standards in § 108-14, General standards, and § 108-15, Standards for all structures, apply, as indicated, in areas of special flood hazard to manufactured homes and to recreational vehicles which are located in areas of special flood hazard.

A. Recreational vehicles.

- (1) Recreational vehicles placed on sites within Zones A1-A30, AE and AH shall either:
 - (a) Be on site fewer than 180 consecutive days;
 - (b) Be fully licensed and ready for highway use; or
 - (c) Meet the requirements for manufactured homes in Subsections B, C and D.
 - (2) A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.
- B. A manufactured home that is placed or substantially improved in Zones A1-A30, AE and AH shall be elevated on a permanent foundation such that the lowest floor is elevated to or above two feet above the base flood elevation and is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
 - C. Within Zone A, when no base flood elevation data are available, new and substantially improved manufactured homes shall be elevated such that the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and are securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement.
 - D. Within Zone AO, the floor shall be elevated above the highest adjacent grade at least as high as two feet above the depth number specified on the Flood Insurance Rate Map enumerated in § 108-6, (at least two feet if no depth number is specified).

ARTICLE VI
Variance Procedure

§ 108-19. Appeals board.

- A. The Zoning Board of Appeals as established by the Town of Westmoreland shall hear and decide appeals and requests for variances from the requirements of this chapter.
- B. The Zoning Board of Appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the local administrator in the enforcement or administration of this chapter.
- C. Those aggrieved by the decision of the Zoning Board of Appeals may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.
- D. In passing upon such applications, the Zoning Board of Appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter and:
- (1) The danger that materials may be swept onto other lands to the injury of others;
 - (2) The danger to life and property due to flooding or erosion damage;
 - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (4) The importance of the services provided by the proposed facility to the community;
 - (5) The necessity to the facility of a waterfront location, where applicable;
 - (6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - (7) The compatibility of the proposed use with existing and anticipated development;
 - (8) The relationship of the proposed use to the comprehensive plan and floodplain management program of that area;
 - (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (10) The costs to local governments and the dangers associated with conducting search and rescue operations during periods of flooding;
 - (11) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - (12) The costs of providing governmental services during and after flood conditions, including search and rescue operations, maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems and streets and bridges.

- E. Upon consideration of the factors of Subsection D and the purposes of this chapter, the Zoning Board of Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.
- F. The local administrator shall maintain the records of all appeal actions including technical information and report any variances to the Federal Emergency Management Agency upon request.

§ 108-20. Conditions for variances.

- A. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provided that the items in § 108-19D(1) through (12) have been fully considered. As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the variance increases.
- B. Variances may be issued for the repair or rehabilitation of historic structures upon determination that:
 - (1) The proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure; and
 - (2) The variance is the minimum necessary to preserve the historic character and design of the structure.
- C. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
 - (1) The criteria of Subsections A, D, E and F of this section are met; and
 - (2) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threat to public safety.
- D. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- E. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- F. Variances shall only be issued upon receiving written justification of:
 - (1) A showing of good and sufficient cause;
 - (2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

G. Notice.

- (1) Any applicant to whom a variance is granted for a building with the lowest floor below the base flood elevation shall be given written notice over the signature of a community official that:
 - (a) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and
 - (b) Such construction below the base flood level increases risks to life and property.
- (2) Such notification shall be maintained with the record of all variance actions as required in § 108-13H of this chapter.²

2. Editor's Note: Attachment A, Model Floodplain Development Application Form, and Attachment B, Sample Certificate of Compliance for Development in a Special Flood Hazard Area, which were included at the end of this chapter, are on file in the Town offices.

Chapter 142
SOLID WASTE

ARTICLE I
(Reserved)

§ 142-1. through § 142-6. (Reserved)

ARTICLE II
Dumping

- § 142-7. Legislative intent and title.
- § 142-8. Definitions.
- § 142-9. Prohibitions and restrictions.
- § 142-10. Enforcement; penalties for offenses.

§ 142-11. Amendments.

§ 142-12. Conflicts with other provisions.

ARTICLE III
Recycling

§ 142-13. Title.

§ 142-14. Legislative intent.

§ 142-15. Legislative findings.

§ 142-16. Definitions.

§ 142-17. Recycling requirements;
designated recyclables.

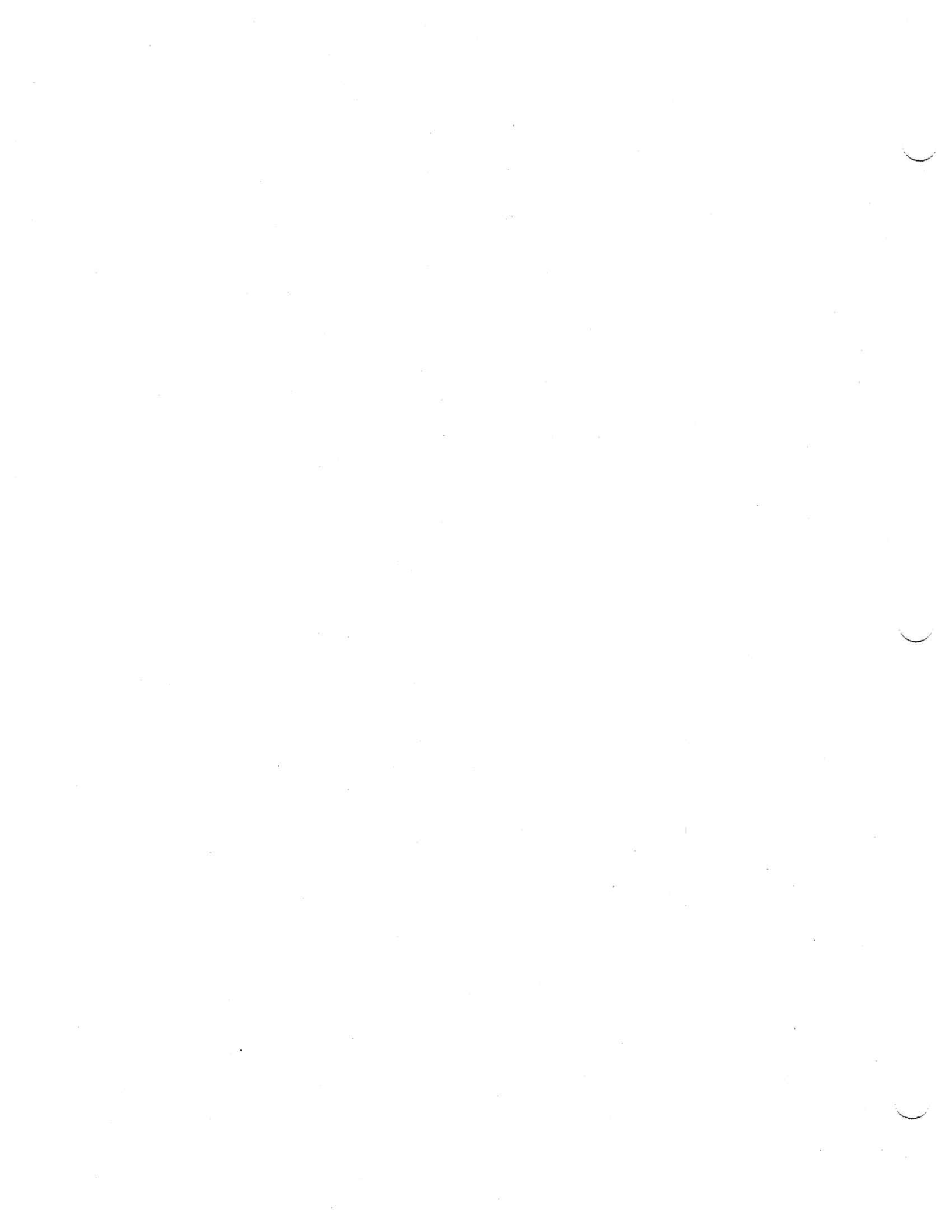
[HISTORY: Adopted by the Town Board of the Town of Westmoreland as indicated in article histories. Amendments noted where applicable.]

ARTICLE I
(Reserved) ¹

[Adopted 2-6-1989 by L.L. No. 1-1989]

§ 142-1. through § 142-6. (Reserved)

1. Editor's Note: Former Art. I, Commercial Haulers, adopted 2-6-1989 by L.L. No. 1-1989, was repealed 2-11-2013 by L.L. No. 2-2013.



Chapter 175

WATER

ARTICLE I Cross-Connection Control

§ 175-1. Legislative intent.

§ 175-2. Definitions.

§ 175-3. Cross-connection control requirements.

§ 175-4. Penalties for offenses; recourse for noncompliance.

[HISTORY: Adopted by the Town Board of the Town of Westmoreland as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Flood damage prevention — See Ch. 108.
Storm sewers — See Ch. 149.

Stormwater management — See Ch. 149.

ARTICLE I Cross-Connection Control [Adopted 1-14-2013 by L.L. No. 1-2013]

§ 175-1. Legislative intent.

The purpose of this article is to safeguard potable water supplies from potential contamination by preventing backflow from a water user's system into the public water system. It is the intent of this article to recognize that there are varying degrees of hazard and to supply the principle that the degrees of protection should be commensurate with the degrees of hazard. Further, it is the intent of the Town of Westmoreland, New York, to comply with the requirements of New York State Sanitary Code, Part 5, Section 5-1.31, which said section mandates the requirement that the supplier of water protect its water system in accordance with procedures acceptable to the Commissioner of Health. These mandated requirements are as set forth in the Cross-Connection Control Manual published by the New York State Department of Health (NYSDOH), and to that extent, the terms, conditions and provisions of the New York State Sanitary Code, Part 5, Section 5-1.31, and the Cross-Connection Control Manual are incorporated in this article by reference as if fully stated.

§ 175-2. Definitions.

As used in this article, the following terms shall have the meanings indicated:

AIR GAP SEPARATION — A physical break between the supply pipe and a receiving vessel. The air gap shall be at least double the diameter of the supply pipe, measured vertically above the top rim of the vessel, in no case less than one inch.

APPROVED CHECK VALVE — A check valve that seals readily and completely. It must be carefully machined to have free moving parts and assured water tightness. The face of the

closure element and valve seat must be bronze composition, or other noncorrodible material which will seat tightly under all prevailing conditions of field use. Pins and bushings shall be of bronze and other noncorrodible, nonsticking material, machined for easy dependable operation. The closure element shall be internally weighted or otherwise internally equipped to promote rapid and positive closure in all sizes where this feature is obtainable.

APPROVED DOUBLE CHECK VALVE ASSEMBLY — Two single, independently acting check valves, consisting of a tightly closing shutoff valve located at each end of the assembly and suitable test connections. This device must be approved as a complete assembly.

APPROVED REDUCED PRESSURE ZONE DEVICE — A minimum of two independently acting check valves together with an automatically operated pressure differential relief valve located between the two check valves and properly located test cocks. In case of leakage of either check valve, the differential relief valve, by discharging to the atmosphere, shall operate to maintain the pressure between the checks at less than supply pressure. This device must also be approved as a complete assembly.

APPROVED WATER SUPPLY — Any water supply approved by the New York State Department of Health.

AUXILIARY SUPPLY — Any water supply on or available to the premises other than the approved public water supply.

CERTIFIED BACKFLOW PREVENTION DEVICE TESTER — An individual who has successfully completed a New York State Department of Health approved course in the testing of backflow prevention devices and has been issued a certificate by the New York State Department of Health.

CROSS-CONNECTION — Any unprotected connection between any part of a water system used or intended to be used as a supply of water for drinking purposes in a source or systems containing water or substance that is not or cannot be approved as equally safe, wholesome and potable for human consumption.

VACUUM BREAKER, PRESSURE TYPE AND NON-PRESSURE TYPE — A vacuum breaker which can only be used for internal plumbing control and, therefore, not acceptable as a containment device.

WATER SUPERVISOR — The consumer or a person on the premises charged with the responsibility of complete knowledge and understanding of the water supply piping within the premises and for maintaining the water system free from cross-connections and other sanitary defects, as required by this article and all other required regulations and laws.

§ 175-3. Cross-connection control requirements.

- A. Where protection is required. The water system shall be required to maintain a degree of protection commensurate with the degree of hazard regardless of whether the hazard is immediate or potential. This may include but not be limited to the presence and use of water boilers for heating systems. To that extent, the Cross-Connection Control Manual published by NYSDOH shall be used as a guide to determine where protection is

required and devices shall be of a type acceptable to the New York State Department of Health.

- B. Supplier of water. The supplier of water's responsibility for cross-connection control is found in Part 5 of the State Sanitary Code, Section 5-1.31. The supplier of water is responsible to ensure that water of questionable or unsuitable quality does not enter the public water supply system. The supplier is required to determine the degree of hazard that a facility poses to his water supply system, and to require that an acceptable backflow prevention containment device be installed, tested, operated and maintained and that adequate records of maintenance and repair be kept.
- C. Customer. The customer has the primary responsibility of preventing contaminants from entering the potable water piping system and subsequently, the public water supply. He shall, as required by the supplier of water, install, test, operate, maintain and keep adequate maintenance and repair records for every backflow prevention device installed to provide containment. Additionally, the customer shall prevent cross-connection between the potable water piping system and any other piping system within his facility.
- D. Type of protection. The protective device required shall depend on the degree of hazard as tabulated below:
- (1) At the service connection to any premises where there is an auxiliary water supply handled in a separate piping system with no known cross-connection, the public water supply shall be protected by an approved reduced pressure zone device.
 - (2) At the service connection to any premises on which a substance that would be objectionable (but not necessarily hazardous to health) if introduced into the public water supply is handled so as to constitute a cross-connection, the public water supply shall be protected by an approved double check valve assembly.
 - (3) At the service connection to any premises on which a substance of unusual toxic concentration or danger to health is or may be handled but not under pressure, the public water supply shall be protected by an air gap separation or an approved reduced pressure zone backflow prevention device. If an air gap is installed, it shall be located as close as practicable to the water meter, and all piping between the water meter and receiving tank shall be entirely visible. A reduced pressure zone device when installed shall be located as close as possible to the property line.
 - (4) At the service connection to any premises on which any material dangerous to health is or may be handled under pressure, the public water supply shall be protected by an air gap separation. The air gap shall be located as close as practicable to the water meter and shall be accessible.
 - (5) At the service connection to any sewage treatment plant or sewage pumping station, the public water supply shall be protected by an air gap separation. The air gap shall be located as close as practicable to the water meter and all piping between the water meter and receiving tank shall be entirely visible. If these conditions cannot be reasonably met, the public water supply shall be protected by

an approved reduced pressure zone backflow prevention device and it shall be located as close as possible to the property line.

- E. Frequency of inspection of protective devices. It shall be the duty of the water user on any premises on which backflow protective devices are installed to have inspections by a New York State Department of Health certified backflow prevention device inspector made at least once a year, or more often in instances where successive inspections indicate repeated failure. Devices shall be repaired, overhauled or replaced at the expense of the water user whenever the devices are found to be defective. These tests shall be performed by a qualified backflow prevention device tester, and all test results will be provided to the water user within 72 hours after the test is made. Records of such tests, repairs and overhaul shall also be kept and made available to the water users and the local health department upon request. The supplier of water is also responsible for assuring that all protective devices are tested annually and maintaining records of such tests.

§ 175-4. Penalties for offenses; recourse for noncompliance.

- A. No water service connection to any premises shall be installed or maintained by the water user, unless the water supply is protected as required by this article and other such applicable local, state and federal laws, rules and regulations.
- B. If any facility served by a water system denies a water department person access to its premises for the purposes of determining if protection to the public water system is necessary, the following consequence applies: Since great risk may be present, the Town will require the installation of prevention devices designed for maximum risk, with the requirement that the number of devices installed shall equal the number of service lines.
- C. The following penalties shall be applicable for a violation of this article:
- (1) Failure to install the appropriate backflow prevention device within a prescribed time frame after the first notice: \$350.
 - (2) Failure to install the appropriate backflow prevention device within a prescribed time frame after the second notice: termination of service.
 - (3) Failure to at least annually test the backflow prevention device: \$500 and/or termination of water services.
 - (4) Failure to replace or repair a backflow prevention device as required: \$1,000 and/or termination of water services.

Chapter 180

ZONING

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Regulation of Automobile Junkyards

§ 180-89. Intent.

[HISTORY: Adopted by the Town Board of the Town of Westmoreland 8-25-1964. Amendments noted where applicable.]

§ 180-90. Definitions.

§ 180-91. Requirements for operation or maintenance.

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Storm sewers — See Ch. 149.

Stormwater management — See Ch. 152.

ARTICLE I

General Provisions

§ 180-1. Short title.

This chapter shall be known and be cited as "The Town of Westmoreland Zoning Ordinance."

§ 180-2. Definitions; word usage.

Except where specifically defined herein, all words used in this chapter shall carry their customary meanings. Words used in the present tense include the future, and the plural includes the singular. The word "lot" includes the word "plot." The word "shall" is intended to be mandatory. The word "building" includes the word "structure." "Occupied" or "used" shall

be considered as though followed by the words, "or intended, arranged or designed to be used or occupied."

ACCESSORY USE OR BUILDING — A use or building customarily incidental and subordinate to the principal use or building, and located on the same lot, and includes swimming pools. [Amended 12-12-1988 by L.L. No. 3-1988]

ALTERATIONS — As applied to a building or structure, means a change or rearrangement in the structural parts or the exit facilities, or an enlargement, whether by extending on a side or by increasing in height or the moving from one location or position to another.

ANIMAL UNITS — The definition of an animal unit as previously utilized by the United States Environmental Protection Agency and as previously utilized by the New York State Department of Environmental Conservation is generically based on 1,000 pounds of animal body weight to equal one animal unit. [Added 12-14-2009 by L.L. No. 1-2010]

CUSTOMARY AGRICULTURAL OPERATIONS — The use of land and on-farm buildings, equipment, manure processing and handling facilities and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including commercial horse boarding operations, timber processing and compost, mulch or other biomass crops, as are all defined in NYS Agriculture and Market Law. [Added 12-14-2009 by L.L. No. 1-2010]

DUMP — A lot or land or part thereof used primarily for the disposal by abandonment, dumping, burial, burning or any other means and for whatever purpose of garbage, sewage, trash, refuse, junk, or waste material of any kind.

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

HOG FARM — The use of any land for the purpose of raising hogs on a commercial or experimental basis and shall include the raising of more than four hogs in any year on such land for any purpose.

HOME OCCUPATION — An occupation or a profession which:

- A. Is customarily carried on in a dwelling unit or in a building or other structure accessory to a dwelling unit; and
- B. Is carried on by a member of the family residing in the dwelling unit; and
- C. Is clearly incidental and secondary to the use of the dwelling unit for residential purposes; and
- D. Which conforms to the following additional conditions:
 - (1) The occupation or profession shall be carried on wholly within the principal building or within a building or other structure accessory thereto.
 - (2) Not more than one person outside the family shall be employed in the home occupation.

- (3) There shall be no exterior display, no exterior sign (except as permitted herein), no exterior storage of materials and no other indication of the home occupation or variation from the residential character of the principal building. **[Amended 9-12-2016 by L.L. No. 1-2016]**
- (4) No offensive noise, vibration, smoke, dust, odors, heat or glare shall be produced.

JUNKYARD — A lot, land or structure, or part thereof, used for the collecting, storage and sale of wastepaper, rags, scrap metal or discarded materials; or for the collecting, dismantling, storage and salvaging of machinery or vehicles, and for the sale of the parts thereof. "Automobile junkyard" shall mean any place of storage or deposit, whether in connection with another business or not, where two or more unregistered, old, or secondhand motor vehicles, no longer intended or in condition for legal use on the public highways, are held, whether for purpose of resale of used parts therefrom, for the purpose of reclaiming for use some or all of the materials therein, whether metal, glass, fabric or otherwise, for the purpose of disposing of the same or for any other purpose. Such term shall include any place of storage or deposit for any such purposes of used parts or waste materials from motor vehicles which, taken together, equal in bulk two or more such vehicles; provided, however, the term junkyard shall not be construed to mean an establishment having facilities for processing iron, steel or nonferrous scrap whose principal produce is scrap iron steel or nonferrous scrap for sale for remitting purposes only. "Motor vehicle" shall mean all vehicles propelled or drawn by power other than muscular power originally intended for use on public highways. **[Amended 2-11-2013 by L.L. No. 2-2013]**

LANDSCAPING/LANDSCAPING STRUCTURES — The planning, laying out and changing/construction of gardens/lawns and addition of plants and related materials for the purpose of enhancing the appearance of a property. **[Added 9-12-2016 by L.L. No. 1-2016]**

MIGRANT LABOR CAMPS — Any buildings, structures or mobile homes, permanent or temporary, designed or intended to be used for temporary housing of three or more persons, whose principal occupation consists of agricultural labor in the seasonal harvesting of crops. As used in this definition, the word "temporary" shall mean for a purpose of less than seven months. **[Amended 8-9-2010 by L.L. No. 2-2010]**

MOBILE HOME COURT — A parcel of land which has been planned and improved for the placement of two or more mobile homes for nontransient use.

MOBILE HOMES — A structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein. For the purpose of this chapter, double-wide mobile homes known as "double wides" are to be considered as mobile homes. **[Amended 2-11-1991 by L.L. No. 1-1991]**

MOTEL — One or more frame or masonry buildings, whether detached or in connected units, designed primarily for transient automobile travelers and providing for accessory off-street parking facilities. The term "motel" includes buildings designated as tourist courts, motor lodges, auto courts and similar appellations. The term "motel" does not include a

mobile or trailer motel designed for transportation to the site after fabrication and requiring only minor and incidental site construction, whether on wheels, supports or foundations.

NATURAL LAND PRODUCTION USE — The use of land for the excavation of sand, gravel, clay, shale, fill or other natural mineral deposits.

NONCONFORMING USE — A building or structure, or a use of land lawfully existing at the time of enactment of this chapter or an amendment hereto but which does not conform to the regulations of the district or zone in which it is situated by reason of such adoption or amendment. A use which constitutes a violation of the Town of Westmoreland Zoning Ordinance of 1958 shall not be deemed a nonconforming use, but shall be a violation of this chapter. [Amended 2-11-2013 by L.L. No. 2-2013]

RIDING ACADEMIES — A commercial operation which offers horse riding lessons to the public and/or individuals that do not own or have a long-term lease for the horse that is boarded and/or used at the facility for such riding. [Added 12-14-2009 by L.L. No. 1-2010]

SWIMMING POOL — A private outdoor pool designed and built for swimming purposes as an accessory use on the same parcel as the principal use, for use primarily by the occupants or tenants of said property. Such pool shall include any permanent under or above ground and any portable pool more than three feet in height and 15 feet in length or diameter. [Added 12-12-1988 by L.L. No. 3-1988]

UNUSED LAND — All land available over and above the land required for the primary residence which includes the residence, well, road setback, septic system and driveway. [Added 12-14-2009 by L.L. No. 1-2010]

USED CAR LOT — The use of an area of any size for the purpose of selling or advertising for sale two or more secondhand automobiles.

YARD, FRONT — An open unoccupied space between the front line of the building and the center of the road and extending the full width of the lot.

YARD REAR — An open space, unoccupied except for accessory buildings as permitted in this chapter, on the same lot with the main building between the rear line of the building and the rear line of the lot, and extending the full width of the lot.

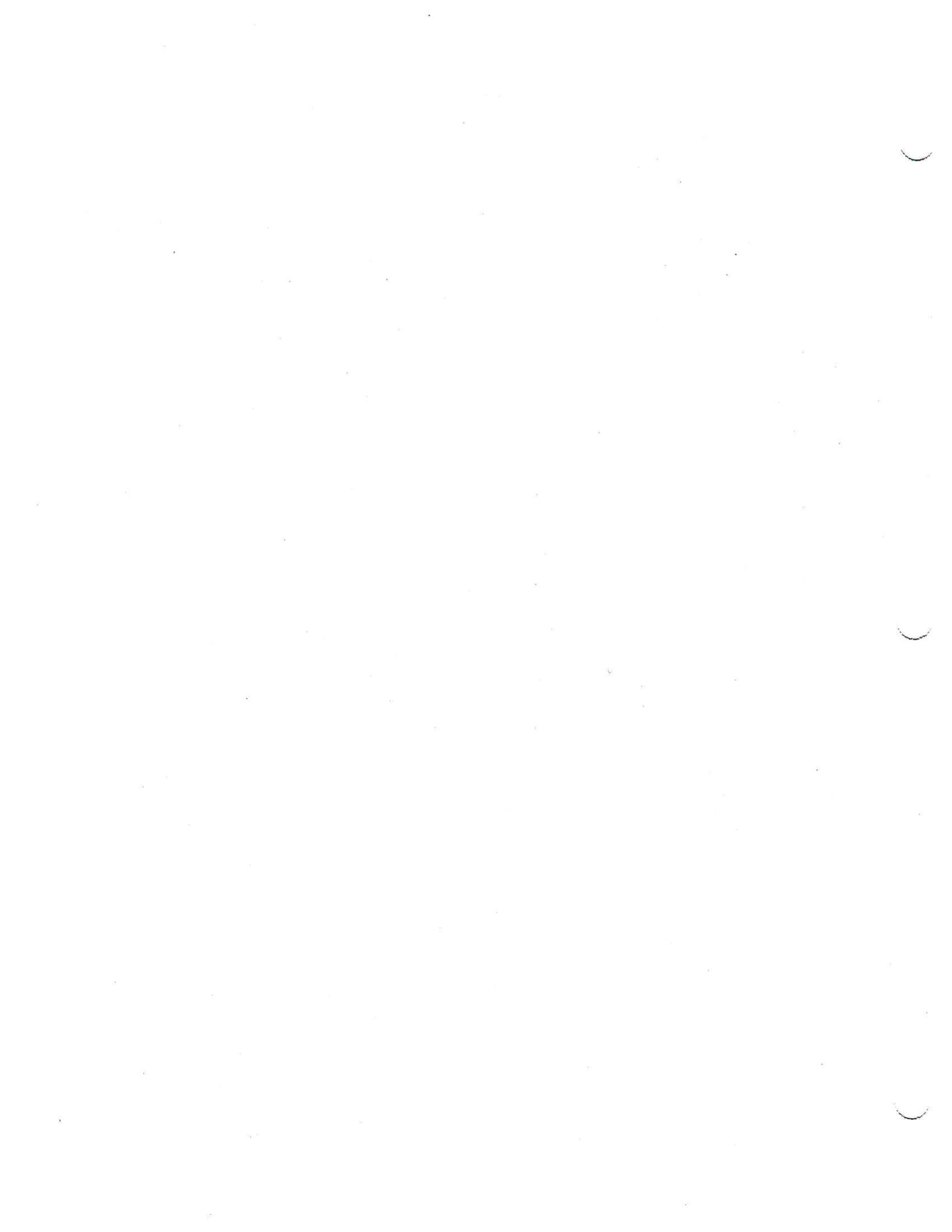
YARD, SIDE — An open space, unoccupied except for accessory buildings as permitted in this chapter, on the same lot with the main building situated between the building and the side line of the lot and extending from the front yard to the rear yard. Any lot line not a rear lot line nor a front line shall be deemed a side line.

ARTICLE II Establishment of Districts

§ 180-3. Classes of districts.

- A. For the purpose of this chapter, the Town of Westmoreland is divided into the following types or classes of districts: [Amended 4-8-2002 by L.L. No. 2-2002; 7-11-2005 by L.L. No. 1-2005; 12-14-2009 by L.L. No. 1-2010]

- R-1 District — One-Family Residential Districts
- R-2 District — One-Family Residential Districts
- R-3 District — One-Family Residential Districts



§ 180-9. Percentage of lot covered.

All buildings, including accessory buildings, shall not cover more than 30% of the area of the lot.

§ 180-10. Yards required.

Each lot shall have a front, side and rear yard not less than the depth or width following:

- A. Front yards shall have a depth of not less than 125 feet where the house is located on a state road and not less than 100 feet where located on a Town or county road.
- B. Each side yard shall have a minimum width of 25 feet.
- C. Each rear yard shall have a minimum depth of 50 feet.

§ 180-11. Building height limit.

No building shall be erected with a height in excess of 35 feet; provided, however, that parapet walls or cornices for ornamental purposes only, and without windows, may be permitted to extend a distance of five feet above the height limit prescribed herein.

§ 180-12. Floor area.

Each house hereafter erected in a R-1 District shall have a minimum floor area, exclusive of attached garage, on the ground level enclosed by the main walls of such house of 1,040 square feet for a one-story house and 780 square feet for house having more than one story.

§ 180-13. Length and width restriction. [Added 5-12-1992 by L.L. No. 1-1992]

The main living area of a single-family or duplex structure shall not be longer than twice its width until that structure width reaches 24 feet at which time the length should not exceed 2 1/2 times its width. Width shall be the distance from side to side at a right angle of the longest side of the structure.

§ 180-14. Accessory buildings and uses. [Amended 6-8-1987 by L.L. No. 3-1987; 12-12-1988 by L.L. No. 3-1988; 12-14-2009 by L.L. No. 1-2010]

- A. All accessory buildings or uses shall require a permit to be issued prior to their initiation as elsewhere required in this chapter, except that no permit shall be required for a single accessory building with dimensions that do not exceed a maximum of 100 square feet in size, providing all minimum required yard dimensions are observed.
- B. There shall not be more than two accessory buildings to the residential lot, except that an agricultural operation shall not be subject to such provisions.
- C. Maximum height of accessory building shall be one story or 20 feet, whichever is less.
[Amended 2-11-2013 by L.L. No. 2-2013]

- D. Accessory buildings or structures in residential districts which are not attached to a principal building may be erected within the side or rear yard in accordance with the following requirements:
- (1) For garage, toolhouse or similar storage building, and swimming pool: 10 feet from side or rear lot line. Distance for in-ground pools will be measured from water line and distance for aboveground pools will be measured from the most external portion of the structure, including decking.
- E. When an accessory building is attached to the principal building it shall comply in all aspects with the requirements of this chapter applicable to the principal building.
- F. Accessory buildings in business or industrial districts shall comply with front, side and rear yard requirements for the principal building to which they are accessory.
- G. No accessory building shall have a floor area in excess of 1,200 square feet at ground level. [Amended 2-11-2013 by L.L. No. 2-2013]
- H. No accessory building or structure shall be permitted on a tax parcel without the presence of an approved dwelling structure. [Amended 8-9-2010 by L.L. No. 2-2010]

ARTICLE IV

R-2 Districts — One-Family Residential Districts

§ 180-15. Applicability.

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

§ 180-16. Uses permitted.

Uses permitted are as follows:

- A. The same uses permitted in a R-1 District.
- B. Customary home occupations; provided that there shall be no external evidence of such occupations except a small announcement or professional sign not over two square feet in area and shall not be illuminated in any color other than white.³
- C. Temporary stands for agricultural products which are not predominantly regionally grown or produced upon obtaining a permit from the Zoning Board of Appeals. Such permit shall be for a period of not to exceed six months and shall be subject to such reasonable restrictions as the Zoning Board of Appeals may prescribe. [Amended 12-14-2009 by L.L. No. 1-2010]

3. Editor's Note: See § 180-66, Signage, for additional sign regulations.

§ 180-30. Dwelling area.

Each dwelling house hereafter erected in a R-3 District shall have a minimum floor area, exclusive of attached garage, on ground level enclosed by the main walls of such house and 624 square feet for a house having more than one story.

§ 180-31. Length and width restriction. [Added 5-12-1992 by L.L. No. 1-1992]

The main living area of a single-family or duplex structure shall not be longer than twice its width until that structure width reaches 24 feet at which time the length should not exceed 2 1/2 times its width. Width shall be the distance from side to side at a right angle of the longest side of the structure.

§ 180-31.1. Square footage. [Added 9-12-2016 by L.L. No. 1-2016]

Each house hereafter erected in an R1, R2, and R3 District shall have a minimum floor area, exclusive of attached garage, on the ground level enclosed by the main walls of such house of 1,040 square feet for a one-story house and 780 square feet for a house having more than one story.

§ 180-32. Accessory buildings and uses. [Amended 6-8-1987 by L.L. No. 3-1987]

- A. Permit. All accessory buildings or uses shall require a permit to be issued prior to their initiation as elsewhere required in this chapter, except that no permit shall be required for a single accessory building with dimensions that do not exceed a maximum of 100 square feet in size, providing all minimum required yard dimensions are observed.
- B. Number. There shall not be more than two accessory buildings to the residential lot, except that an agriculture operation shall not be subject to such provisions.
- C. Height. Maximum height of accessory buildings shall be one story or 15 feet, whichever is less.
- D. Location. Accessory buildings or structures in residential districts which are not attached to a principal building may be erected within the side or rear yard in accordance with the following requirements:
 - (1) For garage, tool or similar storage building, and swimming pool: 10 feet from side or rear lot line. Distance for in-ground pools will be measured from the water line and distance for aboveground pools will be measured from the most external portion of the structure, including decking. [Amended 12-12-1988 by L.L. No. 3-1988]
 - (2) For barn, stable, poultry house, kennel or other animal shelter or farm structure: 25 feet from side or rear lot line.
- E. Attached accessory buildings in residential districts. When an accessory building is attached to the principal building, it shall comply in all respects with the requirements of this chapter applicable to the principal building.

- F. Accessory buildings in business or industrial districts. Buildings accessory to other than a residential structure shall comply with front, side and rear yard requirements for the principal building to which they are accessory.
- G. No accessory building shall have a floor area in excess of 900 square feet at ground level.

ARTICLE VI

R-4 Districts — One-Family Residential Districts (Mobile Homes)

§ 180-33. Applicability.

The following regulations shall apply in all R-4 Districts.

§ 180-34. Uses permitted.

Uses permitted are as follows:

- A. The same uses permitted in a R-3 District.
- B. Mobile homes, subject to the following regulations:
 - (1) Such mobile homes shall be so located as to conform to all front, side and rear yard requirements.
 - (2) Such mobile homes shall be so located that a line passing through the center of the front and rear of such mobile home will be parallel with the road.

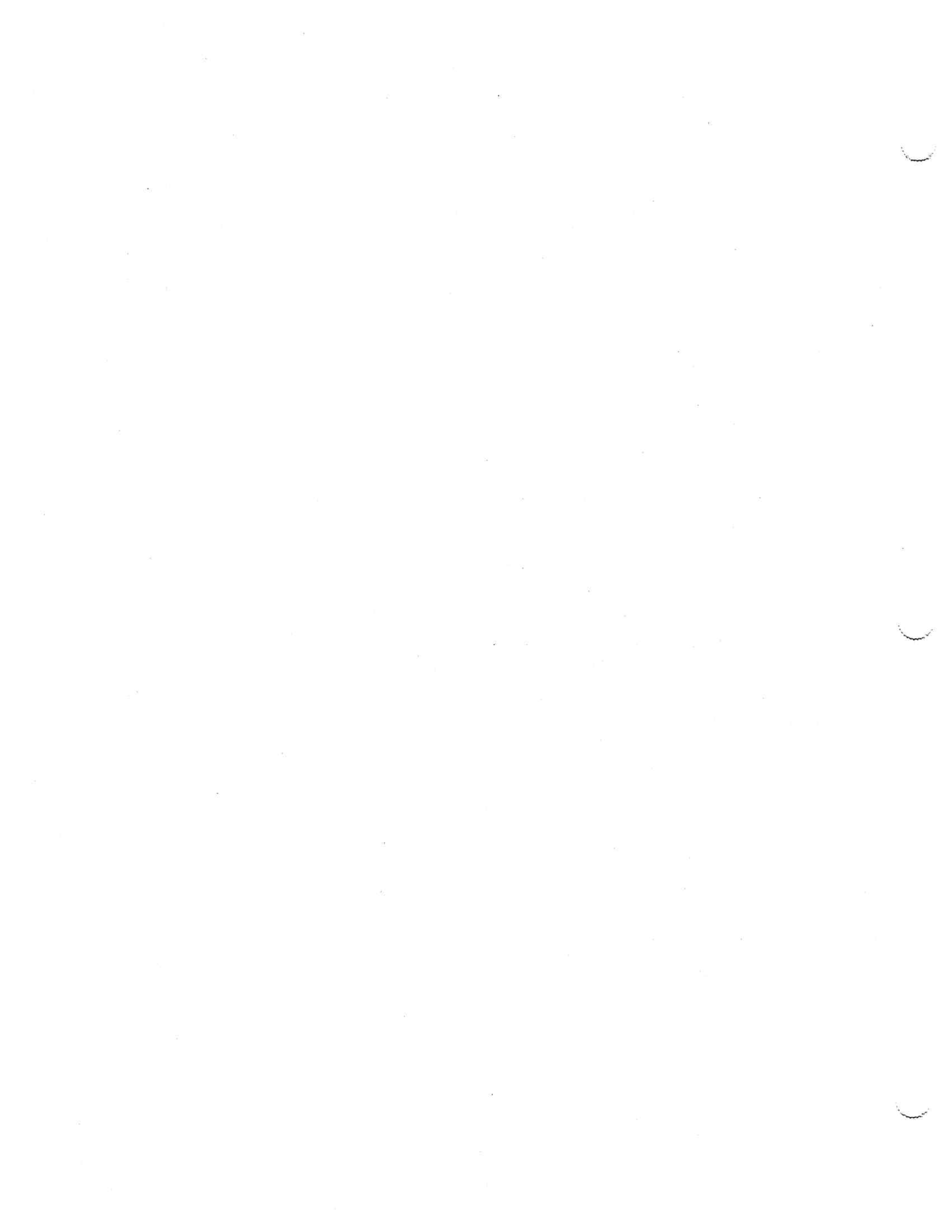
§ 180-35. Applicability of R-3 District regulations.

Except as provided in § 180-34 of this article, all regulations pertaining to a R-3 District shall apply to a R-4 District.

§ 180-36. Mobile homes in certain districts.

- A. Mobile homes may be placed in R-3 and B-2 Districts by obtaining a special permit from the Zoning Board of Appeals. A special permit shall be obtained as outlined in § 180-85B(2) of this chapter.
 - (1) A special permit may be granted by the Zoning Board of Appeals only upon finding that:
 - (a) The use is temporary.
 - (b) No other housing facilities are available to the applicant.
 - (c) That the mobile home is occupied by a member of the family of the owner of the land who is either a mother, father, brother, sister, son, daughter, mother-in-law or father-in-law of the owner of the land.

- (d) The permit is for a maximum of two years.
 - (e) The site must be approved by the Building Inspector and comply with the minimum setback requirements for the district involved.
- (2) Such approval shall be presented to the Board of Appeals prior to the hearing of the application.



- florist, furrier, hand laundry, milliner, optician, photographer, printer, shoeshiner, shoemaker or repairer, tailor, telegraph and telephone office, undertaker, upholsterer.
- H. Such accessory uses as are customarily incidental to the foregoing uses.
- I. Garages, used car lots and filling stations subject to the following provisions:
- (1) No repair work is to be performed out-of-doors.
 - (2) Pumps, lubricating or other devices are to be located at least 25 feet from edge of the paved portion of the road.
 - (3) All fuel, oil or similar substances are to be stored at least 35 feet distant from any lot line.
 - (4) All automobile parts, dismantled automobiles and similar articles are to be stored within the building.
 - (5) Such use shall be permitted only upon obtaining a special use permit from the Zoning Board of Appeals.
- J. (Reserved)⁵
- K. (Reserved)⁶
- L. Other uses which may, in the opinion of the Zoning Board of Appeals, be of the same nature and general character as those listed as permitted uses, and which will not be detrimental to the district in which they are located.

§ 180-44. Required lot frontage and area. [Amended 2-11-1991 by L.L. No. 1-1991]

Each lot in a General Business B-1 District shall have a frontage of not less than 150 feet and an area of not less than 40,000 square feet, except where said lot is on a public water supply, in which case the frontage shall not be less than 100 feet and the total area shall not be less than 20,000 square feet.

ARTICLE VIII

B-2 Districts — General Business Districts

§ 180-45. Applicability.

The following regulations shall apply in all B-2 Districts.

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5. Editor's Note: Former Subsection J, regarding outdoor advertising signs, was repealed 9-12-2016 by L.L. No. 1-2016. See now § 180-66, Signage.
 6. Editor's Note: Former Subsection K, regarding certain other signs, as amended, was repealed 9-12-2016 by L.L. No. 1-2016. See now § 180-66, Signage.

§ 180-46. Uses permitted.

Uses permitted are as follows:

- A. All uses permitted in a B-1 District subject to all provisions specified for such district.
[Amended 5-12-1992 by L.L. No. 1-1992]
- B. Mobile home courts subject to the following regulations:
 - (1) Each mobile home shall be located on a lot having a frontage of not less than 150 feet and an area of not less than 40,000 square feet with the following exception, 50 feet frontage and a minimum area of 5,000 square feet if a central water and sewage system is provided. [Amended 2-11-1991 by L.L. No. 1-1991]
 - (2) Mobile homes fronting on state, county or Town roads shall be set back 100 feet from the center of a state road and 75 feet from the center of a county or Town road. Mobile homes fronting on streets within a mobile home court shall be set back 45 feet from center of such streets.
 - (3) Mobile homes shall be so located that each lot in mobile home court will have side yards of at least 10 feet on each side.

§ 180-47. Applicability of B-1 District regulations.

Except as provided in § 180-46 of this article, all regulations pertaining to a B-1 District shall apply to a B-2 District.⁷

ARTICLE IX
General Industrial Districts — I Districts

§ 180-48. Applicability.

The following regulations shall apply in all I Districts.

§ 180-49. Uses permitted.

Uses permitted shall be all uses not otherwise prohibited by law, except as herein otherwise provided.

§ 180-50. Uses prohibited.

Uses prohibited are as follows:

- A. Junkyards or automobile wrecking yards.
- B. Yards for the storage, sorting or bailing of scrap iron, scrap paper or rags.

7. Editor's Note: Original § 12, Agricultural Districts — A Districts, amended by L.L. No. 2-1999, which immediately followed this section, was repealed 12-14-2009 by L.L. No. 1-2010.

- C. All uses of land, buildings and structures or industrial processes that may be noxious or injurious by reason of the production or emission of dust, smoke, refuse matter, odors, gas, fumes, noise, vibration or similar substances or conditions; provided, however, that any uses may be permitted if approved by the Zoning Board of Appeals and subject to the securing of a permit therefor, and to such conditions, restrictions and safeguards as may be deemed necessary by said Board for the purpose of protecting the health, safety, morals or the general welfare of the community.

§ 180-51. Building height limit.

All buildings hereafter constructed in an I District shall be limited to a height of 45 feet.

§ 180-52. Yards required.

- A. Each lot shall have a front yard depth of not less than 200 where located on a state road or a depth of not less than 175 feet where located on a county or Town road.
- B. There shall be a side yard along the side of each lot in an I District of not less than 10 feet; provided, however, that any lot bordering on a residence district shall have a side yard of a width not less than 200 feet of unoccupied space on the side bordering such residential district.
- C. There shall be a rear yard on every lot of an industrial district of not less than 25 feet.

ARTICLE X

Light Industrial Districts

[Added 4-8-2002 by L.L. No. 2-2002]

§ 180-53. Intent.

The industrial districts established in this section are designed to provide adequate and appropriate sites to situate light industrial facilities within the municipality to promote the municipality's economy and to protect public health and general welfare. The general goals include, among others, the following specific purposes:

- A. To provide adequate space in appropriate locations to meet the needs of the expected future economy for a variety of light industrial and related activities with due allowance for the need for a choice of sites.
- B. To provide, as far as possible, that such space will be available for use for light industrial and related activities, prohibiting the use of such space for new residential development.
- C. To encourage and accommodate facilities involved in assembling, disassembling, repairing, fabricating, finishing, packaging or processing operations of a light industrial nature by permitting such development in areas where this chapter restricts the emission of such nuisances without regard to the industrial products and processes involved.
- D. To protect area by restricting to light industrial zones those activities which are free from danger of fire, explosions, toxic and noxious matter, radiation and other hazards, and

from offensive noise, vibration, smoke, dust and other particulate matter, odorous matter, heat, humidity, glare and other objectionable influences.

- E. To promote the most desirable use of land and direction of building development, to promote stability of light industrial and related development, to strengthen the economic base of the municipality, and to protect the character of the district and its peculiar suitability for particular uses, to conserve the value of land and buildings and to protect the municipality's tax revenues.

§ 180-54. Permitted uses.

No building or premises shall be used, and no building or part of a building shall be erected which is arranged, intended or designed to be used, in whole or in part, for any purpose except the following:

- A. Small appliance and light metal fabrication.
- B. Bakeries, beverage and ice plants.
- C. Plastic fabrication assembly and distribution.
- D. Clothing, shoes, upholstery manufacturing shops.
- E. Electronic fabrication assembly and distribution.
- F. Furniture, woodworking, glass products fabrication.

§ 180-55. Special permit uses.

The following uses are allowed subject to the issuance of a special use permit:

- A. Food processing, canneries.
- B. Vehicle parts fabrication.
- C. Laundries.
- D. Soap and detergent fabrication.
- E. Gypsum, brick, and masonry fabrication.
- F. Wholesale storage and warehouses.

§ 180-56. Prohibited uses.

Any use which is noxious or offensive by reason of emission of odor, dust, noise, smoke, gas, fumes or radiation, which presents a hazard to public health or safety or which is otherwise inconsistent with the general goals of Light Industrial Districts is prohibited. Without limiting the generality of the foregoing, the following uses are deemed to be included herein:

- A. Recycling, resource recovery, solid waste and sanitary waste facilities, including, but not limited to, treatment, processing, incineration and disposal facilities, where such uses are primary and not incidental or accessory uses.
- B. Explosives manufacturing or storage.
- C. Industries which conduct processes which are exothermic in nature.
- D. Petroleum refining.
- E. Slaughterhouses.
- F. Concrete and asphalt plants.

§ 180-57. Required lot frontage and area.

Each lot in a General Light Industrial District shall have frontage of not less than 150 feet and an area of not less than 40,000 square feet, except where said lot is on a public water supply, in which case the frontage shall not be less than 100 feet and the total area shall not be less than 20,000 square feet.

§ 180-58. General requirements.

- A. Maximum building height. No part of any building shall be erected to a height greater than 45 feet measured from natural grade at the building site.
- B. Parking. All facilities must provide for on-site parking facilities. No on-street parking will be permitted.
- C. Accessory buildings. Accessory buildings are permitted where required for the function of the principal use(s). Accessory buildings must comply with all setback, screening and facade designs.
- D. Signage. All buildings and on-site signage must comply with the municipal ordinances regulating signage.⁸
- E. Utilities. Sites shall have access to adequate electric, natural gas, water, sewer, and telecommunications facilities. All electric, telephone, telecommunications, and other service lines shall be underground and shall comply with local codes.

⁸. Editor's Note: See § 180-66, Signage.

ARTICLE XI
Planned Development Districts (PD-R, PD-C and PD-E Districts)
[Added 7-11-2005 by L.L. No. 1-2005]

§ 180-59. Purpose.

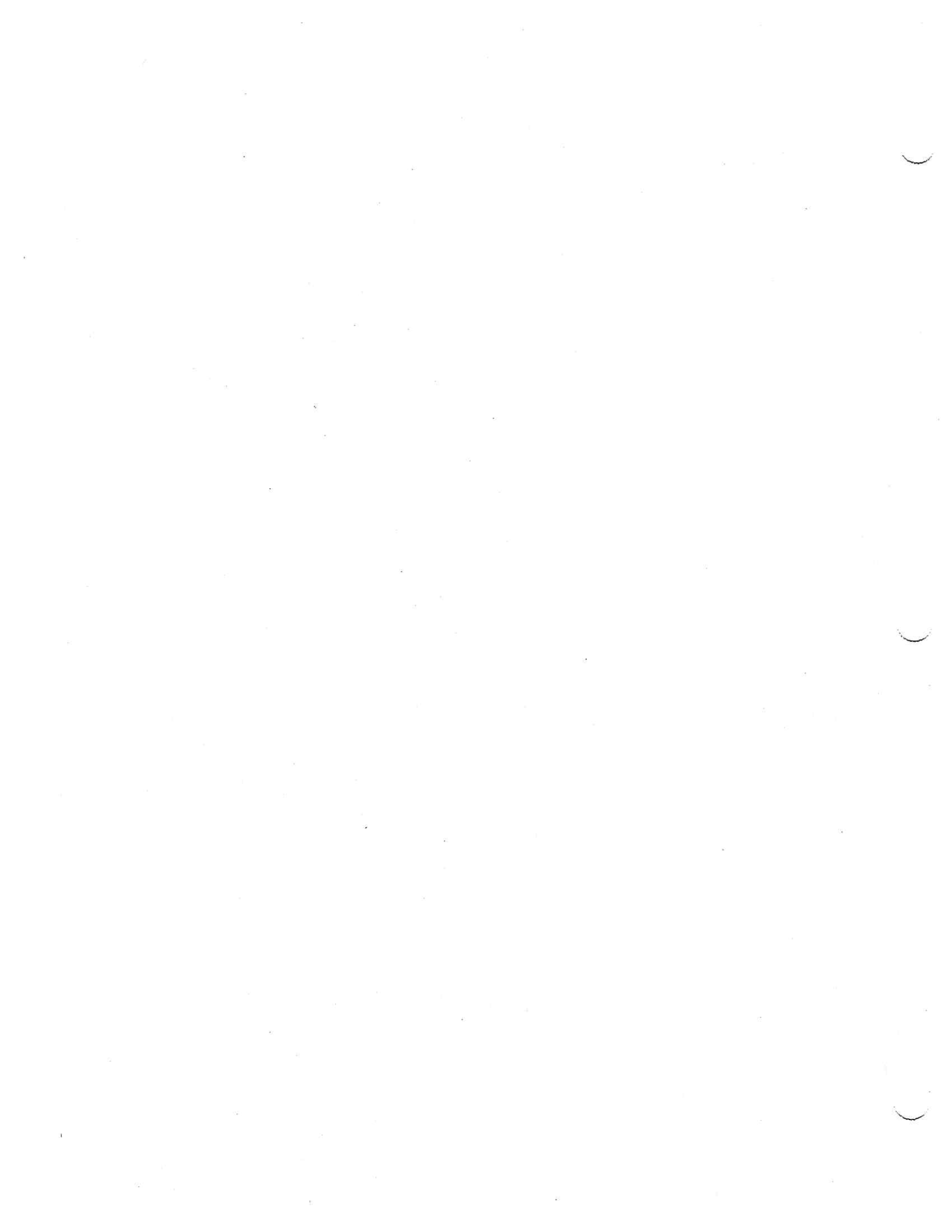
The purpose of the Planned Development District is to provide a means of developing those land areas within the Town considered appropriate for new residential or business use, or a satisfactory combination of these uses, in an economic and compatible manner, while encouraging the utilization of innovative planning and design concepts or techniques in these areas without departing from the spirit and intent of this chapter. In no case shall the regulations of this article be so interpreted as to circumvent the protection and benefits of this chapter to the residents or occupants of such development or the residents or occupants of adjoining properties.

§ 180-60. Classifications of planned development.

A proposal for development of a Planned Development District shall be identified by the general character or dominant use of the development, although the uses need not necessarily be exclusive of all other types of use. Such proposal shall be classified by the designations set out below:

- A. PD-R (Planned Development — Residential): a development a minimum of 7 1/2 acres in size in which more than 80% of the interior floor area of all buildings to be included in the development are used for residential purposes or those purposes customarily relating to residential use. Permitted uses include:
- (1) One-family, two-family, and multiple-family dwellings or a combination thereof.
 - (2) Cluster development.
 - (3) Neighborhood park, playground, recreation area, swimming pool, or golf course.
 - (4) Such accessory uses as are customarily incidental to the foregoing uses.
- B. PD-C (Planned Development — Commercial): a development a minimum of 7 1/2 acres in size in which all of the interior floor area of all buildings to be included in the development is to be used for commercial purposes as defined by this chapter. Permitted uses include:
- (1) Retail store.
 - (2) Shopping center.
 - (3) Professional or business office.
 - (4) Sales office or agency.
 - (5) Development, research or data processing center.
 - (6) Motel, restaurant.

- (7) Bank, savings and loan institution.
 - (8) Light manufacturing or assembly processes.
 - (9) Such accessory uses as are customarily incidental to the foregoing uses.
- C. PD-E (Planned Development — Extraordinary): a development not otherwise distinguishable under either previous classification, occupying a district of a minimum of 7 1/2 acres in area and containing less than the stated minimum proportions of any single



regulations prescribed for the district shall be complied with, and further provided that said lot was held under separate ownership at the time of the adoption of this chapter, and the owner thereof owned no adjoining land that could be combined with said lot to meet the dimension requirement. In the event that compliance with the yard and coverage requirements of the district would result in a structure of less than 575 square feet in area or a width less than 24 feet, the Zoning Board of Appeals shall determine and fix yard and coverage requirements for said lot to permit its reasonable utilization for a permitted use.

§ 180-66. Signage. [Amended 9-12-2016 by L.L. No. 1-2016]

- A. In the Residential Districts R1, R2, R3 and R4, signage shall be permitted in connection with the permitted uses in these districts, referring only to the use of the premises or activities carried on within the confines of the premises and in accordance with the following restrictions/requirements:
- (1) With the exception of customary agricultural operations (NOTE: Customary agricultural operations located in residential districts may display freestanding sign not to exceed 32 square feet.), all freestanding signs in any residential district shall not exceed nine square feet in area and shall not be located closer than 1/2 of the front yard setback. All nontemporary signage requires a signage permit obtained from the Codes Office. All signs shall not exceed six feet in height and shall be kept in a safe and neat condition.
 - (2) No permanent or temporary sign shall be placed in public highway right-of-way or public property without written authorization from the permitting agency or entity responsible for operation and maintenance of the public property or right-of-way.
 - (3) Flashing, blinking, scripting or noise-emitting signs are prohibited in R1, R2, R3, and R4 Residential Districts. Signs with glaring spotlights that create a hazard to motorists or impede the quality of life of neighboring residents are also prohibited in said districts.
 - (4) Permitted in all residential districts shall be one sign advertising the sale or rental of the property on which it is located.
- B. In the Business Districts B1, B2, ID and Planned Development District, one sign shall be permitted for each business conducted on the premises, unless previously approved or required by a site plan review. If the sign or advertising device is attached to the building, it is subject to the following conditions:
- (1) The area of the sign shall not exceed 32 square feet. When the business has frontage on more than one street, there may be one sign of 32 square feet on each street.
 - (2) In the case of a sign or device attached to a building (not to exceed 32 square feet) at a right angle and designed to be read from both sides, the one side area of sign only be counted as square footage.

- (3) In the case of letters or devices painted on or applied to the building, the area of the sign shall be defined as that required to circumscribe all such letters or devices and shall not exceed 32 square feet.
- (4) In addition to signs attached to structures, there may be one freestanding sign or advertising device, upon first submitting a sign plan to and obtaining approval from the Westmoreland Planning Board. All freestanding signs shall not exceed 64 square feet in area and not exceed 15 feet in height.
- (5) Portable or temporary signs on the exterior of the structure or on the premises are permitted up to a maximum of 14 days. All signs that exceed 14 days will be removed by the Codes Office. This includes banners, pennants and the like. The exception is signs placed on a premises or building during a construction period. These signs may not exceed nine square feet and are allowed until the completion of the construction.
- (6) Flashing, blinking, scripting or noise-emitting signs, without previous approval, are prohibited in all business districts. Signs with glaring spotlights that create a hazard to motorists or impede the quality of life of neighboring residents are also prohibited in said districts.
- (7) All signs or advertising devices that have been identified as nonconforming to this section will be required to conform when there is change in business usage, ownership or new/replacement sign. At that time all signs will need to conform to this chapter.
- (8) Anyone aggrieved by this section, seeking a sign contrary to these regulations, may seek a variance pursuant to Section 180-185.

§ 180-67. Mobile homes. [Amended 2-11-1991 by L.L. No. 1-1991; 5-12-1992 by L.L. No. 1-1992]

A mobile home or house trailer, which would be included in the definition of mobile home but for requirements as to size, presently located within the Town of Westmoreland pursuant to permit of the Zoning Board of Appeals under the Town of Westmoreland Zoning Ordinance of 1958 shall constitute a nonconforming use as defined by Article XIII of this chapter and shall be governed by the provisions of that article and by the terms of the permit granted by said Zoning Board of Appeals. Any mobile home or house trailer located in the Town of Westmoreland as a nonconforming use under the provisions of the Town of Westmoreland Zoning Ordinance of 1958 shall be permitted as a nonconforming use under the provisions of this chapter. All other mobile homes or house trailers are forbidden except as provided in this chapter; provided, however, that a small house trailer of the variety commonly known as a "travel trailer" used by its owner exclusively for recreational purposes may be parked for storage as provided in § 180-72 of this article.

- A. All mobile homes, except those located in mobile home courts, whether a permitted use under this chapter or granted through a variance, shall be placed on a permanent perimeter foundation, including any front porch attached thereto. Said foundation shall consist of a reinforced concrete pad being a minimum thickness of six inches and

extending a minimum of two inches beyond the structures perimeter on all four sides. The reinforced concrete pad shall have a substantial foundation consisting of a typical base of gravel, stone, sand or other suitable material with a thickness of six inches or more.

- B. Skirting and steps must be homogeneous and fit securely to the structure. The skirting material must be one of the following types: vinyl, aluminum, concrete, blocks (stucco) or exterior grade wood either stained or painted. The type of material to be used for skirting must be stated at the time of permit application.

§ 180-68. Apartments permitted.

The owner of any dwelling house in a R-2, R-3, R-4, B-1, or B-2 District existing at the effective date of this chapter, having one or more stories and a ground floor area in excess of 800 square feet, may make such alterations as may be necessary to convert such house into not more than two apartments on any one floor, provided that such conversion is accomplished without major alteration of exterior appearance of such house.

§ 180-69. Off-street parking.

- A. The following parking spaces shall be provided and satisfactorily maintained by the owner of the property for each building which, after the date when this chapter becomes effective, is erected, enlarged or altered for use for any of the following purposes:
- (1) Auditorium, stadium, theater or other places of public assemblage: at least one parking space for each eight seats provided for its patrons (based on maximum seating capacity).
 - (2) Hotel: at least one parking space for each three guest sleeping rooms.
 - (3) Restaurant or other eating place: at least one parking space for each five seats, except when it is in a building which provides parking space, in which case the number of places already provided may be taken to be available for the restaurant or other eating place. **[Amended 2-11-2013 by L.L. No. 2-2013]**
 - (4) Hospital, sanitarium or nursing home: at least one parking space for each five patients.
 - (5) Apartment houses: There shall be one off-street parking space for each dwelling unit. **[Amended 9-12-2016 by L.L. No. 1-2016]**
 - (6) Office buildings: at least one parking space for each 300 square feet of office floor space.
 - (7) Industrial or manufacturing establishments: at least one parking space for each 400 square feet of gross floor area or for each five workers.
- B. All parking spaces provided pursuant to this section shall be on the same lot with the building, except that the Board of Appeals may permit the parking spaces to be on any

lot within 500 feet of the building if it determines that it is impractical to provide parking on the same lot with the building.

§ 180-70. Off-street loading space requirement. [Added 2-11-2013 by L.L. No. 2-2013]

Every building occupied for the purpose of business or industry shall provide adequate space for off-street loading and unloading vehicles as determined by the Planning Board.

§ 180-71. Location of gas pressure reduction valves.

All valves and other devices installed by a public utility for the purpose of reducing the pressure of fuel gas shall be located, if installed on the exterior of any house or building, not farther than three feet from the front foundation wall of such house or building, except where unusual circumstances require, in the interest of safety, that such valves or device be located elsewhere, in which event a permit may be obtained from the Zoning Board of Appeals without the requirement that a public hearing be held. A written application for such permit shall state the conditions existing which make such other location necessary in the interest of safety.

§ 180-72. Recreational vehicles.

No travel trailer, boat, boat trailer or recreational vehicle shall be parked or stored for the off-season storage in any residential district except on the side or rear yards. No such vehicles shall be used for any residential, commercial or industrial purpose on the premises. For any single property no more than one type of each unit shall be placed on such property at any given time.

§ 180-72.1. Fencing. [Added 9-12-2016 by L.L. No. 1-2016]

A. Universal requirements. Unless previously approved or required by a site plan review:

- (1) All fences shall first require a permit from the Codes Office.
- (2) All fences shall maintain a minimum side and rear setback of three feet.
- (3) No fence, wall, or landscape structure grading or drainage activity shall cause a diversion of drainage to adjoining public or private property.
- (4) The decorative or finished side of a fence, wall or landscape structure shall face outward from lot.
- (5) No fence, wall, or landscape structure shall be erected, placed or maintained so as to obstruct visibility of vehicular traffic.
- (6) All fences, walls, or landscape structures that have been identified as nonconforming to this chapter will be required to conform when a major repair or replacement of fence, wall, or landscape structure is required. At that time, all new

fence, wall, or landscape structures will need to conform to this chapter. A new permit from the Codes Office will be required.

- B. Fences in R1, R2, R3 and R4 Districts, where front yard is required. No fence, wall, or landscape structure more than seven feet in height shall be erected, placed or maintained so as to obstruct visibility of vehicular traffic within the triangular area formed by the intersecting street right-of-way lines and a straight line joining said lines at points 20 feet distance from point of intersection, measured along said right-of-way lines.
- C. Fences in customary agricultural operations. All barbed wire and other fences in customary agricultural operations for the purpose of fencing a field or pasture, or enclosing crops, livestock, other agricultural uses or woodlots are exempt from this ordinance. Such fence may be constructed and maintained on the property line as long as it does not encroach on an adjoining landowner's property.
- D. Fences, walls, and landscape structures in R1, R2, R3, and R4 general lot. All universal requirements shall apply.
- E. Fences, walls and landscape structures in B1, B2, ID, and Planned Development. All require a permit from the Codes Office. The yard requirements of this chapter shall not prohibit any necessary retaining fence, wall or landscape structure, provided that in B1, B2, ID, and Planned Development Districts, height, side and rear setbacks will be finalized during the site plan review with the guidelines that no fence, walls or landscape structures exceed 20 feet in height. On a corner lot in B1, B2, ID, and Planned Development Districts where a front yard is required, no fence, wall or landscape structure more than seven feet in height shall be erected, placed or maintained so to obstruct visibility of vehicular traffic within the triangular area formed by the intersecting street right-of-way lines and a straight line joining said lines at points 20 feet distance from point of intersection, measured along said right-of-way lines. The decorative or finished side of any fence, wall or landscape structure shall face outward from lot. All fences, walls or landscape structures that have been identified as nonconforming to this chapter will be required to conform when there is change in business usage, ownership or new/replacement fence, wall or landscape structure. At that time all new fence, walls or landscape structures will need to conform to this chapter.
- F. Anyone aggrieved by this section, seeking a fence contrary to these regulations, may seek a variance pursuant to § 180-185.

§ 180-72.2. Trees/hedges. [Added 9-12-2016 by L.L. No. 1-2016]

- A. Hedges and trees in R1, R2, R3, and R4 Districts. Hedges and trees located in the front of a home cannot encroach upon the right-of-away, and fence/hedge growth should be maintained and not to exceed a minimum of three feet from the property lines.
- B. Hedges and Trees in B1, B2, ID, and Planned Development. All require a permit from the Codes Office unless previously approved or required by a site plan review. The yard requirements of this chapter shall not prohibit any necessary hedge or tree, provided that in B1, B2, ID, and Planned Development Districts, height, side, and rear setbacks will be finalized during the site plan review with the guidelines that no hedges or trees exceed

20 feet in height and maintain a minimum side and rear setback of three feet. On a corner lot in B1, B2, ID, and Planned Development District where a front yard is required, no hedge or tree more than seven feet in height shall be erected, placed or maintained so to obstruct visibility of vehicular traffic within the triangular area formed by the intersecting street right-of-way lines and a straight line joining said lines at points 20 feet distance from point of intersection, measured along said right-of-way lines. All hedges or trees that have been identified as nonconforming to this chapter will be required to conform when there is change in business usage, ownership or new/replacement hedge or tree. At that time, hedges or trees will need to conform to this chapter.

- C. Anyone aggrieved by this section may seek a variance pursuant to § 180-185.

ARTICLE XIII Nonconforming Uses

§ 180-73. Continuance of uses.

The lawful use of any building or land existing at the time of the enactment of this chapter may be continued except as otherwise provided herein as follows:

§ 180-74. Nonconforming use of land.

No nonconforming use of land shall be enlarged or increased, nor shall it be extended to occupy a greater area of land than that occupied by such use at the time of the adoption of this chapter. No such nonconforming use of land may be moved in whole or in part to any other portion of the lot or parcel of land occupied by such nonconforming use at the time of the adoption of this chapter. No nonconforming use of land shall be changed to another nonconforming use.

§ 180-75. Nonconforming use of buildings.

- A. Changes. A nonconforming use of a building, other than a one-family residence, may not be changed except to a conforming use. When once changed, a nonconforming use may not thereafter be resumed.
- B. Extension. No nonconforming building, other than a one-family residence, may be enlarged or extended unless such building or structure, including such enlargement or extension is made to conform to all regulations for the district in which it is located. A nonconforming use may be extended throughout any part of the building manifestly designed for such use if at the time of the adoption of this chapter a portion of the building was used for such nonconforming use.
- C. Restoration. No nonconforming building, other than a one-family residence damaged by fire, structural failure, wind, exposure or other natural cause to the extent of 50% or more or its real value at the time of such damage, exclusive of foundations, shall be repaired or rebuilt except in conformity with the provisions of this chapter.

- D. Alterations. No nonconforming building, other than a one-family residence, may be structurally altered unless such alterations are required by law; provided, however, that such maintenance and repair work as is required to keep a nonconforming building or structure in sound condition shall be permitted.
- E. For the purposes of this section, the word "building" is intended to be used in the singular regardless of whether or not the nonconforming use consists of more than one building.

§ 180-76. Building under construction.

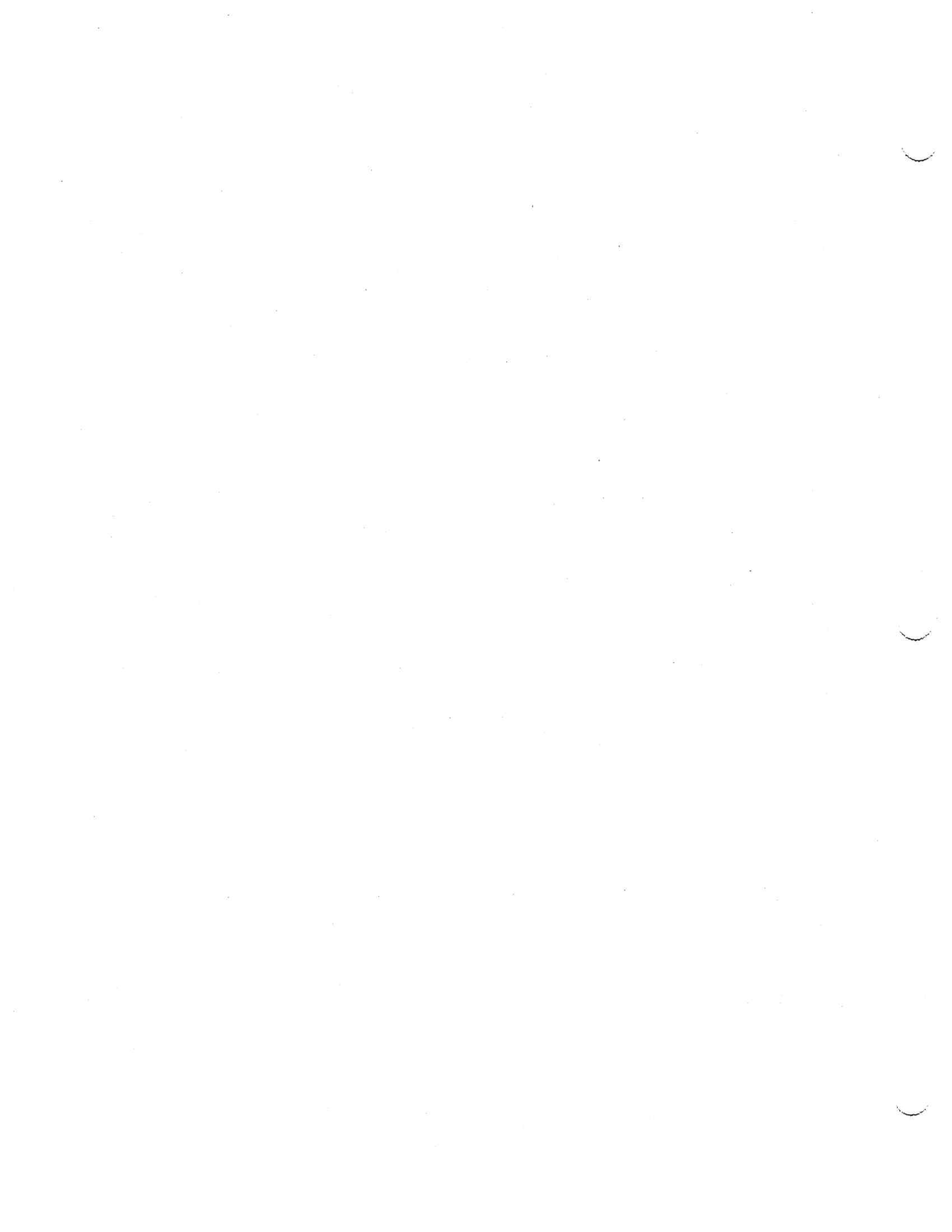
Any building for which a permit has been lawfully granted, the construction of which has been started and diligently prosecuted before the effective date of this chapter, may be completed.

§ 180-77. Removal.

If any building in which any nonconforming use is conducted is hereafter removed, the subsequent use of land on which such building was located and the subsequent use of any building erected thereon shall be in conformity with the regulations of the district in which such building is located.

§ 180-78. Discontinuance.

- A. Wherever a nonconforming use of land or building has been discontinued, such use shall not be thereafter reestablished, and any future use shall be in conformity with the provisions of this chapter. The use shall be deemed to have been discontinued under any of the following circumstances:
- (1) Vacancy of a building occupied by a nonconforming use for a continuous period of nine months.
 - (2) Vacancy of land occupied by a nonconforming use for a continuous period of 90 days.
 - (3) The manifestation of a clear intent on the part of the owner to abandon the nonconforming use.
- B. Nothing in this section shall be construed to be a discontinuance of a nonconforming use where the use shall be temporarily discontinued by reason of the service in the United States Armed Forces of the owner or lessee of such property.



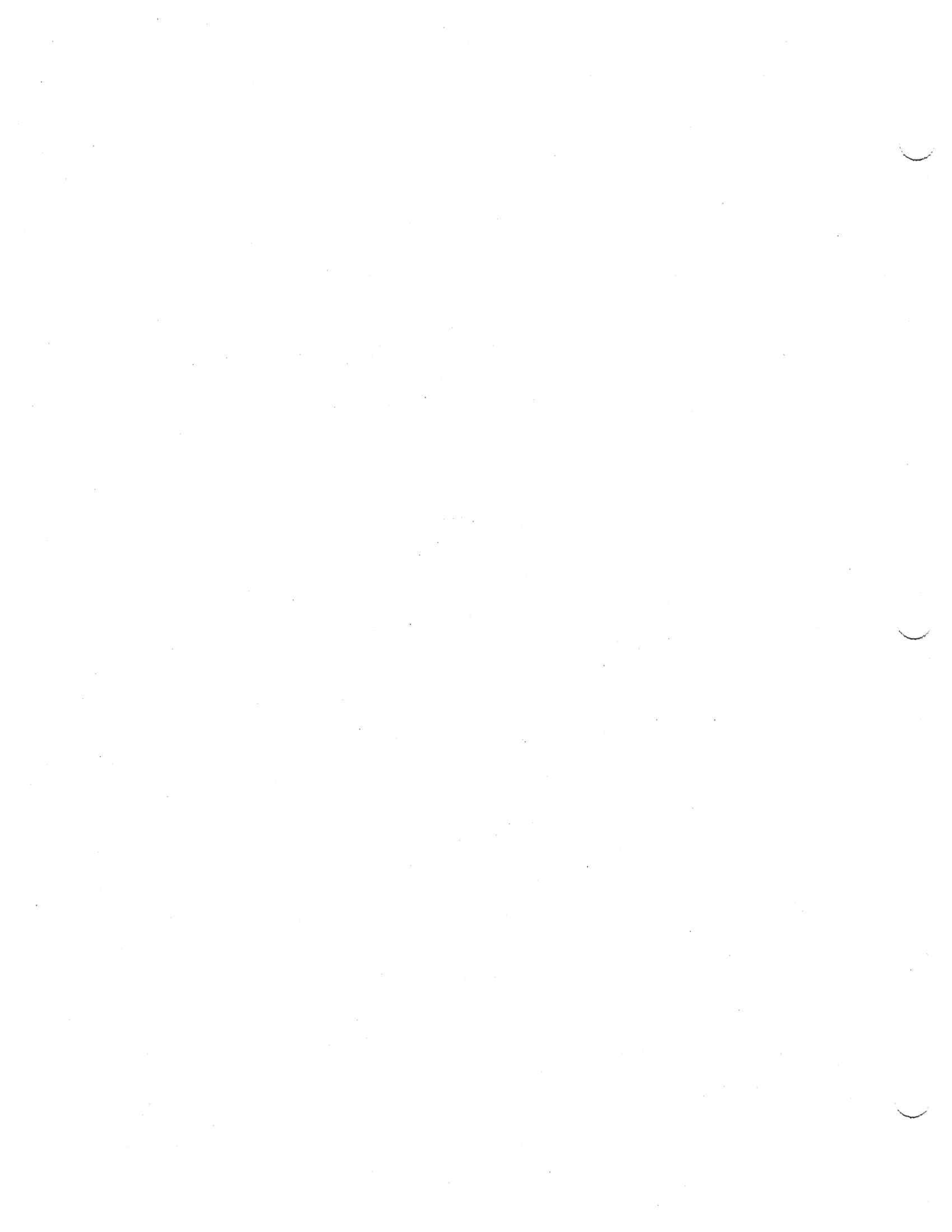
Chapter DL
DISPOSITION LIST

§ DL-1. Disposition of legislation.

The following is a chronological listing of legislation of the Town of Westmoreland adopted since the publication of the Code, indicating its inclusion in the Code or the reason for its exclusion. [Enabling legislation which is not general and permanent in nature is considered to be non-Code material (NCM).] The last legislation reviewed for the original publication of the Code was L.L. No. 1-2012, adopted 2-13-2012.

§ DL-1. Disposition of legislation.

| Local Law No. | Adoption Date | Subject | Disposition |
|----------------------|----------------------|---|--------------------|
| 1-2013 | 1-14-2013 | Water: cross-connection control | Ch. 175, Art. I |
| 2-2013 | 2-11-2013 | Adoption of Code | Ch. 1, Art. I |
| 3-2013 | 2-27-2013 | Moratorium on gas extraction through hydraulic fracturing | NCM |
| 4-2013 | 7-8-2013 | Flood damage prevention | Ch. 108 |
| 1-2013 | 2-25-2014 | Moratorium on gas extraction through hydraulic fracturing | NCM |
| 1-2016 | 9-12-2016 | Zoning amendment | Ch. 180 |



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DEFINITIONS NOTE: For the convenience of the Code user, all terms defined in this Code are included in the Index under the heading "Definitions and Abbreviations."

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