


*Borough of West Cape May, NJ
Wednesday, July 16, 2025*

Chapter 27. Zoning

ATTACHMENTS

Attachment 1- Points in LEED Rating System 

Attachment 2- Zoning Map 

Attachment 3 - Historic District Map 

§ 27-1. TITLE.

[Ord. No. 130-88 § A1]

This Chapter shall be known and may be cited as the "West Cape May Zoning Regulations."

§ 27-2. PURPOSE.

[Ord. No. 130-88 § A2; Ord. No. 428-09 § 27-2]

This Chapter is adopted pursuant to N.J.S.A. 40:55D-1 et seq., its amendments and supplements, and for the purpose of promoting and protecting the public health, safety and general welfare. It is specifically the intent of this chapter to:

- a. To secure safety from fire, flood, panic and other natural and man-made disasters;
- b. To provide adequate air, light and open space;
- c. To ensure that the development of the Borough of West Cape May does not conflict with the development and general welfare of neighboring municipalities, the County and the State as a whole;
- d. To promote the establishment of appropriate population densities and concentrations that will contribute to the well being of persons, neighborhoods and preservation of the environment;
- e. To encourage the appropriate and efficient expenditure of public funds by the coordination of public development with land use policies;
- f. To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational and commercial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all citizens of the Borough of West Cape May;
- g. To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which will result in congestion or blight;

- h. To promote a desirable visual environment through creative development techniques and good civic design and arrangements;
- i. To promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the Borough and to prevent urban sprawl and degradation of the environment through improper use of the land;
- j. To encourage planned unit developments which incorporate the best features of design and relate the type, design and layout of residential, commercial and recreational development to the particular site;
- k. To encourage senior citizen community housing construction;
- l. To encourage coordination of the various public and private procedures and activities shaping land development with a view towards lessening the cost of such development and fostering the more efficient use of land;
- m. To promote utilization of renewable energy sources;
- n. To create a walkable community;
- o. To create a vibrant mixed use commercial district where residents can live, work, shop and dine;
- p. To provide a more viable opportunity for small businesses.

§ 27-3. INTERPRETATION WITH OTHER LAWS AND GOVERNMENTAL REGULATIONS.

[Ord. No. 130-88 § A3]

The provisions of this chapter shall be deemed to be minimum requirements. Where the provisions of the Chapter impose a greater restriction or restrictions than is imposed or required by any other applicable law or governmental regulation, the provisions of this chapter shall be controlling. Where any other applicable law or governmental regulation requires a greater restriction or restrictions than the provisions of this chapter, such other applicable law or governmental regulation shall be controlling.

§ 27-4. PROHIBITED USES.

[Ord. No. 130-88 § A4; amended 3-24-2021 by Ord. No. 594-21]

All uses not specifically permitted under the provisions of this chapter are prohibited. Notwithstanding that limitation, in all commercial districts, more than one principal commercial use shall be permitted in one building or on one lot, provided that such multiple use obtains site plan approval and any appropriate area and/or bulk variances.

§ 27-5. APPLICATION OF ORDINANCE.

[Ord. No. 130-88 § A5]

No building or land may hereafter be used or occupied and no building or other improvement may be

erected, enlarged, improved, altered or moved without compliance with the provisions of this chapter.

§ 27-6. DEFINITIONS.

[Ord. No. 130-88 § A6; Ord. No. 375-07 § 2; Ord. No. 396-07 § 2; Ord. No. 420-08; Ord. No. 420-09 § 27-6; Ord. No. 500-2015; Ord. No. 539-2018; amended 9-13-2023 by Ord. No. 632-23]

For the purposes of this chapter, the following terms, phrases and words shall be defined as follows: Words in the plural shall include the singular. Words used in the present tense shall include the future. The word "shall" is always mandatory and not discretionary. The word lot shall include the words plot, premises and tract. The word used shall include the words arranged, designed, constructed, altered, converted, rented, leased or intended to be used. The word building shall include the words structure, dwelling, and residence. Any word, phrase or term not defined in this chapter shall have its meaning of standard or common usage.

ACCESSORY BUILDING

Or use shall mean a building or use which is located on the same lot as the principal building or use and which is subordinate and customarily incident to the principal building or use. An accessory building which is attached to the principal building shall be considered part of the principal building and shall not be considered as an accessory building.

ACCESSORY DWELLING UNIT

Shall mean a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters, and a private entrance, which is created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building.

AFFORDABLE HOUSING UNIT

Shall mean a residential dwelling unit that qualifies toward the Borough's affordable housing obligation as set forth in the Borough of West Cape May Housing Element and Fair Share Plan.

ALTERATION

Shall mean any change in, enlargement of, rearrangement or addition to a building.

APARTMENT BUILDING

Shall mean a building other than a hotel, motel or tourist/guest house which offer residential dwelling units for rent primarily intended for permanent occupancy.

APPLICANT

Shall mean any person, firm or entity having sufficient interest in a parcel or parcels of land and submitting an application for development under the provisions of this or the Subdivision and Site Plan Ordinances of the Borough of West Cape May.

APPLICATION FOR DEVELOPMENT

Shall mean the application forms and all accompanying documents required by this chapter or the Subdivision and Site Plan Ordinances of the Borough for approval of a subdivision, site plan, conditional use, planned unit development, zoning variance or direction for the issuance of a permit pursuant to N.J.S.A. 40:55D-34 or N.J.S.A. 40:55D-36.

AWNING

Shall mean an architectural projection or shelter projecting from and supported by the exterior wall of a building and composed of a covering of rigid or nonrigid materials and/or fabric on a supporting framework that may be either permanent or retractable.

BED AND BREAKFAST, GUEST HOUSE

Shall mean overnight accommodations with or without as morning meal provided to guests for compensation, which is designed, intended and used for transient travelers and not for permanent residency.

BEDROOM

Shall mean a room planned, used, designed or situated so as to be used primarily for sleeping.

BUILDING

Shall mean any structure or addition to an existing structure having a roof and adopted to or intended for the shelter or occupancy of persons, animals, property or a business use. When used herein, "building" and "structure" shall be interchangeable except where the context clearly indicated otherwise.

[Amended 9-13-2023 by Ord. No. 632-23]

BUILDING FRONT

Shall mean that part of a building facing a street or pedestrian walkway and which contains its principal entrance as indicated from the building's layout.

BUILDING HEIGHT

Shall mean the vertical distance measured to the highest point of a building from the natural grade of the lot on which it is located as measured at the edge of the public right-of-way. Maximum height limitations shall not be applicable to customary appurtenances not used for living or business area such as antennas, heating and air conditioning units or chimneys.

CANOPY

Shall mean a multi-sided overhead structure or architectural projection supported by attachments to a building on one or more sides and either cantilevered from such building or also supported by columns.

CARTWAY

Shall mean that portion of a street or right-of-way which is paved.

COMMON PROPERTY

Shall mean a portion or piece of a lot, tract or other property, together with the improvements thereon, designated and intended for the ownership use of enjoyment of the residents or occupants of the particular development.

CONDITIONAL USE

Shall mean a use which is permitted in a particular zoning district only upon a showing that such use complies with the specific provisions therefor in a particular zoning district and approval therefor by the Planning Board.

DEVELOPMENT

Shall mean the division of a parcel into two or more parcels, the resubdivision of a parcel and the construction, reconstruction, conversion, alteration or enlargement of any building or other

structure, or any mining, excavation or any use or change in use of any building, structure or land or extension of the use of land.

DWELLING

Shall mean:

- a. Single family dwelling shall mean a dwelling designed for occupancy by one family and containing one dwelling unit.
- b. Duplex dwelling or two-family dwelling shall mean a dwelling designed for occupancy by two families and containing two dwelling units.
- c. Dwelling unit shall mean a room or series of connecting rooms containing living, cooking, sleeping and sanitary facilities for one housekeeping unit.

FARM

Shall mean land which is actively devoted to agricultural, horticultural or livestock use, including, but not limited to, cropland, pasture, idle or fallow land, woodland, wetlands, farm ponds, farm roads and certain farm buildings and other enclosures related to agriculture pursuits. A farm may also include one farm residence for occupancy by the owner or operator of the farm.

[Ord. No. 500-2015]

FARM BUILDINGS

Shall mean buildings and activities incidental to farms such as: stables, barns; packing, grading and storage buildings for produce; buildings for the keeping of poultry and livestock; and garages for the keeping of equipment and trucks used in farm operations.

FARM, HORSE

Shall mean a farm that is primarily used for the breeding and boarding of horses and/or riding horses for recreation or competition, and does not meet the definition of horses for personal recreational use herein.

FARM RESIDENCE

Shall mean a dwelling, on a farm property and accessory to the farm operations, used as a full-time residence by the owners or operators of the farm.

[Ord. No. 500-2015]

FLOOR AREA RATIO (FAR)

Shall mean the sum of the gross floor area of all floors of buildings or structures compared to the total area of the site.

GARAGE

May be either attached to the principal structure or detached from the principal structure. The floor area of a garage shall be included when calculating lot coverage. The floor area of the garage will not be included when calculating gross floor area. If the garage has habitable space, the habitable space will also be included when calculating gross floor area.

GREEN ROOF

Shall mean an engineered roofing system that enables the growth of vegetation. Green roofs greatly reduce stormwater runoff, decrease the cost of heating and cooling, and provide an additional amenity for units.

GREEN ROOF, EXTENSIVE

Allows for low level and low maintenance planting and requires little or no additional structure.

GREEN ROOF, INTENSIVE

Allows for major plantings such as grasses, bushes and trees. Because intensive green roofs allow for higher maintenance plantings, they require more structure and support than a standard roof.

GROSS FLOOR AREA (GFA)

Shall mean the total habitable floor area contained within the outermost surfaces of the house structure, including hallways, closets, stairs, columns and wall thickness.

GUEST HOUSE.

See Bed and Breakfast.

HOME OCCUPATION

Shall mean that which is customarily carried on in a detached residential living unit or accessory building thereto and which is clearly incidental to and secondary to the primary residential use. Home occupations may include a single doctor's office, single dentist's office, single lawyer's office, area for sewing taken in by a resident, sharpening service, and professional business office operated solely by a single resident of the property. Whether any other uses shall be allowed as home occupations shall be determined by the Planning Board in accordance with the customary, incidental and secondary standards set forth herein. No home occupation shall be permitted any signs. No home occupation may utilize more than 400 square feet or 25%, whichever is less, of the principal structure or accessory structure, but not both. No home occupation shall have the exterior storage of any products, goods or equipment nor shall it involve any employees on the property other than one of the residents of the property.

HORSES FOR PERSONAL RECREATIONAL USE

Shall mean horses used solely for the enjoyment of occupants of the principal residential use.

HOTEL AND MOTEL

Shall mean a dwelling having three or more individual sleeping units and which is designed, intended and used for transient travelers and not for permanent residency.

LEED

Shall mean Leadership in Energy and Environmental Design, a Green Building Rating System® developed by the United States Green Building Council as a standard for developing high-performance, sustainable buildings.

LEED SCORECARD

Shall mean a voluntary checklist prepared by the applicant rating the subject application in accordance with the green building standards of the LEED Green Building Rating System.

LOT

Shall mean a designated parcel, tract or area of land established by an approved plat or otherwise established by law and including any improvements thereon. Contiguous undersized lots, under one legal beneficial ownership, shall, however, be considered as one lot once the dimensions thereof comply with the provisions of this chapter.

LOT AREA

Shall mean the area contained within the lot lines of a lot.

LOT, CORNER

Shall mean a lot which occupies the interior angle formed by the intersection of two or more streets.

LOT COVERAGE

Shall mean that area of a lot covered by improvements of any type, which are highly resistant to infiltration by water. It is to be expressed as a percentage.

LOT DEPTH

Shall mean the shortest horizontal distance between the front lot line and a line drawn perpendicular to the front lot line through the midpoint of the rear lot line.

LOT WIDTH

Shall mean the straight and horizontal distance between side lot lines at the front yard setback points on each side lot line.

MARQUEE

Shall mean any hood, canopy, awning or permanent construction that projects from a wall of a building, usually above an entrance.

NONCONFORMING BUILDING OR STRUCTURE

Shall mean a building or structure which is so situated on a lot or is so sized as to not be in conformance with the provisions of this chapter.

NONCONFORMING LOT

Shall mean a lot of record which does not conform with the applicable minimum size, width, depth or frontage requirements for the zoning district in which it is located under the provisions of this chapter.

NONCONFORMING USE

Shall mean a use or activity which was lawful prior to the adoption of this chapter but which does not now conform with the use regulations set forth in this chapter.

OUTDOOR SEATING

Shall mean any part of a food establishment, brewery, or distillery located outdoors, not used for any other purposes, and open to the sky, with the exception that it may have a retractable awning or umbrellas, and may contain furniture, including tables, chairs, railings, and planters that are readily movable.

PARKING SPACE

Shall mean a space not less than nine (9') feet wide by eighteen (18') feet in length designated for the parking of one motor vehicle exclusive of driveways, access drives, drive aisles, and public rights-of-way except that driveways may be utilized as parking spaces for one or two family dwellings provided they meet the applicable size requirements.

PERSONAL AND FINANCIAL SERVICES ESTABLISHMENTS

Shall mean any commercial establishment that provides services to customers, including, but not limited to banks, salons, day spas, fitness centers, dry cleaners and self-service laundromats.

PRINCIPAL USE

Shall mean the main purpose for which a lot or building is used.

RESIDENTIAL DENSITY -

Shall mean the number of dwelling units per gross area or residential land area of a development including new streets, easements, and open space areas.

RESTAURANT

Shall mean an establishment where food and drink are prepared, served, and consumed, mostly within the principal building.

RETAIL STORES

Shall mean establishments engaged in the selling or rental of retail goods or merchandise to the general public, including retail food stores.

ROADSIDE MARKETS, NURSERIES AND GARDEN CENTERS

Shall mean uses devoted to the growing, cultivation, storage, and/or sale of produce, landscaping products, and similar accessory and ancillary products.

ROADSIDE STAND

Shall mean a temporary, seasonal area or structure that is less than 100 square feet, and use for the display and sale of farm products grown exclusively on the property upon which the stand is located.

SETBACK LINE

Shall mean a line drawn parallel with a street line or lot line and drawn through the point of a building nearest to a street line or lot line.

[Amended 5-13-2020 by Ord. No. 580-20; 5-12-2021 by Ord. No. 597-21]

SHOPPING CENTER

Shall mean two or more commercial establishments on one property, managed as a unit and providing retail goods and personal services.

SIGN

Shall mean any object, device, display, or structure, or part thereof, situated outdoors or indoors, that is used to advertise, identify, display, direct, or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination, or projected images. Excluded are national and state flags, window displays (but not window signs).

STREET

Shall mean any street, avenue, boulevard, road or other way which is either (a) an existing State, County or Borough roadway; (b) is shown and designated on a plat heretofore approved pursuant to law; or (c) has received final approval therefor pursuant to N.J.S.A. 40:55D-1, et seq.

STRUCTURE

Shall mean anything constructed, assembled or erected for occupancy, use or decoration whether installed on, above, or below the surface of a lot of lots and which includes but is not limited to fences, tanks, towers, signs, stairs, advertising devices, swimming pools, animal enclosures and tennis courts.

[Amended 9-13-2023 by Ord. No. 632-23]

SWIMMING POOL

Shall mean any facility which is constructed, used or maintained to provide facilities for swimming or bathing and which is capable of containing water to a depth of eighteen (18") inches or more.

TOURIST HOUSE

See Bed and Breakfast.

USE

Shall mean the specific purpose for which land or a building or structure is designed, arranged, intended or for which it is or may be occupied or maintained. The term permitted use shall not be deemed to include any nonconforming use.

YARD, FRONT

Shall mean that part of a lot being open space and extending across the entire width of the lot between the front or street line of the lot and the closest point of any building on the lot to the front street line. The depth of the required front yard shall be measured at right angles to the front or street line of the lot across the entire width of the lot.

YARD, REAR

Shall mean that part of a lot being open space and extending across the entire width of the lot between the rear lot line of the lot and the closest point of any building on the lot to the rear lot line. The depth of the required rear lot line of the lot across the entire width of the lot.

YARD, SIDE

Shall mean that part of a lot being open space and extending across the entire length of the lot between each side lot line and the closest point of any building or the lot to each of the side lot lines. The width of each required side yard shall be measured at right angles to each side lot line of the lot across the entire length of each lot.

§ 27-7. ESTABLISHMENT OF ZONING DISTRICTS.

[Ord. No. 130-88 § A7; Ord. No. 153-89 § 2; Ord. No. 302-01 § 2; Ord. No. 348-05 § 2; Ord. No. 428-09 § 27-7]

The Borough of West Cape May is hereby divided into the following designated zoning districts:

- a. R-1 Urban Residential District.
- b. R-2 Rural Residential/Agricultural District.
- c. R-3 Rural Residential District.
- d. R-4 Rural Residential/Agricultural District.
- e. R-5 Rural Residential/Agricultural District.
- f. C-1 Broadway Commercial District.
- g. C-2 Park Commercial District.

- h. C-3 Sunset Commercial District.
- i. P - Preservation District

§ 27-8. ZONING MAP AND DESCRIPTION OF ZONING DISTRICT BOUNDARIES.

[Ord. No. 130-88 § A8; Ord. No. 153-89 § 1; Ord. No. 302-01 § 3; Ord. No. 348-05 § 3; Ord. No. 428-09; Ord. No. 457-10]

The boundaries of the zoning districts established herein are as portrayed on the map entitled "Zoning Map of the Borough of West Cape May," dated June 6, 2009 which is hereby adopted and incorporated by reference as an integral part of this chapter. The Zoning Map dated June 6, 2009 may be found on file at the Borough offices.

§ 27-9. INTERPRETATION OF BOUNDARIES.

[Ord. No. 130-88 § A9]

Zoning district boundary lines have been generally designed and intended to follow street center lines, railroad rights-of-way and lot or property lines as they exist on lots of record at the time of enactment of this chapter, unless otherwise indicated on the zoning map. The exact location of any disputed or questioned zoning district boundary shall be determined by the Zoning Board of Adjustment upon proper application thereto.

§ 27-10. R-1 URBAN RESIDENTIAL DISTRICT.

§ 27-10.1. Permitted Uses.

[Ord. No. 130-88 § A10]

In the R-1 zoning district, a lot, lots, building, buildings or premises may be used by right for the following purposes only:

- a. Single-family dwelling.
- b. Duplex dwelling.

§ 27-10.2. Minimum Area and Bulk Requirements.

[Ord. No. 130-88 § A10; Ord. No. 375-07 § 3; Ord. No. 396-07 § 3]

The minimum area and bulk requirements in the R-1 zoning district shall be as follows:

| | Single-Family Dwelling | Two-Family Dwelling |
|--------------|------------------------|---------------------|
| Lot area | 5,000 sq. ft. | 7,500 sq. ft. |
| Lot frontage | 50' | 75' |

| | | |
|---|---------------|------------------------|
| Lot width | 50' | 75' |
| Front yard setback | 20' | 20' |
| Each side yard setback | 6' | 6' |
| Total side yard setback | 16' | 16' |
| Rear yard setback | 20' | 20' |
| Lot depth | 100' | 100' |
| Maximum lot coverage for principal building and accessories | 40% | 40% |
| Maximum gross floor area | 2,250 sq. ft. | 1,688 sq. ft. per unit |
| Maximum floor area ratio | 45% | 45% |
| Building height | 35' | 35' |

§ 27-10.3. Accessory Uses.

[Ord. No. 130-88 § A10; Ord. No. 396-07 § 3; 9-11-2024 by Ord. No. 639-24]

The following accessory uses only shall be permitted of right in the R-1 zoning district:

- a. Detached garages.
- b. Tool sheds.
- c. Private residential swimming pools, subject to the provisions and requirements of Section **27-38** of the Borough Code.
- d. Private tennis courts.
- e. Home occupations as conditional uses only.
- f. Fences and walls.
- g. Off street parking areas.
- h. Storage sheds.
- i. Animal shelters for customary residential pets.
- j. Roadside stands.

§ 27-10.4. Minimum Bulk Requirements for Accessory Uses.

[Ord. No. 130-88 § A10; Ord. No. 396-07 § 5; 9-11-2024 by Ord. No. 639-24]

Except for private residential swimming pools, which are governed by Section **27-38** of the Code, the minimum bulk requirements for accessory uses in the R-1 zoning district shall be as follows:

- a. Distance to side lot line: 6'
- b. Distance to rear lot line: 6'

- c. Distance from principal structure: 6'
- d. Reserved:
- e. Height 15'

§ 27-10.5. Reserved.

[Ord. No. 375-07 § 4; Ord. No. 396-07 § 5]

§ 27-10.6. R-1 Front Porch.

[Ord. No. 375-07 § 5; Ord. No. 510-2016 § 1]

- a. Each single-family dwelling in the R-1 zoning district with a front porch that is fully open on the front and at least one side may deduct 200 square feet of porch space from the dwelling's gross floor area.
- b. Each two family dwelling in the R-1 zoning district with a front porch that is fully open on the front and at least one side may deduct 400 square feet of porch space (200 square feet per unit) from the dwelling's gross floor area.

§ 27-10.7. Reserved.

[1] *Editor's Note: Subsection **27-10.8**, R-1 Additional Impervious Ground Coverage, added by Ordinance No. 375-07, was repealed in its entirety by Ordinance No. 396-07.*

§ 27-10.8. Green Building Practices.

[Ord. No. 420-08 § 3; Ord. No. 479-13]

- a. In order to encourage sustainable green building practices in accordance with U.S. Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED), a bonus of additional feet may be added to the maximum floor area ratio for property owners or developers that comply with certain of the LEED standards, set forth in Appendix A, which shall be incorporated into herein by reference. The complete LEED standards may be found at <http://www.usgbc.org>, or by contacting the U.S. Green Building Council, 1015 18th Street, NW, Suite 508, Washington, DC 20036. Copies of the standards are also available in the Clerk's or Zoning Officers at the West Cape May Borough Hall.
- b. Any developer or property owner that includes at least 25 LEED points for LEED standards set forth in Appendix A^[1] incorporated into the plan for construction may add 250 square feet to a dwelling's permitted gross floor area in the district where the dwelling is located.

[1] *Editor's Note: Appendix A referred to herein, may be found as an attachment to this chapter.*
- c. Any developer or property owner that includes at least 20 LEED points for the LEED standards set forth in Appendix A^[2] incorporated into the plan for construction may add 200 square feet to

a dwelling's permitted gross floor area in the district where the dwelling is located.

[2] *Editor's Note: Appendix A referred to herein, may be found as an attachment to this chapter.*

- d. Any developer or property owner that includes at least 15 LEED points for the LEED standards set forth in Appendix A^[3] incorporated into the plan for construction may add 150 square feet to a permitted dwelling's gross floor area in the district where the dwelling is located.
[3] *Editor's Note: Appendix A referred to herein, may be found as an attachment to this chapter.*
- e. A developer or property owner proposing a plan for construction that is eligible for less than 15 LEED points may add additional square feet to a dwelling's permitted gross floor area as follows: 100 square feet for 10 LEED points and 50 square feet for five points.
- f. The Zoning Officer shall have no authority to approve additional square footage to a permitted gross floor area, except according to the ratios set forth above, and in no case shall a developer or property owner be allowed additional square footage for less than five LEED points.
- g. The following process shall apply to applicants seeking a FAR bonus pursuant to LEED guidelines, as set forth above:
 - 1. A LEED scorecard shall be submitted with a zoning certificate application detailing which credits the applicant shall seek to apply to the project, and the method that will be utilized to satisfy the credit.
 - 2. All plans submitted for review shall contain the project components listed on the LEED scorecard.
 - 3. A zoning certificate or variance approval granted pursuant to green building incentives as provided in this section shall contain conditions that all components listed on the LEED scorecard be achieved and maintained.
 - 4. If the final project does not include the approved green building components, the Construction Official shall not issue a certificate of completion and/or occupancy certification.
 - 5. Final occupancy certification shall be issued by the Construction Official upon certification by the property owner or developer that the project achieved the approved level of LEED certification.

§ 27-11. R-2 RURAL RESIDENTIAL/AGRICULTURAL DISTRICT.

§ 27-11.1. Permitted Uses.

[Ord. No. 130-88 § A11; Ord. No. 396-07 § 8]

In the R-2 zoning district, a lot, lots, building, buildings or premises may be used by right for the following purposes only:

- a. Farms.
- b. Single-family dwellings.

- c. Two family dwellings.
- d. Multiple dwellings having three or four dwelling units in one or more structures.
- e. Mobile home parks consisting of 20 or more mobile homes.
- f. Campgrounds having 35 or more sites for camping.
- g. Properly licensed cannabis cultivation facilities, provided they conform to all area and bulk standards governing farms in the R-2 district, including standards for permitted accessory uses. In addition, such establishments will meet the following standards:
[Added 7-14-2021 by Ord. No. 603-21]
 - 1. There will be 24/7 on-site video monitoring of the facility. The video shall be maintained for the period prescribed by state law, but in no case less than 30 days.
 - 2. On-premises cannabis consumption areas are prohibited.
 - 3. Compliance with all area and bulk standards in the zone.
 - 4. Compliance with all state statutory and regulatory requirements.

§ 27-11.2. Minimum Area and Bulk Requirements for Residential Use.

[Ord. No. 130-88 § A11; Ord. No. 375-07 § 8; Ord. No. 396-07§ 9]

The minimum area and bulk requirements in the R-2 zoning district are as follows:

| | Single-Family Dwelling | Two-Family Dwelling | Three Dwelling Unit Property | Four Dwelling Unit Property |
|---|------------------------|---|--|---|
| Lot area | 7,500 sq. ft. | 10,000 sq. ft. | 12,500 sq. ft. | 15,000 sq. ft. |
| Lot frontage | 50' | 75' | 100' | 125' |
| Lot width | 50' | 75' | 100' | 125' |
| Front yard setback | 20' | 20' | 20' | 20' |
| Each side yard setback | 6' | 6' | 6' | 6' |
| Total side yard setback | 16' | 16' | 16' | 16' |
| Rear yard setback | 20' | 20' | 20' | 20' |
| Lot depth | 150' | 133' | 125' | 120' |
| Maximum lot coverage for principal building and accessories | 40% | 40% | 40% | 40% |
| Maximum gross floor area | 3,375 sq. ft. | 2,250 sq. ft. per unit 4,500 sq. ft. per structure | 1,875 sq. ft. 5,625 sq. ft. per structure | 1,688 sq. ft. per unit 6,750 sq. ft. per structure |

| | | | | |
|--------------------------|-----|-----|-----|-----|
| Maximum floor area ratio | 45% | 45% | 45% | 45% |
| Building height | 35' | 35' | 35' | 35' |

§ 27-11.3. Accessory Uses.

[Ord. No. 130-88 § A11; Ord. No. 396-07 § 10; 9-11-2024 by Ord. No. 639-24]

The following accessory uses only shall be permitted of right in the R-2 zoning district for single family dwellings, two family dwellings, three dwelling unit properties and four dwelling unit properties:

- a. Detached garages.
- b. Tool sheds.
- c. Private residential swimming pools, subject to the provisions and requirements of Section **27-38** of the Borough Code.
- d. Private tennis courts.
- e. Fences and walls.
- f. Off street parking areas.
- g. Storage sheds.
- h. Home occupations as conditional uses only.
- i. Animal shelters for customary residential pets.
- j. Roadside stands.

§ 27-11.4. Minimum Bulk Requirements for Accessory Uses.

[Ord. No. 130-88 § A11; Ord. No. 396-07 § 11; 9-11-2024 by Ord. No. 639-24]

Except for private residential swimming pools, which are governed by Section **27-38** of the Code, the minimum bulk requirements for accessory uses in the R-2 zoning district shall be as follows:

- a. Distance to side lot line: 6'
- b. Distance to rear lot line: 6'
- c. Distance from principal structure: 6'
- d. Reserved:
- e. Height: 15'

§ 27-11.5. Minimum Area Requirements for All Other Uses.

[Ord. No. 130-88 § A11; Ord. No. 396-07 § 12]

The minimum area requirements in the R-2 zone for all other uses permitted by right shall be as follows:

| | Farms | Mobile Home Park | Campgrounds |
|----------|--------------|-------------------------|--------------------|
| Lot area | 5 acres | 4 acres | 4 acres |

§ 27-11.6. Permitted Accessory Uses for Farms, Mobile Home Parks and Campgrounds.

[Ord. No. 130-88 § A11]

The following accessory uses only shall be permitted of right in the R-2 zoning district for farms, mobile home parks and campgrounds:

- a. Customary accessory farm buildings.
- b. Customary recreational facilities for mobile home parks and campgrounds including, but not limited to, tennis courts, swimming pools, sanitary facilities and an office building servicing the mobile home park or campground.

§ 27-11.7. Minimum Bulk Requirements for Accessory Uses to Farms, Mobile Home Parks and Campgrounds.

[Ord. No. 130-88 § A11; Ord. No. 396-07 § 13]

The minimum bulk requirements for accessory uses to farms, mobile home parks and campgrounds in the R-2 zoning district shall be as follows:

- a. Distance from side lot line: 6'
- b. Distance from rear lot line: 6'
- c. Distance from principal structure: 10'
- d. Lot coverage: 15%
- e. Height: 25'
- f. Farm building—distance from side lot line: 40'
- g. Farm buildings—distance from rear lot line: 20'

§ 27-11.8. Reserved.

[Ord. No. 375-07 § 8; Ord. No. 396-07 § 14]

§ 27-11.9. R-2 Front Porch.

[Ord. No. 375-07 § 9; Ord. No. 510-2016 § 2]

- a. Each single-family dwelling in the R-2 zoning district with a front porch that is fully open on the front and at least one side is allowed to deduct 200 square feet of porch space from the dwelling's gross floor area.
- b. Each two-family dwelling in the R-2 zoning district with a front porch that is fully open on the front and at least one side is allowed to deduct 400 square feet of porch space from the dwelling's gross floor area.
- c. Each three-dwelling units in the R-2 zoning district with a front porch that is fully open on the front and at least one side is allowed to deduct 600 square feet of porch space from the dwelling's gross floor area.
- d. Each four-dwelling unit in the R-2 zoning district with a front porch that is fully open on the front and at least one side is allowed to deduct 800 square feet of porch space from the dwelling's gross floor area.

§ 27-11.10. Reserved.

[Ord. No. 375-07 § 10; Ord. No. 396-07 § 15]

§ 27-12. R-3 RURAL RESIDENTIAL DISTRICT.

[1] *Editor's Note: Pursuant to Ordinance No. 348-05, the former R-3 zone lots are now in zone R-5. Prior ordinance history includes portions of Ordinance No. 130-88.*

§ 27-13. R-4 RURAL RESIDENTIAL DISTRICT.

§ 27-13.1. Permitted Uses.

[Ord. No. 302-01 § 4; Ord. No. 396-07 § 17]

In the R-4 zoning district, a lot, lots, building, buildings or premises may be used by right for the following purposes only:

- a. Farms.
- b. Single-family dwellings.
- c. Properly licensed cannabis cultivation facilities, provided they conform to all area and bulk standards governing farms in the R-4 district, including standards for permitted accessory uses. In addition, such establishments will meet the following standards:
[Added 7-14-2021 by Ord. No. 603-21]
 1. There will be 24/7 on-site video monitoring of the facility. The video shall be maintained for the period prescribed by state law, but in no case less than 30 days.
 2. On-premises cannabis consumption areas are prohibited.

- e. Fences and walls.
- f. Off street parking areas.
- g. Animal shelters for customary residential pets.
- h. Roadside stands.
- i. Customary accessory farm buildings.
- j. Horses for personal recreational use.

§ 27-13.5. Minimum Area and Bulk Requirements for Accessory Uses.

[Ord. No. 302-01 § 4; Ord. No. 396-07 § 20; 9-11-2024 by Ord. No. 639-24]

Except for private residential swimming pools, which are governed by Section **27-38** of the Code, the minimum bulk requirements for accessory uses in the R-4 zoning district shall be as follows:

- a. Distance to side lot line: 6'
- b. Distance to rear lot line: 6'
- c. Distance from principal structure: 6'
- d. Maximum lot coverage: 5%
- e. Height: 15'
- f. Horses for personal recreational use—minimum area: 1/2 acre per horse
- g. Horse barn or stable—distance to side or rear lot line: 12'

§ 27-13.6. Permitted Accessory Uses for Farms.

[Ord. No. 302-01 § 4]

The following accessory uses only shall be permitted of right in the R-4 zoning district for farms.

- a. Customary accessory farm buildings.

§ 27-13.7. Minimum Bulk Requirements for Accessory Uses to Farms.

[Ord. No. 302-01 § 4; Ord. No. 348-05 § 6; Ord. No. 396-07 § 21]

The minimum bulk requirements for accessory uses to farms in the R-4 zoning district shall be as follows:

- a. Distance to side lot line: 40'
- b. Distance to rear lot line: 20'

- c. Distance from principal structure: 10'
- d. Lot coverage: 15%
- e. Height: 25'
- f. Silo: 60 feet maximum

§ 27-13.8. Pre-Existing Vacant Lots.

[Ord. No. 302-01 § 4]

Any pre-existing vacant lot of record that meets current zoning standards now shall remain a buildable lot and shall not require an area or bulk variance.

§ 27-13.9. Reserved.

[Ord. No. 375-07 § 12; Ord. No. 396-07 § 22]

§ 27-13.10. Reserved.

[Ord. No. 375-07 § 13; Ord. No. 396-07 § 23]

§ 27-14. R-5 RURAL RESIDENTIAL/AGRICULTURE DISTRICT.

§ 27-14.1. Permitted Uses.

[Ord. No. 348-05 § 4; Ord. No. 396-07 § 24]

In the R-5 zoning district, a lot, lots, building, buildings or premises may be used by right for the following purposes only;

- a. Farms.
- b. Single-family dwellings.
- c. Mobile home subject to the regulations in § 27-11, R-2 Rural Residential/Agricultural District.
- d. Properly licensed cannabis cultivation facilities, provided they conform to all area and bulk standards governing farms in the R-5 district, including standards for permitted accessory uses. In addition, such establishments will meet the following standards:
[Added 7-14-2021 by Ord. No. 603-21]
 1. There will be 24/7 on-site video monitoring of the facility. The video shall be maintained for the period prescribed by state law, but in no case less than 30 days.
 2. On-premises cannabis consumption areas are prohibited.

- f. Off-street parking areas.
- g. Animal shelters for customary pets.
- h. Roadside stands.
- i. Customary accessory farm buildings.

§ 27-14.5. Minimum Bulk Requirements for Accessory Uses.

[Ord. No. 385-05 § 4; Ord. No. 396-07 § 27; 9-11-2024 by Ord. No. 639-24]

Except for private residential swimming pools, which are governed by Section **27-38** if the Code, the minimum bulk requirements for accessory uses in the R-5 zoning district shall be as follows:

- a. Distance to side lot line: 6'
- b. Distance to rear lot line: 6'
- c. Distance from principal structure: 6'
- d. Maximum lot coverage: 5%
- e. Height: 15'
- f. Horses for personal recreational use—minimum area: 1/2 acre per horse
- g. Horse barn or stable—distance to side or rear lot line: 12'

§ 27-14.6. Permitted Accessory Uses for Farms.

[Ord. No. 348-05 § 4]

The following accessory uses only shall be permitted of right in the R-5 zoning district for farms:

- a. Customary accessory farm buildings.

§ 27-14.7. Minimum Bulk Requirements for Accessory Uses to Farms.

[Ord. No. 348-05 § 4; Ord. No. 396-07 § 28]

The minimum bulk requirements for accessory uses to farms in the R-5 zoning district shall be as follows:

- a. Distance to side lot line: 40'
- b. Distance to rear lot line: 20'
- c. Distance from principal structure: 10'
- d. Lot coverage: 15%
- e. Height: 25'

f. Silo: 60' maximum

§ 27-14.8. Reserved.

[Ord. No. 375-07 § 15; Ord. No. 396-07 § 29]

§ 27-14.9. Pre-Existing Nonconforming Lots and Structures.

[Ord. No. 348-05 § 7]

Any pre-existing lot of record that would otherwise be subject to the requirements of the R-5 zone but that meets existing area and bulk zoning standards shall remain a buildable lot and shall not require an area or bulk variance, for either development or expansion. Additionally, any vacant lot contiguous to another lot owned legally or equitably by the same owner shall remain a separate lot, and shall not be considered merged as a result of this amendment. Furthermore, if because of fire, flood or catastrophe, a use or structure existing at the time of this amendment is destroyed, that use or structure may be restored to its previous condition without the necessity of a variance.

(It is the intent of this subsection that those lots and uses existing at the time of this amendment be preserved as pre-existing lots and uses, and that they retain the benefit of the zoning that existed prior to this amendment.)

§ 27-14.10. Reserved.

[Ord. No. 375-07 § 16; Ord. No. 396-07 § 30]

§ 27-15. C-1 BROADWAY COMMERCIAL DISTRICT.

[Ord. No. 428-09 § 27-15]

The purposes of the C-1 district are to: create a thriving commercial district; encourage low-impact commercial development; promote diversity in services and accommodations; encourage year-round commercial uses that serve the needs of the community; and reuse of valuable historic buildings to expand commercial use.

The C-1 regulations recognize the predominance of residential uses by continuing to permit single- and two-family residential, while encouraging commercial by providing zoning incentives for such uses.

The purpose of allowing residential and professional offices above ground floor retail is to increase the viability of the property by creating continuous activity. Residential units above commercial also provide a realistic opportunity for affordable housing.

[1] *Editor's Note: Former C-1 Main Business/Mixed Use District, previously codified herein and containing portions of Ordinance No. 130-88, was replaced with C-1 Broadway Commercial District by Ordinance No. 428-09.*

§ 27-15.1. Permitted Uses in the C-1 District.

[Ord. No. 428-09 § 27-15.1; Ord. No. 539-2018]

In the C-1 zoning district, a lot, lots, building, buildings or premises may be used by right for the following purposes only:

- a. Bed and Breakfasts, hotels and motels;
- b. Retail stores, excluding car dealerships, service stations and gas stations;
- c. Personal and financial services establishments, excluding drive-through service;
- d. Professional offices;
- e. Single-family and two-family dwellings;
- f. Reserved.
- g. Mixed use — residential dwelling units and/or professional offices above ground floor permitted commercial uses;
- h. Roadside markets, nurseries and garden centers, and roadside stands;
- i. Churches and other charitable, educational, civic or nonprofit uses or facilities;
- j. Public recreational facilities and public parking facilities.
- k. Restaurants, including outdoor dining (per Subsection **27-27.15** Outdoor Dining Standards) and excluding drive-thru service. Restaurants that serve alcoholic beverages are permitted as conditional uses, subject to the requirements in § **27-29**, Conditional Uses.
- l. Liquor stores (for off-premises consumption only), either as a separate establishment or in conjunction with a retail establishment, and subject to the following:
 1. No outside storage or outside display of merchandise of any type.
 2. All cooling, refrigeration and generation equipment must be contained within the building area.
- m. Brewery establishment operating under an approved State-issued limited brewery license issued and valid pursuant to N.J.S.A. 33:1-10(1b), permitted as Conditional Use subject to the requirements in § **27-29**, and subject to the bulk requirements in § **27-15.6**.
- n. Any distillery operating under a State issued distillery license issued and valid pursuant to N.J.S.A. 33:1-10(3), permitted as Conditional Use subject to the requirements in § **27-29**, and subject to the bulk requirements in § **27-15.6**.

§ 27-15.2. Minimum Area and Bulk Requirements for Residential Uses in the C-1 Zoning District.

[Ord. No. 428-09 § 27-15.2]

Single-family and two-family dwellings and accessories, including accessory apartments, shall follow the R-1 area and bulk regulations and accessory use regulations, with the exception of a ten (10') foot front yard setback requirement (R-1 requires twenty (20') feet).

§ 27-15.3. Minimum Area and Bulk Requirements.

[Ord. No. 428-09 § 27-15.3]

Minimum area and bulk requirements for Bed and Breakfasts and hotels and motels in the C-1 zoning district shall be as follows:

| | B & B | Hotel/Motel |
|-------------------------|---|---|
| Lot area | 5,000 sq. ft. for first 6 units and 1,500 sq. ft. per unit thereafter | 5,000 sq. ft. for first 6 units and 1,500 sq. ft. per unit thereafter |
| Lot frontage | 100' | 100' |
| Lot width | 100' | 100' |
| Front yard setback | 20' | 20' |
| Each side yard setback | 10' | 10' |
| Total side yard setback | 20' | 20' |
| Rear yard setback | 20' | 20' |
| Lot coverage | 50% | 50% |
| Building height | 35' | 35' |

§ 27-15.4. Accessory Uses for Bed and Breakfasts and Hotels and Motels.

[Ord. No. 428-09 § 27-15.4; 9-11-2024 by Ord. No. 639-24]

The following accessory uses shall be permitted of right in the C-1 zoning district:

- a. Detached garages.
- b. Tool sheds.
- c. Private residential swimming pools, subject to the provisions and requirements of Section **27-38** of the Borough Code.
- d. Private tennis courts.
- e. Fences and walls.
- f. Off-street parking areas.
- g. Storage sheds.
- h. Animal shelters for customary residential pets.
- i. Restaurants in B&Bs and hotels and motels which shall have a maximum number of seats equal to two times the total number of units in the hotel or motel.
- j. Health club facilities in B&Bs and hotels and motels provided such are limited to no more than five (5%) percent of the total floor area of the facility.

- k. Conference and meeting rooms in B&Bs and hotels and motels provided such are limited to no more than 20% of the total floor area of the facility.

§ 27-15.5. Minimum Area and Bulk Requirements for Accessory Uses to Bed and Breakfasts and Hotels and Motels.

[Ord. No. 428-09 § 27-15.5; 9-11-2024 by Ord. No. 639-24]

Except for private residential swimming pools, which are governed by Section **27-38** of the Code, the minimum bulk requirements for accessory uses to Bed and Breakfasts/Guest Houses in the C-1 district for uses not located within the principal building shall be as follows:

| | | B&B | Hotel/Motel |
|----|----------------------------------|----------------|--------------------|
| a. | Distance from side lot line | 6' | 6' |
| b. | Distance from rear lot line | 6' | 6' |
| c. | Distance from principal building | 6' | 6' |
| d. | Lot coverage | 5% | 5% |
| e. | Building height | 15' | 15' |

§ 27-15.6. Minimum Area and Bulk Requirements for Commercial Only and Mixed Use Structures.

[Ord. No. 428-09 § 27-15.6; Ord. No. 435-09 § 2; Ord. No. 551-2018 § 1]

(Residential dwelling units and/or professional offices above ground floor permitted commercial uses)

| | Commercial/Mixed Use |
|---|---|
| Lot area | 5,000 sq. ft. |
| Lot frontage | 50' |
| Lot width | 50' |
| Front yard setback | 10' |
| Each side yard setback | 6' |
| Total side yard setback | 16' |
| Rear yard setback | 20' |
| Maximum lot coverage | 60% |
| Maximum building height | 35 feet |
| Maximum stories | 3 stories |
| Minimum gross floor area per market rate residential unit | 650 sq. ft. |
| Minimum gross floor area per unit "affordable housing unit" | 500 sq. ft. for an efficiency unit, 650 sq. ft. for a one-bedroom unit, 800 square feet for a two-bedroom |

unit and 950 square feet for a three-bedroom unit.

§ 27-15.7. Accessory Uses to Commercial and Mixed Use.

[Ord. No. 428-09 § 27-15.7]

The following accessory uses to Commercial and Mixed Use only shall be permitted of right in the C-1 zoning district:

- a. Detached garages.
- b. Tool sheds.
- c. Private residential swimming pools.
- d. Private tennis courts.
- e. Fences and walls.
- f. Off-street parking areas.
- g. Storage sheds.
- h. Animal shelters for customary residential pets.

§ 27-15.8. Minimum Area and Bulk Requirements for Accessory Uses to Commercial and Mixed Use.

[Ord. No. 428-09 § 27-15.8]

The minimum area and bulk requirements for such clearly customary and incidental accessory uses shall be as follows:

- a. Distance from side lot line: 6'
- b. Distance from rear lot line: 6'
- c. Distance from principal structure: 6'
- d. Lot coverage: 5%
- e. Building height: 15'

§ 27-15.9. Affordable Housing Requirements.

[Ord. No. 551-2018 § 4]

- a. For residential projects of five or more units, such projects will deliver an on-site affordable housing set-aside of 15% for rental projects, and 20% for for-sale projects. Affordable units in said projects must be affordable to very low, low and moderate income households in accordance with the Borough's Affordable Housing Ordinance, the Borough's Housing Element and Fair Share Plan, the Fair Housing Act, N.J.S.A. 52:27D-301, et. seq. ("FHA"), Uniform

Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. ("UHAC"), and applicable New Jersey Council on Affordable Housing (COAH) Prior Round regulations, N.J.A.C. 5:93-1 et seq.

- b. All affordable units will comply with the requirements of the Borough's Affordable Housing Ordinance, which includes, but is not limited to the following requirements:
 1. All residential affordable housing projects shall provide at least 13% very-low-income units, roughly 37% low-income units (such that low + very low units = at least 50% of the total affordable units) and no more than 50% moderate-income units.
 2. All affordable units shall comply with UHAC bedroom distribution requirements.
 3. All affordable units will be affirmatively marketed in accordance with UHAC by a qualified Administrative Agent, which may or may not be the Borough's Administrative Agent. The developer will be responsible for all costs associated with the affirmative marketing of the affordable units.
 4. All affordable units will be deed restricted for a period of at least 30 years from the date of their initial occupancy, which shall be memorialized in a deed restriction in a form that is satisfactory to the Borough and/or the Borough's Administrative Agent and is compliant with UHAC. Said deed restriction will be recorded in the County Clerk's office.
- c. The Borough-wide Mandatory Set-Aside Ordinance shall not apply to the C-1 zoning district.

§ 27-16. C-2 PARK COMMERCIAL DISTRICT.

[Ord. No. 428-09 § 27-16]

The purpose of this district is to encourage a mix of residential uses within commercial shopping centers serving the needs of year-round residents within the zone, and residents of adjacent neighborhoods and communities.

The purpose of allowing residential and professional offices above ground floor retail is to increase the viability of the property by creating continuous activity. Residential units above commercial also provide a realistic opportunity for affordable housing.

[1] *Editor's Note: Former C-2 General Business/Mixed Uses District, previously codified herein and containing portions of Ordinance Nos. 130-88, 144-89 and 157-90 was replaced by C-2 Park Commercial District by Ord. No. 428-09.*

§ 27-16.1. Permitted Uses in the C-2 District.

[Ord. No. 428-09 § 27-16.1; Ord. No. 539-2018]

- a. Retail stores, excluding car dealerships, service stations and gas stations;
- b. Reserved;
- c. Personal and financial services establishments, including drive-through service;
- d. Professional offices;
- e. Mixed use — residential dwelling units and/or professional offices above ground floor permitted

commercial uses;

- f. Reserved;
- g. Roadside markets, nurseries and garden centers, and roadside stands;
- h. Churches and other charitable, educational, civic or nonprofit uses or facilities;
- i. Public recreational facilities and public parking facilities.
- j. Restaurants, including outdoor dining (per Subsection **27-27.15**, Outdoor Dining Standards) and excluding drive-thru service. Restaurants that serve alcoholic beverages are permitted as conditional uses, subject to the requirements in § **27-29**, Conditional Uses.
- k. Liquor stores (for off-premises consumption only), either as a separate establishment or in conjunction with a retail establishment, and subject to the following:
 - 1. No outside storage or outside display of merchandise of any type;
 - 2. All cooling, refrigeration and generation equipment must be contained within the building area.
- l. Brewery establishment operating under an approved State-issued limited brewery license issued and valid pursuant to N.J.S.A. 33:1-10(1b), permitted as Conditional Use subject to the requirements in § **27-29**, and subject to the bulk requirements in § **27-16.2**.
- m. Any distillery operating under a State issued distillery license issued and valid pursuant to N.J.S.A. 33:1-10(3), permitted as Conditional Use subject to the requirements in § **27-29**, and subject to the bulk requirements in § **27-16.2**.^[1]

[1] *Editor's Note: Former paragraph n, regarding properly licensed cannabis retail establishments, which immediately followed, was repealed 4-24-2024 by Ord. No. 637-24.*

§ 27-16.2. Minimum Area and Bulk Requirements.

[Ord. No. 428-09 § 27-16.2; Ord. No. 435-09 § 3; Ord. No. 551-2018 § 2]

The minimum area and bulk requirements for all permitted uses in the C-2 zoning district are as follows:

| | |
|-------------------------|---------------|
| Lot area | 7,500 sq. ft. |
| Lot frontage | 50' |
| Lot width | 50' |
| Front yard setback | 20' |
| Each side yard setback | 6' |
| Total side yard setback | 16' |
| Rear yard setback | 20' |
| Maximum lot coverage | 60% |
| Maximum building height | 35 feet" |
| Maximum stories | 3 stories |

| | |
|---|--|
| Minimum gross floor area per unit residential | 650 sq. ft. |
| Minimum gross floor area per unit "affordable housing unit" | 500 sq. ft. for an efficiency unit, 650 sq. ft. for a one-bedroom unit, 800 square feet for two-bedroom unit and 950 square feet for a three-bedroom unit. |

§ 27-16.3. Accessory Uses.

[Ord. No. 428-09 § 27-16.3]

The following accessory uses only shall be permitted of right in the C-2 zoning district:

- a. Those uses which are clearly customary and incidental to the principal business or upper floor residential use.

§ 27-16.4. Minimum Area and Bulk Requirements for Accessory Uses.

[Ord. No. 428-09 § 27-16.4]

The minimum area and bulk requirements for such clearly customary and incidental accessory uses shall be as follows:

- a. Distance from side lot line: 6'
- b. Distance from rear lot line: 6'
- c. Distance from principal structure: 6'
- d. Lot coverage: 5%
- e. Building height: 15'

§ 27-16.5. Affordable Housing Requirements.

[Ord. No. 551-2018 § 5]

- a. For residential projects of five or more units, such projects will deliver an on-site affordable housing set-aside of 15% for rental projects, and 20% for for-sale projects. Affordable units in said projects must be affordable to very low, low and moderate income households in accordance with the Borough's Affordable Housing Ordinance, the Borough's Housing Element and Fair Share Plan, the Fair Housing Act, N.J.S.A. 52:27D-301, et. seq. ("FHA"), Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. ("UHAC"), and applicable New Jersey Council on Affordable Housing (COAH) Prior Round regulations, N.J.A.C. 5:93-1 et seq.
- b. All affordable units will comply with the requirements of the Borough's Affordable Housing Ordinance, which includes, but is not limited to the following requirements:
 - 1. All residential affordable housing projects shall provide at least 13% very-low-income units,

roughly 37% low-income units (such that low + very low units = at least 50% of the total affordable units) and no more than 50% moderate-income units.

2. All affordable units shall comply with UHAC bedroom distribution requirements.
 3. All affordable units will be affirmatively marketed in accordance with UHAC by a qualified Administrative Agent, which may or may not be the Borough's Administrative Agent. The developer will be responsible for all costs associated with the affirmative marketing of the affordable units.
 4. All affordable units will be deed restricted for a period of at least 30 years from the date of their initial occupancy, which shall be memorialized in a deed restriction in a form that is satisfactory to the Borough and/or the Borough's Administrative Agent and is compliant with UHAC. Said deed restriction will be recorded in the County Clerk's office.
- c. The Borough-wide Mandatory Set-Aside Ordinance shall not apply to the C-2 zoning district.

§ 27-17. C-3 SUNSET COMMERCIAL DISTRICT.

[Ord. No. 428-09 § 27-17]

The purpose of this district is to encourage a high density, critical mass of commercial uses, preferably retail, leading to high pedestrian traffic. The regulations in this district recognize the importance of building form for a successful downtown.

The purpose of allowing residential and professional offices above ground floor retail is to increase the viability of the property by creating continuous activity. Residential units above commercial also provide a realistic opportunity for affordable housing.

[1] *Editor's Note: Former § 27-15, C-3 Motel/Tourist Business District, previously codified herein and containing portions of Ordinance Nos. 130-88; 149-89 and 157-09 was replaced with C-3 Sunset/Commercial District by Ordinance No. 428-09.*

§ 27-17.1. Permitted Uses in the C-3 District.

[Ord. No. 428-09 § 27-17.1; Ord. No. 539-2018; 7-14-2021 by Ord. No. 603-21; 4-24-2024 by Ord. No. 637-24]

In the C-3 zoning district, a lot, lots, building, buildings or premises may be used by right for the following purposes only:

- a. Retail stores, excluding car dealerships, service stations and gas stations;
- b. Personal and financial services establishments, excluding drive-through service;
- c. Bed and Breakfasts and hotels and motels above ground floor permitted uses (lobby/registration may be on ground floor, but may not occupy greater than 20% of floor area).
- d. Mixed Use — Residential units above ground floor permitted uses; and professional offices above ground floor permitted uses;
- e. Churches and other charitable, educational, civic or nonprofit uses or facilities;
- f. Public recreational and public parking facilities;

- g. Restaurants, including outdoor dining (see Subsection, 27-27.15, Outdoor Dining Standards) and excluding drive-thru service. Restaurants that serve alcoholic beverages are permitted as conditional uses, subject to the requirements in § 27-29, Conditional Uses.
- h. Liquor stores (for off-premises consumption only), either as a separate establishment or in conjunction with a retail establishment, and subject to the following:
 - 1. No outside storage or outside display of merchandise of any type.
 - 2. All cooling, refrigeration and generation equipment must be contained with the building area.
- i. Brewery establishment operating under an approved State-issued limited brewery license issued and valid pursuant to N.J.S.A. 33:1-10(1b), permitted as Conditional Use subject to the requirements in § 27-29, and subject to the bulk requirements in § 27-17.2.
- j. Any distillery operating under a State issued distillery license issued and valid pursuant to N.J.S.A. 33:1-10(3), permitted as Conditional Use subject to the requirements in § 27-29, and subject to the bulk requirements in § 27-17.2.
- k. Properly licensed cannabis retail establishments. In addition, such establishments will meet the following standards:
 - 1. There will be 24/7 on-site video monitoring of the facility. The video shall be maintained for the period prescribed by state law, but in no case less than 30 days.
 - 2. On-premises cannabis consumption areas are prohibited.
 - 3. Compliance with all area and bulk standards in the zone.
 - 4. Compliance with all state statutory and regulatory requirements.
 - 5. No more than one Class 5 cannabis retailer license shall be permitted to operate within the Borough at any given time.

§ 27-17.2. Minimum Area and Bulk Requirements.

[Ord. No. 428-09 § 27-17.2; Ord. No. 439-09 § 4; Ord. No. 551-2018 § 3]

The minimum area and bulk requirements in the C-3 Sunset Commercial zoning district are as follows:

| | All Permitted Uses |
|-------------------------|---------------------------|
| Lot area | 5,000 sq. ft. |
| Lot frontage | 50' |
| Lot width | 50' |
| Front yard setback | Minimum 0', maximum 4' |
| Each side yard setback | Minimum 0', maximum 4' |
| Total side yard setback | Minimum 0', maximum 8' |
| Rear yard setback | 10' |

| | |
|---|--|
| Maximum lot coverage | 80%, |
| Maximum building height | 35 feet |
| Maximum stories | 3 stories |
| Minimum gross floor area per residential unit | 650 sq. ft |
| Minimum gross floor area per unit "affordable housing unit" | 500 sq. ft. for an efficiency unit, 650 sq. ft. for a one-bedroom unit, 800 square feet for a two-bedroom unit and 950 square feet for a three-bedroom unit. |

§ 27-17.3. Accessory Uses for Permitted Uses.

[Ord. No. 428-09 § 27-17.3]

The following accessory uses only shall be permitted by right in the C-3 zoning district for all other permitted uses:

- a. Those uses which are clearly customary and incidental to the permitted use.

§ 27-17.4. Minimum Area and Bulk Requirements for Accessory Uses to All Other Permitted Uses.

[Ord. No. 428-09 § 27-17.4]

The minimum area and bulk requirements for such clearly customary and incidental accessory uses shall be as follows:

- a. Distance from side lot line: 6'
- b. Distance from rear lot line: 6'
- c. Distance from principal structure: 6'
- d. Lot coverage: 5%
- e. Building height: 15'

§ 27-17.5. Building Form Requirements in the C-3 Zone.

[Ord. No. 428-09 § 27-17.5]

Purpose: Recognizing the impact of the building design on a commercial district, these regulations seek to create a visually stimulating environment that contributes to economic success and livability. In addition to height, bulk and setback requirements, other building features affecting building design include storefront display windows, door and window openings, and roof shape.

Storefront buildings have traditionally been designed to reinforce the purpose of commercial activity. The rhythm of storefront openings along the street creates a powerful visual image that consumers recognize and associate with commercial activity.

- a. Percentage of glass for first floor storefront: 50% of the first floor façade.

- b. Second floor front facades are to be in vertical alignment with first floor front facades. Upper floor window openings on adjacent buildings shall be proportional and constant in order to reinforce a strong horizontal continuity along an entire block.
- c. Building design on buildings greater than fifty (50') feet wide shall have separate architectural features creating an image of separate storefronts no greater than thirty (30') feet each (bays).
- d. Roofs shall be flat, and shall have a decorative cornice or parapet, that can also serve as a buffer for rooftop mechanical equipment.
- e. Balconies facing the street on 2nd and 3rd floors shall be limited to twenty-four (24") in depth.

§ 27-17.6. Affordable Housing Requirements.

[Ord. No. 551-2018 § 6]

- a. For residential projects of five or more units, such projects will deliver an on-site affordable housing set-aside of 15% for rental projects, and 20% for for-sale projects. Affordable units in said projects must be affordable to very low, low and moderate income households in accordance with the Borough's Affordable Housing Ordinance, the Borough's Housing Element and Fair Share Plan, the Fair Housing Act, N.J.S.A. 52:27D-301, et. seq. ("FHA"), Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. ("UHAC"), and applicable New Jersey Council on Affordable Housing (COAH) Prior Round regulations, N.J.A.C. 5:93-1 et seq.
- b. All affordable units will comply with the requirements of the Borough's Affordable Housing Ordinance, which includes, but is not limited to the following requirements:
 - 1. All residential affordable housing projects shall provide at least 13% very-low-income units, roughly 37% low-income units (such that low + very low units = at least 50% of the total affordable units) and no more than 50% moderate-income units.
 - 2. All affordable units shall comply with UHAC bedroom distribution requirements.
 - 3. All affordable units will be affirmatively marketed in accordance with UHAC by a qualified Administrative Agent, which may or may not be the Borough's Administrative Agent. The developer will be responsible for all costs associated with the affirmative marketing of the affordable units.
 - 4. All affordable units will be deed restricted for a period of at least 30 years from the date of their initial occupancy, which shall be memorialized in a deed restriction in a form that is satisfactory to the Borough and/or the Borough's Administrative Agent and is compliant with UHAC. Said deed restriction will be recorded in the County Clerk's office.
- c. The Borough-wide Mandatory Set-Aside Ordinance shall not apply to the C-3 zoning district.

§ 27-18. P-PRESERVATION DISTRICT (formerly W-Wetlands District).

§ 27-18.1. Permitted Uses.

[Ord. No. 153-89 § 2; Ord. No. 428-09 § 27-18.1]

In the P-Preservation district, a lot, lots, building, buildings, premises or any portion thereof situated within the P-Preservation District Zone may be used by right for the following purposes and only after approval by the New Jersey Department of Environmental Protection and site plan review by the West Cape May Planning Board:

- a. Public purpose uses which shall mean use by any governmental entity or any officially created authority or agency thereof having jurisdiction in the Borough of West Cape May.
- b. Agricultural uses limited solely to the cultivation and harvesting of naturally occurring agricultural or horticultural products.
- c. Water oriented uses such as marinas and boat slips.
- d. Public walkways, boardwalks for the viewing and enjoyment of the natural scenery and wildlife.

§ 27-19. HISTORIC PRESERVATION.

§ 27-19.1. Purpose and Objectives.

[Ord. No. 364-06 § 1; Ord. No. 378-07 § 1; Ord. No. 533-2018]

The purpose of this section is to implement the historic preservation element of the Master Plan, to provide guidance to property owners in achieving preservation of historic resources and to advance the following public purposes:

- a. To preserve and protect historic, architectural, cultural, archaeological and aesthetic resources for the general welfare;
- b. To identify, designate and regulate Historic Districts and Historic Sites to preserve their historic, architectural, cultural, archaeological and aesthetic significance;
- c. To encourage the continued use of historic resources and facilitate their appropriate reuse;
- d. To preserve and enhance the environmental quality of the neighborhoods;
- e. To maintain and develop an appropriate and harmonious setting for the historic and architecturally significant buildings, structure, sites, objects and/or districts within the Borough of West Cape May;
- f. To strengthen the Borough's economic base by the stimulation of cultural tourism;
- g. To stabilize and improve property values and discourage the unnecessary demolition of historic resources;
- h. To foster economic development and manage growth;
- i. To foster civic pride in the beauty and accomplishments of the Borough's past;
- j. To educate the general public and public officials about the importance of preserving the community heritage;
- k. To promote appreciation of the Borough of West Cape May Historic District and any other

designated historic districts for the education, pleasure and general welfare of the citizens of the Borough and its visitors;

- I. To encourage private reinvestment in existing or new structures in a manner that preserves, restores, repairs or is compatible with the original architectural style which is characteristic of the Historic District in which the structure is located.

§ 27-19.2. Definitions.

[Ord. No. 364-06 § 1; Ord. No. 378-07 § 1; Ord. No. 533-2018]

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

ADDITION

Shall mean an extension or increase in building size, floor area or height.

ADMINISTRATIVE OFFICER

Shall mean a municipal official or officials who are designated by Borough ordinance or resolution.

[Amended 9-11-2024 by Ord. No. 640-24]

ALTERATION

Shall mean as applied to a building or structure, a change or rearrangement in the structural parts or in the means of egress, or an enlargement, whether by extending on a side or by increasing in height or the moving from one location or position to another, or the change in appearance of the exterior surface of any improvement.

BOROUGH ZONING OFFICIAL

Shall mean the individual holding this position in the Borough, and who is authorized to issue zoning permits pursuant to N.J.S.A. 40:55D-18.

[Added 9-11-2024 by Ord. No. 640-24]

CERTIFICATE OF APPROPRIATENESS

Shall mean a resolution issued by the Historic Preservation Commission approving a proposed project for minor and/or major work in an historic district or on an historic site. The review takes place at a public hearing held before the full Commission and is based upon the application and representation of the applicant and the approved plans presented for the preservation, restoration, rehabilitation or alteration of an existing property, or the demolition, addition, removal, repair or remodeling of any feature on an existing building within the historic district, or for any new construction within the historic district.

[Amended 9-11-2024 by Ord. No. 640-24]

DEMOLITION

Shall mean the partial or total razing, dismantling or destruction of any Historic Site or any improvement within a Historic District.

EVALUATION

Shall mean the process of determining whether identified properties meet defined criteria of historical, architectural, archaeological or cultural significance. Alternatively, determining whether a proposed project at a property in an historic district or on an historic site is

appropriate.

HISTORIC DISTRICT

Shall mean an area designated by the Historic Preservation Commission and adopted by the Board of Commissioners as an historic district. The area is characterized by a distinct sense of place and local character, and by the presence of historic resources.

HISTORIC RESOURCE

Shall mean any building or structure that contributes to the character and significance of the historic district, or any part of a building or structure which contributes to the significance of the building or structure.

HISTORIC SITE

Shall mean any real property, man-made structure, natural object or configuration or any portion or group of the foregoing that has been designated in the Master Plan as of historic, archaeological, cultural, scenic or architectural significance at the national, state or local level, as specifically designated herein; or any property located in a historic district. The designation of a Historic Site or landmark shall include the tax map lot on which it is located as well as the contiguous right-of-way.

HISTORIC STRUCTURE

Shall mean any structure situated on property included in the Historic Designation List of the Borough of West Cape May.

IMPROVEMENT

Shall mean any structure or any part thereof installed upon real property by human endeavor and intended to be kept at the location of such construction or installation.

INTEGRITY

Shall mean the ability of a property or element to convey its historic significance; the retention of those essential characteristics and features that enable a property to effectively convey its significance.

INVENTORY

Shall mean a list of historic properties determined to meet criteria of significance specified herein.

MAJOR WORK

Shall mean any proposed work that includes:

[Added 9-11-2024 by Ord. No. 640-24]

- a. Demolition of any building, improvement, site, place or structure;
- b. Change in the exterior appearance of any contributing building, improvement, site, place or structure by addition, reconstruction, alteration or maintenance;
- c. Relocation of a principal or accessory building or structure; or
- d. Any addition to or new construction of a principal or accessory building or structure, except that sheds of an area less than 120 square feet are excluded.

MINOR WORK

Shall mean any proposed work that:

[Amended 1-22-2020 by Ord. No. 577-20; 9-11-2024 by Ord. No. 640-24]

- a. Does not involve demolition, relocation or removal of a historic building, resource, or structure;
- b. Does not involve an addition to a property in a historic district or new construction in a historic district;
- c. Is a request for approval of fences, rear decks, signs, lighting, doors, windows, roofs, paving, shutters, HVAC, generators, exterior shower enclosures exterior sheathing or hardscape work that will comply with the adopted design guidelines for the improvement proposed where a specific guideline applies and that will not substantially affect the characteristics of the historic site or the historic district; or
- d. Is a request for a field change for a Certificate of Appropriateness that has already been issued and that meets the criteria of Subsection **c** above.

NATIONAL REGISTER CRITERIA

Shall mean the established criteria for evaluating the eligibility of properties for inclusion in the National Register of Historic Places.

NONCONTRIBUTING BUILDING

Shall mean a building that does not contribute to the character for which the historic district was designated; or a building, site, structure or object that does not add to the historic architectural qualities, historic associations or archaeological values for which a property is significant because: 1) it was not present during that period of significance; 2) due to alterations, disturbances, additions or other changes it no longer possesses historic integrity reflecting its character at that time or is incapable of yielding important information about the period.

ORDINARY MAINTENANCE AND REPAIR

Shall mean repair of any deterioration, wear or damage to a structure or any part thereof in order to return it as nearly as practicable to its condition prior to the occurrence of the deterioration, wear, or damage with in-kind material and quality workmanship. Ordinary maintenance shall also include in kind replacement of exterior elements or accessory hardware including signs, using the same material and workmanship and having the same appearance.

PERMIT

Shall mean any required approval for exterior work to any improvement or property in a historic district or on a historic site. "Permit" shall include, but is not limited to, a building permit, a window replacement permit, a demolition permit, a permit to move, convert, relocate or remodel or to change the use or type of occupancy of any improvement or property in a historic district which involves exterior changes to the structure or the property on which it is located.

PERMIT FOR MINOR WORK

Shall mean a resolution issued by the Historic Preservation Commission to an applicant and the zoning and building official, endorsing a project. The project must be "minor work" as defined in this section (see "Minor Work"), the Zoning Official must determine the project as applicable for committee review, and the work must be deemed appropriate by a committee of the Historic Preservation Commission.

[Amended 3-23-2022 by Ord. No. 609-22; 9-11-2024 by Ord. No. 640-24]

PRESERVATION

Shall mean the act or process of applying measures to sustain the existing form, integrity and material of a building or structure, and the existing form and vegetative cover of a site. It may include initial stabilization work, where necessary, as well as ongoing maintenance of the historic building's materials.

PROTECTION

Shall mean the act or process of applying measures designed to affect the physical condition of a property by defending or guarding it from deterioration, loss or attack, or to cover or shield the property from danger or injury.

RECONSTRUCTION

Shall mean the act or process of reproducing by new construction the exact form and detail of a vanished or nonsurviving building, structure or object, or any part thereof, as it appeared at a specific period of time when documentary and physical evidence is available to permit accurate reconstruction.

REHABILITATION

Shall mean the act or process of returning a property to a state of utility through repair or alteration that makes possible an efficient contemporary use while preserving those portions or features of the property that are significant to its historical, architectural and cultural values.

REPAIR

Shall mean any work done on an improvement that is not an addition and does not change the exterior appearance of any improvement; provided, however, that any such repairs must be done with materials that are the same as the original or historic materials and workmanship of the same quality as the original or historic workmanship.

RESTORATION

Shall mean the act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work.

STREETSCAPE

Shall mean the visual character of the street, including, but not limited to, the architecture, building setbacks and height, fences, storefronts, signs, lighting, parking areas, materials, sidewalks, curbing and landscaping.

STRUCTURE

Shall mean a combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land.

SURVEY

Shall mean a process of identifying and gathering data on a community's historic resources. It includes a field survey, which is the physical search for and recording of historic resources on the ground; preliminary planning and background research before the field survey begins; organization and presentation of survey data as the survey proceeds; and the development of inventories.

SURVEY DATA

Shall mean the raw data produced by the survey; that is, all the information gathered on each property and area investigated.

§ 27-19.3. Historic Preservation Commission.

[Ord. No. 364-06 § 1; Ord. No. 378-07 § 1; Ord. No. 533-2018; 9-11-2024 by Ord. No. 640-24]

a. Responsibilities. The Historic Preservation Commission shall have the following duties and responsibilities:

1. To identify, record and maintain a survey and inventory of all buildings, sites, places, landmarks and structures of historical or architectural significance based on the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation; and to aid the public in understanding their worth, methods of preservation, techniques or gathering documentation and related matters.
2. To make recommendations to the Planning Board on the historic preservation plan element of the Master Plan and on the implications for preservation of historic sites or any other Master Plan elements. The Commission may provide information to the Planning Board indicating the location and significance of historic sites and districts and by identifying the standards used to assess worthiness for historic site or district identification.
3. To advise the Planning Board on the inclusion of historic sites and landmarks in the recommended capital improvement program.
4. To advise the Planning Board on applications for development, pursuant to N.J.S.A. 40:55D-110.
5. To provide written reports pursuant to N.J.S.A. 40:55D-111 on the application of the Zoning Ordinance provisions concerning historic preservation.
6. To issue Certificates of Appropriateness and Permits for Minor Work pursuant to Subsection **27-19.5** of this section.
7. To establish administrative procedures and/or regulations to carry out the purposes of this section.
8. To carry out such other advisory, educational and informational functions as will promote historic preservation in the Borough.
9. To provide technical assistance to property owners on how to preserve, restore and rehabilitate structures, and to advise property owners about the accuracy of historic restoration, including materials, fenestration, architectural detail, and environment, as budgeted by the Board of Commissioners.

b. Establishment.

1. Members. There is hereby established a West Cape May Historic Preservation Commission, to be appointed by the Mayor. The Commission shall be consistent with N.J.S.A. 40:55D-107 et seq. The Commission shall consist of five regular members and two alternate members. Members shall serve without compensation. At the time of appointment, at least one member each shall be designated from Class A and Class B.

- (a) Class A: A person who is knowledgeable in building design and construction or architectural history and who may reside outside the municipality; and
 - (b) Class B: A person who is knowledgeable, or with a demonstrated interest in, local history and who may reside outside the municipality; and
 - (c) Class C: Citizens of the municipality who shall hold no other municipal office, position or employment except for membership on the Planning Board. Class C members should have at minimum a demonstrated interest in history, historic preservation or a related field.
 - (d) Of the five regular members, at least one less than a majority shall be Class A and Class B.
 - (e) Alternate members shall meet the qualification of a Class C member. At the time of appointment, alternate members shall be designated as "Alternate No. 1" and "Alternate No. 2".
2. Terms.
- (a) The terms for the members of the Historic Preservation Commission first appointed by the Mayor shall be as follows:
 - (1) One member appointed for a one-year term
 - (2) One member appointed for a two-year term.
 - (3) One member appointed for a three-year term
 - (4) Two members appointed for four-year terms.
 - (b) Thereafter, the term of each regular member shall be four years. All terms shall begin on January 1 of the year in which the appointment is made.
 - (c) Notwithstanding any other provision herein, the term of any member common to the Historic Preservation Commission and the Planning Board shall be for the term of membership on the Planning Board.
 - (d) A vacancy occurring otherwise than by expiration of term shall be filled within 60 days for the unexpired term only.
3. Alternates.
- (a) Alternate members shall serve for terms of two years; provided, however, that the initial terms of the two alternate members shall be one and two years, respectively.
 - (b) Alternate members may participate in discussions of the proceedings but may not vote except in the absence or disqualification of a regular member. A vote shall not be delayed so that a regular member may vote instead of an alternate. If a choice must be made as to which alternate member is to vote, Alternate No. 1 shall vote.
4. Commission Liaison. The Board of Commissioners shall designate a member to act as a liaison between the Historic Preservation Commission and the Commissioners.
5. Officers. Annually, the Historic Preservation Commission shall elect a Chairperson and a

Vice Chairperson from its members and select a recording secretary, who may or may not be a member of the Commission or a Borough employee.

6. Budget. Board of Commissioners shall make provision in its budget and appropriate funds for the expenses of the Historic Preservation Commission. The Commission may employ, contract for, and fix the compensation of experts and other staff and services, as it shall deem necessary. The Commission shall obtain its legal counsel from the Borough Attorney at a rate of compensation determined by the Governing Body, unless the Governing Body by appropriation provides for separate legal counsel for the Commission. Expenditures pursuant to this subsection shall not exceed, exclusive of gifts or grants, the amount appropriated by the Board of Commissioners for the Commission's use. If the Commission receives gifts or grants, they will be placed in a dedicated fund for the exclusive use of the Commission.
7. Finances. The Board of Commissioners shall establish by ordinance reasonable fees necessary to cover the expenses of administration and professional services to aid the Commission in its review of applications and development reviews. These fees are in addition to any other required under any portion of this or any other applicable Borough Ordinance.
8. Rules of the Historic Preservation Commission.
 - (a) The Commission shall adopt written rules for the transaction of its business and for the consideration of applications for Certificates of Appropriateness and for designations of historic districts and sites. Such rules shall not be inconsistent with the provision of this section and shall include, but not be limited to, rules pertaining to all notices and hearing required herein.
 - (b) To make available to the public information useful for the preservation and protection of historic districts and sites and to provide the basis for consistency of policy, the Administrative Officer on behalf of the Commission shall maintain complete files and records. The Commission's files shall include, but are not limited to, data used in the classification of buildings as key, contributing or noncontributing, places and structures; minutes of Commission meetings; applications for Certificates of Appropriateness along with collateral data; decisions and appeals associated therewith; and information, material and references submitted to the public related to historic preservation. A record of Commission proceedings shall be kept and made available, but a formal verbatim record shall not be required.
 - (c) The Commission Secretary shall keep minutes and records of all meetings and proceedings, including voting records, attendance, resolutions, findings, determinations, decisions and application. All meetings shall be noticed and conducted in accordance with the Open Public Meetings Act. Copies of all minutes shall be maintained in the office of the Commission and shall be delivered promptly to the Borough Clerk.
 - (d) Copies of records shall be made available to Borough bodies, agencies, and officials for their use. When the Planning Board refers an application to the Historic Preservation Commission, the Planning Board shall receive a copy of the Commission's report.
 - (e) The Zoning Official shall maintain and display an up-to-date map showing the historic

district, as well as a current listing of historic sites.

9. Conflicts of Interest. No member of the Commission shall be permitted to act on any matter in which he or she has, either directly or indirectly, any personal or financial interest. Unless a member resides or owns property within two hundred (200') feet of property which is the subject of an application, mere ownership or residence in a designated historic district and/or ownership of a designated historic site or a nondesignated site shall not be deemed a personal or financial interest.
10. A member of the Commission may, after a public hearing if requested, be removed by the Governing Body for cause.
11. Meetings; Quorum.
 - (a) The Commission shall establish and post in Borough Hall a regular schedule of a minimum of one meeting per month. Regular meetings shall be held as scheduled unless canceled for lack of applications to process. Additional special meetings may be called by the Chairperson or Vice Chairperson, or on the request of any two of its members, when the regular meetings are inadequate to meet the needs of its business, to handle emergencies or to meet time constraints imposed by law.
 - (b) Three members shall constitute a quorum. Nonmember liaisons may not vote. A majority vote of those present and voting shall prevail, and shall be sufficient to grant or deny a Certificate of Appropriateness. A majority of the appointed membership shall be required to grant or change a historic site or district designation or to hear a demolition application.
 - (c) The Historic Preservation Commission shall prepare an annual report to the Governing Body which shall be available to the public and placed on file in Borough Hall. The report shall detail all activities, including problem solving, advice and support given.
 - (d) The Historic Preservation Commission shall hold public hearings to review all applications for Certificates of Appropriateness, referrals of development applications and other business that comes before the Commission.

§ 27-19.4. Designation of Historic Sites and Districts.

[Ord. No. 364-06 § 1; Ord. No. 378-07 § 1; Ord. No. 533-2018]

- a. Survey. The Commission shall maintain a comprehensive Survey of the Borough of West Cape May to identify historic districts, sites and landmarks which are worthy of protection and preservation.
- b. Criteria for Designation. The criteria for evaluating and designating historic districts and sites shall reflect the National Register Criteria. The Commission or any interested party may recommend designation of historic sites or districts that have integrity of location, design, setting, materials, workmanship and association and that meet one or more of the following criteria:
 1. Character, interest, or values as part of the development, heritage or cultural characteristics of the Borough, State or nation;

2. Association with events that have made a significant contribution to the broad patterns of our history; or
 3. Association with the lives or persons significant in our past; or
 4. Embodiment of the distinctive characteristics of a type, period or method of construction, architecture, or engineering; or
 5. Identification with the work of a builder, designer, artist, architect or landscape architect whose work has influenced the development of the Borough, State or nation; or
 6. Embodiment of elements of design, detail, material or craftsmanship that render an improvement architecturally significant or structurally innovative; or
 7. Unique location or singular physical characteristics that make a district or site an established or familiar visual feature; or
 8. That have yielded, or may be likely to yield, information important in prehistory or history.
- c. Procedures for Designation.
1. Interested parties shall contact the Administrative Officer regarding consideration of a proposed historic site or district. The Commission may also initiate the designation of a historic site or district. The Administrative Officer will schedule a hearing before the Commission to review the proposed historic site or district.
 2. The formal historic district nomination shall include: a building-by-building inventory of all properties within the district; color and/or black and white photographs of all properties within the district; a property map of the district showing boundaries; and a physical description and statement of significance which address the criteria for designation set forth herein. The formal historic site nomination shall include: a color and/or black and white photographs, a tax map of the property and a physical description and statement of significance which address the criteria for designation set forth herein.
 3. Upon review and approval of the proposed site or historic district by the Historic Preservation Commission, and after hearing the comments of the public, if any, the Commission shall forward the proposed site or district nomination to the Planning Board for consideration. Notification shall be by public notice in the official paper and by prominent posting in the municipal building at least 30 days prior to the Planning Board hearing. The interested parties or the Commission shall submit to the Planning Board a complete list of involved properties.
 4. Upon review and approval of the proposed site or district by the Planning Board, the site or district nomination will be sent to the Board of Commissioners for adoption to amend and supplement this chapter.
 5. All other requirements of the Municipal Land Use Law regarding adoption of development regulations shall be followed.
- d. Designation of Districts. The following historic district is delineated and described in the Master Plan and is hereby a designated Historic District for purposes of this section:
1. West Cape May Historic District. The designated historic district is set forth on the Zoning Map of the Borough of West Cape May which is incorporated herein by reference.

(a) Amendments:

- (1) The Borough hereby adopts the attached map as the Historic District of the Borough of West Cape May, and Section **27-19.4(d)** of the West Cape May Borough Code is amended so that the Borough's Zoning Map, including delineation of this expanded Historic District, is incorporated into the section.

Editor's Note: The Historic District Map may be found as an attachment to this chapter.

[Added 5-25-2022 by Ord. No. 613-22]

2. Additional District. Any additional designated districts and site and/or any changes in the designation of historic districts and historic sites shall be effectuated by amendment of this section in accordance with procedures provided for under Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. and the procedures set forth herein.

§ 27-19.5. Certificate of Appropriateness.

[Ord. No. 364-06 § 1; Ord. No. 378-07 § 1; Ord. No. 492-2015; Ord. No. 533-2018; 3-23-2022 by Ord. No. 609-22; 9-11-2024 by Ord. No. 640-24]

- a. When Required. A Certificate of Appropriateness issued by the Commission shall be required before a permit is issued, or before work can commence, for any of the following activities within a historic district or on a historic site designated on the Zoning Map.
 1. Demolition of any building, improvement, site, place or structure.
 2. Change in the exterior appearance of any building, improvement, site, place or structure by addition, reconstruction, alteration or maintenance.
 3. Relocation of a principal or accessory building or structure.
 4. Any addition to or new construction of a principal or accessory building or structure, except that sheds of an area less than 120 square feet are excluded.
- b. When Not Required.
 1. A Certificate of Appropriateness shall not be required before a permit is issued by the Construction Code Official for changes to the interior of a structure or changes to the exterior of a structure that strictly meet the standards for ordinary maintenance and repair as defined in this section.
 2. The Zoning Official shall review all permit applications to determine if the application proposes work that constitutes ordinary maintenance and repair as defined in this section. If the Zoning Official determines that the work strictly meets the standards for Ordinary Maintenance and Repair the application may be forwarded to the Construction Official and a permit may be issued. The Zoning Official shall refer the application to the Historic Preservation Commission if he finds that the proposed work does not meet the standards for ordinary maintenance and repair. If the Zoning Official has any doubt as to whether the work constitutes ordinary maintenance and repair, then he shall refer the request to the Commission.
 3. The Zoning Official shall review all applications to the Historic Preservation Commission for

Minor Work to determine if the application shall be reviewed for appropriateness by a committee of the Historic Preservation Commission or before the full Commission. See Permit for Minor Work Subsection **27-19.5f** below.

c. Procedures.

1. All applicants shall complete an application form. Application forms shall be made available in the office of the Administrative Officer. Complete applications shall be filed with the office of the Administrative Officer.
2. Each application may be accompanied by sketches, drawings, photographs, descriptions, the property survey, if available, and other information to show the proposed alterations, additions, changes or new construction. Applications for demolition shall include current and archival photographs of the interior and exterior of the building and drawings to document the condition of the building. The Commission may require the subsequent submission of such additional material as it reasonably requires to make an informed decision.
3. The Commission shall reach a decision on an application and submit its report to the Administrative Officer within 45 days of referral of a complete application by the Administrative Officer. Nothing herein shall prohibit an extension of time by mutual agreement of the applicant and the Commission.
4. The Certificate of Appropriateness and/or denial of a Certificate of Appropriateness shall include, at minimum, a statement of the significance of the structure, a description of the proposed work, and the reasons for the Commission's finding that the proposed project was appropriate or not appropriate.
5. Applications for demolition shall comply with all document, notice, and miscellaneous requirements provided by the "West Cape May Guidelines for the Historic District" adopted pursuant to this ordinance.

d. Informational Meetings/Conceptual Review. Persons considering action that requires a Certificate of Appropriateness for Major Work, as set forth in this section, are encouraged to request an informal informational meeting with the Commission prior to submitting a formal application for a Certificate of Appropriateness for Major Work. Requests for such informational meetings can be made to the Administrative Officer, who will contact the Chairperson of the Commission. The Commission shall hold such informational meetings within 15 days of receipt of such request. The purpose of an informational meeting is to review the design guidelines and standards of appropriateness and the procedures for obtaining a Certificate of Appropriateness. Neither the applicant nor the Commission shall be bound by any informational meeting or conceptual review. Conceptual review shall not apply to any applications for development. The Commission shall not consider conceptual review of an application for development unless specifically referred to it by the Planning Board.

e. Application Review.

1. Notices must comply with the requirements of the Open Public Meetings Act.
2. An applicant shall be required to appear or to be represented at the meeting to consider the application for a Certificate of Appropriateness; however the Commission may take action in the absence of the applicant.

3. The Historic Preservation Commission shall issue a Certificate of Appropriateness to the applicant if it finds the application appropriate to the historic district or site and in conformity with the design guidelines. The Commission shall issue a denial of a Certificate of Appropriateness to the applicant if it finds the application inappropriate to the historic district or site or not in conformity with the design guidelines.
 4. When an application is approved, the Commission shall forthwith issue a Certificate of Appropriateness. Failure to report within a 45 day period shall be deemed to constitute a report in favor of the proposed work and without conditions. If the applicant has consented to an extension of time to consider the Certificate, the extension of time should be transmitted to the Zoning Official and the Certificate shall not be issued during the period of time of the extension.
 5. Appeals from determinations of the Administrative Officer pursuant to referral to the Historic Preservation Commission may be made by the applicant to the Planning Board, exercising the powers of a Board of Adjustment according to N.J.S.A. 40:55D-25 and -70a. Nothing herein shall be deemed to limit the right of judicial review of the action after an appeal is concluded by the Planning Board. The appellant shall pay all costs of copies of any transcript(s) required for appeal. If, in the case of an appeal made pursuant to this subsection, the Planning Board determines there is an error in any order, requirement, decision or refusal made by the Administrative Officer pursuant to a Certificate or denial of a Certificate submitted by the Historic Preservation Commission in accordance with N.J.S.A. 40:55D-111, the Planning Board shall, in writing, include the reasons for its determination in the findings of its decision thereon.
 6. The owner shall post the Certificate of Appropriateness or Permit for Minor Work on a conspicuous spot on the site visible to the public during the entire process of work.
 7. Issuance of an approval for an application to the Historic Preservation Commission shall be deemed to be a final approval pursuant to this section. Such approval shall neither cause nor prevent the filing of any collateral application or other proceeding required by any other ordinance to be made prior to undertaking the action required concerning the landmark or any building, structure, object, or site located within a landmark district. The denial for an application to the Historic Preservation Commission shall be deemed to preclude the applicant from undertaking the activity applied for.
 8. When a Certificate of Appropriateness has been issued, the Administrative Officer or his appointee shall, from time to time, inspect the work approved by such Certificate and shall regularly report to the Commission the results of such inspections, listing all work inspected and reporting any work not in accordance with such certificate.
 9. A Certificate of Appropriateness or Permit for Minor Work shall be valid for a period of two years from date of issue unless reasonable extensions are requested by the applicant or the Commission.
- f. Permit for Minor Work. A committee of the Historic Preservation Commission, consisting of the Chairperson or their designee, a Commission member appointed by the Chair or Secretary, and the Zoning Official as a nonvoting member may review applications for Minor Work without holding a public hearing, if the Zoning Official determines at the time the application is received that the proposed work meets the appropriate criteria for a Permit for Minor Work. If the committee finds the application appropriate, it may act in place of the full Commission and issue a Permit for Minor Work to the Zoning Official, who may then forward it to the Borough's

Construction Official so that a building permit may be issued. In this instance the Permit for Minor Work issued by the Committee shall include, at a minimum, a statement of the significance of the structure, a description of the proposed work and the reasons supporting the Committee's decision. If the committee does not find the application appropriate or doubts its appropriateness, the application shall be considered for a Certificate of Appropriateness and scheduled for a public hearing before the full Board.

g. Emergency Procedures.

1. When a structure or improvement requires immediate repair to preserve the continued habitability of the structure and/or the health and safety of its occupants or others, emergency repairs may be performed in accordance with construction codes, without first obtaining a Certificate of Appropriateness or Permit for Minor Work. Under such circumstances, the repairs performed shall be only such as are necessary to protect the health and safety of the occupants of the structure or others and/or to maintain the habitability of the structure. Where feasible, temporary measures to prevent further damage should be used, provided these measures are reversible without damage to the structure.
2. The property owner shall make a request for the Commission's review simultaneously with the onset of emergency work. The request shall be made to the Administrative Officer. Such emergency work shall be permitted only if the Administrative Officer certifies the immediate necessity for such permit issuance. Upon notice to the full Commission by telephone, personal contact, or other appropriate means of communication, at least three members of the Commission shall convene as soon as possible and shall proceed to review the Certificate of Appropriateness application as provided in this section. The Commission shall conduct the emergency meeting in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-9. Subsequent to such review, a Certificate of Appropriateness or Permit for Minor Work may be issued upon a majority vote of the members convened.
3. No work in addition to the emergency repairs shall be performed on the structure until an appropriate request for approval is made and approval is obtained from the Commission after referral of the request of the Zoning Official.

h. Requirement of Obtaining Certificate of Appropriateness for Government Actions.

1. The intent and purposes of this section would not be fully served if the municipality and other governmental agencies were to control the actions of other but fail to apply similar constraints to themselves. The Borough of West Cape May, when it plans an alteration, demolition, construction or change in appearance to any Borough-owned property in any historic district or on any historic site, shall submit the plans to the Historic Preservation Commission and shall receive an advisory report on the appropriateness of those plans before undertaking the work.
2. In those circumstances where the Borough cannot require compliance, as in certain cases involving the County, State, and Federal governments, the Borough most strongly urges voluntary cooperation of such agencies in seeking a Certificate or Determination of Appropriateness and hereby authorizes the Commission to consider such requests and applications. This does not relieve the property owner from complying with applicable State and Federal regulations regarding historic preservation.

§ 27-19.6. Referral from Municipal Agencies.

[Ord. No. 364-06 § 1; Ord. No. 378-07 § 1; Ord. No. 533-2018]

- a. The Planning Board shall refer to the Commission every application for development submitted to the Board for development in historic districts or on historic sites designated on the Zoning Map or identified in any component element of the Master Plan. This referral shall be made when the application for development is deemed complete or is scheduled for a hearing, whichever occurs sooner. The Board shall provide a copy of its agenda to the Commission members as soon as it has been prepared and at the same time that it is mailed to the members of the Board. Failure to refer the application as required shall not invalidate any hearing or proceeding. The Commission may provide its advice, which shall be conveyed through its delegation of one of its members or staff to testify orally at the hearing on the application and to explain any written report which may have been submitted.
- b. On all matters referred to the Commission which require approval of by the Planning Board, the decision of the Commission shall be a recommendation only.
- c. Yard Variance. Because structures in historic districts are often built close to the lot lines, it is in the public interest to retain a neighborhood's historic appearance by approving variances to normal yard requirements. Where it is deemed that such a variance will not adversely affect neighboring properties, the appropriate Board may grant such variance to standard requirements.
- d. An approval by the Planning Board does not relieve the applicant of the requirement of obtaining a Certificate of Appropriateness for those aspects of a change not approved by the application for development.

§ 27-19.7. Standards, Design Guidelines and Criteria.

[Ord. No. 364-06 § 1; Ord. No. 378-07 § 1; Ord. No. 495-2015; Ord. No. 533-2018; 9-11-2024 by Ord. No. 640-24]

- a. This section provides uniform standards, design guidelines and criteria for the regulation of Historic Sites and Districts by the Historic Preservation Commission. All projects requiring a Certificate of Appropriateness, Permits for Minor Work, and all applications for development shall be governed by the principles of the Secretary of the Interior's Standards for Rehabilitation, the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating & Reconstructing Historic Buildings, and the "West Cape May Guidelines for the Historic District." In the event that there is a conflict between any of the documents referenced above, the "West Cape May Guidelines for the Historic District" shall prevail.
- b. Criteria for Finding Appropriateness. The Historic Preservation Commission may consider the siting, design, arrangement, texture, details, scale, shape, materials, finish, and relationship to streetscape of the proposed work and the relationship of those characteristics to the historic, architectural, cultural, archaeological, and aesthetic significance of the historic site or district.
- c. In considering applications to the Historic Preservation Commission, the Commission shall not consider use, zoning requirements for setbacks, density, height limitations or lot coverage in finding appropriateness, as these fall within the purview of the Planning Board.
- d. In considering development applications referred to it by a Board, the Historic Preservation

Commission may consider use, zoning requirements for setbacks, density, height limitations, and lot coverage, in rendering its advice to the Planning Board on the application of the zoning ordinance provisions concerning historic preservation. The Commission should emphasize the streetscape when reviewing applications for development. The Commission shall not hear applications for development unless referred to it by either the Planning Board or the Zoning Board of Adjustment.

- e. **Criteria for Review of all Applications.** All reviews of applications for Certificate of Appropriateness and plans within historic preservation districts shall consider:
1. The cultural, historic or architectural values of a structure and its relationship to the surrounding area.
 2. The general compatibility of the proposed use to the cultural and historical values of the surrounding area.
 3. The general compatibility of exterior design, arrangement, texture and materials proposes to be used. In carrying out the review under the guidelines, the following criteria shall be utilized:
 - (a) All exterior elevations, including the roof, must be maintained and new construction must be compatible with existing districts and surrounding areas.
 - (b) In-kind or similarly compatible building materials must be utilized.
 - (c) Uses shall be environmentally compatible with the uses adjacent to the property and throughout the surrounding areas. Uses shall not adversely affect the uses in the adjacent or surrounding areas.
- f. **Guidelines.** From time to time the Historic Preservation Commission may, pursuant to resolution, adopt guidelines that shall become part of this chapter. Those guidelines include, but are not limited to, guidelines for demolition applications, window guidelines, door guidelines, exterior sheathing guidelines, fence guidelines, streetscape guidelines and design guidelines. A copy of the guidelines shall be available in the offices of the Construction Official, the Zoning Official and the Borough Clerk. The guidelines may be amended by the Historic Preservation Commission, but shall not take effect until approved by ordinance of Board of Commissioners. [Guidelines Amendments: Ord. No. 409-08 § 1; Ord. No. 439-09 § 1; Ord. No. 495-2015; Ord. No. 575-2019]

§ 27-19.8. Demolitions and Relocations.

[Ord. No. 364-06 § 1; Ord. No. 378-07 § 1; Ord. No. 533-2018; Ord. No. 568-2019; 9-11-2024 by Ord. No. 640-24]

- a. **Criteria.** On an application to demolish or move an historic building, site, place or structure, the following matters shall be considered. The Historic Preservation Commission shall consider criteria 1 through 8 in determining whether it is appropriate to demolish a structure. The Commission shall consider criterion 9 in determining whether the applicant may demolish the building on the grounds of hardship.
1. Its historic, architectural, cultural and aesthetic significance.

2. Its current and potential use for those purposes currently permitted by this chapter or for the use proposed.
3. Its importance to the municipality and the extent to which its historical or architectural value is such that its removal would be detrimental to the integrity of the historic property or district and the public interest.
4. The extent to which it is of such significant craftsmanship, texture or material that it could not be reproduced or could be reproduced only with great difficulty.
5. The extent to which its retention would increase property values, promote business, create new positions, attract tourists, students, writers, historians, artists and artisans, attract new residents, encourage study and interest in American History, stimulate interest and study of architecture and design, educate citizens in American culture and heritage, or make the Borough of West Cape May a more attractive and desirable place to live.
6. The impact of its removal upon the historic district.
7. The reason for not retaining the structure or improvement at its present site, the proximity of the proposed new location and its accessibility to residents of the municipality, and the probability of significant damage to the structure or improvement as a result of the relocation and whether moving the structure from the present site would diminish its significance.
8. A demolition and development plan must be submitted with the Application for a Certificate of Appropriateness when any demolition is proposed. The application will not be deemed complete without this plan.
9. The Commission shall study the question of economic hardship for the applicant and shall determine whether the site can be put to reasonable beneficial use without the approval of the demolition application. In the case of an income-producing building the Commission shall also determine whether the applicant can obtain a reasonable return from the existing building. The Commission may ask applicants for additional information to be used in making these determinations. The request may include but is not limited to:
 - (a) Amount paid for the property, date of purchase, and party from whom purchased, including a description of the relationship, whether business or familial, if any, between the owner and the person from whom the property was purchased;
 - (b) Assessed value of the land and improvements thereon according to the most recent assessment;
 - (c) For depreciable properties a pro forma financial statement prepared by an accountant or broker of record;
 - (d) All appraisals obtained by the owner in connection with his purchase or financing of the property, or during his ownership of the property;
 - (e) Bona fide offers to purchase or rent the property, if any;
 - (f) Any consideration by the owner as to profitable, adaptive uses for the property.

b. Procedure.

1. **One/Two-Year Delay.** The Commission may instruct the Construction Office to withhold approval for a period of one year for residential properties and two years for commercial properties. These delay provisions are designed to allow the Borough of West Cape May, or other interested parties, ample time and opportunity to determine whether it should acquire the property for preservation.
2. **Where Demolition Disapproved.** If the Commission disapproves an application for a Certificate of Appropriateness to demolish a historic building, place or structure, the owner shall nevertheless, as a matter of right, be entitled to raze or demolish such building, place or structure, provided that all of the following requirements have been fully met:
 - (a) **Appeal to Planning Board.** The owner may opt to appeal the denial of the Certificate of Appropriateness to the Planning Board. If the owner appeals the denial of the demolition permit, the owner may simultaneously commence marketing the property for sale for fair market value as set forth below. Alternatively, the owner may await the decision of the Planning Board.
 - (b)
 - (1) **Sale for Fair Market Value.** The owner shall, prior to seeking demolition, for a period of at least one year for residential properties and two years for commercial properties, and at a price reasonably related to its fair market value in its present use as a historic site or structure, make a bona fide offer to sell such building, place or structure and the land pertaining thereto to any person, organization, government or agency thereof or political subdivision which gives reasonable assurance that it is willing to preserve the building, place or structure and the land pertaining thereto. In this instance, the market value shall be determined by an appraiser selected by the Historic Preservation Commission and at the expense of the owner.
 - (2) The owners shall not have been a party to any bona fide contract binding upon all parties thereto, for the sale of any such building, place or structure and the land pertaining thereto executed prior to the expiration of the notice period, except a contract made in accordance with Subsection **(b)(1)** above.
 - (c) **Demolition Notice Posted and Publication.** Notice of proposed demolition shall be posted on the premises of the building, place or structure throughout the notice period in a location such that it is clearly readable from the street. The posted notice shall remain in place for a period of time of one year for residential properties and two years for commercial properties. In addition, the applicant shall publish a notice in the official newspaper of the Borough within the first 10 days following the date of the denial by the Historic Preservation Commission or denial of the appeal by the Planning Board.
 - (d) **Certificate of Compliance.** The property owner shall submit a Certificate of Compliance for review and approval by the Historic Preservation Commission to demonstrate that the owner has complied with the requirements of this section.
3. **Assignment.** No assignment of the rights granted by a Certificate of Appropriateness shall be permitted.
4. **Expiration of Approval.**
 - (a) In cases where demolition is permitted, the Certificate of Appropriateness shall be valid for one year from the date of Historic Preservation Commission approval of the

application. The one-year period shall not be extended.

- (b) At the time of issuance of the Certificate of Appropriateness, the Zoning Official shall designate the period of time (within the one-year approval period) within which demolition must be completed after it is initiated on site.
5. Approval after Change of Circumstances. The Commission may at any time during such notice period, if a significant change in circumstances occurs, approve a Certificate of Appropriateness to demolish, in which event, a certificate shall be issued within 10 days thereafter.

§ 27-19.9. Enforcement.

[Ord. No. 364-06 § 1; Ord. No. 378-07 § 1; Ord. No. 533-2018; 9-11-2024 by Ord. No. 640-24]

All municipal officials reviewing permit applications for real property or improvements thereon shall determine whether the application involves any activity that should also require Historic Preservation Commission approval. If so, the official shall inform the Administrative Officer, the applicant, and the Historic Preservation Commission.

§ 27-19.10. Violations and Penalties; Restoration of Property; Injunctive Relief.

[Ord. No. 364-06 § 1; Ord. No. 378-07 § 1 Ord. No. 533-2018; 9-11-2024 by Ord. No. 640-24]

a. Violations.

1. Should any person undertake a qualified activity at an historic site or improvement within a historic district without first having obtained and posted a Certificate of Appropriateness or Permit for Minor Work, he shall be in violation of this § **27-19**.
2. Upon learning of a violation, the Zoning Officer or their designee shall personally serve upon the owner of the lot where the violation is occurring a notice describing the violation in detail and giving the owner 10 days to abate the violation by seeking review of the extent and proposed work by the Historic Preservation Commission.
3. If the owner cannot be personally served within the municipality with the said notice, a copy shall be posted on site and a copy sent by certified mail, return receipt requested, to the owner at the last known address as it appears on the municipal tax rolls.

b. Penalties. Any person who undertakes an activity affecting an historic site or improvement within a historic district without first having obtained a Certificate of Appropriateness or Permit for Minor Work, or without subsequent review by the Commission following discovery of the omission shall in addition to fines and penalties as set forth in § **1-5** of the West Cape May Code, be required to restore same to a condition consistent with its historic character and integrity, as approved by the Historic Preservation Commission.

c. If, on three occasions, a contractor who undertakes an activity affecting an historic site or improvement within a historic district without first having obtained a Certificate of Appropriateness or Permit for Minor Work or without subsequent review by the Commission following discovery of the omission, shall have their mandatory permit revoked with the Borough

of West Cape May.

- d. Injunctive Relief. Should any action that permanently and adversely change a historic site or historic district, such as demolition or removal, be about to occur without a Certificate of Appropriateness having been issued, the Zoning Officer may apply to the Superior Court of New Jersey for the injunctive relief necessary to prevent the injury to the site or district.

§ 27-19.11. Other Requirements Unaffected.

[Ord. No. 364-06 § 1; Ord. No. 378-07 § 1; Ord. No. 533-2018]

The requirements of this section shall be in addition to, and shall not be interpreted as a substitute for, any other approval, permit or other action as otherwise provided for.

§ 27-19.12. Application and Escrow Fees Payable to the Historic Preservation Commission.

[Ord. No. 381-07 §§ 1,2; Ord. No. 533-2018; 9-11-2024 by Ord. No. 640-24]

- a. Application Fees to be Paid to the Historic Preservation Commission.
1. Permit for Minor Work (i.e. review by a committee of the Historic Preservation Commission): \$45.00
 2. Certificate of Appropriateness (i.e. review by the full Historic Preservation Commission):\$135.00
- b. Additional Fees to be Paid to the Historic Preservation Commission.
1. Legal Review (i.e., all applications): \$300.00.
- c. Should the Commission determine that any professional review of an application is necessary, it shall have the ability to require the applicant to make an escrow deposit in an amount sufficient to defray the cost of that professional review, and to require additional such deposits if necessary.

[Amended 3-23-2022 by Ord. No. 609-22]

§ 27-19.13. West Cape May Historic District Map.

[Ord. No. 468-11; Ord. No. 533-2018]

The Map, as recommended and approved by the Historic Preservation Commission, be and is hereby designated as the Official Historic District Map of the Borough of West Cape May. The Historic District Map may be found on file in the office of the Borough offices.

§ 27-20. through § 27-26. (RESERVED)

§ 27-27. SUPPLEMENTAL REGULATIONS.

[Ord. No. 130-88 § A16]

The following regulations shall govern and be applicable to lots, structures and uses in all zoning districts unless specifically stated otherwise under the provisions set forth for the particular district.

§ 27-27.1. Accessory Buildings and Uses.

[Ord. No. 130-88 A16 § 1; amended 9-23-2020 by Ord. No. 585-20]

Accessory buildings and uses shall not be constructed or utilized prior to construction and utilization of the principal building and use. All accessory buildings or uses, except parking areas and fences or walls, may only be located in the rear or side yard areas. Attached or detached garages may be located on a lot provided the setback from the property line along any street or other public right-of-way to the garage is a minimum of twenty (20') feet pursuant to Section **27-27.3**. This specific provision regarding garage setbacks will take precedence over any lesser setback requirement with general applicability.

§ 27-27.2. Satellite Television Dishes and Antenna.

[Ord. No. 130-88 A16 § 2; Ord. No. 520-2017]

a. All buildings:

1. Generally, dish placement should be positioned on auxiliary structures and be minimally visible from the main right-of-way.
2. On a flat roof, satellite dish or dish type antenna should be located so they are not visible from the public street.
3. Satellite dish or dish type antenna installation on free standing ground is discouraged but may be considered on a case-by-case basis if there are no suitable alternative locations and the location is minimally visible from the main right of way.
4. If located on a sloping roof building, satellite dish or dish type antenna should only be installed on rear slopes that are minimally visible from the public street.
5. Satellite dish or dish type antenna shall be installed where they least affect the view of the protected architectural features of the building, and where they have the least aesthetic effect on the design of the building and the appearance of a historic streetscape.
6. Satellite dish or dish type antenna should be reversible with no damage to the original roof or to the building.
7. If the Zoning Official determines that the application strictly meets the standards for Satellite Television Dishes and Antenna, the application may be forwarded to the Construction Official and a permit may be issued. If the Zoning Official has any doubt whether the proposed work meets the standards, he shall refer the application to the Historic Preservation Commission, if the property is in the Historic District, or to the Planning Board if not in the Historic District.

§ 27-27.3. Parking Requirements.

[Ord. No. 130-88 A16 § 3; Ord. No. 153-89 § 3; Ord. No. 396-07 § 31; Ord. No. 428-09 § 27-27.3; Ord. No. 539-2018; amended 9-23-2020 by Ord. No. 586-20]

All uses shall provide adequate off-street parking. The following is the minimum number of spaces required for each particular category of use:

| Use | Number of Spaces |
|---|--|
| Residential dwelling unit in R-1, C-1, C-2, C-3 | See RSIS, N.J.A.C. 5:21-4.14 |
| Residential dwelling unit in all other zones | See RSIS, N.J.A.C. 5:21-4.14 |
| Bed & Breakfast, guest house, hotel, motel | 1 space per unit, plus one space for owner/manager |
| Campground | 1 space per unit plus 1 space for each employee |
| Mobile home park | 1 space per unit plus 1 space for each employee |
| Farms | 3 |
| Banks and offices | 1 space per 400 square feet of floor area |
| Retail businesses | 1 space per 300 square feet of floor area |
| Restaurant | 1 space for each 6 seats or 1 space per 150 square feet of total restaurant floor area (including outdoor dining area), whichever is greater. |
| Medical offices | 1 space per 150 square feet of floor area |
| Personal service shops | 1 parking space per 400 square feet of floor area |
| Laundry, self-service | One space per 400 square feet of floor area |
| Liquor stores | 1 space per 300 square feet of floor area. Liquor stores shall also provide one truck loading and unloading area for every 10,000 square feet, or part thereof, of gross floor area. Each truck area shall be adjacent to the store, and shall be 14 feet wide by 60 feet long (14'x 60'). |
| Breweries/Distilleries | 1 space for each 6 seats or 1 space per 150 square feet of total floor area (including outdoor seating area), whichever is greater. |

Where the applicant proposes a commercial use not specified above, applicant shall be required to present evidence to the Planning Board that the proposed development contains sufficient parking spaces.

Mixed Uses — If two or more uses are conducted on one lot, the minimum required number of parking spaces shall be the sum of the required parking spaces for each use.

Applications for nonresidential development may include the following alternatives to on-site parking to be considered by the Planning Board. These alternatives are not available if new construction is proposed.

- a. Contribution to Dedicated Parking Fund. In the event that an applicant has insufficient land for 100% of the required off-street parking spaces based on the proposed use or uses of the site, the Planning Board may still approve the application conditioned upon the applicant installing the parking spaces for which there is sufficient land and making a contribution for each

additional parking space omitted, up to the required number, to a Borough Parking Fund maintained by the Borough specifically for the periodic purchase, lease, acquisition or maintenance of off-street parking lots to serve the Borough. The contribution for each parking space shall be paid prior to issuance of a building permit or, at the option of the applicant at the time of approval, in installments over a five-year period, with the first payment due prior to the issuance of the building permit and additional payments due on the annual anniversary of the first payment. Payments not received by the Borough on the anniversary due date shall be delinquent and added to the tax liability of the property owner subject to penalty and interest. Upon sale of the property, any unpaid portion of the contribution will be payable in full.

Contributions are required as follows:

| # of Spaces | 1 x Contribution/ Space | 5-Year Payment Contribution/Space |
|---|-------------------------|-----------------------------------|
| First 5 spaces | \$5,000/each space | \$1,200/each space/year |
| Each additional space in excess of 5 spaces | \$3,000/each space | \$800/each space/year |

- b. Off-site parking spaces within five hundred (500') feet walking distance of a primary pedestrian entrance to the site being developed may be provided through ownership or lease of the lot where the parking is proposed. Proof of ownership or lease is required.

Driveways may be utilized to satisfy these parking requirements for one- and two-family dwellings only.

Off-street parking spaces shall be not less than nine (9') feet by eighteen (18') feet in size. Drive aisles shall be a minimum of ten (10') feet in width.

All parking spaces, driveways and drive aisles shall be designed and situated so as to provide safe and convenient access. Pervious surfaces such as pervious or grass pavers, are encouraged. Where stone or gravel is used, raised borders such as landscape planters shall be used to keep material contained in parking area. Access drives and walkways shall be of a stable material such as concrete, asphalt or pavers.

Parking areas for commercial or mixed use that border a residential use or residential zone, shall be screened and buffered as stated in Subsection **27-27.8**, Buffering. Such buffering shall be at least four (4') feet in width and four (4') feet in height and of a dense evergreen or similar species as may be determined by the Planning Board in connection with site plan review. See Landscaping and Vegetation § **27-36** of this chapter.

When site plan review is required, parking areas shall be in conformance with lighting standards set forth in the Borough's site plan regulations.

For all properties in all districts, ground level lighting shall be used wherever possible. Lighting shall not exceed twelve (12') from grade, and shall be shielded downward.

In the C-1 Broadway/Historic zoning district, except for restaurants and B&B's, guest houses and hotel/motels providing greater than six units (including owners quarters if present), parking requirements shall be waived for pre-existing structures, except in the case of new construction (expansion of existing structure or entirely new structure).

In the C-1 Broadway zoning district, parking areas are prohibited in the front yard. In the C-3 Sunset zoning district, parking areas are prohibited in the front yard and side yards.

Garages fronting on a street in all districts for all uses shall have a minimum setback of twenty (20') from the property line.

Curb cuts for driveways require zoning approval, and are permitted at a maximum width of twelve (12') where one space is required, and twenty-four (24') where two spaces are required.

§ 27-27.4. Signs.

[Ord. No. 130-88A16 § 4; Ord. No. 342-05 § 1; Ord. No. 428-09 § 27-27.4; Ord. No. 512-2016]

- a. Purpose. The purpose of this subsection is to protect the safety and orderly development of the community through the regulation of signs and sign structures. The intent of this subsection is to balance businesses' need to optimize visibility with the cumulative safety and aesthetic impact of all signs in the community. This subsection is consistent with the downtown vision as outlined in the 2008 Business District Urban Design Plan; community goals and objectives as stated in the 2005 Master Plan; and Chapter 27 zoning regulations regarding historic preservation, landscaping, and design standards.
- b. Definitions. When a specific definition is not provided, standard definitions shall be used:

ANIMATED or MOVING SIGN

Shall mean a sign employing actual motion or the illusion of motion.

ARCHITECTURAL PROJECTION

Shall mean any projection that is not intended for occupancy and that extends beyond the face of an exterior wall of a building, but that does not include signs as defined herein.

AWNING

Shall mean an architectural projection or shelter projecting from and supported by the exterior wall of a building and composed of a covering of rigid or nonrigid materials and/or fabric on a supporting framework that may be either permanent or retractable.

AWNING SIGN

Shall mean a sign attached to, affixed to, or painted on an awning.

BANNER SIGN

Shall mean a sign made of fabric or other similar flexible material with no framework or electrical components. A pole banner sign generally is made of fabric, affixed to a lamppost, and celebrates an event, season, community, downtown district or organization.

BENCH SIGN

Shall mean a sign painted on, located on, or attached to any part of the surface of a bench, seat, or chair placed on or adjacent to a public place or right of way. Memorial nameplates or dedication plaques are not included.

BILLBOARD SIGN

Shall mean a commercial sign that directs attention to a business, commodity, service or entertainment conducted, sold, or offered at a location other than the premises on which the sign is located.

CANOPY

Shall mean a multi-sided overhead structure or architectural projection supported by attachments to a building on one or more sides and either cantilevered from such building or also supported by columns.

CANOPY SIGN

Shall mean a sign affixed to the visible surface(s) of a canopy.

CHANGEABLE SIGNS

FIXED-MESSAGE ELECTRONIC SIGNS - Shall mean signs whose basic informational content has been preprogrammed to include only certain types of information projection, such as time and temperature..

ELECTRONIC MESSAGE SIGN - Shall mean an electronically activated changeable sign whose variable message capability can be electronically programmed.

CONSTRUCTION SIGN

Shall mean a temporary sign placed on the premises where construction is taking place, during the period of such construction, indicating the names of the architects, engineers, landscape architects, contractors, and the owners, financial supporters, sponsors, and similar individuals or firms having a role or interest with respect to the structure or project.

DIRECTORY SIGN

Shall mean a sign listing the tenants or occupants of a building or group of buildings and that may also indicate their respective professions or business activities.

FACE, SIGN

Shall mean the area or display surface used for the message.

FACADE, PRINCIPAL

Shall mean the exterior wall of a building or structure that fronts on a public street.

FACADE SIGN

Shall mean the sign on the principal façade of a building.

FREESTANDING SIGN

Shall mean a sign supported by a structure affixed to the ground, and not supported by a building, including pole signs.

GROUND SIGN or MONUMENT SIGN

Shall mean a freestanding sign in which the entire bottom is in contact with or is close to the ground, supported by internal structural framework.

HANGING SIGN

Shall mean a freestanding sign supported by the extended arm of a single post.

ILLUMINATED SIGN

Shall mean a sign characterized by the use of artificial light, either projecting through its surface (internally illuminated); or reflecting off its surface (externally illuminated).

INFLATABLE SIGN

Shall mean any display capable of being expanded by air or other gas and used on a permanent or temporary basis to advertise a product or event.

MARQUEE

Shall mean any hood, canopy, awning or permanent construction that projects from a wall of a building, usually above an entrance.

MARQUEE SIGN

Shall mean any sign part of a marquee and designated to have changeable copy, either manually or electronically.

MEMORIAL SIGN

Shall mean a sign, tablet, or plaque memorializing a person, event, structure, or site.

MONUMENT SIGN

See Ground sign

NEON SIGN

Shall mean a sign consisting of glass tubing, bent to form letters, symbols, or other shapes and illuminated by neon or a similar gas through which an electric voltage is discharged.

NONCONFORMING SIGN

Shall mean a sign lawfully erected and maintained prior to the adoption of the current ordinance that does not conform with the requirements of the current ordinance.

POLE SIGN

Shall mean a sign that is mounted on a freestanding pole.

PORTABLE SIGN

Shall mean a sign that is moveable and not permanently attached to a structure or the ground, including A-frame or sandwich board signs.

PROJECTING SIGN

Shall mean a sign attached to a projecting out from a building face or wall, generally at right angles to the building.

ROOF SIGN

Shall mean a sign mounted on, and supported by a roof, or signs that project above the highest point of the roofline, parapet or fascia of the building. Signs mounted on mansard facades, pent eaves and architectural projections such as canopies or marquees shall not be considered roof signs.

SHOPPING CENTER

Shall mean two or more commercial establishments on one property, managed as a unit, and providing retail goods and personal services.

SHOPPING CENTER SIGN

Shall mean a freestanding sign that identifies all the businesses in the shopping center.

SIGN AREA

Shall mean the entire face of a sign, including the surface and any frame, trim or molding, but not including the supporting structure.

WALL SIGN

Shall mean a sign fastened to, or painted on, the wall of a building or structure in such a manner that the wall becomes the supporting structure for, or forms the background surface of the signs, and that does not project more than eighteen (18") inches from such building or structure.

WINDOW SIGN

Shall mean a sign affixed to the surface of a window with its message intended to be visible to and readable from the public right-of-way or from adjacent property.

c. General Provisions.

1. Unless otherwise stated herein, the installation of any permanent sign for a commercial, professional and/or institutional use shall require a zoning permit.
2. No sign shall be installed which is not in accordance with standards established in this chapter. If a sign type is not specifically permitted, it is prohibited.
3. Each principal structure shall have affixed thereto appropriate numbers indicating its street address in a size and location so as to be readily visible from the street.
4. No sign may be placed on or attached to a building or erected independently for any purpose other than to advertise a permitted use conducted on the same premises.
5. No sign of any type shall be permitted to obstruct driving visions, traffic signals, traffic directional and identification signs, or vehicular or pedestrian traffic in a public right-of-way.
6. No sign or sign supports shall be located within any street, road, sidewalk or other public right-of-way, except where provided herein for awning, canopy and projecting signs.
7. No sign may project above the roof line of the building on which it is mounted, or above the maximum height of the building to which it is associated.
8. All signs shall be kept in good repair, which shall include replacement or repair of broken structural elements, casings, or faces, maintenance of legibility and all lighting elements.
9. All pole signs shall require the approval of the Planning Board and/or Zoning Board of Adjustment, depending upon which Board has jurisdiction. The area surrounding the base of pole signs shall be landscaped.
10. Freestanding signs, where permitted by district regulation, are limited to no more than one per property, and shall be set back four (4') feet from the property line or public right-of-way.
11. Wall signs shall not exceed 5% of any wall.
12. Projecting signs are permitted to encroach over the public right-of-way by a maximum of two (2') feet. The bottom of the sign shall be at least eight (8') feet from grade.
13. Awning signs are only permitted on the vertical fringe of the awning. Awning lettering shall be a maximum of eight (8"). Vinyl or other plastic material is not permitted. Awnings and canopies may project a maximum of four (4') feet into the right-of-way, but the total

projection shall not be any greater than five (5') feet from the face of the building. The bottom of the awning or canopy shall be at least seven (7') feet from grade. Awning supports are not permitted within the setback requirement, or in the public right-of-way. Awnings shall not be closer than twenty-four (24") from the face of the curb.

14. Institutional signs for schools, churches and other public or semi-public institutions are permitted in all zoning districts. There shall not be more than one freestanding sign per frontage, or one sign per wall. Sign area of the freestanding sign shall not exceed 24 square feet, and the wall sign shall not exceed 5% of the wall.

15. Computations.

- (a) Sign area measurement. For those signs with a defined background, the calculated sign area includes the defined background. For signs that have no defined background, such as letters affixed to or painted on a wall, the area shall be computed by measuring the outline of the letters or graphics. The area for a sign with more than one face includes the sum of all the area of signs visible from any one point. For double-sided identical signs, and V-shaped signs at a 15% or more acute angle, only one side is included in sign area.
- (b) Sign height measurement. Sign height is measured at the highest point of the sign or sign structure.
- (c) Computation of total permitted sign area includes all sign types except those listed as exempt or as signs not requiring a permit herein.
- (d) For properties that have more than one side facing a street, additional signage may be permitted in accordance with the standards for this subsection, for each major street upon which the parcel fronts, but may not be combined and placed facing one street.

d. Prohibited Signs.

[Ord. No. 512-2016]

1. Electronic message signs.
2. Animated, blinking, flashing, moving or revolving signs.
3. Neon, LED or similar signs.
4. Roof signs.
5. Signs attached to trees or utility poles.
6. Inflatable signs
7. Billboard signs
8. Bench signs
9. Any sign attached to or placed on a vehicle except for those vehicles actively used in the daily function of the business to which such signs relate.
10. Banners, except where permitted herein, and pennants.
11. Vinyl signs

12. Internally lit signs

- e. Permits Required. All signs except those listed as exempt or as signs not requiring a permit herein, require a zoning permit prior to installation. Certain sign types also require a construction permit to ensure proper, safe and secure installation.
- f. Exempt Signs. Signs exempt from regulations:
 - 1. Official Traffic, Parking and Street Signs. Also exempt are trespassing signs and signs indicating private ownership of roadways or other private property.
 - 2. Signs installed by or at the direction of the Borough upon Borough streets, road, sidewalks, rights-of-way or other real property owned or controlled by the Borough.
- g. Signs That Do Not Require a Permit.
 - 1. Roadside farm stand signs where approved as an accessory use. Maximum size of roadside farm stand sign is 12 square feet.
 - 2. Historical Signs. Historical signs, stating the historical name of a building and a date (e.g., John Doe House, circa 1850) shall be permitted, subject to the following restrictions:
 - (a) The area of a historical sign shall not exceed one and one-half (1 1/2) square feet.
 - (b) A historical sign shall be one-sided and may only be affixed to the front of a structure.
 - (c) Only one historical sign per structure shall be permitted.
 - 3. Signs identifying a resident's name and/or street number, limited to one square foot.
 - 4. Temporary Signs. Temporary signs generally lack good design, are made of substandard material, and are often located in the public right-of-way. Enforcement is difficult due to their ability to be removed easily. Recognizing that temporary signs serve an important commercial and economic function, this chapter seeks to balance these issues through reasonable, appropriate and measurable regulation.
 - (a) For sale or rent. One for sale or rent sign per property is permitted with a maximum sign area of five square feet. "For sale" and/or "sold" signs must be removed from the premises within seven days of closing/settlement.
 - (b) Open house signs, including one directional sign and balloons may be placed only on the property for which the open house is being held, and only during the hours of the open house. Pennants are prohibited.
 - (c) Contractor signs. Contractor signs shall be permitted at a maximum of five square feet, but must be removed within 30 days of the completion of the contractor's work on the premises.
 - (d) Construction sign. During new construction, one temporary sign announcing the builder, architect, lending institution, and/or real estate broker is permitted and shall be no larger than 16 square feet on lots that are 5,000 square feet or less, and 32 square feet on lots greater than 5,000 square feet. The sign must be removed upon issuance of a certificate of occupancy.
 - (e) Political campaign and election signs shall be no larger than 16 square feet.

- (f) Signs with a maximum size of two square feet, posted inside windows advertising a sale, help wanted, and public and nonprofit events.
 - (g) Yard sale and/or garage sale signs. Signs advertising yard sales and/or garage sales shall be permitted but must be removed within 24 hours after the event.
 - (h) Banners indicating a sale event or grand opening are permitted for a total of 30 days in any one year period, and require prior written notification of and written confirmation by the Zoning Officer or Code Official.
- 5. Decorative or informational flags such as "open" or "welcome," with a limit of one flag per business.
 - 6. Information posted regarding hours of operation, credit cards accepted. Such information shall be permitted only where attached to the building. No letter or number in excess of four (4") inches vertical height shall be permitted.
- h. Substandard or Illegal Signs.
- 1. Unsafe Signs. If any sign is deemed unsafe by the Construction Official, Zoning Officer, or Code Official, the owner thereof or the person or firm responsible for the property, upon written or verbal notice shall make the sign safe or remove the sign. If the sign is not removed in the time period indicated, the sign can be removed by the Borough at the expense of the property owner, and shall be cause for the issuance of a summons to appear in Municipal Court.
 - 2. Obsolete Sign Copy. Any individual, corporation or entity who owns or leases a sign shall remove said sign within 30 days after the party no longer conducts business on the premises.
 - 3. Illegal Signs. Any sign that is unlawfully installed shall be removed by the owner immediately upon notification with reason by the Construction Official, Zoning Officer, or Code Official. Failure to remove an illegal sign shall be cause for the issuance of a summons to appear in Municipal Court.
 - 4. Dilapidated Signs. A sign determined to be substantially dilapidated as determined by the Zoning Officer or Code Official, shall be removed in accordance with Subsection 1 above.
 - 5. Durable Materials. All signs shall be made of durable material and fastened securely with nonrusting hardware. Cardboard, poster board, corrugated plastic, and other similar materials are considered substandard and unacceptable sign materials and shall be removed.
- i. Nonconforming Signs.
- 1. Nonconforming signs as defined herein, shall not be structurally altered, enlarged, relocated, extended or increased, unless they are to conform to these regulations and receive a zoning and construction permit.
 - 2. Nonstructural changes such as color and name changes, and normal maintenance and repair, such as light bulb replacement or painting, is permitted for nonconforming sign.
- j. Design Guidelines.

1. Every sign shall be designed as an integral architectural element of the structure, building and site to which it principally relates. It shall be in good scale and proportion in design and visual relationship to structures, building and other surroundings.
2. The colors, materials, and lighting of every sign shall be harmonious with the structure, building and site to which it relates.
3. Each sign shall be compatible with, and shall not block the visibility of signs on adjoining premises.
4. Freestanding signs shall be landscaped using § **27-36**, Landscaping and Vegetation Plan as a guide.

k. Administration and Enforcement.

1. Enforcement of all subsections of the within section shall be commenced by the issuance of a violation notice with order to comply. If no action is taken by the property owner, there shall be a filing of a complaint in the Municipal Court.
2. Any person found guilty of violation of this chapter, or any section therein, shall be subject to a fine not to exceed the sum of \$200 for a first offense. For a second offense or subsequent offense, a fine of not less than \$200 nor more than \$500, provided, however, that the Court shall waive or suspend any fines if the Court determines it is appropriate to do so. An individual need not be charged as a subsequent offender in order to be fined as a subsequent offender. Each day the violation continues may constitute a separate offense.

l. District Regulations.

1. Signs in C-1 Broadway Commercial District.

(a) Sign types permitted in the C-1 zoning district include:

- (1) Awning signs, only on vertical fringe of awning.
- (2) Façade signs, maximum 15% of first floor façade.
- (3) Hanging signs, maximum size 12 square feet, maximum height six (6') feet.
- (4) Monument signs, maximum size 12 square feet, maximum height four (4') feet.
- (5) Portable signs, maximum six square feet.
- (6) Projecting signs, maximum six square feet.
- (7) Wall signs, maximum 5% of wall.
- (8) Window signs, maximum 25% of window.

(b) There shall be no more than two signs per fifty (50') feet of lot frontage. Undersized lots are permitted no more than one sign.

(c) Signs shall be consistent with the character of the property and the historic nature of the district. Internally lit box signs are not permitted in the C-1 zone.

2. Signs in C-2 Park Commercial District.

- (a) Sign types permitted in the C-2 zoning district include:
 - (1) Awning signs, only on vertical fringe of awning.
 - (2) Hanging signs, maximum size 12 square feet, maximum height six (6') feet.
 - (3) Façade signs, maximum 15% of first floor facade.
 - (4) Monument signs, maximum size 12 square feet, maximum height four (4') feet.
 - (5) Portable signs, maximum six square feet.
 - (6) Projecting signs, maximum six square feet.
 - (7) Shopping center signs, one square foot of signage per foot of storefront, with a maximum size of 100 square feet, and maximum height ten (10') feet.
 - (8) Wall signs, maximum 5% of wall.
 - (9) Window signs, maximum 25% of window.
 - (b) There shall be no more than two signs per fifty (50') feet of store frontage.
 - (c) For shopping centers, in addition to a main shopping center sign, each individual store front may have two additional signs, (such as a facade sign and window sign) with a maximum of two square feet per foot of store frontage.
3. Signs in C-3 Sunset Commercial District.
- (a) Sign types permitted in the C-3 zoning district include:
 - (1) Awning signs, only on vertical fringe of awning.
 - (2) Façade signs, maximum 15% of first floor façade.
 - (3) Portable signs, maximum six square feet per side.
 - (4) Projecting signs, maximum six square feet.
 - (5) Wall signs, maximum 5% of wall.
 - (6) Window signs, maximum 25% of window.
 - (b) There shall be no more than three signs per fifty (50') feet of store frontage. Undersized lots are permitted no more than two signs.
4. Signs in Residential Districts.
- (a) Institutional signs as permitted in Subsection **c.14** of these sign regulations.
 - (b) Freestanding sign for multi-family residential complex at a limit of one square foot per ten (10') feet of frontage dedicated to such use, with a maximum of 24 square feet. Waivers from this requirement can be requested as part of the site plan application.

§ 27-27.4.1. Gutters and Downspouts.

[Added 5-13-2020 by Ord. No. 580-20]

- a. All new construction or reconstruction, conversion, alteration or enlargement of any building, portion of any building, or other structure shall be required to be outfitted with gutters and downspouts for purposes of directing stormwater away from adjacent properties and towards on-site stormwater facilities, or, toward the street. If impossible to drain directly to the street, it shall be directed to a system of interior yard drainage approved by the Municipal Engineer.
- b. Any development as defined in § 27-6 that requires approval from the Borough of West Cape May Combined Planning and Zoning Board, and impacts drainage or stormwater runoff, may be conditioned on the installation of gutters and downspouts, and any other related system recommended by the Municipal Engineer to direct or control stormwater runoff from the property in accordance with the Borough Code.

§ 27-27.5. Decks and Porches.

[Ord. No. 130-88 A16 § 5; Ord. No. 396-07 § 32]

- a. No deck or porch may be situated in the setback area. Decks and porches shall be counted when determining lot coverage.
- b. No deck or porch shall be higher than the highest floor of the principal structure.
- c. Covered decks and porches shall be counted in gross floor area except in the R-1 and R-2 zones as stated in Subsections 27-10.6 and 27-11.9. Uncovered decks or porches shall not be counted in gross floor area.

§ 27-27.6. Fences, Walls and Sight Triangles.

[Ord. No. 130-88 A16 § 6; Ord. No. 396-07 § 33; Ord. No. 498-2015; amended 11-25-2020 by Ord. No. 590-20]

Any fence construction or installation, including replacement, requires a zoning permit. Nonconforming fences must conform at time of replacement.

- a. All permitted fences shall be situated on a lot in such a manner that the finished side of the fence shall face adjacent properties. All poles, posts, etc., shall be erected on the inside of the fence at least six inches from the property line. It being the intent of this section that all fencing materials be installed within the property lines of the property making the application. No electrified or barbed wire fences shall be allowed except for farms when necessary to contain livestock.
- b. On any lot in any district, no wall or fence shall be erected or altered so that the wall or fence shall be over four feet in height in front and side yards and six feet in any rear yard with the following provisions and exceptions:
 1. A dog run may have fencing a maximum of six (6') feet in height provided such area is located in rear yards only and is set back from any lot line the distance required for accessory buildings in the zoning district as stipulated.
 2. A private residential swimming pool area must be surrounded by a fence at least four feet

but no more than six feet in height. Swimming pool areas shall be located in rear yards only.
[Amended 3-8-2023 by Ord. No. 621-23]

3. A tennis court area, located in rear yards only, may be surrounded by a fence a maximum of fifteen (15') feet in height; the fence to be set back from any lot line the distance required for accessory buildings in the zoning district as stipulated.
 4. Schools, playgrounds and parks in any district and commercial and industrial uses may erect security fences to control ingress and egress to all or part of the lot. The fence shall be no more than ten (10') feet in height and constructed with a ratio of the open portion to the solid portion being not less than six to one (6:1).
- c. Chain link fence is permitted in side and rear yards only.
- d. Sight triangle areas shall be required at intersections and driveways entering public streets, in addition to the specified right-of-way widths, in which no grading, planting, or structure shall be erected or maintained more than thirty (30") inches above the street center line, except for utility poles, street signs, fire hydrants and light standards. The sight triangle is defined as that area outside of the curb line and the straight line connecting "sight points," one located on each curb line or driveway center line at a distance of twenty-five (25') feet or one (1') foot for each mile of allowed street speed limit, whichever is greater, or fifteen (15') feet along the center line of a driveway.
- e. A property owner may construct an arbor along a permitted fence line subject to the following requirements:
1. No arbor will be permitted within a required sight triangle.
 2. Arbors shall not exceed a maximum height of 12 feet, a maximum width of eight feet, minimum clearances of eight feet in height and three feet in width (to provide clear passage through the arbor), and a maximum 18 inches in depth (front to rear).
 3. All arbors shall be properly constructed according to applicable construction codes.
 4. An arbor shall not be considered to be a fence for purposes of this section. An "arbor" is defined as an open work structure constructed of wood, metal or plastic and used to support vines, flowers or shrubs.
[Ord. No. 498-2015]

§ 27-27.7. Corner Lots.

[Ord. No. 130-88 A16 § 7; Ord. No. 157-90 § 3; Ord. No. 240-96 § 2; Ord. No. 502-15]

Development on corner lots shall generally adhere to the regulations in this chapter, except that, for setback purposes, the front yard of a corner lot will be that side of the lot that fronts the street to which the property's street address applies. The side yard paralleling the street side of the property on a corner lot shall not be reduced to a width of less than fifteen (15') feet from the street side property line, irrespective of any other setback requirement in this chapter, except for those specified in the C-3 Commercial District bulk requirements (Subsection 27-17.2d.).

§ 27-27.8. Buffering.

[Ord. No. 130-88 A16 § 8; Ord. No. 428-09 § 27-27.8]

Except in the C-3 district, all commercial uses, including hotels, motels and tourist guest houses shall have buffering at least four (4') feet in width along rear and side lot lines. Such buffering shall be at least four (4') feet in height and of a dense evergreen or similar such material as may be determined by the Planning Board in connection with site plan review.

§ 27-27.9. Parking Lots as Principal Uses.

[Ord. No. 130-88 A16 § 9]

No lot or lots shall have as its principal use a parking lot or area except when the lot or lots are contiguous to a lot or lots where the principal use is located and both the parking lot and principal use are in common ownership.

§ 27-27.10. Mobile Home and Campground Sites.

[Ord. No. 130-88 A16 § 10]

Individual mobile home sites in a mobile home park shall not be less than four thousand (4,000') feet in size. Individual campsites in campgrounds shall be not less than twenty-five hundred (2,500') feet in size. One on-site parking space shall be provided for each individual mobile home site or campsite.

[1] *Editor's Note: Refer to Chapter 13 Campgrounds and Chapter 14 Trailers and Trailer Camps for additional regulations concerning these topics.*

§ 27-27.11. Prohibited Conditions.

[Ord. No. 130-88 A16 § 11]

No building, structure or premises may be used, altered, or occupied in a manner as to create any dangerous, injurious, noxious or otherwise objectionable fire, explosive, radioactive or other hazard; noise or vibration; smoke, dust, odor, or other form of air pollution; electrical or other disturbance; glare; liquid or solid refuse or wastes; conditions conducive to the breeding of rodents or insects; or other substance, condition or element, in any manner or amount as to adversely affect the surrounding area.

§ 27-27.12. Existing Nonconforming Lots.

[Ord. No. 130-88 A16 § 13; Ord. No. 161-90 § 1; Ord. No. 396-07 § 34]

All lots located in any zoning district which were lawfully in existence at the time of the adoption of this Zoning Ordinance, may have a detached single family house built thereon without the need for variance relief provided the following conditions are met:

- a. The lot has frontage of at least fifty (50') feet.
- b. The proposed single family complies with all applicable setbacks, height and lot coverage and off street parking requirements.
- c. The lot is not contiguous with another lot owned legally or equitably by the same person,

persons or entity such that the two lots have merged for zoning purposes.

§ 27-27.13. Unsewered Lots.

[Ord. No. 153-89 § 4]

In all zoning districts, the minimum lot area for any lot not serviced by an off-site sewerage system shall be 35,000 square feet. Nothing herein shall be construed, however, as preventing use of the lot sizes set forth for the respective zoning districts for a lot or lots which are presently unsewered but will be serviced by an off-site sewerage system as part of the approval of an Application for Development. Nothing herein shall also be construed as preventing variance relief, in appropriate circumstances, for lots which are unsewered but which are considered as isolated undersized lots.

§ 27-27.14. Exceptions to Bulk Regulations.

[Ord. No. 396-07 § 35; Ord. No. 428-09 § 27-27.14; Ord. No. 544-2018]

- a. Gross Floor Area. The following shall not be included in gross floor area, used to calculate floor area ratio:
 1. Front porches as specified in Subsections **27-10.6** and **27-11.9**;
 2. Uncovered porches, decks and steps or stairs;
 3. Bay or bow windows.
- b. Lot Coverage. Where green roofs or solar panels are installed, lot coverage may be increased at a 1:1 ratio, up to 10% of the lot area. Green roofs shall be comprised of an engineered roofing system that enables the growth of vegetation. The engineered rooftop is typically comprised of the following components: an insulation layer, a waterproof membrane, a root barrier, a drainage layer, a geotextile or filter mat, and a growing medium. Green roofs should only be irrigated (if necessary) with water obtained from a rainwater collection system integrated into the building and/or block.
- c. Stairs in Connection with House Raising. If the steps or stairs are to be constructed in connection with a house raising, steps or stairs from first floor of the principal structure shall be permitted to extend from the deck or principal structure no closer than 5 ft from the front property line. The exception under Subsection (c) does not extend to adjoining decks or porches.

§ 27-27.15. Outdoor Seating Standards.

[Ord. No. 428-09 § 27-27.15; Ord. No. 461-11; Ord. No. 504-2015; Ord. No. 539-2018]

- a. Purpose. Outdoor seating contributes to the goals of a vibrant and interesting commercial district. The purpose of these rules and regulations is to allow outdoor seating in a way that contributes to the goals of the commercial district and the Borough.
- b. Definition.

OUTDOOR SEATING

Shall mean any part of a food establishment, brewery, or distillery located outdoors, not used for any other purposes, and open to the sky, with the exception that it may have a retractable awning or umbrellas, and may contain furniture, including tables, chairs, railings, and planters that are readily movable.

- c. Permitted Zones. Outdoor seating is permitted in the C-1, C-2, and the C-3 commercial zoning districts.
- d. Outdoor Seating Design Standards.
[Ord. No. 504-2015]
 - 1. Outdoor seating shall be permitted only in conjunction with, and adjacent to, an established restaurant, brewery, or distillery. Outdoor seating shall be permitted year-round, subject to the conditions below.
 - 2. No furniture, apparatus, decoration or appurtenance used in connection with the operation of the sidewalk café shall be located in such a way that less than five feet (5') of paved sidewalk remains for the exclusive use of pedestrians, nor shall any such object protrude into, on or above the required five-foot (5') wide pedestrian passageway.
 - 3. Should any outdoor seating facility close for a period of two weeks or more, all furniture or other equipment located on any portion of the public paved sidewalk shall be removed from the sidewalk until the facility reopens.
 - 4. No signs are permitted on the sidewalk except that the name and type of establishment may appear on umbrellas or the valance of an awning.
 - 5. Adequate lighting shall be provided to promote safe passage of pedestrians and for patrons.
 - 6. Awnings and/or umbrellas may be used in conjunction with outdoor seating. Awnings shall be adequately secured and retractable. Supporting structure must be attached to the building and may not be set on the ground. The bottom of the awning shall be seven (7') feet from the ground. No screening or weather protection panels will be permitted. No heating or cooling equipment will be permitted.
 - 7. Any outdoor seating area that is next to a residential use or residential district must be a minimum of five (5') feet from the shared property line.
 - 8. Outdoor seating proposed in connection with a brewery or distillery shall be contained within the licensed premises.
- e. Hours of Operation. The hours of operation of an outdoor seating area shall be limited to the hours of operation of the associated restaurant, brewery, or distillery. In no event shall hours of operation exceed 12:00 midnight.
- f. Administration. An application for an outdoor seating license shall be submitted as a separate mercantile license with an associated fee of \$50. Along with the application shall be the following:
 - 1. Plans showing the dimensions of the area and all furniture, planters, etc.
 - 2. A survey of the property may also be required.

3. Proof of insurance for such operation shall also be provided as part of the mercantile application. The term of license shall be one year.

Such license may be revoked if any of the provisions of the license have been violated, or that the outdoor seating operation in some way creates an unsafe situation.

§ 27-27.16. Artificial Turf.

[Added 5-26-2021 by Ord. No. 600-21]

- a. The installation of artificial turf in any form is prohibited in all Borough zoning districts. Any installations of artificial turf existing at the time of the adoption of this section may be maintained, but may not be expanded in any fashion. At the end of the artificial turf installation's useful life, the artificial turf must be replaced by grass or other natural ground covering.
- b. As used in this section, "artificial turf" means any of various synthetic, carpet-like materials made to resemble turf or grass and used as a substitute for grass or other natural substances as a lawn, a surface covering, a playing surface for athletic events, or other similar applications.

§ 27-27.17. Electric Vehicle Supply/Service Equipment (EVSE) and Make-Ready Parking Spaces.

[Added 3-9-2022 by Ord. No. 608-22]

- a. Purpose. The purpose of this subsection is to promote and encourage the use of electric vehicles by requiring the safe and efficient installation of EVSE and Make-Ready parking spaces through municipal parking regulations and other standards. EVSE and Make-Ready parking spaces will support the State's transition to an electric transportation sector, reducing automobile air pollution, greenhouse gas emissions, and storm water runoff contaminants. The goals are to:
 1. Provide adequate and convenient EVSE and Make-Ready parking spaces to serve the needs of the traveling public.
 2. Provide opportunities for residents to have safe and efficient personal EVSE located at or near their place of residence.
 3. Provide the opportunity for non-residential uses to supply EVSE to their customers and employees.
 4. Create standard criteria to encourage and promote safe, efficient, and cost-effective electric vehicle charging opportunities in all zones and settings for convenience of service to those that use electric vehicles.
- b. Definitions. As used in this subsection:

CERTIFICATE OF OCCUPANCY

The certificate provided for in N.J.A.C. 5:23-2, indicating that the construction authorized by the construction permit has been completed in accordance with the construction permit, the act and the regulations. See "State Uniform Construction Code Act," P.L.1975, c.217

(C.52:27D-119 et seq.) and regulations adopted pursuant thereto.

CHARGING LEVEL

The amount of voltage provided to charge an electric vehicle varies depending on the type of EVSE as follows:

1. Level 1 operates on a 15 to 20 amp breaker on a 120 volt AC circuit.
2. Level 2 operates on a 40 to 100 amp breaker on a two 208 or 240 volt AC circuit.
3. Direct-current fast charger (DCFC) operates on a 60 amp or higher breaker on a 480 volt or higher three phase circuit with special grounding equipment. DCFC stations can also be referred to as rapid charging stations that are typically characterized by industrial grade electrical outlets that allow for faster recharging of electric vehicles.

ELECTRIC VEHICLE

Any vehicle that is licensed and registered for operation on public and private highways, roads, and streets; and operates either partially or exclusively using an electric motor powered by an externally charged on-board battery.

ELECTRIC VEHICLE SUPPLY/SERVICE EQUIPMENT or (EVSE)

The equipment, including the cables, cords, conductors, connectors, couplers, enclosures, attachment plugs, power outlets, power electronics, transformer, switchgear, switches and controls, network interfaces, point of sale equipment, and associated apparatus designed and used for the purpose of transferring energy from the electric supply system to a plug-in electric vehicle. "EVSE" may deliver either alternating current or, consistent with fast charging equipment standards, direct current electricity. "EVSE" is synonymous with "electric vehicle charging station."

MAKE-READY PARKING SPACE

Means the pre-wiring of electrical infrastructure at a parking space, or set of parking spaces, to facilitate easy and cost-efficient future installation of Electric Vehicle Supply Equipment or Electric Vehicle Service Equipment, including, but not limited to, Level Two EVSE and direct current fast chargers. Make Ready includes expenses related to service panels, junction boxes, conduit, wiring, and other components necessary to make a particular location able to accommodate Electric Vehicle Supply Equipment or Electric Vehicle Service Equipment on a "plug and play" basis. "Make-Ready" is synonymous with the term "charger ready," as used in P.L. 2019, c.362 (C.48:25-1 et al.).

PRIVATE EVSE

EVSE that has restricted access to specific users (e.g., single and two-family homes, executive parking fleet parking with no access to the general public).

PUBLICLY ACCESSIBLE EVSE

EVSE that is publicly available (e.g., park & ride, public parking lots and garages, on-street parking, shopping center parking, non-reserved parking in multi-family parking lots, etc.).

c. Approvals and Permits.

1. An application for development submitted solely for the installation of EVSE or Make-Ready parking spaces shall be considered a permitted accessory use and permitted accessory structure in all zoning or use districts and shall not require a variance pursuant to N.J.S.A.

40:55D-70.

2. EVSE and Make-Ready Parking Spaces installed pursuant to paragraph d. below in development applications that are subject to site plan approval are considered a permitted accessory use as described in paragraph 1. above.
3. All EVSE and Make-Ready parking spaces shall be subject to applicable local and/or Department of Community Affairs permit and inspection requirements.
4. The zoning officer shall enforce all signage and installation requirements described in this subsection. Failure to meet the requirements in this subsection shall be subject to the same enforcement and penalty provisions as other violations of West Cape May's land use regulations.
5. An application for development for the installation of EVSE or Make-Ready spaces at an existing gasoline service station, an existing retail establishment, or any other existing building shall not be subject to site plan or other land use board review, shall not require variance relief pursuant to C. 40:55D-1 et seq. or any other law, rule, or regulation, and shall be approved through the issuance of a zoning permit by the administrative officer, provided the application meets the following requirements:
 - (a) The proposed installation does not violate bulk requirements applicable to the property or the conditions of the original final approval of the site plan or subsequent approvals for the existing gasoline service station, retail establishment, or other existing building;
 - (b) All other conditions of prior approvals for the gasoline service station, the existing retail establishment, or any other existing building continue to be met; and
 - (c) The proposed installation complies with the construction codes adopted in or promulgated pursuant to the "State Uniform Construction Code Act," P.L. 1975, c. 217 (C. 52:27D-119 et seq.), any safety standards concerning the installation, and any State rule or regulation concerning electric vehicle charging stations.
6. An application pursuant to paragraph 5. above shall be deemed complete if:
 - (a) The application, including the permit fee and all necessary documentation, is determined to be complete;
 - (b) A notice of incompleteness is not provided within 20 days after the filing of the application; or
 - (c) A one-time written correction notice is not issued by the zoning officer within 20 days after filing of the application detailing all deficiencies in the application and identifying any additional information explicitly necessary to complete a review of the permit application.
7. EVSE and Make-Ready parking spaces installed at a gasoline service station, an existing retail establishment, or any other existing building shall be subject to applicable local and/or Department of Community Affairs inspection requirements.
8. A permitting application solely for the installation of electric vehicle supply equipment permitted as an accessory use shall not be subject to review based on parking requirements.

d. Requirements for New Installation of EVSE and Make-Ready Parking Spaces.

1. As a condition of preliminary site plan approval, for each application involving a multiple dwelling with five or more units of dwelling space, which shall include a multiple dwelling that is held under a condominium or cooperative form of ownership, a mutual housing corporation, or a mixed-use development, the developer or owner, as applicable, shall:
 - (a) Prepare as Make-Ready parking spaces at least 15% of the required off-street parking spaces, and install EVSE in at least one-third of the 15% of Make-Ready parking spaces;
 - (b) Within three years following the date of the issuance of the certificate of occupancy, install EVSE in an additional one-third of the original 15% of Make-Ready parking spaces; and
 - (c) Within six years following the date of the issuance of the certificate of occupancy, install EVSE in the final one-third of the original 15% of Make-Ready parking spaces.
 - (d) Throughout the installation of EVSE in the Make-Ready parking spaces, at least 5% of the electric vehicle supply equipment shall be accessible for people with disabilities.
 - (e) Nothing in this subsection shall be construed to restrict the ability to install electric vehicle supply equipment or Make-Ready parking spaces at a faster or more expansive rate than as required above.
2. As a condition of preliminary site plan approval, each application involving a parking lot or garage not covered in paragraph 1. above shall:
 - (a) Install at least one Make-Ready parking space if there will be 50 or fewer off-street parking spaces.
 - (b) Install at least two Make-Ready parking spaces if there will be 51 to 75 off-street parking spaces.
 - (c) Install at least three Make-Ready parking spaces if there will be 76 to 100 off-street parking spaces.
 - (d) Install at least four Make-Ready parking spaces, at least one of which shall be accessible for people with disabilities, if there will be 101 to 150 off-street parking spaces.
 - (e) Install at least 4% of the total parking spaces as Make-Ready parking spaces, at least 5% of which shall be accessible for people with disabilities, if there will be more than 150 off-street parking spaces.
 - (f) In lieu of installing Make-Ready parking spaces, a parking lot or garage may install EVSE to satisfy the requirements of this subsection.
 - (g) Nothing in this subsection shall be construed to restrict the ability to install electric vehicle supply equipment or Make-Ready parking spaces at a faster or more expansive rate than as required above.
 - (h) Notwithstanding the provisions of this Section, a retailer that provides 25 or fewer off-street parking spaces or the developer or owner of a single-family home shall not be

required to provide or install any electric vehicle supply equipment or Make-Ready parking spaces.

e. Minimum Parking Requirements.

1. All parking spaces with EVSE and Make-Ready equipment shall be included in the calculation of minimum required parking spaces, pursuant to Subsection **27-27.3** of the West Cape May Code.
2. A parking space prepared with EVSE or Make-Ready equipment shall count as at least two parking spaces for the purpose of complying with a minimum parking space requirement. This shall result in a reduction of no more than 10% of the total required parking.
3. All parking space calculations for EVSE and Make-Ready equipment shall be rounded up to the next full parking space.
4. Additional installation of EVSE and Make-Ready parking spaces above what is required in paragraph d. above may be encouraged, but shall not be required in development projects.

f. Reasonable Standards for All New EVSE and Make-Ready Parking Spaces.

1. Location and layout of EVSE and Make-Ready parking spaces is expected to vary based on the design and use of the primary parking area. It is expected flexibility will be required to provide the most convenient and functional service to users. Standards and criteria should be considered guidelines and flexibility should be allowed when alternatives can better achieve objectives for provision of this service.
2. Installation:
 - (a) Installation of EVSE and Make-Ready parking spaces shall meet the electrical subcode of the Uniform Construction Code, N.J.A.C. 5:23-3.16.
 - (b) Each EVSE or Make-Ready parking space that is not accessible for people with disabilities shall be not less than nine feet wide or 18 feet in length. Exceptions may be made for existing parking spaces or parking spaces that were part of an application that received prior site plan approval.
 - (c) To the extent practical, the location of accessible parking spaces for people with disabilities with EVSE and Make Ready equipment shall comply with the general accessibility requirements of the Uniform Construction Code, N.J.A.C. 5:23, and other applicable accessibility standards.
 - (d) Each EVSE or Make-Ready parking space that is accessible for people with disabilities shall comply with the sizing of accessible parking space requirements in the Uniform Construction Code, N.J.A.C. 5:23, and other applicable accessibility standards.
3. EVSE Parking:
 - (a) Publicly accessible EVSE shall be reserved for parking and charging electric vehicles only. Electric vehicles shall be connected to the EVSE.
 - (b) Electric vehicles may be parked in any parking space designated for parking, subject to the restrictions that would apply to any other vehicle that would park in that space.
 - (c) Public Parking. Pursuant to N.J.S.A. 40:48-2, publicly accessible EVSE parking spaces

shall be monitored by the municipality's police department and enforced in the same manner as any other parking. It shall be a violation of this Section to park or stand a non-electric vehicle in such a space, or to park an electric vehicle in such a space when it is not connected to the EVSE. Any non-electric vehicle parked or standing in a EVSE parking space or any electric vehicle parked and not connected to the EVSE shall be subject to fine and/or impoundment of the offending vehicle as described in the general penalty provisions of this Municipal Code. Signage indicating the penalties for violations shall comply with Section 5. below. Any vehicle parked in such a space shall make the appropriate payment for the space and observe the time limit for the underlying parking area, if applicable.

- (d) Private Parking. The use of EVSE shall be monitored by the property owner or designee.

4. Safety.

- (a) Each publicly accessible EVSE shall be located at a parking space that is designated for electric vehicles only and identified by green painted pavement and/or curb markings, a green painted charging pictograph symbol, and appropriate signage pursuant to Section 5. below.
- (b) Where EVSE is installed, adequate site lighting and landscaping shall be provided in accordance with
- (c) West Cape May's ordinances and regulations.
- (d) Adequate EVSE protection such as concrete-filled steel bollards shall be used for publicly accessible EVSE. Non-mountable curbing may be used in lieu of bollards if the EVSE is setback a minimum of 24 inches from the face of the curb. Any stand-alone EVSE bollards should be three to four feet high with concrete footings placed to protect the EVSE from accidental impact and to prevent damage from equipment used for snow removal.
- (e) EVSE outlets and connector devices shall be no less than 36 inches and no higher than 48 inches from the ground or pavement surface where mounted, and shall contain a cord management system as described in e. below. Equipment mounted on pedestals, lighting posts, bollards, or other devices shall be designated and located as to not impede pedestrian travel, create trip hazards on sidewalks, or impede snow removal.
- (f) Each EVSE shall incorporate a cord management system or method to minimize the potential for cable entanglement, user injury, or connector damage. Cords shall be retractable or have a place to hang the connector and cord a safe and sufficient distance above the ground or pavement surface. Any cords connecting the charger to a vehicle shall be configured so that they do not cross a driveway, sidewalk, or passenger unloading area.
- (g) Where EVSE is provided within a pedestrian circulation area, such as a sidewalk or other accessible route to a building entrance, the EVSE shall be located so as not to interfere with accessibility requirements of the Uniform Construction Code, N.J.A.C. 5:23, and other applicable accessibility standards.
- (h) Publicly accessible EVSEs shall be maintained in all respects, including the functioning

of the equipment. A twenty-four-hour on-call contact shall be provided on the equipment for reporting problems with the equipment or access to it. To allow for maintenance and notification, West Cape May shall require the owners/designee of publicly accessible EVSE to provide information on the EVSE's geographic location, date of installation, equipment type and model, and owner contact information.

5. Signs.

- (a) Publicly accessible EVSE shall have posted regulatory signs, as identified in this section, allowing only charging electric vehicles to park in such spaces. For purposes of this section, "charging" means that an electric vehicle is parked at an EVSE and is connected to the EVSE. If time limits or vehicle removal provisions are to be enforced, regulatory signs including parking restrictions shall be installed immediately adjacent to, and visible from the EVSE. For private EVSE, installation of signs and sign text is at the discretion of the owner.
- (b) All regulatory signs shall comply with visibility, legibility, size, shape, color, and reflectivity requirements contained within the Federal Manual on Uniform Traffic Control Devices as published by the Federal Highway Administration.
- (c) Wayfinding or directional signs, if necessary, shall be permitted at appropriate decision points to effectively guide motorists to the EVSE parking space(s). Wayfinding or directional signage shall be placed in a manner that shall not interfere with any parking space, drive lane, or exit and shall comply with b. above.
- (d) In addition to the signage described above, the following information shall be available on the EVSE or posted at or adjacent to all publicly accessible EVSE parking spaces:
 - (1) Hour of operations and/or time limits if time limits or tow-away provisions are to be enforced by the municipality or owner/designee;
 - (2) Usage fees and parking fees, if applicable; and
 - (3) Contact information (telephone number) for reporting when the equipment is not operating or other problems.

6. Usage Fees.

- (a) The Borough shall not charge a fee for the use of any publicly accessible municipal EVSE, but reserves the right and authority to institute such a fee in the future.
- (b) Private EVSE: Nothing in this ordinance shall be deemed to preclude a private owner/designee of an EVSE from collecting a fee for the use of the EVSE, in accordance with applicable State and Federal regulations. Fees shall be available on the EVSE or posted at or adjacent to the EVSE parking space.

§ 27-28. DESIGN STANDARDS FOR ALL DISTRICTS.

[Ord. No. 396-07 § 36; Ord. No. 428-09 § 27-28]

- a. Bulk trash receptacles, outdoor storage, loading docks, and other accessory uses (like areas and structures) shall be located or screened so that they are not visible from the street.

- b. Mechanical equipment shall only be located in the side or rear yards, or on the roof, and shall be buffered or screened with natural or man-made barriers, such as shrubbery, or fencing or architectural features.
- c. When there is a two-story wall that is greater than forty (40') feet in length, a one-foot change in the plane is required at any point in the wall. Such change can be achieved by using bay or bow windows, roof lines, columns, porches, varying horizontal elevations, recesses, bump outs, or by stepping back the height in tiers, or other structural or architectural relief.
- d. For townhouse or similar residential structures, there shall be a two (2') foot change in the plane between every two units or every forty (40') feet, whichever is less.
- e. No two contiguous homes shall have identical facades.
- f. Additions to existing buildings shall be designed with a style, materials, colors, and details that are compatible with the existing structure.
- g. Building eaves may extend no farther than 15 inches beyond the required setback line; otherwise, variance relief shall be required. This building eave exception shall not apply in any instance where its application would cause the building eave to encroach beyond a property line or into a public right-of-way.
[Amended 5-12-2021 by Ord. No. 597-21]
- h. In order to contribute to the goals of orderly design, aesthetics, and pedestrian compatibility, the façade of a building or structure, as indicated by front entry, shall face the street. On corner lots, the façade shall face the primary or wider street.

§ 27-29. CONDITIONAL USES.

[Ord. No. 428-09 § 27-29; Ord. No. 539-2018]

- a. Restaurants Serving Alcoholic Beverages.
 - 1. Restaurants serving alcoholic beverages shall have a minimum lot area of 5,000 square feet.
 - 2. Except as provided below in Subsection **b**. On-premises alcoholic beverage services will be limited to restaurant establishments serving food. Restaurants may have an ancillary bar area, but only in conjunction with the restaurant. No stand-alone or bar-only operations are permitted.
 - 3. The bar area shall contain no more than 20% of the number of seats in the dining area.
 - 4. All refrigeration and generator equipment shall be contained within the building. Mechanical heating and cooling shall be located on the roof.
 - 5. There shall be a specified area for collection of trash and recycling. The area shall be suitably enclosed. There shall be separate collection areas for trash and recycling, and cooking oil and grease.
 - 6. There shall be a specified exterior "wash down" or "cleanup area" for the cleaning of floor mats, furniture, etc.

7. Each restaurant shall provide parking for patrons as specified in Subsection **27-27.3** Parking, including both dining area and bar seats.
 8. Trash pickup/removal shall occur a minimum of two times per week.
- b. Breweries and Distilleries.
1. The license holder of a Limited Licensed Brewery (hereafter brewery), licensed by the State of New Jersey, is permitted to brew and sell malt alcoholic beverages, as per N.J.S.A. 33:1-10(1b), at a Limited Licensed Brewery in the Borough of West Cape May for consumption on premises and for consumption off premises in quantity of not more than 15.5 fluid gallons per person.
 2. The license holder of a Craft Distillery License (hereafter distillery) licensed by then State of New Jersey is permitted to manufacture and sell distilled alcoholic beverages as per N.J.S.A. 33:1-10(3) for consumption on premises and for consumption off premises of not more than 5 liters per person.
 3. The brewery and/or distillery may operate for business to serve customers seven days per week. On Sundays the brewery or distillery may not conduct business by serving customers before twelve o'clock noon. Sundays through Thursday, the brewery or distillery shall stop serving customers no later than 10:00 p.m., and on Friday and Saturday shall stop serving customers no later than 11:00 p.m. The customers in the above facilities may remain for an hour after service cut off time to finish that which they have been served. Notwithstanding the above, breweries and distilleries are permitted to manufacture their product at any time during any day.
 4. The brewery or distillery shall not sell food or operate a restaurant on the licensed premises including any outdoor facility of the brewery or distillery. Pretzels, potato chips, nuts, and other such ready prepared finger food snacks are permitted so long as they are provided without charge.
 5. The brewery or distillery may provide for an outdoor seating facility in Subsection **27-27.15** of this Code, which shall be controlled by and adjacent to the brewery or distillery, and within the commercial district, provided that the Alcoholic Beverage Control (ABC) has approved such outdoor seating within the licensed premises area.
 6. Plans shall be submitted that include a scale diagram of the entire interior of the brewery or distillery showing the location of all receiving, storage, brewing or distilling area, servicing, seating and waiting areas, waste removal and garbage storage areas, and the intended location of tables, counters, bars and their respective seats or chairs.
 7. Storage of waste materials and garbage shall be in enclosed containers, such containers shall be stored inside the main building or in a separately enclosed structure that will completely confine odors and obstruct view of the waste/garbage.
 8. A system to vent brewing or distilling and other exhausts and odors shall be provided so that the exhaust and odor shall not offense or disturb nearby commercial or residential uses or intrude on any street, sidewalk, or walkway. This shall include the requirement of filters or other technologically adequate means of eliminating oils, grease, and odors from the exhaust. Such vents shall be interior and exist through the roof.
 9. A brewery or distillery use is to be considered the principal use or any structure and not an

accessory use.

10. Each brewery or distillery shall provide parking for patrons as specified in Subsection **27-27.3** Parking.
- c. Properly licensed cannabis manufacturing, wholesaling and/or distributing operations, subject to the following conditions:
[Added 7-14-2021 by Ord. No. 603-21]
1. The facility shall meet all of the requirements for licensure by the New Jersey Cannabis Regulatory Commission and/or the New Jersey Department of Health.
 2. Enclosed building. All cultivation, manufacturing, storage and distribution activities shall take place within enclosed building or greenhouse structures. The facility shall be the sole occupant of its building.
 3. Fencing. All structures utilized for any manufacturing, wholesaling, storage or distribution of cannabis shall be enclosed by a fence at least seven feet high.
 4. Security. All structures shall be designed, using safety and security barriers, to prevent the unlawful and unauthorized entry into the structures as prescribed by state law.
 - (a) There shall be controlled access to the site, with 24/7 on-site video monitoring of the exterior and interior of the facility, which video shall be retained and stored for the period prescribed by state law, but in no case shall such video be retained and stored for less than 30 days.
 - (b) Plans and reports depicting or describing access and security details information concerning the facility shall be deemed and protected as confidential security documents, exempt from disclosure as public records.
 5. There shall be no direct sales to the public from the property. Nothing herein shall permit the retail sale of cannabis or marijuana products, the dispensing of cannabis or marijuana products, or the direct point sale or distribution of marijuana products except to other cannabis businesses licensed by the state.
 6. Noise. Cannabis cultivation and manufacturing facilities shall operate in compliance with state and local noise laws and regulations, except in emergency situations requiring the use of a backup generator.
 7. Odor. Cannabis cultivation and manufacturing operations shall utilize available technology to filter and recirculate air, so that odors are not discernible by a reasonable person beyond the property line.
 8. Location. One thousand linear feet measured from the lot line of any residence, school, church, or park to the nearest portion of the building containing a cannabis use. The subsequent approval of a school or any other facility in proximity to the cannabis use shall not render any existing cannabis business a nonconforming use.
 9. Emergency power. Cannabis cultivation and manufacturing operations shall have a backup generator, capable of maintaining, at a minimum, all electronic security systems in the event of a power failure.
 10. Signs. Cannabis cultivation and manufacturing facilities shall only be permitted to have one

sign, in compliance with sign requirements for the zone.

11. Lighting. No light generated by any cannabis cultivation and manufacturing activities shall result in measurable light changes at the nearest property boundary to each structure.
 12. Consumption. No cannabis or cannabis product shall be smoked, eaten or otherwise consumed on the premises of any cannabis cultivation or manufacturing facility.
- d. If a cannabis cultivation facility is combined with a cannabis manufacturing, wholesaling or distributing operation, it shall be located on a parcel of no less than five acres and shall comply with all conditions set forth in subsection c, above.
[Added 7-14-2021 by Ord. No. 603-21]

§ 27-30. NONCONFORMING USES, STRUCTURES AND LOTS.

§ 27-30.1. Nonconforming Uses.

[Ord. No. 428-09 § 27-30.1]

Municipal Land Use Law recognizes the rights of lawful pre-existing, nonconforming uses as follows: any nonconforming use or structure (lawfully) existing at the time of the passage of an (amendment to a zoning) ordinance may be continued upon the lot or in the structure so occupied and any such structure may be restored or repaired in the event of partial destruction thereof. (West Cape May 2005 Master Plan Section 7.5.3 Pre-existing Nonconforming Uses)

Any nonconforming use of buildings or land may be continued indefinitely, but such buildings or uses:

- a. Shall not be enlarged, extended, or reconstructed, nor placed on a different portion of the lot or parcel of land occupied by such use on the effective date of this ordinance, nor shall any external evidence of such use be increased by any means whatsoever.
- b. Shall not be moved to another location where such use would be nonconforming.
- c. Shall not be re-established if such use has been legally abandoned, or has been changed to, or replaced by, a conforming use.
- d. Shall not be restored for other than a conforming use after substantial destruction thereof.

A prospective purchaser, prospective mortgagee, or any other person interested in any land upon which a nonconforming use or structure exists may apply in writing for the issuance of a certificate certifying that the use or structure existed before the adoption of the ordinance which rendered the use or structure nonconforming. Application pursuant hereto may be made to the administrative officer within one year of the adoption of the ordinance which rendered the use or structure nonconforming or at any time to the Planning Board, acting in its capacity as a Board of Adjustment.

§ 27-30.2. Nonconforming Structures.

[Ord. No. 428-09 § 27-30.2]

Nothing in this section shall be deemed to prevent normal maintenance and repair of nonconforming structures. Reconstruction (as defined in the Uniform Construction Code) of a nonconforming structure requires conformance with current zoning regulations.

An addition of a nonconforming structure is permitted provided that such action does not increase or extend the degree of, or create any new, nonconformity with regard to the regulations pertaining to such buildings or the lot upon which they are constructed.

As an example, a dwelling which complies fully with all requirements except that it is closer to the street than the minimum required depth of a front yard may build an addition to the rear that does not encroach on the required rear yard.

It shall be lawful to raise a nonconforming structure which is below the base flood elevation requirements of the Borough, up to the base flood elevation requirement as long as the nonconforming structure is not otherwise expanded or relocated in such a manner as to increase or create a nonconformity. In so doing, the structure may be disconnected from all utilities without losing its protected status as a nonconforming structure.

§ 27-30.3. Nonconforming Lots.

[Ord. No. 428-09 § 27-30]

All lots located in any zoning district which were lawfully in existence at the time of the adoption of this Zoning Ordinance, may have a detached single-family house built thereon without the need for variance relief provided the following conditions are met:

- a. The lot has frontage of at least thirty (30') feet.
- b. The lot area is not less than 3,000 square feet.
- c. The lot is, and always has been, in separate ownership and not contiguous to lots in the same ownership.
- d. The height of the dwelling shall be reduced in direct proportion to the percentage of the shortfall of the required lot width.

Example: If the minimum lot width in the zone is fifty (50') feet, and the nonconforming lot has a lot width of only forty (40') feet, the height of the building shall be reduced by 50 feet - 40 feet/50 feet = 20%. If the maximum height permitted in the zone is thirty-five (35') feet, the maximum height on this nonconforming lot would be twenty-eight (28') feet.

- e. The proposed single-family may reduce minimum side and rear setback requirements in direct proportion to the percentage of the shortfall of the required width and depth, but in all cases shall not be less than five (5') feet for each side yard and ten (10') feet for rear yards.
- f. The maximum lot coverage may be increased in proportion to the difference in lot area.

Example: If the minimum lot width in the zone is fifty (50') feet, and the nonconforming lot has a lot width of only forty (40') feet, the lot coverage may be increased by 20%. If the maximum lot coverage permitted in the zone is 40%, the maximum lot coverage on this nonconforming lot would be 48%.

- g. Off-street parking requirements must meet district regulations.

§ 27-31. ENFORCEMENT.

[Ord. No. 130-88 § A17]

The provisions of this chapter shall be enforced by the Zoning Officer and Construction Code Official of the Borough of West Cape May. It shall be their duty to examine all applications for zoning permits for compliance with this chapter.

§ 27-32. ZONING PERMIT.

[Ord. No. 130-88 § A18; Ord. No. 189-92 § 1; Ord. No. 392-07 § 1; Ord. No. 396-07 § 37; Ord. No. 405-07; Ord. No. 422-09 § 2; Ord. No. 528-2017]

A zoning permit shall be required prior to the erection, construction or alteration of any building, structure or portion thereof. Application for a zoning permit shall be made to the Zoning Officer in writing by the owner of the premises or his authorized agent. Each application shall be accompanied by a fee as follows:

| | | |
|----|---|----------|
| a. | Construction of new single- or two- family home | \$100.00 |
| b. | Construction of new three or four dwelling unity property | 200.00 |
| c. | Additions greater than \$50,000 in estimated construction costs | 100.00 |
| d. | Additions costing between \$10,000.00 and \$50,000.00 in estimated construction costs | 75.00 |
| e. | Additions which cost less than \$10,000.00 in estimated construction costs | 50.00 |
| f. | Residential construction greater than four dwelling units | 200.00 |
| g. | Commercial renovation or new commercial construction* | 200.00 |
| h. | Demolitions | 50.00 |
| i. | Permit renewal fee | 50.00 |
| j. | Decks, fences, accessories and any other permit application for development not otherwise stated herein | \$50.00 |
| k. | Zoning review administrative fee | 35.00 |
| l. | Rooftop solar installation | 50.00 |
| m. | Wind/ground solar installation | 100.00 |

*Any commercial project with an estimated construction cost greater than \$100,000.00, an additional 1/4 of 1% of the estimated construction cost over \$100,000.00 will be charged.

Each such application shall include a complete set of plans drawn to scale showing the proposed structure or alteration and its relationship to all other structures on the lot and all lot lines. The Zoning Officer, upon receipt of a complete application form, shall promptly forward copies of the complete application form to the Tax Collector and Water and Sewer Clerk for their review. The Tax Collector and the Water and Sewer Clerk shall notify the Zoning Officer of the current status of the real estate taxes, water and sewer charges, if any, on the property subject to the Zoning Permit. No Zoning Permit shall be issued for any property unless all real estate taxes, water and sewer

charges for the property are current as of the date of the application. Zoning permits shall be granted or refused within 10 days of the submission of a complete application to the Zoning Officer. The issuance of a Zoning Permit shall not be deemed to authorize construction pursuant thereto in situations where the Zoning Ordinance is changed prior to the start of actual construction. Zoning Permits shall automatically be terminated if no building permit therefor is issued within six months of the date of the Zoning Permit or upon the expiration or termination of any building permit issued in connection therewith.

[1] *Editor's Note: Ordinance No. 514-2016 pertaining to fees is codified in § 26-2, Schedule of Fees.*

§ 27-33. through § 27-34. (RESERVED)

§ 27-35. VIOLATIONS.

[Ord. No. 130-88 § A19; Ord. No. 393-07 § 2]

Any person, firm or corporation that shall violate any of the provisions of this chapter or of any condition imposed upon a developer pursuant to this chapter shall, upon conviction, be liable to the fine as stated in Chapter 1, § 1-5. Each day that any such violation is found to exist shall constitute a separate offense. Nothing herein shall be construed as limiting the Borough of West Cape May from pursuing any other remedies available to it to correct any such violation nor shall anything herein be construed as requiring the Borough of West Cape May to pursue any such remedies instead of seeking the above designated penalties.

Any one who receives a development approval from a Land Use Board in the Borough of West Cape May is required to comply strictly with all terms and conditions of that approval, as embodied in the resolution of the Board setting forth that approval. Any one who violates any term, condition or provision of a development approval shall be subject to prosecution for a violation of this section in the West Cape May Municipal Court, and if convicted, shall be subject to the penalties set forth in Chapter 1, § 1-5 of this Code. Nothing in this section shall limit the Borough from pursuing any other remedy available to it to correct any such violation, or require the Borough to pursue those remedies before instituting prosecution under this section.

§ 27-36. LANDSCAPING AND VEGETATION PLAN.

[Ord. No. 268-99 § 1; Ord. No. 462-11; Ord. No. 494-2015 § 3; Ord. No. 530-2017 § 1; 3-10-2021 by Ord. No. 592-21]

It is the intent of the Borough of West Cape May to require a Landscaping and Vegetation Plan for several reasons: To continue the history of coexistence of human habitation with natural habitat that supports concentrations of migrant and resident wildlife. The maintenance and replacement of trees and vegetation on both private and public lands are crucial to the continued ability of the Borough to support migration. Additionally, there are social, environmental, and economic benefits: Trees alter the environment by moderating climate (thus reducing energy costs), improving air quality (by absorbing carbon dioxide, ozone, carbon monoxide and sulfur dioxide), conserving water, and increasing land value. The provisions of this section and Ch. 30 are to be read together for the protection and preservation of trees.

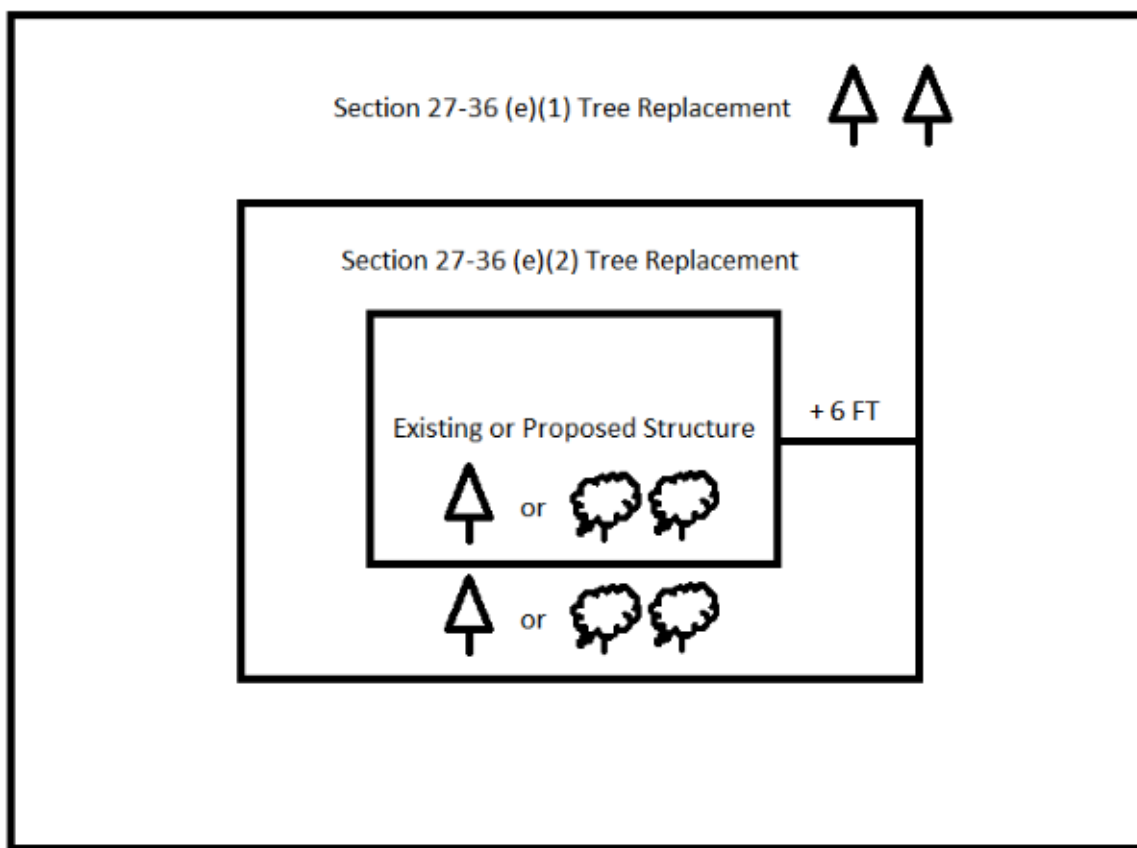
- a. Prior to the issuance of any zoning permit for additions to any existing structure which increased the lot coverage in excess of 10%, or construction of a new dwelling unit, or conversion of larger

dwelling units to apartments or condominiums or the removal of more than 40% of the vegetation covering of a lot, a landscaping and vegetation plan for the parcel in question must be submitted to and approved by the City of West Cape May Zoning Officer to ensure substantial compliance with the criteria and requirements set forth in this section, which landscaping and vegetation plan must constitute the minimum percentage of overall vegetation coverage of the lot as set forth below and incorporate the parameters of Subsection e hereafter:

1. R1 — 45% overall vegetation coverage
 2. R2 — 55% overall vegetation coverage
 3. R4 — 60% overall vegetation coverage
 4. R5 — 60% overall vegetation coverage
 5. C1 — 35% overall vegetation coverage
 6. C2 — 35% overall vegetation coverage
 7. C3 — 20% overall vegetation coverage
- b. The landscaping and vegetation plan must constitute the above minimum percentage of the overall lot either left in its natural state or covered in vegetation, incorporating the parameters of Subsection e hereafter. The utilization of natural indigenous vegetation is encouraged.
- c. The Zoning Officer may require such information as is reasonably necessary to enable him to make the determination required under the provision of this chapter. Any landscaping or vegetation plan proposing removal of trees, or other tree care services, shall be referred for administrative review and approval by the Shade Tree Commission Executive Committee or the Borough Arborist, and absent administrative review and approval, the plan shall be referred for full review before the Shade Tree Commission.
- d. All driveways and parking areas shall be deemed to be covered and excluded from the overall vegetation coverage for the purposes of this section.
- e. Trees.
1. All existing trees outside a building footprint having a three (3") inch diameter trunk measured at a point four and one-half (4.5') feet above the ground on the downhill side of such tree, shall remain if said trees are in excess of six (6') feet from the outside of the exterior wall of the proposed structure. In the event that an applicant wishes to remove a tree or trees as above described, that applicant shall then be required to plant two trees for each tree removed, which replacement trees shall be of at least two (2") inches in diameter at a point four and one-half (4.5') feet above the ground at a location on the property to be chosen by applicant.
 2. In addition to the replacement of removed trees above described, the applicant shall replace at a location of his or her choice on the property, any trees located within the footprint of the proposed structure, plus six (6') feet, if said trees have a trunk at least three (3") inches in diameter measured at a point four and one-half (4.5') feet above the ground on the downhill side of such tree. For every tree removed within the footprint of the existing or proposed structure, plus six (6') feet, the applicant shall plant one tree along the side yard and rear yard which tree shall be of the same size as the replacement tree above described. The applicant shall be permitted to plant two bushes in lieu of a tree if said

bushes are a minimum of two (2') feet in diameter and are classified by the West Cape May List of Approved Trees and Shrubs. This requirement is to make up for the replacement of shrubs and is in addition to trees from outside the building envelope. However, the applicant shall not be required to plant trees closer than ten (10') feet between the two, said distances measured from center trunk to center trunk. The replacement trees need not be of the same species as the trees removed, however, they shall be of the same height classifications as the trees removed. There may be circumstances in which these general guidelines for replacement are unworkable due to unique conditions affecting land. The Shade Tree Commission may determine the appropriate replacement obligation balancing the purposes of tree protection stated in the preamble to this section and with the general guidelines for replacement, which may include contribution to a tree bank, which are funds dedicated to tree replacement and maintenance initiatives throughout the Borough.

- 3. The location of the tree to be removed determines the replacement obligation. All replacement trees or bushes may be installed in a location determined by the applicant in accordance with this section. The example graphic below depicts the areas subject to Subsections e,1 and e,2 above:



- 4. As part of the Landscaping and Vegetation Plan required by this section, the applicant shall submit a Tree Inventory identifying all existing trees as defined in Chapter 30, § 30-1. The trees shall be identified on a plan depicting the site and the applicant shall indicate all proposed site improvements, and delineate in the tree preservation plan the trees to be retained on site, and the measures to be implemented for their protection. For purposes of complying with this section, the plan depicting the location of the trees may be submitted

without a seal.

5. A Tree Protection Zone (TPZ) shall be delineated around all trees to be protected during a project to limit root pruning and restrict traffic and material storage. The TPZ shall specify a distance in which excavation, storage, and other construction-related activities shall be prohibited. The TPZ may vary depending on species, factors, age and health of the plant, soil conditions, and proposed construction. The TPZ may be accomplished by physical barriers or soil protection layers or treatments. TPZ barrier(s) shall be installed prior to any activities performed on the site that may impact the root zone or aboveground parts of the tree.
 - (a) The area and dimensions of the TPZ shall be calculated by multiplying the diameter of the tree by 12. Plywood fencing with a height of at least four feet shall be located at that distance and surround the tree completely. Nothing should enter or be placed within the TPZ until the project has been completed.
 - (1) Example: A tree with a ten-inch diameter: 12 by 10 inches = 120 inches or 10 feet. In this example, the wooden fencing should surround the tree at a distance of 10 feet from the trunk of the tree.
 - (b) If site conditions make compliance with the TPZ impractical, the Borough Arborist or designated representative of the Shade Tree Commission may approve alternative mitigation procedures reasonably calculated to advance the purposes of the TPZ, or that such activities will not impact tree health.
 - (c) The Arborist or designated representative may include such reasonable conditions necessary for the protection of trees as described herein.
 - (d) Fencing or other barriers to the TPZ shall be installed prior to site clearing, grading, and demolition, and maintained through construction and landscaping. Excavation, storage, and other construction-related activities shall be prohibited within the TPZ. TPZ fencing may be removed upon the issuance of a CO, or earlier if approved by the Borough Arborist or designated representative of the Shade Tree Commission.
6. If a referral is made to the Shade Tree Commission, the Commission may determine to grant or deny removal of one or more trees pursuant to § **30-1.6**, notwithstanding the applicant's proposal to conform to the general replacement obligation contained herein.
7. It shall be a violation of this section, punishable under § **30-2**, for any person, corporation, or entity to remove a tree in order to avoid the provisions of this section. In addition to the penalties in § **30-2**, the Borough may issue a stop work order until corrective measures have been taken.
- f. Except as otherwise herein provided, the landscaping and vegetation plan shall retain as much of the natural vegetation as is possible. The proposed removal of any tree that is included on the Borough of West Cape May's Significant Specimen Trees shall be subject to the permit requirements of Subsection **30-1.4**.
[Ord. No. 494-2015 § 3]
- g. Nothing herein is to be interpreted as indication that an applicant is prohibited from planting additional trees, bushes, grasses or flowers.
- h. Existing Lots.

1. Any existing improved lots with structures shall be allowed to exist in their current state together with routine maintenance, expansion, trimming, planting and replanting of vegetation.
2. Existing improved lots with structures having less than the required percentage of overall vegetation coverage will be allowed to remain as such, but will be considered an existing nonconforming landscaped property in which the nonconformity must be corrected should the primary structure be altered, outbuildings added or the property be significantly altered or relandscaped which increases the lot coverage in excess of 10%. Any new landscaping and vegetation plan must meet the minimum required percentages of overall vegetation coverage for the lot, as set forth herein, and incorporate the parameters of Subsection e,1.
 - i. In lieu of replacing bushes, vines and grasses, the applicant shall plant or leave in place one tree at approximately twenty (20') foot intervals along the side yard and rear yard, which trees shall be at least two (2") inches in diameter, or the applicant shall plant two bushes of a minimum of two (2') feet in diameter in lieu of every second replacement tree. The requirements of this subsection are in addition to other tree requirements.
 - j. In the case of the issuance of a zoning permit for alteration or construction, the property owner shall be required to plant any new vegetation provided for by the landscaping and vegetation plan within 60 days of the issuance of a Certificate of Occupancy for the property, or within 60 days of the beginning of the planting schedule below, whichever date is earliest. In the case of the issuance of a permit only for the removal of natural vegetation, the property owners will be required to plant any new vegetation provided for by the landscaping and vegetation plan within 60 days of the issuance of said permit, or within 60 days of the beginning of the attached planting schedule below, whichever date is earliest.

| Table 811.03.01.1 Optimal Planting Season | |
|---|---|
| Type of Plant | Season |
| Broad leaf and coniferous evergreen trees, shrubs, vines, and ground covers | March 1 to May 15 August 15 to December 1 |
| Deciduous trees, shrubs, vines, ornamental grasses, and perennials | March 1 to May 15 October 15 to December 1 |
| Container grown plant materials | March 1 to May 15 August 15 to December 1 |
| Narcissus | October 15 to December 1 |
| Hemorocallis | March 1 to May 15 |

- k. Any property owner or person aggrieved by a determination of the Zoning Officer under the provisions of this chapter may appeal to the Borough of West Cape May Board of Adjustments; provided however, that said appeal is filed, in writing, within 45 days after said property owners or person receives notice of the decision by the Zoning Officer.

§ 27-37. AFFORDABLE HOUSING.

§ 27-37.1. Accessory Apartments as Affordable Housing Units.

[Ord. No. 398-07; Ord. No. 404-07; Ord. No. 417-08; Ord. No. 436-09; Ord. No. 550-2018]

- a. It is the specific purpose and intent of this section to allow accessory apartments on parcels of minimum size in conformance with the specific zoning district minimum lot size requirement to provide the opportunity for the development of affordable housing units to meet the needs of very low, low and moderate income residents. It is also the purpose of this limited, special-use provision to allow more efficient use of the Borough's existing stock of dwellings and the Borough's existing stock of accessory buildings, to allow existing residents the opportunity to remain in large, underutilized houses by virtue of the added income for them from an accessory apartment, to allow accessory apartments in new attached and/or detached structures and to protect and preserve property values in the Borough of West Cape May. To help achieve these goals to promote the other objectives of this chapter and of the Master Plan, and to implement the Borough's 2018 Housing Element and Fair Share Plan, the following specific standards and limitations are set forth for such accessory apartment use. The requirements of this section do not apply to accessory apartment units created prior to the adoption of the Ordinance creating this section.
- b. Location and Number of Units.
 1. An accessory apartment may be located in the principal building or in an existing permitted accessory building, such as a barn or garage, and may include existing and/or expanded structure construction.
- c. Other Requirements.
 1. An accessory apartment unit will comply with the requirements of the Borough's Affordable Housing Ordinance.
 2. All standards and requirements of the zone district, except as modified by this section, shall apply.
 3. An accessory apartment unit shall comply with all applicable statutes and regulations of the State of New Jersey in addition to all local building codes.
 4. Exterior Appearance. Principal buildings containing an accessory apartment shall have only one front or principal entry to the building, and the accessory apartment shall be located, designed, constructed, and landscaped so as to preserve the appearance of the principal building to the maximum extent feasible and further to enhance and not detract from the character of the principal building and the surrounding neighborhood. An accessory apartment shall have a separate, distinct entry which does not detract from the character of the principal building.
 5. Off-Street Parking. Off-street parking requirements shall be that two off-street parking spaces must be provided for each dwelling unit on the property of the applicant. Additional parking areas shall be paved only when proven necessary and shall be screened and buffered from adjacent properties to the extent possible.
 6. The appropriate utility authority must certify that there is water and sewer infrastructure with sufficient capacity to serve the proposed accessory apartment.
 7. An accessory apartment unit shall, for a period of at least 10 years from the date of the issuance of a certificate of occupancy, be rented only to a very low, low or moderate income qualified household as is defined by applicable Council on Affordable Housing ("COAH")

and Uniform Housing Affordability Controls ("UHAC") regulations at the time of initial occupancy of the unit.

8. The occupant must meet the established income limitations for very low, low, and moderate income households as specified by the rules and regulations of the Council on Affordable Housing (COAH) (N.J.A.C. 5:93 et seq.).
9. The accessory apartment must meet the adaptability law at P.L. 2005, c.350, if applicable.
10. Rents of accessory apartments shall be affordable to very low, low, and moderate income households as per COAH and UHAC regulations.
11. There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the accessory apartment is located running with the land and limiting its subsequent rental or sale within the affordable housing requirements stated herein.
12. Each accessory apartment shall have living/sleeping space, cooking facilities, a kitchen sink and complete sanitary facilities for the exclusive use of its occupants.
13. The accessory apartment shall have a separate door with direct access to the outdoors.
14. The accessory apartment shall be affirmatively marketed to the housing region in accordance with COAH regulations and the Uniform Housing Affordability Controls at N.J.A.C. 5:80-26.1 et seq.
15. Accessory Apartment units are exempt from bedroom mix requirements in N.J.A.C. 5:93-7.3.
16. New freestanding accessory buildings containing accessory apartment units shall conform to the setback requirements for principal buildings in the district.

d. Administration.

1. West Cape May Borough shall designate an Administrative Agent to administer the accessory apartment program.
2. The Administrative Agent shall administer the accessory apartment program in accordance with the Borough's Affordable Housing Ordinance, which includes, but is not limited to, advertising, income qualifying prospective renters, setting rents and annual rental increases, maintaining a waiting list, distributing the subsidy, overseeing the securing of certificates of occupancy, qualifying properties, handling application forms, overseeing the filing deed restrictions, filing monitoring reports and affirmatively marketing the accessory apartment program.
3. The Borough shall provide fixed subsidies per accessory apartment unit as follows to subsidize the creation of each accessory apartment: For very-low income units a \$70,000 fixed subsidy will be available. For low income units a \$40,000 fixed subsidy will be available. For moderate income units a \$25,000 fixed subsidy will be available. Prior to the grant of such subsidy, the property owner shall enter into a written agreement with the Borough insuring that the subsidy shall be used to create the accessory apartment and the apartment shall meet the requirements of this subsection.
4. Applicants for the creation of an accessory apartment shall submit to the administrative agent:

- (a) A sketch of floor plans showing the location, size and relationship of both the accessory apartment and the primary dwelling within the building or in another structure;
 - (b) Rough elevations showing the modification of any exterior building façade to which changes are proposed; and
 - (c) A site development sketch showing the location of the existing dwelling and other existing buildings; all property lines; proposed addition, if any, along with the minimum building setback lines; the required parking spaces for both dwelling units and any man-made conditions which might affect construction.
5. In accordance with the recommendations of the Court and the Court-appointed Master, the Borough reserves the right to revisit this subsection from time to time, and to make appropriate adjustments to enhance the effectiveness of the Borough's Accessory Apartment Program.

§ 27-37.2. Reserved.

[1] *History: Municipal Housing Liaison adopted by Ord. No. 395-07 § 3 was repealed by Ord. No. 548-2018*

§ 27-37.3. Affordable Housing Mandatory Set-Aside.

[Adopted October 10, 2018 by Ord. No. 549-2018]

a. Purpose.

This Ordinance is intended to ensure that any site that benefits from a rezoning, variance or redevelopment plan approved by the Borough or the Borough Planning/Zoning Board that results in multi-family residential development of five dwelling units or more produces affordable housing at a set-aside rate of 20% for for-sale affordable units and at a set-aside rate of 15% for rental affordable units. This Ordinance shall apply except where inconsistent with applicable law.

b. Mandatory Set-Aside Ordinance.

If the Borough or the Borough Planning/Zoning Board permits the construction of multi-family or single-family attached residential development that is "approvable" and "developable," as defined at N.J.A.C. 5:93-1.3, the Borough or the Borough's Planning/Zoning Board shall require that an appropriate percentage of the residential units be set aside for low and moderate income households. This requirement shall apply beginning with the effective date of this Ordinance to any multi-family or single-family attached residential development, including the residential portion of a mixed-use project, which consists of five or more new residential units, whether permitted by a zoning amendment, a variance granted by the Borough's Planning/Zoning Board, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation. For any such development for which the Borough's land use ordinances (e.g. zoning or an adopted Redevelopment Plan) already permitted residential development as of the effective date of this Ordinance, this requirement shall only apply if the Borough or the Borough's Planning/Zoning Board permits an increase in approvable and developable gross residential density to at least twice the permitted approvable and developable

gross residential density as of the effective date of this Ordinance. Nothing in this subsection precludes the Borough or the Borough's Planning/Zoning Board from imposing an affordable housing set-aside in a development not required to have a set-aside pursuant to this subsection consistent with N.J.S.A. 52:27D-311(h) and other applicable law. For inclusionary projects in which the low and moderate units are to be offered for sale, the appropriate set-aside percentage is 20%; for projects in which the low and moderate income units are to be offered for rent, the appropriate set-aside percentage is 15%. This requirement does not create any entitlement for a property owner or applicant for a zoning amendment, variance, or adoption of a Redevelopment Plan or amended Redevelopment Plan in areas in need of redevelopment or rehabilitation, or for approval of any particular proposed project. This requirement does not apply to any sites or specific zones otherwise identified in the Borough's Settlement Agreement with FSHC dated March 28, 2018, or in the Borough's Housing Element and Fair Share Plan, adopted by the Borough Planning/Zoning Board on July 10, 2018 and endorsed by the Borough Board of Commissioners on July 25, 2018, for which density and set-aside standards shall be governed by the specific standards set forth therein.

Furthermore, this section shall not apply to developments containing four or less dwelling units. All subdivision and site plan approvals of qualifying residential developments shall be conditioned upon compliance with the provisions of this section. Where a developer demolishes existing dwelling units and builds new dwelling units on the same site, the provisions of this section shall apply only if the net number of dwelling units is five or more.

§ 27-38. SWIMMING POOLS.

[Added 3-8-2023 by Ord. No. 621-23]

- a. Swimming pools shall be designed and constructed in accordance with the latest edition of International Building Code, Section 3109.
- b. All drawings and plans for the construction, installation, enlargement or alteration of any swimming pool and appurtenances shall first be submitted to the Zoning Officer and Construction Official for examination and approval.
- c. All plans shall be prepared by a New Jersey licensed professional engineer or architect, and drawings shall be drawn to scale of not less than one inch equals 10 feet.
- d. The pool plan shall show the location of all existing and proposed site structures, including principal and accessory buildings, decks, walks, patios, fences, pumps and pool equipment, as well as impervious coverage calculations. All dimensions, sizes, coverage calculations and distances shall be accurately figured and drawings made explicit and complete showing the lot line, all structures on the lot, all information pertaining to the pool including water supply system, drainage and disposal systems for the filtration unit, decks, walks and fence locations and all appurtenances pertaining to the swimming pool. Detailed plans and vertical elevations in accordance with the Building Code must also be provided.
- e. All proposed pools shall comply with Chapter **27**, Zoning, Subsection **27-27.6**, Fences, Wall, and Sight Triangles.
- f. All private residential swimming pools, appurtenances, water supply and drainage systems shall be constructed in conformity with the approved plans. As-built drawings of the pool and appurtenant structures as described in paragraph d, above, shall be prepared by a New Jersey

licensed professional engineer, architect or surveyor.

- g. All outdoor swimming pools shall be completely enclosed by a fence as required by the construction code. All fences shall comply with Chapter **27**, Zoning, Subsection **27-27.6**, Fences, Walls and Sight Triangles.
- h. No private residential pool shall be installed on any lot unless said lot shall contain a residence and said pool shall be accessory to the residence.
- i. Swimming pools shall be located in the rear yard only.
- j. All swimming pools, including any aprons, walkways, or patios connected with any swimming pool, whether made of pervious or impervious material shall be at least 10 feet from any property line.
- k. Pumps, filters, pool water disinfectant equipment and other similar equipment accessory to a swimming pool's use shall be located not less than 10 feet from any side or rear property line.
- l. All swimming pools, measured from the water's edge, shall be at least 10 feet from any principal structure; provided that this shall not apply to any swimming pool which a) is wholly above grade; b) occupies an area less than 100 square feet; and c) is covered by a rigid cover when not in use.
- m. No significant specimen tree shall be removed for the construction of a swimming pool. The Borough's Tree Specialist shall designate what constitutes a significant specimen tree. See Chapter **30**, Subsection **30-1.2**, Significant Specimen Trees, and Subsection **30-1.3**, Tree Specialist.