

Chapter 200

ZONING

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[HISTORY: Adopted by the Town Board of the Town of Whitestown 7-15-1981 by L.L. No. 1-1981 as Ch. 30. Amendments noted where applicable.]

GENERAL REFERENCES

Unsafe buildings – See Ch. 58.	Junkyards – See Ch. 125
Excavations – See Ch. 90.	Mobile home and tourist camps – See Ch.130.
Fire Prevention and Building Code – See Ch. 98	Subdivision of land – See Ch. 175.
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ARTICLE I General Provisions; Terminology

§ 200-1. Title.

This chapter shall be known and may be cited as “The Town of Whitestown Zoning Ordinance of 1980.”

§200-2 Purposes.

This chapter is enacted for the following purposes:

- A. To lessen congestion in the streets;
- B. To secure safety from fire, flood, panic and other dangers;
- C. To promote health and the general welfare;

- D. To provide adequate light and air;
- E. To prevent the overcrowding of land;
- F. To avoid undue concentration of population;
- G. To facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements;
- H. To conserve the value of buildings;
- I. To encourage the most appropriate use of land through the Town
- J. To make provisions for, so far as conditions may permit. The accommodation of solar energy systems and equipment and access to sunlight necessary therefor. **[Added 3-16-1999 by L.L. No. 2-1999]**

§200-3. Definitions; word usage.

- A. Generally. Words used in the present tense include the future tense; words used in the singular include the plural and the plural the singular. The word “lot” includes the words “plot” and “parcel.” The Word “building” includes the word “structure.” The word “used” shall be deemed also to include “designed, intended or arranged to be used.” The word “shall” is mandatory and not permissive.
- B. Specific terms. As used in this chapter, unless the context or subject matter otherwise requires, the following terms shall have the following meanings:

ABATTOIR - Slaughterhouse, stockyard or transfer site for livestock or other animals. **[Added 3-16-1999 by L.L. No. 2-1999; amended 7-17-2002]**

ABOVE GROUND LEVEL (AGL) - A measurement of height from the proposed grade of a site to the highest point of a structure. **[Added 3-20-2002 by L.L. No. 2-2002]**

ACCESSORY USE - A non-inhabitable accessory facility or structure. Examples include a storage and equipment shed/shelter, and cabinets used to house power, communications, and control equipment. **[Added 3-20-2002 by L.L. No. 2-2002]**

ADEQUATE COVERAGE - Coverage for wireless communications facilities is considered to be "adequate" within that area surrounding a base station where the predicted or measured median field strength of the transmitted signal is greater than -90 dbm for at least 80% of the intended coverage area. It is acceptable for there to be holes within the area of adequate coverage where the signal strength declines further away from the base station (e.g., -95 dbm rather than -90 dbm). For the limited purpose of determining whether the use of repeater is necessary, there shall be deemed to be inadequate coverage within said holes. The outer boundary of the area of adequate coverage is that location past which the signal does not regain a strength equal to or greater than -90 dbm. **[Added 3-20-2002 by L.L. No. 2-2002]**

ADULT ENTERTAINMENT [Added 3-16-1999 by L.L. No. 2-1999; amended 7-17-2002] –

- (1) ADULT BOOKSTORE - A building or portion of a building used for the barter, rental or sale of items consisting of printed matter, pictures, slides, records, audio tape, videotape or motion-picture film if such building or portion of a building is not open to the public generally but only to one or more classes of the public, excluding any minor by reason of age, or if a substantial or significant portion of such items are distinguished or characterized by an emphasis on the depiction or description of sexual activities or anatomical areas.
- (2) ADULT CABARET - A building or portion of a building used for providing dancing, massage parlor or other live entertainment if such building or portion of a building excludes minors by virtue of age, or if such dancing or other live entertainment is distinguished or characterized by an emphasis on the presentation, display, depiction or description of sexual activities or anatomical areas
- (3) ADULT MINI MOTION-PICTURE THEATER - A building or portion of a building with a capacity for less than 50 persons used for presenting material if such building or portion of a building as a prevailing practice excludes minors by virtue of age, or if such material is distinguished or characterized by an emphasis on the depiction or description of sexual activities or anatomical areas for observation by patrons herein.
- (4) ADULT MOTION-PICTURE THEATER - A building or portion of a building with a capacity of 50 or more persons used for presenting material if such building or portion of a building as a prevailing practice excludes minors by virtue of age, or if such material is distinguished or characterized by an emphasis on the depiction or description of sexual activities or anatomical areas for observation by patrons therein.
- (5) ADULT USES - Includes adult bookstores, adult motion-picture theaters, adult mini motion-picture theaters, adult cabarets and other premises, enterprises, businesses or places open to some or all members of the public at or in which there is an emphasis on the presentation, display; depiction or description of sexual activities or anatomical areas which are capable of being seen by members of the public

AREA VARIANCE – This is a variance that allows for the use of land in a way that is not permitted by the dimensional or physical requirements of the zoning law. This type of variance is needed when a building application does not comply with the setback, height, lot or area requirements of the zoning code. [Added 9-18-2019 By L.L. No 2-2019]

ALLEY - Narrow supplementary thoroughfare for the public use of vehicles or pedestrians, affording access to abutting property.

ALTERATION - Any change, rearrangement or addition to a building, other than repairs; any modification in construction or in building equipment.

AUTOMOBILE BODY SHOP - Any building or area for repair or alteration of the frame or body of automobiles

AUTOMOBILE SALES – Any area for wholesale or retail sale or exchange of automobiles. This may include a facility for repairs to prepare autos for sale.

BASEMENT – That space of a building that is partly below grade, which has ½ of more of height, measured from floor to ceiling, above the average finished grade.

BED AND BREAKFAST – An owner-occupied residence resulting from a conversion of a one-family dwelling, used for providing overnight accommodations and a morning meal to not more than 10 transient lodgers, and containing not more than five bedrooms for such lodgers. **[Added 9-18-2019 by L.L. No. 2-2019]**

BUILDING - A structure wholly or partially enclosed within exterior walls or within exterior and party walls and a roof. The term "building," shall be construed as if followed by the phrase "or part thereof," unless otherwise indicated by the text.

BUILDING AREA- The total ground floor area of a principal building and accessory buildings, exclusive of uncovered porches, parapets, steps and terraces. **[Added 7-17-2002]**

BUILDING COVERAGE - That percentage of the lot area covered by the building area.

BUILDING, HEIGHT OF - The vertical distance measured from the average level of the proposed finished grade across the front of the building to the ridge line of the roof of the building.

BUILDING LINE - A line parallel with the front, side and rear property lines, respectively, beyond which any structure may not extend as specified in this chapter. **[Added 7-17-2002]**

BUILDING OR STRUCTURE, ACCESSORY - A structure, the use of which is incidental to that of the main building and which is located on the same premises.

CAMOUFLAGED - A wireless communications facility that is disguised, hidden, part of an existing or proposed structure, placed within an existing or proposed structure, or completely hidden by surrounding vegetation is considered "camouflaged." When facilities include a new tower or other tall structure, camouflage will conceal both the tall structure and the accompanying antennas and other equipment through the use of technology which gives these facilities the appearance of structures which are compatible with the surrounding area; also known as a "stealth facility." Examples of such structures include native trees, a farm silo, flagpole, and church steeple. **[Added 3-20-2002 by L.L. No. 2-2002]**

CAMP - Any area designated for temporary use or other similar shelter designed and intended for seasonal use.

CARRIER - A company, licensed by the FCC, that provides wireless services to customers. **[Added 3-20-2002 by L.L. No. 2-2002]**

CELLAR - That part of a building that is partly or entirely below grade, which has more than 1/2 of its height, measured from floor to ceiling, below the average finished grade.

CHICKEN – for the purpose of this code, a chicken (*Gallus Domesticus*) refers only to a female chicken.

CHICKEN ENCLOSURE – means a fenced (or wire) area, or pen, required in association with a coop in order to provide an outside exercise area for the chicken free from predators, and of a size that allows for access to foraging area, sunlight, etc.

CHILD-CARE CENTER - A facility that provides care for any number of preschool or school age children during any part of a twenty-four-hour day. All state licensing requirements are to be met, and all operation is to be in accordance with New York State Department of Social Services regulations. [Added 7-17-2002]

CLUB, PRIVATE - A building or use catering exclusively to club members and their guests for social and/or recreational purposes and not operated primarily for profit. [Added 7-17-2002]

COLLOCATION - The shared use of a single wireless communications facility, either on the ground or on an existing building or structure, by more than one wireless communications carrier. 1 [Added 3-20-2002 by L.L. No. 2-2002]

COMMUNICATIONS TOWER - A structure erected for the purpose of supporting communications equipment and antenna. [Added 7-17-2002]

COOP – the covered house, structure or room that is required in order to provide chickens with shelter from the weather and with a roosting area protected from predators.

DBM - Unit of measure of the power level of an electromagnetic signal expressed in decibels referenced to one milliwatt. [Added 3-20-2002 by L.L. No. 2-2002]

DENSITY - The total number of dwelling units proposed divided by the total number of acres within the tract.

DISH ANTENNA - A device incorporating a reflective surface that is solid, open mesh or bar configured and is in the shape of a shallow dish, cone, horn or cornucopia. Such device shall be used to transmit and/or receive radio or electromagnetic waves between terrestrial and/or orbitally based uses. This definition is meant to include but not be limited to what are commonly referred to as "satellite earth stations," "television reception-only systems (TVRO's)" and "satellite microwave antennas." [Added 7-17-2002]

DRIVE-IN RESTAURANT OR REFRESHMENT STAND- Any place or premises used for sale, dispensing or serving food, refreshments or beverages to persons in automobiles, including those establishments where customers may serve themselves and may eat or drink the food, refreshments or beverages on the premises or those primarily of a pickup or carry-out service nature. [Added 7-17-2002]

DWELLING, MULTIFAMILY-

- (1) A building designed or occupied for residential purposes by more than two families;
- (2) A series of attached, detached or semidetached buildings, which are provided as a group collectively with essential services and utilities and which are located on a lot, plot or parcel or land, under common ownership; or
- (3) The residential part of a mixed occupancy building.
- (4) Regardless of the foregoing, any residential building, other than a one- or two-family dwelling on a single zoning lot, shall be deemed to be a multiple dwelling.

DWELLING, ONE-FAMILY - A building containing only one dwelling unit and occupied by only one family.

DWELLING, TWO-FAMILY - A building containing only two dwelling units and occupied by only two families.

DWELLING UNIT – A complete self-contained residential unit with living, sleeping cooking and sanitary facilities within the unit, for use by one family.

ELEEMOSYNARY – A service and/or charitable club or organization. **[Added 7-17-2002]**

EQUIPMENT SHELTER - An enclosed structure, cabinet, shed or box at the base of the mount within which is housed the electronic receiving and relay equipment for a wireless communications facility. Associated equipment may include air-conditioning and emergency generators. This term does not include offices, long-term storage of vehicles or other equipment storage, or broadcast studios; qualifies as an accessory use. **[Added 3-20-2002 by L.L. No. 2-2002]**

FALL ZONE - The area on the ground within a prescribed radius from the base of a wireless communications facility, and shall be one and a half times the height of the proposed facility. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material. **[Added 3-20-2002 by L.L. No. 2-2002]**

FAMILY - One or more persons living together as a single housekeeping unit. The term "family" does not include live-in household employees. **[Amended 3-16-1999 by L.L. No. 2-1999]**

FARM - An area of 10 acres or more from which gross sales of agricultural products is greater than \$10,000.

FINANCE, INSURANCE AND REAL ESTATE (FIRE) - Establishments such as banks and savings and loans, credit agencies, investment companies, brokers and dealers of securities and commodities, security and commodity exchanges, insurance agents, lessors, lessees, buyers, sellers, agents and developers of real estate. **[Added 4-1-1998 by L.L. No. 4-1998]**

FLOODPLAIN - Any area adjacent to a water body which is subject to inundation from high water and/or wave action, and, at a minimum, that area subject to a one-percent or greater chance of flooding in any given year, and all areas designated as special flood hazard zones by the Federal Insurance Administration's Official Map for the Town shall be considered as flood plain areas,

FLOOR AREA, NET - The sum of the gross horizontal area of those parts of the floors of a building which are designed to be used for the direct service of customers or clients, or the sum of the gross horizontal area of those parts of a building which are designed to be used as offices where the office function is the principal use of the building. **[Added 3-16-1999 by L.L. No. 2-1999; amended 7-17-2002]**

GARAGE, PRIVATE - A roofed space for the storage of one or more motor vehicles, provided that no business, occupation or service is conducted for profit therein nor space therein for more than one car is leased to a nonresident of the premises.

GARAGE, PUBLIC - A building or part thereof used for the storage, hiring, selling, greasing, washing, servicing or repair of motor vehicles, operated for gain.

GARAGE, STORAGE - A building or part thereof used only for the storage of vehicles for gain and at which automobile fuels and oils are not sold and motor-driven vehicles are not equipped, repaired, hired or sold.

GARBAGE - Putrescible solid waste, including animal and vegetable waste resulting from the handling, storage, sale, preparation, cooking or serving of foods. Garbage originates primarily in the home kitchens, stores, markets, restaurants and other places where food is stored, prepared or served. **[Added 3-16-1999 by L.L. No. 2-1999; amended 7-17-2002]**

GASOLINE STATION - Any area of land, including structures thereon, that is used or designed to be used for the sale of gasoline or oil or other motor vehicle fuel and which may include facilities for lubricating, washing, cleaning or otherwise servicing motor vehicles. The term "gasoline station" shall be construed to include the terms "filling station and service station.11

GUYED TOWER - A monopole or lattice tower that is tied to the ground or other surface by diagonal cables. **[Added 3-20-2002 by L.L. No. 2-2002]**

HEALTH/SPORT CLUB/FITNESS CENTER - A building or portion thereof designed and equipped for the conduct of sports, exercise, leisure-time activities or other customary and usual recreational activities, operated for or on a not-for-profit basis and which can be open only to bona fide members and guests of the organization or open to the public for a fee. **[Added 10-5-2005]**

HOME OCCUPATION – any non-residential activity or use, done for hobby or profit as an incidental and secondary use of a residential property and which does not alter the exterior of the property or affect the residential character of the neighborhood. **[Amended 9-18-2019 By L.L. No 2-2019]**

HOSPITAL - A building or structure for the diagnosis and medical or surgical care of human sickness or injuries. The term shall be deemed to include sanitarium and medical clinic.

HOTEL - A building containing primarily hotel units for the purpose of furnishing lodging, with or without meals, for transient occupancy; and with management maintaining a register, and providing daily housekeeping and other incidental services, including desk, telephone or bellboy services.

JUNKYARD - A lot, land or structure or part thereof used primarily for the collecting, storage or sale of wastepaper, rags, scrap metal or discarded material; or for the collecting, dismantling, storage or salvaging of machinery or vehicles or for the sale of the parts thereof.

KENNEL - Land or a building used for harboring five or more dogs over six months old. **[Added 3-16-1999 by L.L. No. 2-1999; amended 7-17-2002]**

LAND DEVELOPMENT ACTIVITY - Defined as set forth in Chapter 168 entitled "Stormwater Management and Erosion and Sediment Control." **[Added 1-23-2007 by L.L. No. 2-2007]**

LANDFILL - Any area for the depositing of refuse in a natural or man-made depression or trench or dumping at ground level, compacting to the smallest practical volume and covering with earth in a systematic and sanitary manner.

LATTICE TOWER - A self-supporting mount constructed of vertical metal struts and cross braces forming a triangular or square structure which often tapers from the foundation to the top. **[Added 3-20-2002 by L.L. No. 2-2002]**

LAUNDROMAT - A business premises equipped with individual clothes washing or cleaning machines for use by retail customers, exclusive of laundry facilities provided in an apartment, fraternity, sorority, residential hotel or club. **[Added 3-16-1999 by L.L. No. 2-1999; amended 7-17-2002]**

LICENSED CARRIER - A company authorized by the FCC to construct and operate a commercial mobile radio services system. **[Added 3-20-2002 by L.L. No. 2-2002]**

LOADING SPACE - Off-street space used for the temporary location of one licensed motor vehicle, such space being at least 12 feet wide and 40 feet long, not including access driveway, and having direct access to a street or alley. **[Added 3-16-1999 by L.L. No. 2-1999; amended 7-17-2002]**

LOT - A parcel of land considered as a unit, occupied or capable of being occupied by one building and accessory buildings or uses or by a group of buildings united by a common use or interest; and including such open spaces as are required by this chapter and having its principal frontage on a public street or an officially approved place.

LOT, AREA - The total horizontal area included within lot lines, except that no part of the area within a public right-of-way may be included in the computation of lot area.

LOT, CORNER - A lot located at the intersection of and frontage on two or more intersecting streets and having an interior angle at the corner of intersection of less than 135°.

LOT COVERAGE - The percentage of the lot area that is occupied by the ground floor area of a building and its accessory buildings. **[Added 3-16-1999 by L.L. No. 2-1999; amended 7-17-2002]**

LOT, DEPTH - The mean horizontal distance between the front and rear lot lines, measured from front to rear.

LOT, INTERIOR - A lot other than a corner lot.

LOT, THROUGH - An interior lot having frontage on two approximately parallel or converging streets.

LOT, WIDTH - The distance between side lot lines measured at right angles to the lot depth measured at a point from the front lot line equal to the front yard specified for the district.

MINING, EXCAVATION - The extraction of overburden and minerals, including any naturally formed solid located on or below the surface of the earth, including peat and topsoil from the earth; the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, stockpiling or other processing of minerals at the mine location so as to make them suitable for commercial, industrial, or construction use, exclusive of manufacturing processes at the mine location; the removal of such materials through sale or exchange, or for commercial, industrial or municipal use; and the disposition of overburden, tailings and waste at the mine location. Mining shall not include the excavation, removal and disposition of minerals from construction projects, exclusive of the creation of water bodies, or excavation in aid of agricultural activities. **[Added 5-4-2005]**

MOBILE HOME - A vehicular, portable structure built on a chassis and designed to be used without a permanent foundation as a dwelling when connected to utilities.

MOBILE HOME COURT or PARK- A parcel of land which has been planned and improved primarily for the placement of mobile homes.

MONOPOLE - A self-supporting mount constructed of a single shaft of wood, steel or concrete with below-grade foundations and a platform (or racks) for panel antennas arrayed at the top. **[Added 3-20-2002 by L.L. No. 2-2002]**

MOTEL - A building, with or without party walls, or any group of buildings used primarily for sheltering transient motorists and accessory uses, such as restaurants and parking.

MOUNT - The structure or surface upon which antennas are mounted, including the following four types of mounts: **[Added 3-20-2002 by L.L. No. 2-2002]**

- (1) ROOF-MOUNTED - Mounted on the roof of a building.
- (2) SIDE-MOUNTED - Mounted on the side of a building.
- (3) STRUCTURE-MOUNTED - Mounted on a structure other than a building.
- (4) GROUND-MOUNTED - Mounted on the ground.

NEIGHBORHOOD CONVENIENCE STORE - Any store selling convenience items in a retail establishment of less than 5,000 square feet of net floor area and which may or may not include the sale of gasoline. **[Added 3-16-1999 by L.L. No. 2-1999; amended 7-17-2002]**

NONCONFORMING BUILDING, STRUCTURE or LOT - A building, structure or lot of record legally existing prior to and/or at the time of enactment of this chapter or any subsequent amendment which, by reason of such enactment or amendment, does not conform to the minimum parking or dimension requirements for the district in which it is located. **[Amended 3-16-1999 by L.L. No. 2-1999]**

NONCONFORMING USE - A property use legally existing prior to and/or at the time of the enactment of this chapter or any subsequent amendment which, by reason of such enactment or amendment, does not conform to the use regulations of the district in which is situated. **[Amended 3-16-1999 by L.L. No. 2-1999]**

NURSING or CONVALESCENT HOME - Any dwelling used for the accommodation and care of persons with or recuperating from illness or incapacity, where nursing services are furnished.

PARKING SPACE - An off-street space available for the parking of one motor vehicle and having an area of not less than 180 square feet, exclusive of passageways and driveways thereto.

PERSONAL SERVICES ESTABLISHMENT- Any building wherein the primary occupation is the repair, care of, maintenance or customizing of personal properties that are worn or carried about the person or are a physical component of the person. For the purpose of this chapter, personal service establishments shall include but not be limited to barbershops, beauty parlors, hairstylists, laundering, cleaning and other garment servicing establishments, tailors, dressmaking shops, shoe cleaning or repair shops and other similar places of business. The term "personal service establishment" is not to be construed to include offices of physicians, dentists and veterinarians, or dry-cleaning plants or laundries containing more than 3,000 square feet of net floor area or linen or diaper service establishments. **[Added 3-16-1999 by L.L. No. 2-1999; amended 7-17-2002]**

PLANT NURSERY, GREENHOUSE- An area or establishment where trees, shrubs or plants are grown for transplanting, for use as stocks for budding and grafting or for sale. **[Added 3-16-1999 by L.L. No. 2-1999; amended 7-17-2002]**

PROFESSIONAL ENGINEER- A person licensed to practice engineering in the State of New York. **[Added 3-20-2002 by L.L. No. 2-2002]**

PROFESSIONAL OFFICE - A room or suite of rooms in which an individual or group of individuals operates a private professional practice, including, but not limited to, medical, osteopathic, dental, podiatric, chiropractic, optometric, law, psychiatric, accounting, architecture and engineering. **[Added 3-16-1999 by L.L. No. 2-1999; amended 7-17-2002]**

PUBLIC UTILITY - Includes offices and secondary uses of gas, electricity, water, sewage, telephone, telecommunications and cable television service companies. **[Added 7-17-2002]**

QUICK-SERVICE FOOD STORE - Any food store selling convenience items in a retail establishment of less than 5,000 square feet of net floor area, with or without the dispensing of retail gasoline. **[Added 7-17-2002]**

RADIO FREQUENCY - High-frequency waves used in wireless systems to propagate information from one location to another. **[Added 3-20-2002 by L.L. No. 2-2002]**

RECREATION, COMMERCIAL OUTDOOR - Includes such uses as golf driving range, golf pitch and putt course, par-three golf course, outdoor amusement park, go-cart track, motor-cross course and batting range. **[Added 7-17-2002]**

RECREATION, COMMERCIAL INDOOR - Includes such uses as bowling alley, theater, table tennis and pool hall, skating rink, curling, gymnasium, swimming pool, hobby workshop, and similar places of indoor commercial recreation. **[Added 7-17-2002]**

RECREATION VEHICLE - A mobile recreational unit, including travel trailer, motor home, pickup camper, converted bus, tent trailer, tent or similar device used for temporary portable housing. **[Added 7-17-2002]**

REPEAT VIOLATION – Shall mean a violation of the provision of a code or ordinance by a person who has been previously found, through a code enforcement special magistrate or any other quasi-judicial process, to have violated, or who was admitted violating, the same provision within five years prior to the violation, notwithstanding that the violations may occur at different locations. For the purposes of the definition, a plea of “No Contest” or “Nolo Contendere” shall be deemed an admission of a violation.

REPEATER - A small receiver/relay transmitter of not more than 20 watts' output designed to provide service to areas which are not able to receive adequate coverage directly from a primary sending and receiving site in a wireless communications network. **[Added 3-20-2002 by L.L. No. 2-2002]**

ROOMING HOUSE - Any building or portion thereof containing more than two and less than 10 rooms that are used, rented or hired out to be occupied or that are occupied for sleeping purpose for compensation, whether the compensation be paid directly or indirectly.

SECURITY BARRIER - A locked, impenetrable wall, fence or berm that completely seals an area from unauthorized entry or trespass. **[Added 3-20-2002 by L.L. No. 2-2002]**

SEPARATION - The distance between one carrier's array of antennas and another carrier's array. **[Added 3-20-2002 by L.L. No. 2-2002]**

SERVICE STATION - See "gasoline station."

SHOPPING CENTER [Added 7-17-2002] -

- (1) Any group of two or more commercial uses which:
 - (a) Are designed as a single commercial group, whether or not located on the same lot.
 - (b) Are under common ownership or management
 - (c) Are connect by common part walls, partitions, canopies or other structural members to form one continuous structure or if located in separate buildings, are interconnected by walkways and access ways designed to facility customer Interchange between uses.
 - (d) Share a common parking area; and
 - (e) Otherwise present the appearance of one continuous commercial area.
- (2) For the purpose of this chapter, the term “shopping center” shall be construed to include the term “mini-mall.”

SIGN – Any writing, letter work, numerical or pictorial presentation, illustration or decoration, emblem, device, symbol or trademark, flag banner or pennant or any other device, figure or similar character which:

1. Is used to announce, direct attention to, identify, advertise or otherwise make anything known including menu boards;
2. Is visible from the public right-of-way or from adjoining property. **[Amended 9-18-2019 By L.L. No 2-2019]**

SIGN AREA – The area of a sign shall be equivalent to the total exposed surface devoted to a sign message, including ornamentation, embellishment and symbols, but excluding supporting structures. **[Added 9-18-2019 By L.L. No 2-2019]**

SIGN, ADVERTISING - A sign which directs attention to a business, commodity, service or entertainment sold or offered elsewhere than upon the premises where such sign is located or to which it is affixed and only incidentally on the premises where such sign is located, or to which it is affixed and only incidentally on the premises if at all. **[Amended 9-18-2019 By L.L. No 2-2019]**

SIGN, BUILDING-MOUNTED – Any sign attached to and deriving its major structural support from a building, and including but not limited to the following. Arcade sign, awning sign, canopy sign, cornice sign, facade sign, marquee sign, parapet sign, plaque sign, projecting sign, wall sign, and window sign. **[Added 9-18-2019 By L.L. No 2-2019]**

SIGN, BUSINESS – A sign which indicates the name of an individual commercial or industrial business or any corporation with which it is affiliated, but which does not indicate the products, services or entertainment offered by that business. **[Amended 9-18-2019 By L.L. No 2-2019]**

SIGN, COMMERCIAL ELECTRONIC VARIABLE MESSAGE SIGNS (CEVS) – an electronic sign capable of automatically carrying the display. **[Added 9-18-2019 By L.L. No 2-2019]**

SIGN, EXEMPT – a sign which may be placed without a Permit but which shall otherwise comply with the applicable provisions of this Chapter. Such signs shall include official traffic signs, posting or trespass notices, and official flag, emblem, or insignia of a nation, state or municipality other than in connection with a commercial use. A temporary political sign is exempt. **[Added 9-18-2019 By L.L. No 2-2019]**

SIGN, FLASHING - An illuminated sign on which the artificial light is not maintained stationary or at a constant intensity and/or color at all times which such is in use. For the purpose of this Chapter, any revolving, illuminated sign shall be considered a “Flashing Sign.” **[Amended 9-18-2019 By L.L. No 2-2019]**

SIGN, FREESTANDING – Any sign supported by upright structural members or by braces on or in the ground and not attached to a building including, but not limited to the following: Bulletin board sign, outdoor advertising sign, pole or pylon sign or ground sign. **[Added 9-18-2019 By L.L. No 2-2019]**

SIGN, IDENTIFICATION – A sign indicating the name and/or address of an occupant. Such sign may be wholly or partly devoted to a readily recognized symbol, trademark, or logo. **[Added 9-18-2019 By L.L. No 2-2019]**

SIGN, OUTDOOR ADVERTISING (ALSO “BILLBOARDS”) - Any sign on which information is portrayed which directs attention to a business, commodity, service, or entertainment not related to other uses existing or permitted on the lot upon which the sign is located. **[Added 9-18-2019 By L.L. No 2-2019]**

SIGN, POLITICAL - A sign related to governmental affairs or social issues. These include, but are not limited to, campaign signs. **[Added 9-18-2019 By L.L. No 2-2019]**

SIGN, PORTABLE - Any sign not permanently affixed to the ground nor to a building including any sign attached to or displayed on a vehicle that is used for the expressed purpose of advertising a business establishment, political event, service product, or entertainment when the vehicle is operated or parked so as to attract the attention of the motoring or pedestrian traffic. **[Added 9-18-2019 By L.L. No 2-2019]**

SIGN, REAL ESTATE - Any Sign advertising the sale, rental, or lease of the premises or part of the premises on which the sign is displayed. **[Added 9-18-2019 By L.L. No 2-2019]**

SIGN REGULATION – Local laws that regulate the erection and maintenance of signs and outdoor advertising with respect to their size, color, appearance, movement, illumination, and placement on structures or location on its ground. **[Added 9-18-2019 By L.L. No 2-2019]**

SIGN, SHOPPING CENTER - A freestanding sign that identifies only the name of the shopping center and the individual enterprises. **[Added 9-18-2019 By L.L. No 2-2019]**

SIGN, TEMPORARY - Any sign intended to be displayed for a limited period of time and not to be permanently affixed, attached, implanted, or placed on a building, pole, or in the ground. **[Added 9-18-2019 By L.L. No 2-2019]**

SIGN, WINDOW - Any sign attached to the glass area of a window or placed behind the glass of a window so that it can be read from outside. **[Added 9-18-2019 By L.L. No 2-2019]**

STORAGE YARD - The use of any space, whether inside or outside a building, for the storage or keeping of construction equipment, machinery, vehicles or parts thereof, boats and/or farm machinery. **[Added 7-17-2002]**

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

STORY, HALF - That part of a building between a pitched roof and the uppermost full story, such part having a ceiling height of seven feet or more for an area not exceeding 1/2 the floor area of said full story and in which space not more than 2/3 of the floor area is finished off as rooms.

STREET - Thoroughfare dedicated and accepted by a municipality for public use or legally existing on any map of a subdivision filed in the manner provided by law.

STRUCTURAL ALTERATION - Any change to a structure which is not merely a repair or replacement of an existing part or any change which would:

- (1) Enlarge or diminish the livable floor area of the structure or any part thereof.
- (2) Change the number of dwelling units contained in any structure.
- (3) Cause a change in the location or height of the exterior walls or roof of the structure.
- (4) Move the structure from one position to another.
- (5) Change any exit or entry facilities.
- (6) Change or rearrange the structural parts, including bearing walls, beams, girders and columns.

STRUCTURE - An assembly of materials forming a construction framed of component structural parts for occupancy or use, including buildings.

SWIMMING POOL - A private, semiprivate or public swimming, bathing, wading pool, man-made pond or tank above or below the ground of a permanent or temporary nature which has a depth of more than 24 inches and a water surface of more than 100 square feet and designed or intended for use as such. **[Added 3-16-1999 by L.L. No. 2-1999]**

TENANT - An occupant of land or premises who occupies, uses, and enjoys real property for a fixed time, usually through a lease arrangement with the property owner and with the owner's consent. **[Added 5-4-2005]**

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

TRAILER - A mobile unit, whether self-propelled or intended to be towed, designed for camping, recreational travel or vacation use, which provides partial housekeeping facilities such as plumbing, heating, electrical, cooking or refrigeration systems or equipment, but not intended for year-round living. The term "trailer" shall include utility trailers intended to be used for hauling boats, snowmobiles, freight, construction equipment and materials and property maintenance equipment. **[Amended 6-7-2000 by L.L. No. 4-2000]**

TRAILER CAMP - An area occupied or designed for occupancy by two or more trailers.

USE VARIANCE - A variance that allows landowners to put their land to a use that is not permitted under the zoning law. This type of variance may be granted only in cases of unnecessary hardship. To prove unnecessary hardship, the owner must establish that the requested variance meets statutorily prescribed conditions. **[Added 9-18-2019 By L.L. No 2-2019]**

WIRELESS COMMUNICATIONS ANTENNA - A device used to transmit or receive communications as authorized by the Federal Communications Commission, including, but not limited to whip, panel and dish communications antennas. **[Added 3-20-2002 by L.L. No. 2-2002]**

WIRELESS COMMUNICATIONS FACILITY - A facility for the provision of wireless communications services, as defined by The Telecommunications Act of 1996, and usually consisting of an equipment shelter, a mount, and/or antenna(s). Radio or television transmission towers and repeaters shall be included in the definition of wireless communications facilities. **[Added 3-20-2002 by L.L. No. 2-2002]**

WIRELESS COMMUNICATIONS SERVICES – Licenses wireless telecommuncations services, including, but limited to cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), and paging services marketed to the general public. Excluded from this definition are services used for fire, police, and other dispatch.

YARD - An open space on the same lot with a building, unoccupied or unobstructed by any portion of a structure from the ground upward, except as otherwise provided in this chapter.

YARD, FRONT - An open, unoccupied space on the same lot with the building, between the front line of the building and the street or highway line and extending the full width of the lot.

YARD, REAR - An open, unoccupied space, except for accessory buildings, on the same lot with the building between the rear line of the building and the rear lot line and extending the full width of the lot.

YARD, SIDE - An open, unoccupied space on the same lot with the building, situated between the building and the side lot line and extending from the front yard to the rear yard.

§200-4. Establishment of Districts. [Amended 3-16-1999 by L.L. No. 2-1999; 7-17-2002; 08-18-2019]

The Town of Whitestown is hereby divided into the following Zoning Districts:

R-200	Residence District
R-100	Residence District
R-80	Residence District
C-1	Neighborhood Commercial District
C-2	Office Commercial District
C-3	Retail Commercial District
C-4	General Commercial District
ELM	Environmentally Limited Manufacturing District
M-1	Manufacturing District
L-M	Light Manufacturing District
M-H	Mobile Home District
A	Airport District
L-F	Landfill District
F	Floodplain District

§200-5. Zoning Map.¹

The locations and boundaries of the zoning districts hereby established are shown on a map entitled "Zoning Districts." The Zoning Map and all notations, reference and other information shown thereon are hereby declared to be a part of this chapter. The Town Clerk shall delineate on the Zoning Map all amendments to the district boundaries which are authorized by this chapter immediately upon the effective date of such amendment, indicating the title and date of the amendment.

§ 200-6. District boundaries.

Where uncertainty exists as to the locations of any boundaries shown on the Zoning Map, the following rules shall apply:

- A. District boundary lines are intended to follow center lines of streets or alleys, rights-of-way, water courses or lot lines or be parallel or perpendicular thereto, unless such boundary lines are fixed by dimensions as shown on the Zoning Map.
- B. Where such boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be such boundaries.
- C. In unsubdivided land and where a district boundary divides a lot, the location of such boundary, unless the same is indicated by dimensions shown on the map, shall be determined by the use of the scale appearing thereon.

1. Editor's Note: Zoning Map located at the end of this chapter

- D. If, after the application of the foregoing rules, uncertainty exist as to the exact location of a district boundary, the Board of Appeals shall determine and fix the location of said line.
- E. Where a district boundary line divides a lot of record, held in one ownership at the time of adoption of said district line, the regulations for the less restricted portion of such lot shall apply to the remainder of said lot up to a distance of not more than 50 feet from said district line.
- F. Any land hereafter annexed to or consolidated within the Town of Whitestown shall be deemed to be zoned R-200 until said land is reclassified by an amendment to this chapter.

§ 200-7. Use regulations.

- A. Applicability.
 - (1) The uses which are permitted principal uses, site plan review uses and special permit uses for each zoning district are indicated in Articles II through V and in Schedule A².
 - (2) In each of the districts, no building or premises shall be used and no building shall be erected or altered except for one or more of the uses listed. Uses not listed herein are prohibited, except as provided in this chapter.
 - (3) Any given use shown in more than one category indicates that a review and approval is by both the Planning Board and the Zoning Board of Appeals. The specific process for each of the categories is explained in Subsection C and D of this section.
 - (4) In each of the districts, no building or premises shall be used and no building shall be erected or altered except for one or more of the uses listed. Uses not listed herein are prohibited, except as provided elsewhere in this chapter.
 - (5) Any given use shown in more than one category indicates that review and approval is by both the Planning Board and the Zoning Board of Appeals. The specific process for each of the categories is explaining in Subsection C and D of this section.
- A. Permitted Principal uses. Uses shown in this category in Articles II through V are required to obtain a building permit as described in Article VIII, Administration; Board of Appeals.
- B. Site plan review uses.
 - (1) Uses shown in this category Articles II through V are required first to comply with review by the Planning Board as explained in § 200-24, Site Plan Review Process. All such uses shall comply with § 200-24 of this chapter. All applications for such uses shall be referred by the Enforcement Officer to the Planning Board. After compliance with

Planning Board review per § 200-24, the application will be returned to the Enforcement Officer for the appropriate action.

- (2) If a use is shown in both the site plan review uses and the special permit uses categories, the Enforcement Officer shall refer such an application first to the Planning Board for its review and action. No action shall be taken by the Zoning Board of Appeals in such a case until a determination has been rendered by the Planning Board.

C. Special permit uses.

- (1) Uses shown in this category in Articles II through V must be approved by the Zoning Board of Appeals as explained in § 200-39E
- (2) All applications for uses in this category shall be referred by the Enforcement Officer to the Zoning Board of Appeals. If a use is shown in both the special permit uses and site plan review uses categories, the Enforcement Officer shall refer such an application first to the Planning Board for its review and action. No action shall be taken by the Zoning Board of Appeals until a determination has been rendered by the Planning Board.

ARTICLE II
Residence Districts

§200-8. R-200 Residence District.

This district delineates those areas of Town where natural and man-made features, including the airport approach zones, are such that rural, low-density residential development should be the primary land use.

A. Permitted principal uses.

- (1) Farms
- (2) One-family dwellings.

B. Site plan review uses.

- (1) Public and semipublic uses.
- (2) Standard nine- or eighteen-hole golf course or country club.
- (3) Nursing home.
- (4) Public utility.
- (5) (Reserved)⁴
- (6) Hospital.
- (7) Home occupation.
- (8) Recreation vehicle park [Added 3-16-1999 by L.L. No. 2-1999]

- (9) Golf Ball driving range, executive/par-three golf course [Added 3-16-1999 by L.L. No. 2-1999; amended 7-17-2002]
- (10) Child-care center. [Added 3-16-1999 by L.L. No. 2-1999; amended 7-17-2002]
- (11) Service clubs and organizations.[Added 3-16-1999 by L.L. No. 2-1999; amended 7-17-2002]
- (12) Change in any nonresidential use or tenant. [Added 5-4-2005]
- (13) Mining, excavations. [Added 5-4-2005]
- (14) Land development activities. [Added 1-23-2007 by L.L. No. 2-2007]
- (15) R-100 permitted principal uses with public sewer and water. [Added 9-18-2019 by L.L. No 2-2019]

C. Special Permit Uses.

- (1) Public utility.
- (2) Mining, excavations. [Amended 4-6-2005 by L.L. No. 1-2005]
- (3) Hospital.
- (4) Home occupation.
- (5) Child-care center. [Added 3-16-1999 by L.L. No. 2-1999; amended 7-17-2002]

D. Accessory uses and structures. Such accessory uses and structures as are customarily incidental to the foregoing uses.

§ 200-9. R-100 Residence District.

This district provides for moderate density one- and two-family residential development and controlled multifamily residential development.

A. Permitted Principal uses.

- (1) Farm
- (2) One-family dwellings.
- (3) Two-family dwellings.

B. Site plan review uses.

- (1) Public or semipublic uses.
- (2) Standard nine- or eighteen-hole golf course or country club.
- (3) Nursing home (must have provisions for public sewer and water service).
- (4) Public Park or playground.

- (5) Multifamily dwellings (must have provisions for public sewer and water service).
- (6) Public utility.
- (7) Golf ball driving range, executive/par-three golf course. **[Added 3-16-1999 by L.L. No. 2-1999; amended 7-17-2002]**
- (8) Change in any nonresidential use or tenant. **[Added 5-4-2005]**
- (9) Mining, excavations. **[Added 5-4-2005]**
- (10) Land development activities. **[Added 1-23-2007 by L.L. No. 2-2007]**
- (11) Bed and Breakfast **[Added 9-18-2019 by L.L. No 2-2019]**

C. Special permit uses.

- (1) Public Utility

D. Accessory uses and structures. Such accessory uses and structures as are customarily incidental to the foregoing uses

§ 200-10. R-80 Residence District.

This district provides for moderate- to high-density single-family residential development in areas close to the village centers and existing public services.

A. Permitted principal uses.

- (1) Farm
- (2) One-family dwelling, permitted only with public sewer and water. **[Amended 3-16-1999 by L.L. No. 2-1999; 7-17-2002]**

B. Site plan review uses

- (1) Public or semipublic uses
- (2) Standard nine- or eighteen-hole golf course or country club
- (3) Public Park or playground.
- (4) Public utility.
- (5) Golf ball driving range, executive/par-three golf course. **[Added 3-16-1999 by L.L. No. 2-1999; amended 7-17-2002]**
- (6) Change in any nonresidential use or tenant. **[Added 5-4-2005]**
- (7) Land development activities. **[Added 1-23-2007 by L.L. No. 2-2007]**
- (8) Bed and Breakfast **[Added 9-18-2019 by L.L. No 2-2019]**

C. Special permit uses.

- (1) Public utility.

D. Accessory uses and structures. Such accessory uses and structures as are customarily incidental to the foregoing uses.

§ 200-11. M-H Mobile Home District.

This district provides for mobile home parks where it is compatible with adjacent uses.

- A. Permitted principle uses.
 - (1) Single mobile homes.
- B. Site plan review uses.
 - (1) Mobile home parks
 - (2) Recreation Vehicle Park. **[Added 3-16-1999 by L.L. No. 2-1999; amended 7-17-2002]**
 - (3) Land development activities. **[Added 1-23-2007 by L.L. No. 2-2007]**
- C. Accessory uses and structures. Such accessory uses and structures as are customarily incidental to the foregoing uses.

ARTICLE III
Commercial Districts

§ 200-12. C-1 Neighborhood Commercial District.

This district provides for commercial uses in close proximity to residential areas to serve the residents of the area and not to provide large-scale Town or regional commercial uses.

- A. Site plan review uses.
 - (1) Restaurant.
 - (2) Neighborhood convenience store (without gasoline sales). **[Amended 3-16-1999 by L.L. No. 2-1999; 7-17-2002]**
 - (3) Bakery or confectionery shop.
 - (4) Personal services such as barber, tailor and shoe repair.
 - (5) Bank.
 - (6) Launderette.
 - (7) Fruit or vegetable market.
 - (8) Professional office such as doctor, lawyer, architect and accountant.
 - (9) Nursery or greenhouse.
 - (10) Public utility.
 - (11) Service clubs and organizations. **[Added 3-16-1999 by L.L. No. 2-1999; amended 7-17-2002]**
 - (12) Child-care center. **[Added 3-16-1999 by L.L. No. 2-1999; amended 7-17-2002]**
 - (13) Change in any nonresidential use or tenant. **[Added 5-4-2005]**
 - (14) Land development activities. **[Added 1-23-2007 by L.L. No. 2-2007]**

B. Special permit uses.

- (1) Public utility.
- (2) ⁴Child-care center. [Added 3-16-1999 by L.L. No. 2-1999; amended 7-17-2002]

C. Accessory uses and structures. Such accessory uses and structures as are customarily incidental to the foregoing uses.

§ 200-13. C-2 Office Commercial District. [Amended 3-16-1999 by L.L. No. 2-1999; 7-17-2002]

This district provides for integral areas for the development of professional and business offices which are not associated with retail commercial uses but which are compatible with all adjacent uses.

A. Site plan review uses.

- (1) General business officers
- (2) Studio.
- (3) Bank.
- (4) Governmental offices.
- (5) Research and development center.
- (6) Laboratory research.
- (7) Storage.
- (8) Warehouse,
- (9) Nursery or greenhouse.
- (10) Change in any nonresidential use or tenant. [Added 5-4-2005]
- (11) Land development activities. [Added 1-23-2007 by L.L. No. 2-2007]

B. Special permit uses.

- (1) Public Utility

C. Accessory uses and structures. Such accessory uses and structures as are customarily incidental to the foregoing uses.

§ 200-14. C-3 Retail Commercial District. [Amended 3-16-1999 by L.L. No. 2-1999; 7-17-2002]

This district provides for limited commercial development in nonresidential areas.

A. Site plan review uses.

- (1) C-1 and C-2 Commercial uses.
- (2) Retail store or shopping center.

- (3) Personal service shop such as barber, beauty parlor, tailor or shoe repair.
- (4) Bank or other monetary institution.
- (5) Restaurant or other place serving food or drink.
- (6) Business or professional office.
- (7) Private club or lodge.
- (8) Business sign as provided in § 200-28B of this chapter.
- (9) Public utility structure.
- (10) Wholesale store, discount store or warehouse.
- (11) Stone or monument works.
- (12) Gasoline service station
- (13) Automatic or coin-operated laundry or dry cleaner or pick up station
- (14) Motel-hotel
- (15) Retail sales and services of motorcycles, recreational vehicles, except trailers, lawn and garden vehicles and equipment and parts and accessories related thereto.
- (16) Adult entertainment
- (17) Convenience store (with gasoline sales)
- (18) Change in any nonresidential use or tenant. [**Added 5-4-2005**]
- (19) Land development activities. [**Added 1-23-2007 by L.L. No. 2-2007**]

B. Special permit uses

- (1) Adult entertainment

C. Accessory uses and structures. Such accessory uses and structures as are customarily incidental to the foregoing uses.

§ 200-15. C-4 Commercial District. [Amended 9-18-2019 by L.L. No. 2-2019]

A. Site plan review uses.

- (1) Uses permitted in the C-3 Commercial District.
- (2) Automobile, farm implement, boat sales or rental, including accessory service.
- (3) Confectionary or bakery where all goods made and processed are sold at retail on the premises.
- (4) Motel or hotel.
- (5) Recreation, commercial; indoor and outdoor.

- (6) Casino.
 - (7) Printing, lithographing or publishing.
 - (8) Wholesale store or discount house.
 - (9) Electrical, plumbing, heating or air-conditioning fabrication or repair shop, but not outside storage of used materials.
 - (10) Gasoline service station, mechanical car wash.
 - (11) Building material sales yard, excluding concrete mixing.
 - (12) Retail lumber yard, including only incidental mill work.
 - (13) Contractor's equipment storage yard.
 - (14) Small animal hospital, veterinary clinic or kennel
 - (15) Truck terminals.
 - (16) Change in any nonresidential use or tenant. [Added 5-4-2005]
 - (17) Land development activities. [Added 1-23-2007 by L.L. No. 2-2007]
 - (18) Automobile Body Shop [Added 8-18-2019 by L.L. No. 2-2019]
- B. Special permit uses.
- (1) Public utility.
- C. Accessory uses and structures. Such accessory uses and structures as are customarily incidental to the forgoing uses.

ARTICLE IV

Manufacturing Districts

§ 200-16. M-1 Manufacturing District.

This district provides for limited industrial uses outside the industrial park.

- A. Site plan review uses. Site plan uses shall be as follows:
- (1) Uses permitted in the C-4 Commercial District, but not including any dwelling, school, hospital or similar institution for human care except when incidental to a permitted principal use.
 - (2) Research, experimental or testing laboratory, provided that no operation shall be conducted which may cause hazardous, noxious or offensive conditions in the area in which such laboratory is located.
 - (3) Manufacture, compounding, assembling, fabrication or treatment of articles or merchandise from the following previously prepared materials: fiber, fur, glass, leather, metal, paper, plastic, stone, textiles, tobacco, wax, wire and wood.

- (4) Warehouse or storage facility, but not including aboveground tanks for the storage of crude oil or petroleum products, natural gas, molasses and similar bulk liquids.
- (5) ⁵Any use equivalent to the above, but not including any use which may become hazardous, noxious or offensive by reason of the emission of odor, dust, dirt, smoke, cinders, gas, fumes, vibration, refuse matter or water-carried waste.
- (6) Mining excavations. [**Added 3-16-1999 by L.L. No. 2-1999; amended 7-17-2002**]
- (7) Change in any nonresidential use or tenant. [**Added 5-4-2005**]
- (8) Land development activities. [**Added 1-23-2007 by L.L. No. 2-2007**]

B. Special permit uses. Special permit uses shall be as follows:

- (1) Truck terminal, including any premises where any vehicle used in long distance freight hauling or where any tractor trailer combination or automobile conveyor is parked, loaded or unloaded.
- (2) Food processing plant.
- (3) Abattoir. [**Added 3-16-1999 by L.L. No. 2-1999; amended 7-17-2002**]

§ 200-17. ELM Environmentally Limited Manufacturing District. [Amended 3-16-1999 by L.L. No. 2-1999; 7-17-2002]

This district provides for limited and controlled industrial development involving low-density human habitation in areas subjected to environmental constraints, such as floodplains or airport approach zones.

A. Site plan review uses. Site plan review uses shall be as follows:

- (1) Manufacturing.
- (2) Indoor (secure) storage.
- (3) Warehouse
- (4) Truck terminal.
- (5) Junkyard.
- (6) Change in any nonresidential use or tenant. [**Added 5-4-2005**]
- (7) Land development activities. [**Added 1-23-2007 by L.L. No. 2-2007**]

B. Accessory uses and structures. Such accessory uses and structures as are customarily incidental to the foregoing uses.

§ 200-18. L-M Light Manufacturing District.

This district provides for light industrial zoning which is to allow wholesale and warehousing uses as well as those industrial uses that include fabrication, manufacturing, assembly or processing of materials that are in refined form and that do not in their transformation create smoke, gas, odor, dust, noise, vibration of earth, soot or lighting to a degree that is unreasonable offensive when measured at the property line of subject property.

A. Site plan review uses. Site plan review uses shall be as follows:

- (1) Uses permitted in the C-4 Commercial district, but not including any dwelling, school, hospital or similar institution for human care except when incidental to a permitted principal use.
- (2) Research, experimental or testing laboratory, provided that no operation shall be conducted which may cause hazardous, noxious or offense conditions in the area in which such laboratory is located.
- (3) Manufacture, compounding, assembling fabrication or treatment of articles or merchandise from prepared materials.
- (4) Warehouse or storage facility
- (5) Food processing plants or facilities.
- (6) Establishments engaged in manufacturing machinery, apparatus and supplies for the generation, storage, transmission and utilization of electrical energy or the generation of electrical energy itself.
- (7) Establishments engaged in manufacturing equipment for the transportation of passengers and cargo by land, sea or air.
- (8) Any use equivalent to the above, but not including any use which may become hazardous, noxious or offensive by reason of the emission of odor, dust, dirt, smoke, cinders, gas, fumes, noise, vibration, refuse matter or water-carried waste.
- (9) Change in any nonresidential use or tenant.
- (10) Land development activities.
- (11) Finance, insurance and real estate (FIRE) uses.

B. Accessory uses and structures. Such accessory uses and structures as are customarily incidental to the foregoing uses shall be allowed.

§ 200-19. A Airport District.

This district provides for the further development and maintenance of a regional air transportation facility.

A. Site plan review uses. Site plan review uses shall be as follows:

- (1) Storage of aircraft.
- (2) Terminal facilities.
- (3) Maintenance buildings.
- (4) Fuel storage structures.
- (5) Commercial and industrial buildings or facilities which are related to airport operations.
- (6) Public facilities and buildings of such a nature that they do not interfere with the operation, maintenance and safety of aircraft and airport facilities.
- (7) Any other building or facility which conforms with the overall development plan of the airport.
- (8) Finance, insurance, and real estate (FIRE) uses, provided that they do not interfere with the operation, maintenance and safety of aircraft and airport facilities. **[Added 4-1-1998 by L.L. No. 4-1998]**
- (9) Change in any nonresidential use or tenant. **[Added 5-4-2005]**
- (10) Land development activities. **[Added 1-23-2007 by L.L. No. 2-2007]**

B. Accessory uses and structures. Such accessory uses and structures as are customarily incidental to the foregoing uses shall be allowed.

§ 200-20. F Floodplain District.

Floodplain zoning is intended to provide a means for the regulation of land uses in area subject to flood, for the protection of life and property values and the public safety, health, welfare and convenience.

A. Permitted principal uses. Permitted principal uses shall be as follows:

- (1) Agricultural or recreational use of land, but not including any dwelling, school or hospital or similar structure for human habitation or care.

B. Site plan review uses. Site plan review uses shall be as follows:

- (1) Mining excavations. **[Amended 5-4-2005]**
- (2) Public utility
- (3) Change in any nonresidential use or tenant. **[Added 5-4-2005]**
- (4) Land development activities. **[Added 1-23-2007 by L.L. No. 2-2007]**

- C. Accessory uses and structures. Such accessory uses and structures as are customarily incidental to the foregoing uses shall be allowed.

§ 200-21. L-F Landfill District.

A clean, wholesome, attractive environment is important to the health and safety of the inhabitants of the Town, and the safeguarding of its material rights against unwarranted invasion is deemed essential to the maintenance and continued development of the economy of the Town and the general welfare of its citizens. For this purpose, a separate district is hereby established to be known as a Landfill District wherein Town refuse disposal shall be permitted.

- A. Permitted principal uses. Permitted principal uses shall be as follows:

(1) Sanitary landfill

- (a) Any sanitary landfill area in use shall not be located within 50 feet from any highway, stream, property line, existing dwelling, church, school, hospital, public building or place of public assembly.
- (b) Any sanitary landfill area shall be fenced so as to adequately control access, with a suitable gate which shall be closed and locked except during the working hours of said sanitary landfill operations.
- (c) Such fence shall not be erected nearer than 50 feet from the public highway. All junk, refuse and other materials stored or deposited at the sanitary landfill area shall be kept within the enclosure of the fence except during transportation of the same in the reasonable course of the work. Any dumping and burning of the same in the vicinity of the sanitary land fill area shall be accomplished within the enclosed area.
- (d) Where the topography, natural growth of timber or other considerations accomplish the purposes of this section in whole or in part, the requirements hereunder may be reduced; provided, however, that such natural barrier conforms with the purposes of this section.
- (e) All refuse material shall be covered at the close of each working day with suitable earth, except in extenuating circumstances.

- B. Accessory uses and structures. Such accessory uses and structures as are customarily incidental to the foregoing uses shall be allowed.

§ 200-22. Land Conservation Overlay District. [Repealed 9-18-2019 by L.L. No. 2-2019]

§ 200-22.1 JR Judd Road Corridor Overlay District. [Repealed 9-18-2019 by L.L. No. 2-2019]

ARTICLE VI
Special Procedures

§ 200-23. Planned Development (PD) District process. [Amended 7-17-2002]

- A. Purpose. The regulations hereinafter set forth in this section are intended to provide a means for the development of residential, business, commercial, manufacturing, recreational and park areas, or combinations thereof, in a manner which will permit flexible and imaginative design concepts to be utilized while maintaining adequate supervision and control by the Town to ensure that the spirit and intent of this chapter will be preserved.
- B. Overview of planned development process. The planned development process consists of two basic steps:
- (1) Step one, zone change designation. The first step is a change of existing zoning to Planned Development (PD) District designation. In considering a zone change, the Town Board options include; approve the change, approve with binding stipulations (ordered by the Town Board) or denied. The Town Board shall request a recommendation and comments from the Planning Board prior to consideration. Any zone change to a PD District must be based on a specific development proposal. The request for PD Zone District designation must include a land use, utility and circulation plan developed to concept stage. Primary vehicular and pedestrian routes and linkages must be shown. Adequate sources of water, sewer, electric, gas and other utilities must be shown and/or identified. Specific requirements may be established during the zone change designation portion of the PD District review process with respect to such development details as minimum lot sizes within the district, lot coverage, building height, yard dimensions, off-street parking, transportation facilities and density of residential use. For projects being developed in phases, the plans submitted for this step must address all phases. Evaluation of these details are made, so far as is practicable, within the overall scheme of a PD District. The requirements of Schedules A⁶ and B of this chapter should be considered as a guide in determining reasonable requirements for comparable uses within a PD District. PD Districts may be proposed for any area(s) within the Town. Land uses in a PD District should be compatible with the general zoning categories of adjacent land established in this chapter. A PD District is not intended to accomplish spot zoning. The minimum project size to be considered for a PD District is five acres.
 - (2) Step two, site plan review. The second step is review and approval of the specific site plan for the PD District and occurs subsequent to Town Board action on the zone change designation to a PD District. This review is conducted by the Town Planning Board under the provisions of the site plan review process defined in this chapter. The final approved PD District site plan must substantially conform to the conceptual development proposal for which the PD District was granted.

C. Procedures for PD District zone change designation (Step one).

(1) Pre-application conference. Before submission of a petition for a zone change to a PD District, the applicant is encouraged to meet with the Town Board to determine the feasibility and suitability of the application. A meeting shall also be conducted with the Town Planning Board.

(2) Application procedure.

(a) Application for the establishment of a **PD** District shall be made the Town Board. Each application shall be accompanied by but not necessarily limited to the following:

[1] A petition for the zoning change.

[2] The application must provide proof of full legal and beneficial ownership of the property or proof of an option or contractual right to purchase the property.

[3] A payment in accordance with the adopted fee schedule.⁷

[4] A completed environmental assessment form (EAF) [or draft environmental impact statement (DEIS)] complying with the provisions of the state environmental quality review process {SEQR}.

[5] A conceptual land use, circulation and utility plan of the property in question. Such a plan shall include:

[a] All existing and proposed structures, lots, roads, parking areas and other improvements and shall indicate facilities for public transit and pedestrian circulation, the general site location for all proposed land use areas, building densities within areas, the approximate acreage in each type of use, the proposed number of dwelling units and proposed square footage of nonresidential buildings and the amount proposed use and location of all open space and recreation areas.

[b] Primary vehicular and pedestrian routes and linkages must be shown.

[c] An indication of the conceptual source and arrangement of all utilities and proposed expansions and/or any alternative concepts for dealing with water supply, sewage disposal, stormwater drainage and gas and electric service.

[d] An indication of the use and location of existing structures on adjoining parcels.

[6] A preliminary engineering report which shall include but not necessarily be limited to:

- [a] A written description of the proposal, including the major planning assumptions and objectives, schedule and project phases, the probable effect on adjoining properties and the extent to which the plan achieves the objective of the overall Town development plan.
 - [b] A comparison that contrasts the proposed land planning concepts with current zoning requirements.
 - [c] A written description of the probable impacts on the resources and the utility systems of the Town.
 - [d] A written description of the probable fiscal impacts, including a summary of new costs and revenues to the Town due to the development.
- (b) It is expected that the Town Board will serve as lead agency under most circumstances; however, the Town Board may defer the role of SEQR lead agency to the Planning Board. The Town Board shall refer zone change application and all application materials to the Town Planning Board upon receipt of the application. The lead agency will distribute the application materials to all other involved agencies.
- (3) Planning Board review.
- (a) Within 62 days of the date that the application is determined to be complete, the Planning Board shall recommend approval, approval with modifications or disapproval of the application to the Town Board. Failure of the Planning Board to act within 62 days or such longer period may be consented to shall be deemed to be a commendation for approval of the plan as submitted.
 - (b) Review criteria.
 - [1] In considering the application for the zone change to a PD District, the Planning Board may request such changes in the conceptual plans and specify such additional requirements as are deemed reasonably necessary to protect the established or permitted uses in the vicinity and promote and protect the orderly growth and sound development of the community. In reach its recommendation on the proposed development and changes, if any, in the conceptual plans, the Planning Board shall consider, among other things, the following.
 - [a] The public benefit of the proposed PD District.
 - [b] The existing character of the neighborhood.
 - [c] The location of principal buildings on the site in relation to one another and in relation to builds and uses on properties adjoining the proposed district.
 - [d] The general circulation and open space pattern relative to the structures.

- [e] The traffic circulation features within the site and the amount, location, and access to automobile parking areas.
 - [f] The environmental factors on the environmental assessment form (EAF).
- [2] In the event that approval subject to modifications is granted, the applicant may, within 10 days after receiving a copy of the Planning Board's decision, notify the Town Board, in writing, of acceptance or refusal of all such modifications. If modifications are refused, the Planning Board shall be deemed to have recommended disapproval of the application. In the event that the applicant does not notify the Town Board within said period of acceptance or refusal of all said modifications, the recommendation of approval of the application, subject to such modifications, shall stand.
- (c) Establishment of a PD District is a rezoning action and is subject to the state environmental quality review process (SEQR). It is expected that the Town Board will initially serve as lead agency. Under SEQR provisions, it is expected that the Town Board will reestablish lead agency status to the Planning Board. The lead agency may hold a public hearing pursuant to SEQR statutes. If it is determined that an environmental impact statement will be prepared for the proposal in questions, all time periods and deadlines are delayed until a draft environmental impact statement has been filed. An application is not complete, and therefore, the review process does not start, until a determination of no significance has been made or until a draft environmental impact statement (EIS) or generic EIS has been completed and the SEQR process concluded.
 - (d) The recommendations of the Planning Board shall be in the form of a written resolution which shall include findings of fact and shall set forth the reasons for granting or denying tentative approval, specifying with particularity in what respects the proposal contained in the application would or would not be in the public interest and factors considered under the review. The resolution shall be filed with the Town Clerk and shall be available during regular office hours for inspection by any interested person.
- (4) Town Board SEQR review (if not reestablished to the Planning Board.) The Town Board will perform the SEQR investigations and reviews described in the preceding subsection. SEQR requirements for the PD plans will have been met during the zoning change/conceptual plan approval phase of the process, provided that the thresholds established under the DEIS/GEIS have not been exceeded.
- D. Period of eligibility. In the event that construction has not commenced within two years from the date that the Zoning Map amendment establishing the PD District became effective, the Planning Board may so notify the Town Board and the Town Board may, on its own motion, institute a Zoning Map amendment to return the PD District to its former classification pursuant to Article IX of this Chapter.

§200-24. Site plan review process.

A. Purpose and general process.

- (1) The following process is incorporated into this chapter as the method for the Planning Board to evaluate specific uses in certain zoning districts. Those uses subject to site plan review are noted for each district in Articles II through V.
- (2) The site plan review process has three steps:
 - (a) Concept review;
 - (b) Preliminary site plan review and action; and
 - (c) Initial site plan review and action.
- (3) Application, review and other fees. All applications for site plan review shall be accompanied by those fees as established by the Town Board by resolution. **[Added 5-4-2005]**

B. Procedure for preliminary site plan review and action.

- (1) Prior to the issuance of a building permit for any site plan review uses, the Code Enforcement Officer shall refer the application and all application materials as specified herein to the Planning Board for its review and approval in accordance with the provisions set forth in this section.
- (2) Within 4 days of the receipt of a preliminary site plan the Planning Board shall inform the applicant of its decision.
- (3) Concept review. A meeting is recommended between the Planning Board and applicant to review the basic site design concept and generally determine the information to be required on the preliminary site plan. The applicant shall provide the data discussed below, in addition to a statement or rough sketch describing what is proposed.
 - (a) An area map showing the parcel under consideration for site plan review and all properties, subdivisions, streets and easements within 200 feet of the boundaries thereof.
 - (b) A map of site topography at no more than five feet contour intervals. If general site grades exceed 5% of portions of the site have susceptibility to erosion flooding or ponding, a solids overlay and topographic map showing contour intervals of not more than two feet of elevation should also be provided.
- (4) Application for preliminary site plan approval.
 - (a) An application for preliminary site plan review and approval shall be accompanied by a fee set from time to time by resolution of the Town Board. **[Amended 3-16-1999 by L.L. No. 2-1999; 7-17-2002; 5-4-2005]**

- (b) Anticipated costs which the Planning Board expects to incur due to consulting services or other review costs shall be paid by the applicant and placed in an escrow account. Any unspent funds shall be returned to the applicant within 30 days of Planning Board action on the final site plan. **[Amended 5-4-2005]**.
- (c) An application for preliminary site plan approval shall be made, in writing, to the Code Enforcement Officer and shall be accompanied by information drawn from the following checklist, as determined necessary by the Planning Board at the concept review meeting.
- (d) Preliminary site plan checklist. The following information, unless it is not applicable, shall be furnished by the applicant in the preliminary site plan:
- [1] The title of drawing, including the name and address of the applicant and the person responsible for preparation of such drawing;
 - [2] North arrow, scale and date;
 - [3] The boundaries of the property plotted to scale;
 - [4] Existing watercourses;
 - [5] Grading drainage and stormwater management plans showing existing and proposed contours; **[Amended 5-4-2005]**
 - [6] The location, proposed use and height of all buildings;
 - [7] The location, design and construction materials of all parking and truck loading areas, showing access and egress, including a comparison of required and provided parking spaces and loadings areas. **[Amended 3-16-1999 by L.L. No. 2-1999; 7-17-2002]**
 - [8] Provision for pedestrian access, including provisions for meeting provisions of the Americans with Disabilities Act (ADA). **[Amended 3-16-1999 by L.L. No. 2-1999; 7-17-2002]**
 - [9] The location of outdoor storage, if any, including the temporary storage of solid wastes. **[Amended 3-16-1999 by L.L. No. 2-1999; 7-17-2002]**
 - [10] The location, design and construction materials of all existing or proposed site improvements, including drains, culverts, retaining walls and fences;
 - [11] A description of the method of sewage disposal and location, design and construction materials of such facilities;
 - [12] A description of the method of securing public water and location, design and construction materials of such facilities;
 - [13] The location of fire and other emergency zones, including the location of fire hydrants;

- [14] The location, design and construction materials of all energy distribution facilities, including electrical, gas and solar energy;
 - [15] The location, size and design and construction materials of all proposed signs;
 - [16] The location and proposed development of all buffer areas, including existing vegetative cover;
 - [17] The location and design of outdoor lighting facilities;
 - [18] Designation of the amount of building area proposed for retail sales or similar commercial activity;
 - [19] A general landscaping plan and planting schedule;
 - [20] Other elements integral to the proposed development as considered necessary by the Planning Board, including identification of any state or county permits required for the project's execution; and
 - [21] Completed environmental assessment form (EAF) in compliance with the State Environmental Quality Review Act (SEQR).
 - [22] Stormwater pollution prevention plan. A stormwater pollution prevention plan consistent with the requirements of Chapter 168 of the Code of the Town of Whitestown shall be required for site plan approval. The SWPPP shall meet the performance and design criteria and standards in Chapter 168 of the Code of the Town of Whitestown. (Added 7-17-2002; amended 1-23-2007 by L.L. No. 2-2007)
 - [23] Proposed building plans, elevations and indication of exterior building materials. (Added 5-4-2005)
- (5) Review criteria.
- (a) The following criteria for the Planning Board review may include, but shall not be limited to the following:
 - [1] Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls.
 - [2] Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian.
 - [3] Location, arrangement, appearance and sufficiency of off-street parking and loading.
 - [4] Location, arrangement, size, design and general site compatibility of buildings, lighting and signs.

- [5] Adequacy of stormwater and drainage facilities.
 - [6] Adequacy of water supply and sewage disposal facilities.
 - [7] Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum retention of existing vegetation.
 - [8] In the case of an apartment complex or other multiple dwelling, the adequacy of usable open space for play areas and informal recreation.
 - [9] Protection of adjacent or neighboring properties against noise, glare, unsightliness or other objectionable features.
 - [10] Adequacy of fire lanes and other emergency zones and the provision of fire hydrants.
 - [11] Special attention to the adequacy of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.
- (b) Consultant review. The Planning Board may consult with the Code Enforcement Officer, Fire Commissioners, Conservation Council, Superintendent of Highways, other local and county officials and its designated private consultants, in addition to representatives of federal and state agencies, including but not limited to the Soil Conservation Service, the State Department of Transportation and the State Department of Environmental Conservation.
 - (c) Public hearing. The Planning Board may conduct a public hearing on the preliminary site plan. If a public hearing is considered desirable by a majority of the members of the Planning Board, such public hearing shall be conducted within 45 days of the receipt of the application for preliminary site plan approval and shall be advertised in a newspaper of general circulation in the Town at least five days before the public hearing.
- (6) Planning Board Action on Preliminary site plan.
 - (a) The proposed development in question may be subject to the provisions of the State Environmental Quality Review Act (SEQR). First, the Planning Board should identify the type of action the proposed development is according to the SEQR. Depending on the size, location and other factors it may be a Type I or an unlisted action. To make a decision the Planning Board should consult Planning Board Technical Memo S or, if necessary, Part 617 of the New York Codes, Rules and Regulations and Article 8 of Environment Conservation Law. The Planning Board shall also review the environmental assessment form (EAF) Submitted as part of the application. The action type and related procure will dictate the next steps, if any, to be taken to comply with the SEQR regulations.

- (b) If it is determined that an environmental impact statement will be prepared for the proposal in question, all time periods and deadlines are delayed until a draft environmental impact statement is filed. An application is not complete and therefore the review period does not start until a determination of no significance has been made or until a draft environmental impact statement has been completed. When a draft environmental impact statement is completed, the time period for Planning Board review begins (45 days). If another agency has determined that the proposal in question may have a significant effect on the environment, the Planning Board shall not issue a decision until a final environmental impact statement has been filed.
- (c) When compliance with SEQR is complete, the Planning Board shall act on the application within 45 days. If no decision is made within said 45 day period, the preliminary site plan shall be considered approved. The Planning Board's action shall be in the form of a written statement to the applicant stating whether or not the preliminary site plan is approved, disapproved or approved with modifications.
- (d) The Planning Board's statement may include recommendations of desirable modifications to be incorporated in the final site plan, and conformance with said modifications shall be considered a condition of approval. If the preliminary site plan is disapproved, the Planning Board's statement will contain the reasons for such findings. In such a case, the Planning Board may recommend further study of the site plan and resubmission to the Planning Board after it has been revised or redesigned.

C. Procedure for final site plan review and action

(1) Submission

- (a) After receiving approval, with or without modifications, from the Planning Board on a preliminary site plan, the applicant shall submit a final, detailed site plan to the Planning Board for approval. If more than six months has elapsed since the time of the Planning Board's action on the preliminary site plan and if the Planning Board finds that conditions may have changed significantly in the interim, the Planning Board may require a resubmission of the preliminary site plan for further review and possible revision prior to accepting the proposed final site plan for review.
- (b) The final site plan shall conform substantially to the approved preliminary site plan. It shall incorporate any modifications that may have been recommended by the Planning Board in its preliminary review. All such compliances shall be clearly indicated by the applicant on the appropriate submission.
- (c) The following additional information shall accompany an application for final site plan approval:

- [1] Record of application for and status of all necessary permits from state and county officials;
 - [2] Details sizing and final material specification of all required improvements;
 - [3] An estimated project construction schedule.
- (2) Required referral. Prior to taking action on the final site plan, the Planning Board shall refer the plan to the County Planning Department for advisory review and a report in accordance with §§ 239-1 and 239-m of the General Municipal Law, where the proposed action is within a distance of 500 feet from the boundary of any city, village or Town or from the boundary of any existing or proposed county or state park or other recreation area or from the right-of-way of any existing or proposed county or state.
 - (3) Parkway, thruway, expressway, road or highway or from the existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines or from the existing or proposed boundary of any county- or state-owned land on which a public building or institution is situated.
 - (4) Planning Board action on final detailed site plan. Within 45 days of receipt of the application for final site plan approval, the Planning Board shall render a decision to the Code Enforcement Officer. If no decision is made within the forty-five-day period, the final site plan shall be considered approved.
 - (5) Upon approval of the final site plan and payment by the applicant of all fees and reimbursable costs due to the Town, the Planning Board shall endorse its approval on a copy of the final site plan and shall forward such copy to the Code Enforcement Officer.
 - (6) Upon disapproval of a final site plan, the Planning Board shall so inform the Code Enforcement Officer and the Code Enforcement Officer shall deny a building permit to the applicant. The Planning Board shall also notify the applicant, in writing, of its decision and its reasons for disapproval.

D. Construction phase. [Added 7-17-2002]

- (1) Concurrent with the filing of an application for a building permit with the Code Enforcement Officer, the applicant shall place on file with the Code Enforcement Officer a performance bond, security deposit or other form of deposit acceptable to the Town in the amount of 20% of the estimated cost of construction of the site work.
- (2) During construction, the work shall be periodically reviewed by the Code Enforcement Officer, Highway Superintendent and/or Town Engineer for conformance with the approved site plan. [Amended 5-4-2005]

- (3) The applicant will be notified if the work does not conform with the approved site plan. If the applicant fails to remedy deficiencies within 30 days, the Town may proceed to have corrective action taken. Any and all costs of such corrective action will be the responsibility of the applicant.
- (4) At the conclusion of the project, the bonds and/or deposit, less the cost of corrective actions, will be returned to the applicant.

ARTICLE VII
Supplementary Regulations

§ 200-25. Lot area and width, yard, build coverage and heights.

- A. Regulations in Schedule A. Regulations governing lot area and lot width; front, side and rear yards; building coverage and building height are as specified in Schedule A.⁸ All permitted uses are subject to the regulations appearing in Schedule A and the additional regulations following Schedule A.
- B. Additional are regulations.
 - (1) Lots of less than required dimensions.
 - (a) Any lot with an area or width less than that required in the district in which said lot is located may be used for any purpose permitted in the district, provided that all other regulations prescribed for the district shall be complied with; and further provided that said lot was held under separate ownership at the time of the adoption of this chapter and the owner thereof owned no adjoining land that could be combined with said lot to meet the dimensional requirements.
 - (b) In the event that compliance with the yard and coverage requirements of the district would result in a residential structure of less width than 24 feet, the Board of Appeals shall determine and fix yard and coverage requirements for such lot to permit its reasonable utilization for a permitted use.
 - (2) Reduction of lot area. The minimum yards and open spaces, including lot area per family, required by this chapter for any building existing at the time of adoption of this chapter or for any building hereafter erected or structurally altered shall not encroached upon or considered as yard or open space requirements for any other building, nor shall any lot be reduced below the district requirements of this chapter.

- (3) Corner lot. On a corner lot in any district where a front yard is required, a yard shall be provided on each street equal in depth to the required front yard on such streets. One rear yard shall be provided on each corner lot and the owner shall designate the rear yard on his or her application for a building permit. Nothing in this chapter shall be so interpreted as to reduce the building width of a corner lot facing an intersecting street and of record at the time of passage of this chapter to less than 24 feet.
- (4) Visibility at street corners. On a corner lot in any district where a front yard is required, no fence, wall, hedge or other structure or planting shall be erected, placed or maintained so as to obstruct visibility of vehicular traffic within the triangular area formed by the intersecting street right-of-way lines and a straight line joining said lines at points 20 feet distant from the point of intersection, measured along said lines.
- (5) Front yard exceptions. The front yard of all buildings and structures hereafter constructed within a Residence District shall be not less than the average front yard of all buildings in the block for a distance of 300 feet on each side of such building. A vacant lot within the three-hundred-foot distance shall be considered as having the minimum front yard required in the district for the purpose of computing such average front yard.
- (6) Transition yard requirements
 - (a) Where two districts abut on the same street between two intersecting streets and the front yard requirements of one district are less than those of the other district, there shall be provided for buildings hereafter constructed or structurally altered within a distance of 50 feet from the district boundary lines in the less restricted district a front yard equal in depth to the average of the required depth in the two districts.
- (7) Projecting architectural features, terraces, porches, fire escapes.
 - (a) The space in any required yard shall be open and unobstructed except for the ordinary projections of window sills, belt courses, cornices, eaves and other architectural features; provided, however, that such features shall not project more than 30 inches into any required yard.
 - (b) A paved terrace shall not be considered as part of a building in the determination of yard sizes or lot coverage, provided that such terrace is unroofed and without walls, parapets or other form of enclosure exceeding six feet in height.
 - (c) In determining the percentage of building coverage or the size of yards for the purpose of this chapter, enclosed porches or porches open at the side but roofed shall be considered a part of the building.

- (d) An open fire escape may extend into any required yard not more than six feet, provided that such fire escape shall not be closer than four feet at any point to any lot line.
 - (e) Unenclosed entrance steps or stairways providing access to the first story of a building may extend into any required yard a distance not to exceed six feet.
- (8) Walls, fences and hedges. The yard requirements of this chapter shall not prohibit any necessary retaining wall nor any fence, wall or hedge permitted by the Town of Whitestown Municipal Code, providing that any such fence, wall or hedge shall: **[Amended 6-7-2000 by L.L. No. 5-2000]**
- (a) Be erected no less than two feet within the property line, and none shall be erected so as to encroach upon a public right-of-way or interfere with vehicular or pedestrian traffic or interfere with visibility on corner lots and/or other structures or vehicles, whether stationary or transitory, on private or public property; and
 - (b) Be constructed such that the smooth side or finished side faces the outside of the property owner installing the fence, with all fence posts placed on the inside of said fence; and
 - (c) Be no more than six feet in height.

C. Additional height requirements.

- (1) Chimney, spires, etc.
 - (a) The height limitations of this chapter shall not apply to belfries, church spires, cupolas, penthouses and domes which are not used for human occupancy; nor to chimneys, ventilators, skylights, water tanks and necessary mechanical appurtenances usually carried above the roof level; nor to flag poles, monuments, transmission towers and cables, radio and television antennas or towers and similar structures. Such features, however, shall be erected only to such height as is necessary to accomplish the purpose for which they are intended. No advertising device of any kind whatsoever shall be inscribed upon or attached to that part of any chimney, tower, tank or other structure which extends above the roof limitations.
 - (b) Wireless communications facilities, with their customary appurtenances, not to exceed 150 feet in height. **[Added 3-20-2002 by L.L. No. 2-2002]**
- (2) On through lots. On through lots 120 feet or less in depth, the height of a building may be measured from the grade of either street. On through lots more than 120 feet deep, the height regulations and basis of height measurement for the street permitting the greater height shall apply to a depth of not more than 120 feet from that street.

§ 200-26. Accessory buildings; number, height and location.

- A. Number. There shall be not more than one accessory structure on each lot intended or used for residential purposes, except that swellings groups and large scale planned development districts shall not be subject to such provisions.
- B. Height. Maximum height of accessory buildings shall be one story or 15 feet. **[Amended 9-18-2019 by L.L. No. 2-2019]**
- C. Location. Unattached Accessory buildings in Residential Districts. Accessory buildings which are not attached to a principal building may be erected within the rear yard in accordance with the requirements set forth on Schedule A attached to this chapter. **[Amended 9-18-2019 by L.L. No. 2-2019]**
- D. Attached accessory buildings in Residence Districts. When an accessory building is attached to the principal building, it shall comply in all respects with the requirements of this chapter applicable to the principal building.
- E. Accessory Buildings in Commercial (article III) and Manufacturing Districts (Article IV). Non-dwelling accessory buildings shall comply with the front and side yard requirements for the principal building to which they are accessory in accordance with the requirements set forth on Schedule A attached to this Chapter.
- F. Size. The maximum floor area of an accessory building shall not exceed 2% of the size of the lot on which it is being placed, with total lot coverage of all structures not to exceed the maximum coverage (percent)

§ 200-27. Off-street parking and loading.

- A. Off-street parking.
 - (1) Off-street parking space shall be required for all buildings constructed or new uses established after the effective date hereof. Each off-street space shall consist of at least 180 square feet with a minimum width of nine feet. In addition, space necessary for aisles, maneuvering and drives shall be provided. Parking requirements are specified in Schedule B.
 - (2) In addition to the standard off-street parking spaces described in Subsection A(1) above, off-street handicapped parking spaces of the number and dimensions required by the Americans with Disabilities Act (ADA) shall also be provided. **[Amended 7-17-2002]**
 - (3) For uses not specified, the Board of Appeals shall, on appeal and after recommendation of the Planning Board, establish parking requirements in specific cases consistent with those specified in Schedule B.

- (a) For any building having more than one use, parking space shall be required as provided for each use.
- (b) Parking spaces required in Residence Districts shall be located in the side or rear yard on the same lot or tract as the principal use.
- (c) Floor areas for the purposes of computing parking requirements shall be the sum of the horizontal area of the several floors of a building, excluding basement, cellar and attic areas used primarily for storage or service.

B. Off- street loading.

- (1) At least one off-street loading facility shall be provided for each commercial or industrial establishment hereafter erected or substantially altered to have a gross floor area in excess of 5,000 square feet, computed as described in Subsection A. Space for off-street loading shall be in addition to space for off-street parking.
- (2) Each facility shall be subject to the following minimum requirements:
 - (a) Each berth shall be not less than 12 feet wide, 33 feet long and 14 feet in height if covered.
 - (b) Space for such berth may occupy any part of any required side or rear yard, except no such berth shall be located closer than 100 feet to any lot in any Residence District unless wholly within a completely enclosed building.

Schedule B – Off-street Parking
[Amended 7-17-2002]

Use	Spaces Required
Dwelling	2.0 for each dwelling unit
Rooming house, Tourist home, motel, hotel	1 for each guest room
Administrative, professional, eleemosynary, governmental or utility office	1 for each 400 square feet or floor area
Funeral home	10 spaces for each reposing room
Church or temple	1 for each 5 seating spaces in main assembly room
School	2 for each elementary classroom 5 for each secondary classroom
Theater or other place of assembly	1 for each 5 seating spaces
Nursing or convalescent home	1 for each 4 beds
Retail store or bank	1 for each 400 square feet of floor area
Clubs and restaurants	1 for each 50 square feet of floor area
Bowling alley	5 for each alley
Wholesale, storage, freight terminal or utility use	1 for each 1,000 square feet of floor area
Industrial or manufacturing use	1 for each employee on the maximum working shift
Bank, drive in	1 for each 250 square feet of floor area, plus 1 for each 1.0 employees
Medical or dental office	4 for each examination or treatment room, plus 1 for each 1.0 employees/staff

- C. Recreation vehicles, trailers and mobile homes, parking and storage. Parking or storage of recreation vehicles, trailers and mobile homes is hereby prohibited in all residence districts as defined in Article II of this chapter, for a period of more than three days and for no more than two periods per month, except that: **[Added 6-7-2000 by L.L. No. 4-2000]**
- (1) One recreation vehicle, trailer or mobile home may be parked or stored but not used, provided such recreation vehicle, or trailer is parked or stored within the rear yard of the home, and is at least 5 feet from any property line. **[Amended 9-18-2019 by L.L. 2-2019]**
 - (2) Where such setback requirements cannot be met because of topographical conditions, lot size or other unalterable conditions application may be made to the Zoning Board of Appeals for a special permit for the parking or storage of recreation vehicles, trailers or mobile homes as provided for in § 200-38B.

§ 200-28. Signs

- A. The general purpose of this section is to regulate signage with comprehensive system of reasonable, effective, consistent, and content-neutral standards. This section is further intended to:
- (1) Preserve and enhance the town as an aesthetically attractive environment that promotes residential and business activities;
 - (2) Encourage signage that is compatible and appropriate with surrounding buildings, landscaping, and other site features;
 - (3) Establish signs that aid residential and business uses while not concealing or obstructing adjacent land uses or signs;
 - (4) Establish sign size in relation to the scale of the lot and building frontage along the street on which the sign is to be placed;
 - (5) Lessen the confusion and visual clutter caused by proliferation, improper placement, illumination, animation, and excess height and area of all signs that also compete for the attention of pedestrian and vehicular traffic;
 - (6) Curtail the size and number of signs to the minimum reasonably necessary to convey the desired message or identify a commercial or non-commercial establishment or event; and
 - (7) Protect the public from the dangers of unsafe signs and require signs to be located, constructed, installed, and maintained in a safe and satisfactory manner

B. Applicability

- (1) Generally. This section shall apply to any sign in any district, unless otherwise stated in this section or this code.
- (2) Permit Required. No person shall install or display any sign without the prior issuance of a sign permit, unless the sign is exempt from permit requirements as provided in Section 200-28.B.3.
- (3) Signs not requiring a permit. The following signs are exempt from the issuance of a sign permit, and do not require a permit, provided they comply with the applicable conditions and limitations listed in this section.
 - (a) Name and identification signs. One sign indicating the address, number, and/or name of occupants of the subject premises conforming to 911 requirements that does not exceed two square feet in area per side and does not include any commercial advertising or other identification.
 - (b) Integral Signs. Names of buildings, dates of erections, monumental citations, commemorative tablets, and the like, when carved into stone, concrete or similar materials, or made of bronze, aluminum, or other permanent-type construction and made an integral part of the structure.
 - (c) Window Signage. Signs and decals affixed or painted on windows or door glass panels, provided window signage does not cover more than 50 percent of any one window panel.
 - (d) Flags. Up to two flags may be displayed per property. Such flags shall be no larger than three by five feet if hung from a building, and no larger than five by seven feet if hung from a pole.
 - (e) Directional and warning signs. Any sign commonly associated with and limited to information and directions necessary to navigate the property, including signs marking entrances, private drive signs, handicapped parking signs, parking areas, one-way drives, rest rooms, security and warning signs, and pickup and delivery areas. The maximum size of each directional or warning sign shall be two square feet.
 - (f) Signs accessory to parking area. Signs designating entrances or exits to or from a parking area are limited to one size for each exit and entrance. Such signs shall be limited to a maximum size of four square feet. In addition, each parking area is allowed one sign per street frontage to designate identity and restrictions for parking.

- (g) Public Signs. Signs of a non-commercial nature, in the public interest, and erected by or on the order of a public official in the performance of his public duty (e.g. safety signs, danger signs, trespassing signs, traffic signs, memorial plaques, signs of historical interest, et. al).
 - (h) Garage or yard sale signs. Signs and advertising garage sales or yard sales shall be installed no more than two days prior to the sale and shall be removed within one day after the close of the garage or yard sale. Such signs shall not be affixed to any structure, tree, pole, or nature vegetation.
 - (i) Signs located inside buildings. Signs located inside a building, except that any sign located within five feet of any window shall not have any flashing or moving lights that would produce any glare or distraction for any passing motorist, excluding temporary holiday lights.
 - (j) Yard Signs. Yard signs communicating a message or idea are permitted on a property provided such signs comply with the following:
 - [1] Yard signs are allowed during the sale or lease of a property;
 - [2] Yard signs shall be limited to two per property;
 - [3] Yard signs shall be limited to six square feet in area within residential zoning districts, and 16 square feet in area within all other zoning districts;
 - [4] No personal shall post any yard sign upon public or private property without permission of the property owner.
 - [5] Yard signs shall not be permitted on any utility pole, lighting pole, or other similar structure;
 - [6] Yard signs shall be removed within fire calendar days following any meetings, event, closing of a sale or lease, or decision for which they were posted. In no case shall any yard sign remain for longer than nine months.
 - (k) Street Signs. Street name signs shall be installed at all intersections. For new development applications, at the discretion of the Town Board, the developer shall install street and traffic control signs, devices, and markings. The number and type of signs, devices, and markings shall conform to the current Town regulations.
- (4) Prohibited Signs. The following signs are prohibited.
- (a) Glaring signs. Signs with light sources or that reflect brightness (such as mirrors) to the extent that they constitute a hazard or nuisance. This includes signs with fluorescent text, graphics, or background, as well as holographic signs.

- (b) **Obstructive Signs.** Any sign or other advertising device that obstructs free and clear vision of an intersection or traffic approaching the intersection or a road or driveway.
- (c) **Poster and Handbills.** Any exterior sign affixed to any structure, tree, pole, or natural vegetation except in designated community areas or as otherwise permitted by this Chapter.
- (d) **Strings of light.** Any devices including lights that outline property lines, sales areas, or any portion of a structure and are intended to advertise or draw attention to a business or commercial activity, except as follows:
 - [1] Lights used temporarily as holiday decorations;
 - [2] Temporary lights or other devices associated with an approved town permit; and
 - [3] Strings of lighting used to delineate an area of outdoor dining, provided such lighting was approved as part of Site Plan Review.
- (e) **Vehicle Signs.** Any sign displayed on a parked vehicle or trailer where the primary purpose is to advertise a business not on or near the same premises.
- (f) **Signs in the Public Right-Of-Way.** Any sign in, on, or above a public right-of-way that in any way interferes with normal or emergency use of that right-of-way without entering into a revocable license agreement with the Town.
- (g) **Streamers.** No sign shall contain or consist of banners, posters, pennants, ribbons, streamers, spinners or other similar moving, fluttering, or revolving devices. Animated or moving signs may be permitted as part of Site Plan Review.
- (h) **Obscene, indecent, or immoral signs.** There shall be no signs or pictures of an obscene, indecent, or immoral character such as will offend morals or decency in accordance with constitutional standards.
- (i) **Abandoned Signs.** Any unused abandoned sign, including any pole or structure such sign, shall be removed within six months following the conclusion or termination of the reason for the sign. If an existing sign pole or structure is expected to be used for future use of an existing building, then such structure may remain; however, the copy, text, icon, or any messages on such sign shall be removed. A sign that advertises a defunct business or product so that the content of the sign is no longer appropriate for the purpose(s) for which the sign permit was issued shall render the sign permit null and void and the sign shall be removed in accordance with the direction of the Code Enforcement Officer.

- (5) Unsafe Signs.
- (a) Any sign found to be unsafe or derelict upon inspection by the Code Enforcement Officer shall be repaired or made secure by the permit applicant of record.
 - (b) The Code Enforcement Officer shall give notice by certified mail, return receipt requested to such person to repair or remove such unsafe or derelict sign within five days of receipt of said notice.
 - (c) If the sign is not repaired, made secure, or removed within said time period, or within such additional time as the Code Enforcement Officer may allow, the permit issued for said sign shall be revoked and the sign shall be ordered removed by the Code Enforcement Officer.
 - (d) If a sign is found to be a source of imminent peril to persons or property, the Code Enforcement Officer shall cause the sign to be immediately removed without notice to the permit applicant of record or property owner.

C. General Sign Standards.

- (1) Permanent Sign Standards. The following standards apply to all permanent signs unless specifically exempted in other parts of this section or by a variance. In some instances, the following standards are minimum requirements and the sign(s) may be subject to additional requirements elsewhere in this section.
- (a) Allowed area. The following rules shall apply in determining the size of all signage on a single parcel of land.
 - [1] The aggregate area of all signs and the maximum area of any one sign shall not exceed that allowed in the Table entitled Maximum Size for Signs that follows.
 - [2] Sign areas of all signs and the maximum area of any one sign shall not exceed that allowed in Table A, Maximum Size for Signs that Follows.
 - (b) Area. The area of a sign shall be equivalent to the total exposed surface devoted to a sign message, including ornamentation, embellishment and symbols, but excluding supporting structures. Listed below are additional definitions and specifications.
 - [1] Single-Faced Signs. The area of a sign with one sign face shall be calculated as the total area of the face. In the case of cutout letters, displays, symbols, statuary or logos, the area will be calculated as that area which can be enclosed with a rectangle, series of attached rectangles, or other geometric shapes.

- [2] Double-Faced Signs. The area of a sign with two sign faces shall be calculated as one sign face only as long as the sign faces are identical and parallel.
 - [3] Angled Signs. If the angle between the two faces is greater than 30 degrees, the sign area shall be calculated by adding the area of the two faces. If the angle is less than 30 degrees, the sign area shall be calculated in the same manner as for double-faced signs. Angled signs may be used for real estate signs only.
 - [4] Multi-faced (Three or More) Signs. The sign area shall be computed as the sum of the area of all sign faces.
 - [5] Multiple Signs. Whenever more than one sign is hung continuously or placed on a freestanding or projecting structure, the combination of signs shall be considered as one sign for the purpose of computing sign area and determining the number of signs on a parcel.
- (c) Height. The maximum height for any freestanding sign and supporting structure is not to exceed 20 feet. Height is measured from the average grade of the base of the sign to the top of the highest point of the sign. In no case shall any sign exceed the height of any building for which signage is provided.
- [1] Freestanding signs in residential zones shall not exceed five feet in height.
 - [2] Roof-mounted signs shall not extend beyond the roofline.
- (d) Location.
- [1] No sign shall be placed so as to impede the visibility of motorists or pedestrians.
 - [2] Signage may be mounted on any side of a building.
 - [3] Except for approved sandwich board signs, no sign structures shall be built or placed on the sidewalk, curb or area between sidewalk and curb, or public right-of-way except for approved sandwich board signs.
 - [4] Except as provided in this subsection, freestanding signs shall be installed a minimum of six feet from the street right-of-way and five feet from the side lot line.

- (e) Illumination. The following rules and standards shall apply in establishing the type of illumination that may be used for signs.
- [1] The source of a sign's illumination (bulb or direct lamp image) shall not be visible from any street, sidewalk or adjacent property. This shall not preclude the use of neon sign elements.
 - [2] The light from any illuminated sign shall be shaded, shielded, or directed so that the light intensity or brightness will not be disruptive to residential property or create a distraction to a motorist.
 - [3] No sign shall have or contain blinking, flashing, fluttering or intermittent lights or other devices that create a change in color, brightness, direction or intensity of lighting. This provision does not apply to electronic variable message signs.
 - [4] In residential districts, only indirect lighting may be used on the adjacent lot.
 - [5] Projecting signs located over sidewalks or public ways shall be placed not less than 8.5 feet from the travel way to the base of the sign. The projecting edge of the sign shall be at least two feet back from any curb line. Neon may be used in sign text only, not as an architectural feature.
- (f) Landscaping. Freestanding signs shall be landscaped at their base extending a minimum of one foot beyond the edges of the sign, in plain view. Landscaping shall consist of shrubs, flowers, small trees or dry landscaping materials including but not limited to, decorative rock, railroad ties, bark chips and other decorative materials. A landscaping plan for permanent freestanding signs shall be approved at the time the sign application is approved.
- (g) Structural and safety considerations.
- [1] All exterior signs shall be designed to withstand a minimum wind load of 80 miles per hour. The Code Enforcement Officer may require structural signs to be designed by a New York Licensed Professional Engineer with plans complete with required information and professional stamps.
 - [2] All electrical service for sign lighting shall be provided with underground or hidden devices. All such devices, as well as signage using electrical devices, must comply with the State Electrical Code, and a permit must be obtained to that effect.
 - [3] Exposed reflective type bulbs, incandescent lamps or other illuminating devices that exceed 40 watts shall not be used on the exterior surface of any sign so as to expose the face of the bulb, light or lamp to any public street or adjacent property.

- [4] Guy wires can only be used after special review and approval by the Code Enforcement Officer,
 - [5] All parts of any electric, illuminated or transparent sign shall be of metal or other materials that are not readily combustible.
 - [6] Freestanding signs must be anchored in concrete unless the structure is sufficiently small to allow alternative means of anchoring.
 - [7] Wall-mounted and projecting signs shall be directly secured by metal anchors, bolts, supports, stranded cable or braces, in such a manner as to assure that the sign remains securely attached.
 - [8] All structural components shall be compatible with surrounding design and architectural feature.
- (h) Electronic Variable Message Sign. Electronic variable message signs (CEVMS) shall be spaced so that the message from only one sign at a time is identifiable to a motorist. These signs shall have a maximum daytime brightness of 5,000 candelas per square meter (cd/m²) and a maximum brightness of 280 cd/m². The display on an EVMS may not update more than one time every six seconds.
- (i) Outdoor Advertising Signs. Outdoor advertising signs (i.e., billboards), shall be granted a permit only upon compliance with the following provisions.
- [1] Outdoor advertising signs (i.e., billboards), shall be permitted in the Commercial, Manufacturing and Special Districts, only subject to Site Plan Review by the Planning Board.
 - [2] Outdoor advertising signs shall be no closer to one another than 1,000 feet in any direction.
 - [3] All outdoor advertising signs shall be a minimum of 10 feet from any property line plus the height of the sign and not less than 50 feet minimum for the front yard setback. All other setbacks shall conform to the minimum building setback requirements.
 - [4] No sign shall extend above the roof line of any building(s) within 50 feet of the sign.
 - [5] No outdoor advertising sign shall exceed 300 square feet in sign area.
 - [6] No outdoor advertising sign shall be mounted on a building's rooftop.
 - [7] The name of the person(s) erecting and maintaining an outdoor advertising sign shall be plainly marked on such sign.

- [8] All application plans for outdoor signs shall be by a stamped New York State Professional Engineer.
- [9] All permits shall be renewed by the Code Enforcement Officer for a five-year term, provided the sign meets all conditions of this Code and of the permit conditions under which the outdoor advertising sign was erected.
- [10] The owner of the property on which an outdoor advertising sign is locate, which is in existence on the effective date of this Code, shall, within six months of the effective date of this Code, apply for a permit for each sign. Failure to submit a complete application shall constitute a violation of these Regulations. The Code Enforcement Officer shall issue a permit, subject to appropriate conditions, as if the subject of the application were a new sign. If the sign does not conform, the Code Enforcement Officer may issue a permit providing for bringing the sign into conformity within a stated period of time, or if that is not possible, for removal of the sign after a reasonable amortization period. The amortization period shall not exceed five years unless the applicant provides dollars-and-cents proof satisfactory to the Code Enforcement Officer, that a longer amortization period is required to permit the applicant reasonable time to recoup his/her investment.

D. Temporary Signs

- (1) General Requirements.
- (a) Temporary signs, except as exempted in this Code, shall require a permit.
 - (b) Signs exempt from permitting requirements shall meet all the regulations applicable thereto stated in this section.
 - (c) A permit for such a sign shall expire 90 days after issuance thereof and may not be renewed.
 - (d) Permits for such signs in no event shall authorize more than one sign.
 - (e) Banners and promotional signs are not allowed for a duration greater than 10 days.
- (2) Removal. In the event such temporary signs have not been removed upon expiration of the permit, the Code Enforcement Officer shall cause the signs to be removed, the cost of which is to be charged to the applicant.

§ 200-29. Nonconforming uses and buildings.

- A. Continuation. Any nonconforming use, building or structure which existed lawfully at the time of enactment of this chapter may be continued, subject to the regulations which follow in this section.
- B. Registration. All nonconforming uses shall be registered with the Code Enforcement Officer by the owner or agent within six months of the date of adoption of this chapter.
- C. Nonconforming use of land. The nonconforming use of land shall not be enlarged or extended beyond the area of land occupied by such use at the time of the adoption of this chapter. A nonconforming use of land may not be moved in whole or in part to any other portion of the lot or parcel of land occupied by such nonconforming use at the time of adoption of this chapter. A nonconforming use of land shall not be changed to another nonconforming use. If a nonconforming use of land is discontinued for a period of 12 consecutive months, it shall not be renewed and any subsequent use of the land shall conform to the regulations of the district in which the land is located.
- D. The amortization period for a nonconforming use of land may be established by the Zoning Board of Appeals on appeal in relation to:
 - (1) The nature of the business;
 - (2) The amount of the investment;
 - (3) The number or extent of improvements;
 - (4) The detriment caused by the nonconforming use;
 - (5) The character of the neighborhood; and
 - (6) The amount of time needed by the owner to amortize his or her investment.
- E. Nonconforming use of buildings.
 - (1) Additions. A nonconforming building shall not be added to or enlarged in any manner unless such nonconforming building and the use thereof is made to conform to all the regulations of the district in which it is located.
 - (2) Alterations and repairs. No structural alterations shall be made to any nonconforming building unless such alterations are required by law; provided, however, that such maintenance and repairs as are required to keep a nonconforming building or structure in sound condition shall be permitted.
 - (3) Changes. A nonconforming use of a building may not be changed except to a conforming use. When so changed, the nonconforming use may not be resumed thereafter.

- (4) Discontinuance. A nonconforming use of a building or structure or a portion thereof, which is discontinued for a period of 12 consecutive months shall not be reestablished, and any subsequent use shall conform to the use regulations of the district in which the premises are located. A use shall be deemed to have been discontinued under any of the following conditions:
 - (a) Vacancy of a nonconforming use building or discontinuance of a nonconforming use for a period of 12 consecutive months.
 - (b) Manifestation of a clear intent on the part of the owner to abandon the nonconforming use.
- (5) Extension. A nonconforming use may not be extended to any other part of such building.
- (6) Restoration. Except in the cases of any one- or two-family dwelling unit whose primary use is a dwelling unit, any building devoted to a nonconforming use destroyed or damaged by fire, wind, explosion, structural failure or other natural cause to the extent of 50% or more of its true market value at the time of such damage, as adjusted from assessed value, based upon State Board of Equalization rates, shall not be repaired or rebuilt except in conformity with the provisions of this chapter. **[added 5-4-2005]**
- (7) Removal. If any building in which any nonconforming use is conducted is hereafter removed, the subsequent use of the land on which such building was located and the subsequent use of any building erected thereon shall conform with the regulations the district.
- (8) Validity of permit. Only a nonconforming building for which a building permit has been lawfully granted and on which the construction has been started and diligently pursued before the effective date of this chapter may be completed.

§ 200-30. Chickens ⁹

A. General conditions for the keeping of chickens in the R-200, R-100, R80 Residence Districts.

- (1) Up to 4 chickens are allowed to reside on an occupied single-family property within the R-200, R-100, R-80 Residence Districts, zoning districts. Chickens may not be kept on duplex, triplex, or multifamily properties. Chickens are allowed with manufactured home subdivisions, but are not allowed within mobile home/manufactured home parks. These regulations shall not apply to licensed agricultural farms.
- (2) Chickens must be kept on the owner's property at all times.
- (3) No ducks, geese, turkeys, peafowl, or male chickens or roosters, or any other poultry or fowl may be kept under the provisions of this Section.

- (4) Chickens shall be kept for personal use only. The selling of chickens, eggs, or chicken manure, or the breeding of chickens for commercial purposes is prohibited,
- (5) The slaughtering of chickens of premises is not allowed.
- (6) The coop and enclosure must be screened from the neighbor.

B. Location and Requirements for Chicken Coops and Enclosures in the R-200, R-100 and R-80 Residence Districts.

- (1) Any chicken coop and fenced enclosures must be located in the rear yard. No coop, enclosure or chickens shall be allowed in any front or side yard. (Corner lots shall be excluded from the side setback restrictions.)
- (2) The coop and enclosure must be a minimum of 10 feet from the rear and side property line.
- (3) If the coop structure exceeds 100 square feet in size (10 foot by 10 foot), a building permit is required to be obtained from the Building Inspector/Codes Officers from the Town.
- (4) The coop shall be covered and ventilated, and a fenced enclosure or run is required. The coop and enclosure must be completely secured from predators, including all openings, ventilations, holes, doors, and gates (Fencing or roofing is required over the enclosure in addition to the coop, in order to protect chicken from predators).
- (5) All stored feed must be kept in a rodent and predator-proof container.
- (6) The coop shall provide a minimum of three square feet per chicken and be of a sufficient size to permit free movement of the chickens. The coop may not be taller than six (6) feet, measure from the natural grade, and must be easily accessible from cleaning and maintenance.

C. Health, sanitation and Nuisance as applied to the keeping of chickens in the R-200, R-100 and R-80 Residence Districts.

- (1) Chickens shall not be permitted to trespass on neighboring properties, be released or set free [and shall be kept within a coop and enclosure].
- (2) Chicken coops and enclosures shall be maintained a clean and sanitary condition at all times. Chickens shall not be permitted to create a nuisance consisting of odor, noise or pests, or contribute or any other nuisance condition.

D. Enforcement.

- (1) Enforcement regarding the keeping of chickens within any zoning district is addressed within Section 200-45 of this chapter.
- (2) No person convicted for repeat violations of Section 200-30 of the Code may be permitted to, or continue to, keep chickens on their premises.

E. Severability.

- (1) If any section, sentence, clause, phrase or word of the Local Law is, for any reason, held or declared to be unconstitutional, inoperative or void, such holding or invalidity shall not affect the remaining portions of this local law, and it shall be construed to be the legislative intent to pass this Local Law without such unconstitutional, invalid or inoperative part therein.

§ 200-31. Home Occupation. [Amended 2-2-2011 by L.L. No. 1-2011 and 9-18-2019 by L.L. No. 2-2019]

- A. Purpose. The regulations of this section dealing with home occupations are designed to protect and maintain the residential character of established neighborhoods while recognizing that certain professional and limited business activities have traditionally been carried on in the home. This section recognizes that, when properly limited and regulated, such activities can take place in a residential structure without changing the character of either the neighborhood or the structure.
- B. General Regulations.
- (1) No home occupation shall be permitted which is noxious, offensive or hazardous by reason of hours of operation, vehicular traffic, operation or emission of noise, vibration, smoke, dust or other particulate matter, odorous matter, heat, humidity, glare, refuse, radiation or other objectionable emissions.
 - (2) In no manner shall the exterior appearance of a building be altered, nor shall a home occupation be conducted in a manner that would cause the premises to lose its residential character, including but not limited to the use of colors, materials, construction or lighting, nor shall a home occupation be conducted in an accessory structure that is either attached to or detached from a dwelling unit.
 - (3) In accordance with this chapter and Title 19 NYCRR (Building Code of New York State), the floor area of a home occupation shall not exceed 25% of the gross floor area, exclusive of attached garages, of the dwelling in which such home occupation is located or 500 square feet, whichever is less. Accessory uses which are limited by this section to the private, noncommercial use by the residents of the premises on which said accessory uses are located shall be exempt from said limitation, provided that said accessory uses are used as part of and in conjunction with a legal home occupation.
- C. Major Home Occupation.
- (1) A major home occupation shall not be allowed without a site plan review as prescribed by § 200-24.
 - (2) A major home occupation shall include any home occupation which:
 - (a) Has more than one employee, paid or unpaid, who is not a resident member of the family which resides on the premises;
 - (b) Uses an identification sign;
 - (c) Displays or stores goods, materials or equipment outdoors;
 - (d) Generates additional traffic or the need for off-street parking beyond the customary needs of the occupants of a dwelling unit;

- (e) Uses equipment that would not customarily be used by the occupants of a dwelling unit; or
- (f) Is advertised by address; or
- (g) Requires a commercial vehicle or trailer exceeding 20 feet in length and/or 18,000 pounds be parked regularly at the residence as part of the business.

(3) Major Home Occupations are not permitted in R-80 Residential Districts.

D. Prohibited Home occupations. The following uses, because of their potential for impacts on the surrounding residential area, shall not be permitted as home occupations:

- (1) Retail sales: On-site sales of goods or merchandise contained on the property to members of the general public who came to the property.
- (2) Health practitioner or beauty care provider. Any medical, dental, hair stylist, or similar service, treatment or activity that provides services on site to non-resident visitors. The general management office of such a business can be considered a home occupation provided no services are rendered on premise and it meets the other applicable requirements;
- (3) Auto repair or motorized implement repair, and/or the painting of vehicles, trailers or boats;
- (4) Dance, music, or other types of instruction (if more than four students are being instructed at one time);
- (5) Private schools with organized classes;
- (6) Motor vehicle towing operation;
- (7) Welding shops;
- (8) Nursing homes; and
- (9) Any other home occupation that, in the sole opinion of the Code Enforcement Officer, will have negative impacts on the neighborhood.

§ 200-32. Solar Access.

The siting of houses to take best advantage of solar energy and/or the construction of residential solar equipment shall be considered in the application of the provisions of this chapter. Upon appeal pursuant to § 200-38B(3) the Zoning Board of Appeals shall consider the specific conditions of the case and may make provision for, so far as conditions permit, the accommodation of solar energy systems and equipment and access to sunlight necessary thereof.

§ 200-33. Satellite antennas. [Added 3-17-1986]

Notwithstanding any other provisions in this chapter, a satellite antenna which is defined herein as a parabolic dish or other antenna or device, the purpose of which is to receive television, radio and/or microwave or other signals from space satellites may be erected and maintained in any district subject to the following requirements:

- A. A special permit shall be obtained from the Board of Appeals in accordance with § 200-38B(5)(c)[2]; provided, however, that no public notice shall be required unless ordered by the Board of Appeals. Likewise, the Board of Appeals may dispense with the filing of a site plan but may require a sketch of the proposed location.
- B. The satellite antenna shall not exceed five meters in height, width or depth. Units measuring one meter or less shall be excluded from all provisions of this section.
- C. The Board of Appeals shall have the power to designate the exact location of the antenna and to require any landscaping or screening to protect the aesthetic appearance of the area.
- D. No satellite antenna shall be installed

§ 200-33.1 Wireless Communications Facilities. [Added 3-20-2002 by L.L. No. 2-2002]

- A. Purpose.
 - (1) The purpose of this section is to regulate the location, design, and use of wireless communications facilities in order to:
 - (a) Protect the health, safety, and general welfare of residents of the Town of Whitestown.
 - (b) Establish predictable and balanced regulations for the siting and screening of wireless communications facilities in order to accommodate the growth of communications services within the Town.
 - (c) Maximize the use of existing towers, tall buildings and other high structures to reduce the number of new towers needed to serve the community.
 - (d) Avoid potential damage to adjacent properties from tower failure through engineering and siting standards.

- (e) Ensure harmony and compatibility with surrounding land use patterns.
 - (f) Protect the character, natural features and scenic qualities of the Town, with special attention to open space, recreation areas, scenic roads, view sheds, and historic sites, through careful design, siting, landscaping, screening and innovative camouflaging techniques.
- (2) These regulations are not intended to prohibit or have the effect of prohibiting the provision of personal wireless services, nor shall they be used to discriminate among providers of functionally equivalent services, consistent with federal regulations.

B. District Regulations

- (1) Use regulations. These regulations govern the installation and/or use of all wireless communications facilities as defined herein. Any proposed user of wireless communications facilities shall be an FCC-licensed provider of wireless communications facilities and must obtain site plan approval and/or a special use permit whether or not they will install and own the facilities. The construction of a wireless communications facility shall require a building permit in all cases.
- (a) Permitted uses, existing structures. A wireless communications facility may be permitted to collocate on any existing radio or television transmission tower, guyed tower, lattice tower, monopole, fire tower, water tower, clock tower, bell tower, cross tower, flagpole, road sign, steeple, chimney, silo or other innovative use of appropriate existing structures (as determined by the Planning Board), provided that there is no increase in the height of the existing structure as a result of the installation of the facility. Such installations shall not require a special use permit but will require site plan approval by the Planning Board in accordance with § 200-24 of this chapter.
 - (b) Permitted uses, existing buildings. A wireless communications facility may be permitted to collocate on any existing building, with the exception of a designated historic structure, provided that the installation of the new facility does not increase the height of the existing building by more than 10 feet. Such installations shall not require a special use permit but will require site plan approval by the Planning Board in accordance with § 200-24 of this chapter.
 - (c) Permitted uses, existing utility structures. A wireless communications facility may be permitted to collocate on any existing electric utility transmission and distribution tower, telephone pole and similar existing utility structure, provided that the installation of the new facility does not increase the height of the existing structure by more than 20 feet. These facilities may locate in all areas of the Town where they are permitted or specially permitted by Schedule A of this chapter. Such installations shall not require a special use permit but will require site plan approval by the Planning Board in accordance with § 200-24.

(d) Special use permit. A wireless communications facility involving construction of a new wireless telecommunications tower shall require a special use permit. A special use permit may be granted, provided that the proposed use complies with the height, setback, and other requirements of this chapter, the special use permit regulations set forth in Article VIII, is placed to minimize visual and aesthetic impacts, and is placed on the side slope of terrain so that, as much as possible, the top of the tower does not protrude over the ridgeline. The Town of Whitestown defines the placement, construction, and modification of a wireless communications facility requiring a special use permit as a Type I action under the New York State Environmental Quality Review Act (SEQR).

[1] If an applicant for a special use permit proposes a wireless communications facility which does not meet all dimensional requirements of the Town of Whitestown Zoning Law, including height, area and bulk regulations, the applicant may, at any point in the review process, apply for an area variance from the Zoning Board of Appeals.

[2] New wireless communications facilities requiring a special use permit shall be prohibited from locating:

[a] Within 500 feet of any single- or multiple-family dwelling.

[b] Inside or within 500 feet of a special overlay district unless such overlay district specifically provides for regulations governing the siting of wireless communications facilities.

[c] Inside or within 500 feet of a critical environmental area, as designated under the State Environmental Quality Review Act (SEQR).

[3] It shall be the responsibility of the holder of the special permit to inform the Town of Whitestown of any change in or termination of contractual agreements which affect the special use permit within 30 days of such change. Any material change in the conditions under which a special use permit was granted shall result in the immediate termination of the special use permit unless agreement has been obtained from the Codes Enforcement Officer, who may refer the action to the Zoning Board or Planning Board prior to the change. These material changes include, but are not limited to:

[a] Changes in supporting structures (such as towers), accessory buildings or access roads.

[b] Modification to, or addition of, lighting on the tower, equipment shelter, or site.

- [c] A change in ownership of the facility or the property on which the facility is installed shall require notification to the Zoning Enforcement Officer by the holder of the special use permit but will not terminate such permit.
 - [d] Cessation of use by the FCC-licensed carrier which has a special use permit for use of the facility.
 - [e] A change in the FCC-licensed user of the specially permitted facility. Nothing herein shall prohibit another FCC-licensed carrier from using the facility so long as that carrier provides evidence of need to use that facility and acquires a special use permit under this chapter.
 - [f] Loss of the user's FCC license to provide commercial communications services within the Town of Whitestown.
 - [g] Violation of the Town of Whitestown Zoning Law, on or with regard to the facility by the holder(s) of the special use permit, or the owner of the land on which the facility is installed.
- (2) Location. Wireless communications facilities shall only be located, upon the granting of site plan approval and, as applicable, a special use permit, on property which allows wireless communications facilities as set forth in Schedule A, Schedule of Use facilities shall comply with the following:
- (a) The minimum distance between wireless communications towers shall be 1/4 mile.
 - (b) If feasible, new wireless communications facilities shall be located on existing structures, including, but not limited to, buildings, water towers, existing communications facilities, silos, utility poles and towers, and related facilities, provided that such installation preserves the character and integrity of those structures. In particular, applicants are urged to consider use of existing wireless communications towers and telephone and electric utility structures as sites for one or more wireless communications facilities. The applicant shall have the burden of proving that there are no feasible existing structures on which to locate.
 - (c) if the applicant demonstrates through a detailed propagation study that it is not feasible to locate on an existing structure, wireless communications facilities shall be designed so as to be camouflaged to the greatest extent possible, including, but not limited to, the use of compatible building materials and

colors, screening, landscaping, placement within trees, and the use of stealth technology to disguise the facility as specified in § 200-33.1D(1)(a)[2] and as determined by the Planning Board.

- (d) The applicant must submit documentation that the landowner grants permission to install and use wireless communications facilities on the proposed site at the time of application for site plan approval and/or special use permit.
 - (e) The following hierarchy, in descending priority, of preferred sites shall be adhered to when considering new wireless communications facilities:
 - [1] Existing structures such as buildings, water towers, and utility poles.
 - [2] Existing and approved towers.
 - [3] Municipal or government-owned property.
 - [4] Commercial and industrial zones.
 - [5] Residential zones.
- (3) Dimensional requirements. Wireless communications facilities shall comply with the following requirements:
- (a) Height. The total height of any mount or accessory elements attached to any structure shall be measured from the ground level to the top of the mount or the top of the uppermost accessory affixed to the mount, whichever is higher. The maximum height of a wireless communications facility is limited to 150 feet above ground level (AGL).
 - (b) Height variance. The Zoning Board of Appeals may allow wireless communications facilities in excess of 150 feet if an independent radio frequency consultant determines through technical analysis that adequate coverage would not be provided by a tower of lesser height and if the applicant can demonstrate that, based upon the topography of the site and surrounding area, siting of the antenna, antenna design, surrounding tree cover and structures and/or through the use of screening, that off-site views of the facility will be minimized. The height limitation is waived when the antenna is mounted on an existing structure or building and is completely camouflaged, or is located on an existing utility structure. Applicants may be required to achieve coverage objectives by using multiple existing or new structures rather than taller structures, which shall not exceed the height limitations in § 200-33.1B(3)(a).
 - (c) Setbacks. All wireless communications facilities and their equipment shelters shall comply with the building setback provisions of the zoning district in which the facility is located. In addition, the following setbacks shall be observed:

[1] To ensure public safety, the minimum distance from the base of any ground-mounted wireless communications facility to any property line, road, habitable dwelling, business or institutional use, accessory structure, or public recreation area shall be 1 1/2 times the height of the facility/mount, including any antennas or other appurtenances. This setback is considered the "fall zone." Additional setbacks may be required by the Planning Board to provide for the public safety.

[a] All new towers shall be designed and constructed with break stress points such that a tower will break into sections rather than topple in one piece.

[2] In the event that an existing structure or building is proposed as a mount for a wireless communications facility, a fall zone shall not be required unless the Planning Board finds that a substantially better design will result from an increased setback. In making such a finding, the Planning Board shall consider both the visual and safety impacts of the proposed use.

C. Performance standards. All wireless communications facilities shall comply with the performance standards set forth in this section.

(1) Camouflage. Wireless communications facilities shall be the least obtrusive and the most appropriate to the proposed site, as approved by the Planning Board.

(c) All wireless communications facilities shall be designed to blend into the surrounding environment through the use of design and color except in such instances where color is dictated by federal or state authorities such as the Federal Aviation Administration.

(d) A wireless communications facility which is roof-mounted on a building shall be concealed within or behind existing architectural features to limit its visibility from public ways, and shall be stepped back from the front facade in order to limit its impact on the building's silhouette.

[1] Non roof-penetrating sled mounts are acceptable. They must be stepped back from the edge of the roof and have a maximum height of 15 feet over the top of the building roof line.

(e) A wireless communications facility which is side-mounted on a building shall be painted or constructed of materials to match the color of the building material directly behind it.

(f) The Planning Board may require the use of camouflaged ground-mounts, as specified in § 200-33.1D(1)(a)[2], where appropriate.

- (2) Lighting. Wireless communications facilities shall not be artificially lighted or display strobe lights unless required by the Federal Aviation Administration (FAA) or other applicable authority.
- (3) Noise. Equipment for wireless communications facilities shall not generate noise in excess of that allowed by the Town Noise Ordinance.¹⁰
- (4) Radio frequency radiation (RFR) standards.
 - (a) All equipment proposed for a wireless communications facility shall be authorized per the FCC. Guidelines for Evaluating the Environmental Effects of Radio-frequency Radiation (FCC Guidelines).
 - (b) Where an applicant proposes to collocate on an existing structure, the applicant must submit a radio frequency emissions study, prepared by a qualified licensed professional engineer. The study shall certify that the general public will not be exposed to electromagnetic emissions in excess of FCC standards as a result of the proposed project.

D. Special use permit regulations. All wireless communications facilities requiring a special use permit shall comply with the regulations set forth in this section, in addition to those found in § 200-7D.

(1) Design Standards

- (a) Camouflage. Wireless communications facilities shall be camouflaged to the maximum extent possible by vegetation and/or design as follows:

[1] Camouflage by vegetation. If wireless communications facilities are not camouflaged from public viewing by existing buildings or structures, base of tower, or accessory uses, they shall be surrounded by buffers of dense tree growth and understory vegetation in all directions to create an effective year-round visual buffer. Ground-mounted wireless communications facilities shall provide a vegetative buffer of sufficient height and depth to effectively screen the facility. Trees and vegetation may be existing on the subject property or installed as part of the proposed facility or a combination of both. Such buffer shall be maintained in a healthy state or replaced as necessary to provide continuing camouflaging.

- [a] Existing on-site vegetation shall be preserved to the maximum extent possible. No cutting of trees in excess of four inches in and/or special use permit.

- [b] Appropriate vegetative buffering around the fences of the base area, accessory uses, and anchor points of guyed towers will be maintained to buffer their view from neighboring residences, recreation areas, historic and scenic areas, or public roads.
 - [c] The Planning Board will review additional buffers for sufficiency based on site conditions.
- [2] Camouflage by design. To the extent that any wireless communications facility extends above the height of the vegetation immediately surrounding it, the facility shall be designed to minimize the adverse visual and aesthetic impact unless otherwise required by the Planning Board. Where feasible, wireless communications facilities shall be camouflaged to resemble or mimic a native coniferous species of tree or by other means such as new construction of a silo, flagpole, clock tower, bell tower, cross tower, steeple or other innovative replication of a structure that would be consistent with the character of the community as determined by the Planning Board.
- (b) Lighting. Wireless communications facilities shall not be artificially lighted or display strobe lights unless required by the Federal Aviation Administration (FAA) or other applicable authority. Motion-activated or staff-activated security lighting around the base of a tower or accessory structure entrance may be provided if such lighting does not project off the site. Such lighting shall only occur within the fenced area. Applicant shall show all lighting types and locations on the plans.
- (c) Signs.
- [1] Signs shall be limited to those needed to identify the property and the owner and warn of any danger. No advertising is permitted anywhere on the facility, with the exception of the identification signage. All signs shall comply with the requirements of the Town's sign regulations.¹¹
 - [2] All ground-mounted wireless communications facilities shall be surrounded by a security barrier which shall be posted with "no trespassing"¹¹ signs. A twenty-four-hour emergency telephone number shall be posted adjacent to the entry gate. If high voltage is necessary for the operation of equipment within the facility, signs shall be posted stating "Danger-High Voltage."
- (d) Equipment shelters. Equipment shelters for wireless communications facilities shall be designed consistent with one of the following standards:
- [1] Equipment shelters shall be located in underground vaults; or

- [2] Equipment shelters shall be designed to be architecturally compatible, both in style and materials, with principal structures on the site, as determined by the Planning Board; or
 - [3] Equipment shelters shall be camouflaged behind an effective year-round landscape buffer equal to the height of the proposed building. Such buffer shall be maintained in a healthy state or replaced as necessary to provide continuing camouflaging.
- (e) Accessory structures. Accessory structures for wireless communications facilities shall be permitted if the structures are constructed for the sole and exclusive use and operation of the communications facility, are the minimum size necessary to meet the needs of the specific site, and meet the following requirements:
- [1] Accessory structures may not include office, long-term vehicle storage, other outdoor storage or other uses that are not needed to send or receive wireless communications transmissions.
 - [2] Accessory structures must be less than 500 square feet and 15 feet in height.
 - [3] Accessory structures must be camouflaged behind an effective year-round landscape buffer equal in height to the proposed structure. Such buffer shall be maintained in a healthy state or replaced as necessary to provide continuing camouflaging.
 - [4] In residential zones, the use of compatible building materials such as wood, brick or stucco is required for all accessory structures, which shall be designed to match architecturally the exterior of residential structures in the neighborhood, as determined by the Planning Board.
- (f) Utility service lines. All electric power supply and communications service lines to new towers and accompanying facilities shall be installed underground from the existing power and communications sources.
- (g) Access and parking.
- [1] An access road and parking plan shall be provided to ensure adequate emergency vehicle access as well as to accommodate the usual number of service vehicles expected on the premises at any one time. All driveways shall meet the requirements of the jurisdiction having authority over the road on which driveway fronts.
 - [2] Maximum use of existing public and private roads shall be made, consistent with safety and aesthetic considerations.

[3] Road construction shall minimize ground and vegetation disturbance. Road grades shall follow natural contours to reduce soil erosion potential and to ensure that roads are aesthetically compatible with the character of the surrounding area.

[a] New access roads shall be at least 12 feet wide, but no more than 24 feet wide to allow access for emergency vehicles.

[4] The Planning Board may require an erosion and sedimentation control plan and may refer the site plan to the Town Engineer, and/or Special Consultant for review.

[5] Unpaved roads shall be considered unless conditions require paving, as determined by the Planning Board, in consultation with the appropriate authorities or consultants.

(h) Maintenance and engineering.

[1] The original developed appearance, as approved through the site plan review process, of the exteriors of all towers, accessory buildings, other structures, and grounds must be maintained through regular maintenance by the special use permit holder. This shall be documented by pre- and post-construction photos taken by the applicant and delivered to the Codes Enforcement Officer prior to the facility being placed into operation.

(i) Removal of facilities.

[1] Towers and antennas shall be removed if the owner's or user's special use permit for these facilities has expired or been terminated or if the facilities are no longer being used by the FCC licensee. Towers and antennas shall be removed if there is not at least one operator with a valid special permit using the tower. Potential or planned future use of any facility for commercial communication service is not sufficient to avoid the requirement for removal. Refer also to Subsection I.

[2] If the removal of towers and antennas is required, accessory buildings, fencing, and other structures shall also be removed unless:

[a] The landowner wishes to retain these structures and communicates this in writing to the Planning Board; and

[b] The retention of these structures will comply with the Zoning Law; and

- [c] The Planning Board agrees that removal of these structures is not required.
- [3] Each applicant seeking a special use permit for a wireless communications facility shall provide a written agreement with the Town of Whitestown such that applicant is fully responsible for removal, and indemnifying the Town for the costs of removal, of antennas, accessory buildings and supporting structures such as towers when removal is required by the Town of Whitestown Zoning Law.
- [4] A decision to require removal shall be the responsibility of the Code Enforcement Officer after consulting with the Codes Enforcement Officer and the Town Attorney. Removal shall occur within 90 days of the decision to require removal unless the Town has agreed to an extension of that time. If not removed within the designated period, the Town shall have the right to compel removal, with all costs to be borne by the special permit holder who owns and/or previously used the facilities. Removal costs may also be recovered from the owner of the tax parcel on which the facilities are located. All applicable permits associated with the removal must be obtained by the special use permit holder.
- [5] When towers are removed, site reclamation shall be completed to the satisfaction of the Codes Enforcement Officer within 60 days of structure removal, unless otherwise approved by the Town. Reclamation shall include finish grading, landscaping, removal of structures, utility lines and accessory structures, and shall encompass the building site and buffer area controlled by the facility owner. Reclamation shall not negatively impact adjacent property owners.
- (j) Bonding. Before obtaining a building permit, the special use permit holder shall provide a financial security bond for removal of the wireless communications facility and property restoration with the Town of Whitestown as the assignee, in an amount approved by the Planning Board, but not less than \$60,000 for a collocator and \$50,000 for a new facility.
- (2) Environmental standards.
- (a) No hazardous or regulated waste shall be discharged on the site of any wireless communications facility. If any hazardous and/or regulated materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least 110% of the volume of the hazardous materials stored or used on the site.

- (b) If applicable, additional storm water runoff generated by the use shall be contained on site.
 - (c) Equipment for wireless communications facilities shall not generate noise in excess of the Town Noise Ordinance⁷.
- (3) Safety Standards.
- (a) Towers, anchor points around guyed towers, and accessory structures shall be surrounded by fencing no less than six feet in height.
 - (b) There shall be no climbing pegs within 15 feet of the ground.
 - (c) A locked gate around the leased compound shall be required to deter vandalism and unwanted visitors. The key/combination to locked gates shall be provided to local law enforcement to be used only for public safety purposes.

E. Application Procedures.

- (1) The Planning Board is authorized to review and approve, approve with modifications, or disapprove site plans. Requests for special use permits shall be reviewed and approved, approved with modifications, and disapproved by the Zoning Board of Appeals pursuant to Article I of the Zoning Law. The Planning and Zoning Boards shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed antenna, mount, or equipment structure(s). Any decision by the Planning Board and Zoning Board to deny or approve a request to place, construct, or modify wireless communications facilities shall be in writing and supported by applicable evidence.
- (2) Application filing requirements, site plan approval. All applicants for a wireless communications facility shall fulfill the site plan requirements of § 200-24 of the Zoning Law and shall, in addition, provide the following:
 - (a) Proof that the applicant or co-applicant is an FCC-licensed carrier.
 - (b) Proof that the wireless communications facility will be fully automated and require only occasional maintenance of the facility and site.
- (3) Application filing requirements, special use permit. Applicants for a special use permit for a wireless communications facility shall fulfill the requirements of a Type I action under SEQR and shall, in addition, provide the following:

- (a) An inventory and supporting documentation, including propagation plots and narrative of all existing structures, buildings and utility structures within the Town, outlining the opportunities for the use of these existing structures and buildings as an alternative to the proposed site. The applicant must demonstrate that the proposed wireless communications facility cannot be accommodated on an existing structure, building or utility structure. In the event that location on an existing structure, building or utility structure is not feasible, a written statement of the reasons for the infeasibility shall be submitted to the Planning Board. The Planning Board may hire an independent technical expert in the field of radio frequency engineering, to verify if location on an existing structure, building or utility structure is not feasible and to evaluate the need for the proposed facility. The cost for such a technical expert shall be at the expense of the applicant and shall be fair and in line with similar costs in other communities. The failure of an applicant to demonstrate a good faith effort to collocate may be grounds for denial of the special use permit.
- (b) Applicant shall illustrate on a map its existing regional network of all existing and future wireless facilities in the Town of Whitestown and surrounding area. Applicant must explain in writing its efforts to modify existing facilities to meet radio frequency coverage objectives.
- (c) Proposed location of antenna, mount and equipment shelter(s), with total elevation dimensions and AGL of the highest point.
- (d) Proposed security barrier, indicating type and extent as well as point of controlled entry.
- (e) Drawings, dimensioned and to scale, which show the ultimate appearance and operation of the wireless communications facility at full buildout, including representations of the proposed mount, antennas, equipment shelters, cable runs, driveways, parking areas and any other construction or development attendant to the wireless communications facility. If the security barrier will block views of the wireless communications facility, the barrier drawing shall be cut away to show the view behind the barrier.
- (f) Materials of the proposed facility specified by generic type and specific treatment. These shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier.
- (g) Colors of the proposed facility represented by a color board showing actual colors proposed. Colors shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier.

- (h) Landscape plan, including existing trees and shrubs, by dominant species and current height, and those proposed to be added, identified by size of specimen at installation and species.
- (i) The following material shall be provided to allow the Planning Board to determine the level of visual impact and the appropriateness of the facility:
 - [1] Existing ("before" condition) color photographs of views of the site from key viewpoints both inside and outside of the Town, including, but not limited to, state highways and other major roads, state and local parks, other public lands, preserves and historic sites normally open to the public, scenic roads and scenic view sheds identified in the Town of Whitestown Comprehensive Plan, and from any other location where the site is visible to a large number of residents or visitors. The Planning Board shall determine the appropriate key viewpoints from which the site shall be photographed.
 - [2] Proposed ("after" condition) simulations. Each of the existing condition photographs shall have the proposed, wireless communications facility superimposed on to it to show what would be seen from the key viewpoints if the proposed facility is built.
- (j) Balloon or crane test. The Planning Board may require a balloon or crane test. The applicant will be responsible for arranging and paying all costs associated with a balloon or crane test at the proposed site to illustrate the height of the proposed facility. The test shall be run for two consecutive days. Test dates shall be approved by the Planning Board. The date, time and location of such test shall be advertised by the applicant in the official newspaper of general circulation for the Town of Whitestown at least five days, but not more than 10 days, prior to the test.
- (k) A photometric plan of all lighting on the site, including tower lighting (if lighting is required).
- (4) The Planning Board may waive one or more of the application filing requirements of this section if it finds that such information is not needed for a thorough review of a proposed wireless communications facility, based upon a specific request by the applicant.
- (5) Application fee. Refer to Subsection L.

- (6) Consultant fees. The Planning Board and/or Zoning Board of Appeals may retain consultants to assist in reviewing the application, its renewal, or an application for a variance related to a pending application, with consultant fees to be paid by the applicant. These consultants may include the Town Engineer, Town Planner, the Town's attorney, one or more commercial communications facility consultants, or other consultants as determined by the Planning Board and/or Zoning Board of Appeals. At the beginning of the review process the applicable board may require the applicant to fund a separate escrow account from which the Town may draw to ensure reimbursement of consultant fees. During review of the application, the applicable board may require the applicant to add funds to the escrow account, as the applicable board deems necessary. If the required funds are not added to the escrow account, review of the application by the applicable board shall be suspended until such time, if any, as payment of said funds is made. Any remaining funds in the escrow account, after payment of all consultant fees, will be returned to the applicant.

- F. Collocation requirements. All wireless communications facilities requiring a special use permit shall comply with the following requirements:

- (1) Location of other facilities.

- (a) The applicant must demonstrate, through preparation of a propagation study showing the carrier's local network and nearby existing facilities with equipment at varying heights, that the proposed wireless communications facility cannot be accommodated on an existing, approved, or proposed communications tower, structure or facility due to one or more of the following reasons:

- [1] The antenna would exceed the structural capacity of the existing, approved, or proposed wireless communications facility, as documented by a qualified professional engineer, and the existing, approved, or proposed facility cannot be reinforced, modified, or replaced to accommodate the planned or equivalent antenna at a reasonable cost.
- [2] The antenna would cause interference materially impacting the usability of other existing, approved or proposed antennas at the facility as documented by a qualified professional engineer and the interference cannot be prevented at a reasonable cost.
- [3] Existing, approved, or proposed wireless communications facilities cannot accommodate the antenna at a height necessary to function, as documented by a qualified professional engineer.
- [4] Other foreseen reasons that make it infeasible to locate the antenna upon an existing, approved, or proposed wireless communications facility.

- (b) In the event that collocation is not feasible, a written statement of the reason for the infeasibility shall be submitted to the Planning Board.

(2) Provision for new facilities.

- (a) Any proposed ground-mounted wireless communications facility shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least three additional users if the mount is 150 feet or greater in height or for at least one additional user if the mount is less than 150 feet and over 60 feet in height. Mounts must be designed to allow for future rearrangement of antennas upon the mount and to accept antennas mounted at varying height.
- (b) The applicant shall submit to the Planning Board a letter of intent committing the applicant, and his/her successors in interest, to negotiate in good faith for shared use of the proposed facility by any wireless service providers in the future. The issuance of a permit (assuming the facility is approved according to this section) shall commit the new facility owner and his/her successors in interest to:

- [1] Respond in a timely comprehensive manner to a request for information from a potential shared-use applicant.
- [2] Negotiate in good faith concerning future requests for shared use of the new facility by other wireless service providers.
- [3] Allow shared use of the new facility if another wireless service provider agrees in writing to pay charges.

(3) Inter-Municipal Cooperation. In order to keep neighboring municipalities informed, and to facilitate the possibility of directing that an existing wireless communications facility in a neighboring municipality be considered for shared use, the Planning Board shall require that:

- (a) An applicant who proposes a new wireless communications facility shall notify in writing the legislative body of each municipality that borders the Town and the Oneida County Department of Planning. Notification shall include the exact location of the proposed facility and the general description of the project, including, but not limited to, the height of the facility and its capacity for future shared use.
- (b) Documentation of this notification shall be submitted to the Planning Board within two weeks of the applicant's application for site plan review.

G. Modifications.

- (1) Modifications. A modification of a wireless communications facility may be considered equivalent to an application for a new facility and will require a special use permit when the following events apply:
 - (a) The applicant intends to alter the terms of the special use permit by changing the number of facilities permitted on site or by changing the technology used for the facility.
 - (b) The applicant intends to add any equipment or additional height not specified in the original special use permit.
- (2) Monitoring and maintenance. The applicant shall maintain the wireless communications facility in good condition, including, but not limited to, structural integrity of the mount and security barrier, painting, maintenance of stealth technology camouflaging, and maintenance of the buffer areas and landscaping. All wireless communications towers shall be inspected annually by a qualified professional engineer, and a copy of the inspection report shall be submitted to the Town of Whitestown Codes Enforcement Officer at the time of renewal for the special use permit.

H. Abandonment or discontinuation of use.

- (1) Any wireless communications facility that is not operated for a continuous period of 12 months shall be considered abandoned, and the owner of the facility shall physically remove it within 90 days of a receipt of notice. "Physically remove" shall include, but not be limited to:
 - (a) Removal of antennas, mount, equipment shelters and security barriers from the subject property.
 - (b) Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
 - (c) Restoring the location of the facility to its natural condition, with the demolition area restored by landscaping and grading to blend in with the surrounding properties. Determination of acceptability of restoration work shall be left to the discretion of the Codes Enforcement Officer.
- (2) If the carrier fails to remove the facility in accordance with this section of the Zoning Law, the Town will have the authority to enter the property, and remove the facility, with the costs of removal assessed against the property.

I. Term of special use permit.

(1) A special use permit issued for any wireless communications facility shall be valid for five years. At the end of that time period, the wireless communications facility shall be removed by the carrier or a new special use permit shall be required. In reviewing the new application for a special use permit, the Planning Board shall determine whether the technology in the provision of the facility has changed such that the necessity for the permit at the time of its approval has been eliminated or modified, and whether the subsequent renewal permit should be modified or terminated as a result of any such change.

(2) Special use permit renewals shall require submission of the following data:

- (a) Structural inspection and analysis performed within the previous 90 days.
- (b) Current insurance certificate.
- (c) Site plan, including equipment of collocators.
- (d) RF power density study prepared within the previous 90 days.
- (e) Special use permit renewal fee.

J. Insurance. Facilities shall be insured by the owner(s) of the towers and/or the antennas thereon against damage to persons or property. The owner(s) of the towers and/or antennas thereon shall provide annually to the Town Clerk a certificate of insurance in the minimum amount of \$1,000,000 or a higher amount if required by the Planning Board in consultation with the Town Board, in which the Town of Whitestown shall be an additional named insured. The insurance shall insure against damage or loss arriving from all structures, towers or antennas on the property.

K. Fee Schedule. The following schedule of fees associated with wireless communications facilities has been adopted by the Town of Whitestown. This schedule supersedes other previously adopted Town fee schedules.

	New Facility With Tower	Collocation on Existing Structure
(1) Site plan review*		
-Sketch plan conference	\$250.00	Fee waived
-Conceptual	\$500.00	\$250.00
-Preliminary	\$1,000.00	\$500.00
-Final	\$750.00	\$250.00
*Fees due at time of application.		
(2) Special use permit*		
-New	\$1,000.00	\$500.00
-Renewal	\$750.00	\$250.00
*Fees due at time of application.		
(3) Building permit		
(a) New Tower	\$10.00/Vertical foot up to 150 feet of tower, plus an additional \$25.00 for each vertical foot of tower greater than 150 feet as measured about ground level.	
(b) Structurally Modified existing tower	\$3.00/vertical foot of tower measured above ground level when height of structure is increased.	
(c) Collocation	\$500.00 per array of wireless communications antenna.	
(d) Accessory use	\$200 for each structure.	

§ 200-34. Swimming pools and spas. [Amended 5-20-2009 by L.L. No. 1-2009]

A. Permits

- (1) Building permit required. Any structure intended for swimming or recreational bathing that is capable of containing water over 24 inches deep must obtain a building permit prior to its construction, installation, enlargement, or modification. This includes in-ground, aboveground, and on-ground swimming pools, hot tubs, and spas. All work must conform to the New York State Uniform Fire Prevention and Building Code requirements.
- (2) Application. Each application for a building permit must be accompanied by plans which show the following:
 - (a) A plot plan of the property showing the location of the proposed pool or spa.
 - (b) Offsets to buildings and property lines
 - (c) Location of septic tanks, wells and leach fields.
 - (d) Location of overhead wires, underground wires and piping
 - (e) Location of required fences, gates and alarms.
 - (f) Location of filter, pump, heater, etc., that may be installed.
 - (g) Estimated cost of all work to be performed.

B. Location. The location of a permanent or temporary swimming pool, measured from waters edge, shall conform with the following:

- (1) Not be placed in the front yard.
- (2) Be at least 15 feet from any side or rear yard line.
- (3) Be at least six feet from any permanent structure.
- (4) Be at least 20 feet from any active well, septic tank, leach bed, etc., unless conditions warrant a lessening or increasing of this distance.

C. Corner lots. Every pool constructed on a corner lot shall be screened from front yard view by adjacent property owners and from property owners across the street. Screening shall be a solid and minimum height of six feet.

D. Maintenance. Every pool and spa shall be maintained at all times in such manner as never to constitute a public nuisance, a hazard or menace to health or safety. Any such hazard which may exist or develop with any such pool or spa shall be abated or removed upon receipt of notice from the Town. Pools and spas no longer capable of holding water as a result of structural failure, deterioration or liner collapse shall be deemed abandoned and upon notice from the Code Enforcement Officer shall be removed from the property within 10 days. **[Amended 2-2-2011 by L.L. No. 1-2011]**

E.

§ 200-34.1. Prohibited uses. [Added 9-18-2019 by L.L. No. 2-2019]

The following uses and types of operations are specifically excluded in all zoning districts:

A. The operation of stockyards slaughter houses, and rendering plants.

ARTICLE VIII
Administration; Board of Appeals

§ 200-35. Enforcement Officer

The provisions of this chapter shall be administered and enforced by the Code Enforcement Officer, who shall have the power to make inspections of buildings or premises necessary to carry out his or her duties in the enforcement of this chapter. No building permit or certificate of occupancy required hereunder shall be issued by the Code Enforcement Officer except in compliance with the provisions of this chapter and Chapter 98 of this Code.

§ 200-36. Building permit.

- A. No building shall be erected, moved, altered, added to or enlarged, and no excavation for any building shall be begun, unless and until a building permit for such work has been issued by the Code Enforcement Officer in compliance with this chapter and Chapter 98, Fire Prevention and Building Construction.
- B. Applications for building permits shall be submitted as provided in Chapter 98, Uniform Fire Prevention and Building Code. The Code Enforcement Officer may require such additional information other than that called for on the application form as may reasonably be needed for him or her to determine if the proposed building, its use and the use of the land are in conformity with the provisions of this chapter.
- C. All driveways must extend to a dedicated public road that has been constructed to the standards of the Town. Under no circumstances shall a driveway be constructed to an undedicated public road or paper street. **[Added 5-4-2005]**

§ 200-37. Certificate of Occupancy.

A. A certificate of occupancy is require for any of the following:

- (1) Occupancy and use of a building hereafter erected, altered, moved or extended.

- (2) Change in the use of an existing building.
- (3) Occupancy and use of vacant land, except for any use consisting primarily of tilling the soil or similar agricultural use.
- (4) Change in the use of land, except for any use consisting primarily of tilling the soil or similar agricultural use.

B. A certificate of occupancy may be obtained on application from the Code Enforcement Officer pursuant to Ch. 98, Uniform Fire Prevention and Building Code. Such certificate shall be issued only if the proposed use of the building or land conforms to the provisions of this chapter and other applicable laws, rules and regulations.

§ 200-38. Board of Appeals.

- A. A board of Appeals is hereby established. It shall consist of five members, each to serve for a term of five years. The term of office of the members of the Board of Appeals and the manner of their appointment shall be in accordance with the provisions of the Town Law. Vacancies occurring in said Board shall be filled for such unexpired term only.
- B. The Board of Appeals shall have the duties, rights, powers and function conferred upon it by § 267 of the Town Law and any other provisions of law or ordinance applicable thereto, including the following:
 - (1) Meetings. All meetings of the Board of Appeals shall be held at the call of the Chairperson and at such other times as such Board may determine. Such Chairperson or in his or her absence the acting Chairperson may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. Such Board shall keep minutes of its proceedings showing the vote of each member upon every questions, or if absent or failing to vote indication such fact, and shall also keep records of its examinations and other official actions.
 - (2) Records. All decisions of the Board shall be in writing, and a copy of each decision shall be sent to the applicant and to the Code Enforcement Officer. Every rule, regulation, amendment or repeal thereof and every order, requirement, decision or determination of the Board shall immediately be filed in the office of the Board and shall be a public record. Each decision shall set forth fully the reasons for the decision of the Board and the findings of fact on which the decision was based. Such findings and reasons shall include references to the standards of Subsection B(3) where the appeal is for a variance or a special permit use.

- (3) Appeal.
- (a) The board of Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by the Code Enforcement Officer. It shall also hear and decide all matters referred to it upon which it is required to pass under this chapter. The concurring vote of a majority of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Code Enforcement Officer or to decide in favor of the applicant any matter upon which it is required to pass under this chapter or to effect any variation in this chapter. Such appeal may be taken by any person aggrieved or by any officer, department, board or bureau of the Town.
- (b) Such appeal shall be taken within 30 days or such additional time as shall be prescribed by the Board of Appeals by general rule, by filing with the Code Enforcement Officer and with the Board of Appeals a notice of appeal specifying the grounds thereof. The Code Enforcement Officer shall forthwith transmit to the Board all of the papers constituting the record upon which the action appealed from was taken.
- (4) Stay. An appeal stays all proceedings in furtherance of the action appealed from unless the Code Enforcement Officer from whom the appeal is taken certifies to the Board of Appeals after the notice of appeal shall have been filed with him or her that, by reason of acts stated in the certificate, a stay would in his or her opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.
- (5) Jurisdiction. The Board of Appeals shall have the following powers and duties prescribed by statute and by this chapter.
- (a) Interpretation. On appeal from a determination of the Code Enforcement Officer to hear and decide on questions where it alleged there is an error in any order, requirement, decision or determination made by the Code Enforcement Officer involving the interpretation of any provisions of this chapter.
- (b) Variance. On appeal from a determination of the Code Enforcement Officer and in conformity with law, to vary the requirements as they apply to a particular lot. No application for a variance shall be acted on until the required public hearing has been held. The Board of Appeals shall prescribe appropriate conditions and safeguards to carry out the requirements of this subsection and shall not grant any variance unless it shall make a finding of fact based upon the evidence as presented to it in each specific case as specified below:

- [1] Area variance. This is a variance involving dimensional deviations from the standards set forth in this chapter. Because of exceptional narrowness, shallowness, shape or area of the specific parcel or because of extraordinary topographic conditions or other physical conditions or location of the specific parcel, the strict application of the provisions of this chapter actually prohibit or unreasonably restrict the use of the land or building for which such variance is sought, that the granting of the variance is necessary of the reasonable use of the property and that the variance granted by the Board is the minimum variance that will provide for the reasonable use of the property. An area variance may be granted if the Zoning Board of Appeals finds that the benefit to the applicant if the variance is granted outweighs the potential detriment to the health, safety, and welfare of the neighborhood or community by such grant, having considered the following:
- [a] Whether an undesirable change will be provided in the character of the neighborhood or a detriment to nearby properties will be created by granting the variance;
 - [b] Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other an area variance;
 - [c] Whether the requested area variance is deemed to be substantial;
 - [d] Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
 - [e] Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.
- [2] Use variance. This is a variance which permits a use of land which is prohibited by this chapter. The granting of a use variance will alleviate a clearly demonstrable hardship as distinguished from a special privilege or convenience sought by the owner, which conditions are peculiar to such land or building and do not apply generally to land or buildings in the vicinity or neighborhood and have not resulted from any act of the applicant subsequent to the adoption of this chapter. Unnecessary hardship is the test for a use variance. A use variance may be granted if the Zoning Board of Appeals finds that the applicable zoning regulations and restrictions have caused unnecessary hardship to the applicant, as evidenced by the existence of all of the following:

- [a] The applicant cannot realize a reasonable economic return, provided that lack of return is substantial, as demonstrated by competent financial evidence;
 - [b] The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of other properties in the district or neighborhood;
 - [c] The requested use variance, if granted, will not alter the essential character of the district or neighborhood; and
 - [d] The alleged hardship has not been self-created.
- [3] In any case, the granting of the variance will be in harmony with the intent spirit and purpose of this chapter and will not permit a use of the property in question for any purpose not permitted in the district in which such property is located or otherwise be injurious to the neighborhood.
- (c) Special permit uses. On application, supplementing an application to the Code Enforcement Officer for a building permit or certificate of occupancy, the Board of Appeals may grant a permit for any use for which approval of the Board is required under this chapter. In granting such permit, the Board may specify appropriate conditions in harmony with the following standards:
- [1] The use shall be of such location, size and character that it will be in harmony with the appropriate and orderly development of the district in which it is situated and will not be detrimental to the orderly development of adjacent districts.
 - [2] The location and size of the use, the nature and intensity of the operations involved in or conducted in connection therewith, its site layout and its relation to streets giving access to it shall be such that traffic to and from the use and the assembly of persons in connection with it will not be hazardous or inconvenient to the neighborhood or conflict with the normal traffic of the neighborhood. In applying this standard, the Board shall consider, among other things, convenient routes of pedestrian traffic, particularly of children, relation to main traffic thoroughfares and to street and road intersections and the general character and intensity of development of the neighborhood.
 - [3] The location and height of buildings, the location, nature and height of walls and fences and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the proper development and use of adjacent land and buildings or impair the value thereof.

- [4] Hearing and determination. The Board of Appeals shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the parties and by publication at least once in the official newspaper seven days before the date of the hearing and shall decide the same within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. The Board of Appeals may reverse or affirm, wholly or partly or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises and to that end shall have all the powers of the officer from whom the appeal is taken.

ARTICLE IX
Amendments

§ 200-39. Initiation of amendments.

- A. The Town Board may, from time to time on its own motion, amend, supplement, repeal or change the regulations and district boundaries established by this chapter pursuant to § 265 of the Town Law.
- B. Amendment of this chapter may be subject to the State Environmental Quality Review process (SEQR). The Town Board should identify the type of action, the zone change and several other factors; it may be a Type I or an unlisted action. To make a decision, the Board should consult Planning Board Technical Memos and, if necessary, Part 617 of the New York Codes, Rules and Regulations or Article 8 of Environmental Conservation Law.
- C. If it is determined that an environmental impact statement will be prepared for the proposal in question, all time frames and deadlines are delayed until a draft environmental impact statement has been filed. An application is not complete and therefore the review clock does not start until a determination of no significance has been made or until a draft environmental impact statement is completed.
- D. Whenever the owners of 50% or more of the frontage in any district or part thereof shall present a petition duly signed and acknowledged, to the Town Board, requesting an amendment, supplement or change of the regulations prescribed for such district or part thereof, it shall be the duty of the Town Board to vote upon said petition within 30 days after the filing of the same by the petitioners with the Town Clerk.
- E. The Planning Board may, by resolution, propose an amendment to the Town Board suggesting a change or repeal of the regulations. Within 45 days from the time such resolution is filed with the Town Clerk it shall be the duty of the Town Board to vote on such proposed amendment.

§ 200-40. Referral of amendments to Town Planning Board and County Planning Agency.

- A. All proposed amendments, supplements or changes originating by petition or by motion of the Town Board shall be referred to the Planning Board for a report and recommendations thereon. The Planning Board shall submit its report within 45 days after receiving such referral. Failure of the Planning Board to report within the required time shall be deemed to be approval of the proposed amendment.

- B. Whenever any zoning regulation or any amendment, including special permits or variances would change the district classification of or a regulation applying to real property within a distance of 500 feet from any boundary line of properties in a neighboring municipality or upon other county or state property as described in §§ 239-1 and 239-m of the General Municipal Law, said zoning regulations or amendment shall be referred by the Town Board to the Oneida County Department of Planning, which Department shall have 30 days in which to report its recommendations to the Town Board. Failure of the County Department of Planning to report within 30 days may be construed to be approval by the Department.

§ 200-41. Hearing on proposed amendment.

Before any amendment, supplement or change in the regulations or district boundaries, there shall be a public notice and hearing thereon as provided by law.

§ 200-42. Adoption of amendment.

After the public hearing and referral to and report by the Planning Board, a majority vote of the members of the Town Board shall be required to amend this chapter except as described in § 200-43.

§ 200-43. Protest petition.

If a protest against a proposed amendment, supplement or change is present to the Town Board, duly signed and acknowledged by the owners of 20% or more of the area of the land included in such proposed change or by the owners of 20% or more of land immediately adjacent extending 100 feet therefrom or by the owners of 20% or more of the land directly opposite thereto extending 100 feet from the street frontage of such opposite land, such amendment shall not be passed except by the favorable vote of $\frac{3}{4}$ of the Town Board.

§ 200-44. Periodic review.

From time to time, at intervals of not more than three years, the Planning Board shall reexamine the provisions of this chapter and the location of district boundary lines and shall submit a report to the Town Board recommending such changes or amendments, if any, which may be desirable in the interest of public safety, health, convenience, necessity or the general welfare.

ARTICLE X
Penalties

§ 200-45. Penalties for offenses.

- A. Any person or corporation, whether as owner or lessee, agent or employee, who shall violate any of the provisions of this chapter or who fails to comply with any order or regulation made thereunder, or who erects, alters, moves or uses any building or uses any land in violation of any detailed statement or plans submitted by him or her and approved under the provisions of this chapter, shall be guilty of an offense and, upon conviction, shall be punished by a fine not exceeding \$350 or imprisonment not exceeding six months, or both, for a first offense; for a second offense, both of which were committed within a period of five years, a fine not less than \$350 nor more than \$700 or imprisonment not exceeding six months, or both; and upon conviction of a third or subsequent offense, all of which were committed within a period of five years, a fine not less than \$700 nor more than \$1,000 or imprisonment not exceeding six months, or both, all in accordance with provisions of § 268 of the Town Law and any amendments thereto and any statutes relating thereto. Each week's continued violation shall constitute a separate additional violation.
- B. In case any building or structure is erected, constructed, reconstructed, altered, converted or maintained or any building, structure or land is used in violation of this chapter, the proper local authorities of the Town, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct business or use in or about such building, structure or land.

ZONING

200 Attachment 1

Town of Whitestown
Chapter 200, Zoning
Schedule A

[Amended 3-16-1999 by L.L. No. 2-1999; 7-17-2002; 5-4-2005; 1-23-2007 by L.L. No. 2-2007; 7-16-2008 by L.L. No. 1-2008]

District	Permitted Principal Uses (building permit)	Site Plan Review Uses (Planning Board)	Special Permit Uses (ZBA)	Minimum Lot Sizes		Maximum Coverage (percent)	Minimum Ground Floor Area (square feet)	Building Height Maximum (stories)	Building Height Maximum (feet)	Minimum Yard Dimension			
				Area	Width or Frontage (feet)					Front (feet)	Each Side (feet)	Rear (feet)	
R-80 Residence	Farm One-family dwelling (only with public water and sewer) Accessory building ≥ 144 FT ² Accessory Building ≤ 144 FT ²	Public or semipublic uses, such as schools, churches, libraries, cemetery, parks and playgrounds		10 acres	NA	NA	NA	NA	NA	NA	NA	NA	
				10,000 square feet	80	20%	800	2 ½	35	30	10	30	
				NA	NA	2%	NA	1	15	30	10	10	
								1	15	30	5	5	
				20,000 square feet	100	25%	NA	2 ½	35	40	15	30	
				Standard golf course Executive/par-three golf course	NA NA	NA NA	NA NA	NA NA	NA NA	NA NA	NA NA	NA NA	NA NA
R-100 Residence	Farm One-family dwelling Two-family dwelling Accessory building ≥ 144 FT ² Accessory Building ≤ 144 FT ²	Public or semipublic uses, such as schools, churches, libraries, cemetery, parks and playgrounds		10 acres	NA	NA	NA	NA	NA	NA	NA	NA	
				20,000 square feet	100	20%	800	2 ½	35	30	15	30	
				40,000 square feet	100	20%	600/dwelling unit	2 ½	35	30	15	30	
				NA	NA	2%	NA	1	15	30	10	10	
								1	15	30	5	5	
				40,000 square feet	100	20%	800	2 ½	35	40	15	30	
				Nursing home Standard golf course Executive/par-three golf course	40,000 square feet NA NA	100 NA NA	20% NA NA	800 NA NA	2 ½ NA NA	35 NA NA	40 NA NA	15 NA NA	30 NA NA
				Public utility	NA	NA	NA	NA	NA	NA	NA	NA	NA
				Multifamily dwellings with: (1) Public sewer and water	NA	NA	NA	NA	NA	NA	40	15	15
				(2) No public sewer and water Golf ball/driving range	3,000 square feet/dwelling unit; 10,000 square feet minimum	100	30%	NA	4	60	50	30	50
Land development activities	Not permitted with no public sewer or water												

NOTES:
NA = Not applicable.
TBD = To be determined.

WHITESTOWN CODE

Town of Whitestown
Chapter 200, Zoning
Schedule A
(Continued)

District	Permitted Principal Uses (building permit)	Site Plan Review Uses (Planning Board)	Special Permit Uses (ZBA)	Minimum Lot Sizes		Maximum Coverage (percent)	Minimum Ground Floor Area (square feet)	Building Height Maximum (stories)	Building Height Maximum (feet)	Minimum Yard Dimension		
				Area	Width or Frontage (feet)					Front (feet)	Each Side (feet)	Rear (feet)
R-200	Farm			10 acres	NA	NA	NA	NA	NA	NA	NA	NA
	One-family dwelling			60,000 square feet	200	20%	800	2 ½	35	50	20	40
	R-100 uses (with public water and sewer)			20,000 square feet	100	20%	800	2 ½	35	30	15	30
	Accessory building ≤ 144 FT ²			NA	NA	2%	NA	1	15	50	5	5
	Accessory building ≥ 144 FT ²			NA	NA	2%	NA	1	15	50	10	10
	Public or semipublic uses, such as schools, churches, libraries, cemeteries and parks			60,000 square feet	200	25%	NA	2 ½	35	50	30	50
	Nursing home			60,000 square feet	200	25%	NA	2 ½	35	50	30	50
	Service clubs and organizations			60,000 square feet	200	25%	NA	2 ½	35	50	30	50
	Standard golf course			NA	NA	NA	NA	NA	NA	NA	NA	NA
	Golf ball driving range			NA	NA	NA	NA	NA	NA	NA	NA	NA
	Executive/par-three golf course			NA	NA	NA	NA	NA	NA	NA	NA	NA
	Recreational vehicle park			125,000 square feet	200	25%	NA	1	15	50	30	50
	Public utility		Public utility	NA	NA	NA	NA	NA	NA	50	20	20
	Mining, excavations		Mining, excavations									
	Hospital		Hospital		60,000 square feet	200	25%	NA	2 ½	35	50	30
Home occupation		Home occupation		60,000 square feet	200	25%	NA	2 ½	35	50	30	50
Child-care center		Child-care center		60,000 square feet	200	25%	NA	2 ½	35	50	20	40
Land development activities												
M-H Mobile Home		Mobile home park		125,000 square feet	200	20%	NA	1	15	50	20	40
		Recreational vehicle park		125,000 square feet	200	20%	NA	1	15	50	20	40
	Single mobile home			5,000 square feet	40	20%	350	1	15	25	10	30
	Accessory building			NA	NA	NA	NA	1	15	25	10	10
			Land development activities									

NOTES:
NA = Not applicable.
TBD = To be determined.

ZONING

Town of Whitestown
Chapter 200, Zoning
Schedule A
(Continued)

District	Permitted Principal Uses (building permit)	Site Plan Review Uses (Planning Board)	Special Permit Uses (ZBA)	Minimum Lot Sizes		Maximum Coverage (percent)	Minimum Ground Floor Area (square feet)	Building Height Maximum (stories)	Building Height Maximum (feet)	Minimum Yard Dimension					
				Area	Width or Frontage (feet)					Front (feet)	Each Side (feet)	Rear (feet)			
C-1 Neighborhood Commercial		Restaurant		40,000 square feet	200	25%	NA	2	35	50	50	100			
		Service clubs and organizations		NA	NA	NA	NA	NA	NA	NA	NA	NA			
		Neighborhood convenience store (without gasoline)		5,000 square feet	50	25%	NA	2	35	20	20	50			
		Accessory building		5,000 square feet	50	25%	NA	1	12	20	20	10			
		Bakery		5,000 square feet	50	25%	NA	2	35	20	20	50			
		Fruit or vegetable market		5,000 square feet	50	25%	NA	2	35	20	20	50			
		Personal services		5,000 square feet	50	25%	NA	2	35	20	20	50			
		Bank		5,000 square feet	50	25%	NA	2	35	20	20	50			
		Laundrette		5,000 square feet	50	25%	NA	2	35	20	20	50			
		Professional offices		5,000 square feet	50	25%	NA	2	35	20	20	50			
		Nursery, greenhouse		5,000 square feet	50	25%	NA	2	35	20	20	50			
		Child-care center		5,000 square feet	50	25%	NA	2	35	20	20	50			
		Public utility		Public utility	NA	NA	NA	NA	NA	20	20	20			
		Land development activities													
C-2 Office Commercial	Accessory building	General business offices		NA	NA	NA	NA	1	12	20	15	10			
		Bank		5,000 square feet	50	25%	NA	4	50	20	15	25			
		Governmental offices		5,000 square feet	50	25%	NA	4	50	20	15	25			
		Studio		5,000 square feet	50	25%	NA	4	50	20	15	25			
		Research and development center		10,000 square feet	100	20%	NA	4	50	20	15	25			
		Laboratory research		10,000 square feet	100	20%	NA	4	50	20	15	25			
		Storage		10,000 square feet	100	20%	NA	4	50	20	15	25			
		Warehouse		10,000 square feet	100	20%	NA	4	50	20	15	25			
		Nursery, greenhouse		10,000 square feet	100	20%	NA	4	50	20	15	25			
		Public utility		Public utility	NA	NA	NA	NA	NA	NA	NA	NA	NA		
		Land development activities													
		C-3 Retail Commercial			C-1 uses		Dimensional requirements as specified in C-1 Districts								
					C-2 uses		Dimensional requirements as specified in C-2 Districts								
				Personal services	5,000 square feet		50	40%	NA	2	35	40	20	50	
Business and professional offices	5,000 square feet	50	40%	NA	2	35	40	20	50						

NOTES:
NA = Not applicable.
TBD = To be determined.

WHITESTOWN CODE

Town of Whitestown
Chapter 200, Zoning
Schedule A
(Continued)

District	Permitted Principal Uses (building permit)	Site Plan Review Uses (Planning Board)	Special Permit Uses (ZBA)	Minimum Lot Sizes		Maximum Coverage (percent)	Minimum Ground Floor Area (square feet)	Building Height Maximum (stories)	Building Height Maximum (feet)	Minimum Yard Dimension		
				Area	Width or Frontage (feet)					Front (feet)	Each Side (feet)	Rear (feet)
C-3 Retail Commercial (cont'd)		Private club or lodge		5,000 square feet	50	40%	NA	2	35	50	20	50
		Wholesale; discount store		5,000 square feet	50	40%	NA	2	35	40	20	50
		Stone or monument works		5,000 square feet	50	40%	NA	2	35	40	20	50
		Shopping center, retail store		10,000 square feet	100	20%	NA	1	15	50	25	50
		Restaurant		10,000 square feet	100	20%	NA	1	15	50	25	50
		Gasoline service station		10,000 square feet	100	20%	NA	1	15	50	25	50
		Automatic or coin-op laundry		10,000 square feet	100	20%	NA	1	15	50	25	50
		Motel-hotel		10,000 square feet	100	20%	NA	1	15	50	25	50
		Motorcycle and recreational vehicle retail sales and service		10,000 square feet	100	20%	NA	1	15	50	25	50
		Convenience store with gasoline sales		10,000 square feet	100	20%	NA	1	15	50	25	50
		Adult entertainment		10,000 square feet	100	20%	NA	1	15	50	25	50
		Accessory building		NA	NA	2%	NA	1	12	50	5	5
		Banks or other monetary institutions										
Public utility structures												
Land development activities												
C-4 General Commercial	Accessory buildings	C-3 Retail Commercial uses		NA	NA	NA	NA	1	12	50	25	10
		Motel-hotel		750 square feet/unit	100	40%	225/unit	2	35	40	15	30
		Automobile, farm implement, boat sales or rental, including service		5,000 square feet	50	50%	NA	2	40	40	15	30
		Confectionery or bakery for on-premises retail sales		5,000 square feet	50	50%	NA	2	40	40	15	30
		Printing, lithographing or publishing		5,000 square feet	50	50%	NA	2	40	40	15	30
												30
												13

NOTES:
NA = Not applicable.
TBD = To be determined.

ZONING

Town of Whitestown
Chapter 200, Zoning
Schedule A
(Continued)

District	Permitted Principal Uses (building permit)	Site Plan Review Uses (Planning Board)	Special Permit Uses (ZBA)	Minimum Lot Sizes		Maximum Coverage (percent)	Minimum Ground Floor Area (square feet)	Building Height Maximum (stories)	Building Height Maximum (feet)	Minimum Yard Dimension			
				Area	Width or Frontage (feet)					Front (feet)	Each Side (feet)	Rear (feet)	
C-4 General Commercial (cont'd)		Electrical, plumbing, heating or air-conditioning fabrication or repair shop, but not outside storage of used materials		5,000 square feet	50	50%	NA	2	40	40	15	30	
		Truck terminals		10,000 square feet	100	20%	NA	1	15	50	25	50	
		Casino		10,000 square feet	100	20%	NA	1	15	50	25	50	
		Recreation, commercial; indoor and outdoor		10,000 square feet	100	20%	NA	1	15	50	25	50	
		Building materials		5,000 square feet	50	50%	NA	2	40	40	15	30	
		Lumber yard		5,000 square feet	50	50%	NA	2	40	40	15	30	
		Small animal hospital		5,000 square feet	50	50%	NA	2	40	40	15	30	
		Kennel		5,000 square feet	50	50%	NA	2	40	40	15	30	
		Contractor's storage yard		5,000 square feet	50	50%	NA	2	40	40	15	30	
		Land development activities											
M-1 Manufacturing		C-4 uses		5,000 square feet	50	50%	NA	2	40	40	15	30	
		Laboratory research, testing, Manufacturing		10,000 square feet	100	50%	NA	2	40	40	15	30	
		Storage		10,000 square feet	100	50%	NA	2	40	40	15	30	
		Warehouse		10,000 square feet	100	50%	NA	2	40	40	15	30	
		Accessory building		NA	NA	2%	NA	1	12	40	15	30	
		Mining, excavations											
		Abatoire		10,000 square feet	100	50%	NA	NA	NA	40	15	30	
		Truck terminal		10,000 square feet	100	50%	NA	NA	NA	40	15	30	
		Food processing plant		10,000 square feet	100	50%	NA	NA	NA	40	15	30	
		Land development activities											
ELM Environmental Limited Manufacturing		Manufacturing		10,000 square feet	100	50%	NA	2	40	40	15	30	
		Indoor (secure) storage		10,000 square feet	100	50%	NA	2	40	40	15	30	
		Warehouse		10,000 square feet	100	50%	NA	2	40	40	15	30	
		Junkyard		10,000 square feet	100	NA	NA	2	40	40	15	30	
		Truck terminal		10,000 square feet	100	50%	NA	2	40	40	15	30	
		Accessory buildings		NA	NA	2%	NA	1	12	40	15	30	
		Land development activities											
L-M Light Manufacturing		C-4 uses											
		Laboratory research, testing, Manufacturing											
		Warehouse/Storage											
		Any equivalent use to above		NA	NA	50%	NA	NA	NA	50	25	50	
		Change in any nonresidential use or Tenant											
		Land Development activities											
Finance, insurance and real estate (FIRE) uses													

NOTES:
NA = Not applicable.
TBD = To be determined.

WHITESTOWN CODE

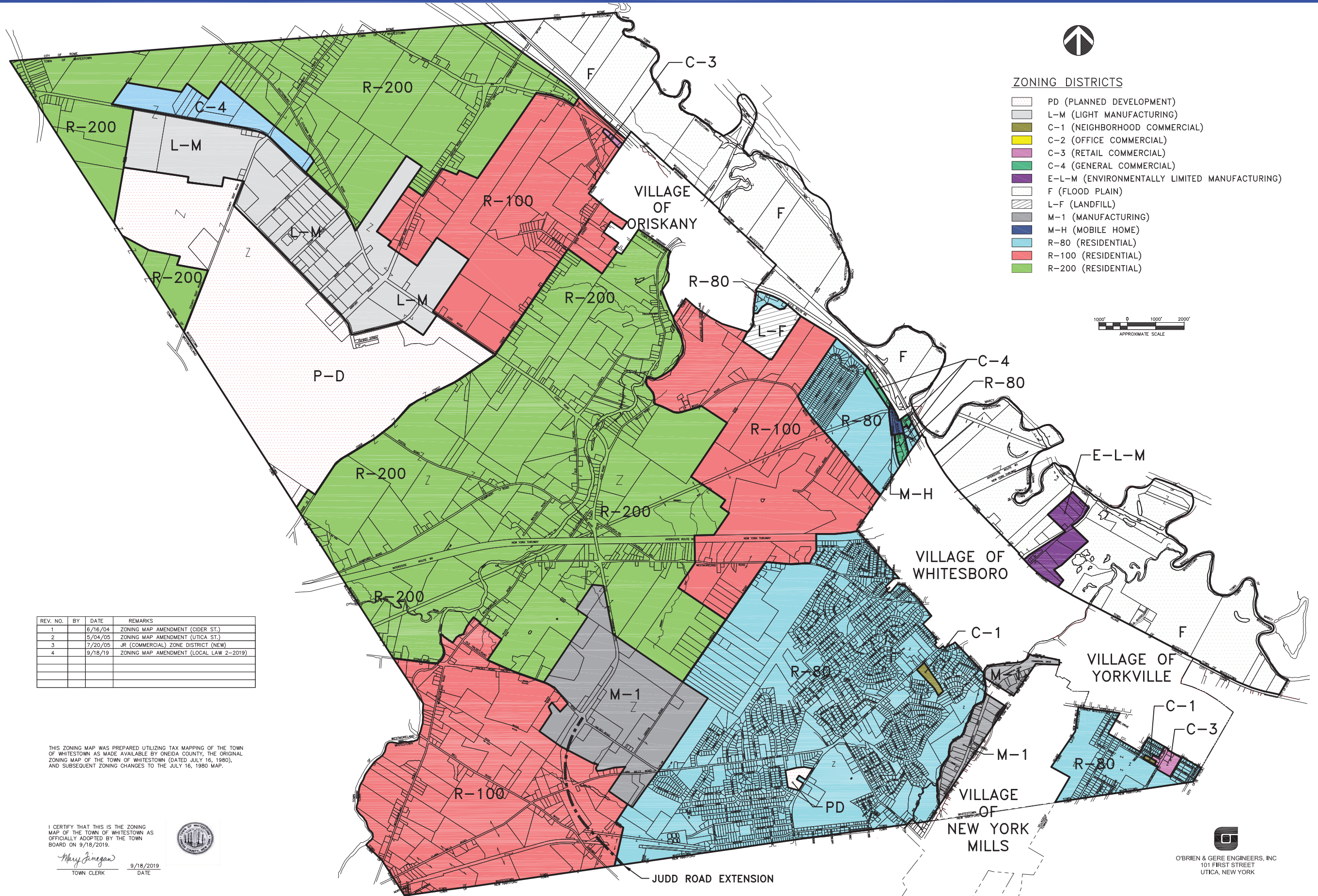
Town of Whitestown
Chapter 200, Zoning
Schedule A
(Continued)

District	Permitted Principal Uses (building permit)	Site Plan Review Uses (Planning Board)	Special Permit Uses (ZBA)	Minimum Lot Sizes		Maximum Coverage (percent)	Minimum Ground Floor Area (square feet)	Building Height Maximum (stories)	Building Height Maximum (feet)	Minimum Yard Dimension		
				Area	Width or Frontage (feet)					Front (feet)	Each Side (feet)	Rear (feet)
L-F Landfill	Sanitary landfill			NA	NA	NA	NA	NA	NA	50	50	50
F Floodplain	Agriculture and recreation without structures	Mining, excavations Land development activities	Mining, excavations	NA	NA	NA	NA	NA	NA	40	25	30
F Floodplain JR Overlay	Agriculture and recreation without structures Uses as permitted in the underlying zoning district; land development activities. Review by the Planning Board required for all uses.	Mining, excavations Land development activities Dimensional requirements will be the same as the underlying zoning district.	Mining, excavations									
P-D	One single district designation to be based on a specific development proposal.			5 Acres		TBD	TBD	TBD	TBD	TBD	TBD	TBD

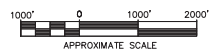
NOTES:
NA = Not applicable.
TBD = To be determined.

ZONING MAP

TOWN OF WHITESTOWN, NEW YORK



- ZONING DISTRICTS**
- PD (PLANNED DEVELOPMENT)
 - L-M (LIGHT MANUFACTURING)
 - C-1 (NEIGHBORHOOD COMMERCIAL)
 - C-2 (OFFICE COMMERCIAL)
 - C-3 (RETAIL COMMERCIAL)
 - C-4 (GENERAL COMMERCIAL)
 - E-L-M (ENVIRONMENTALLY LIMITED MANUFACTURING)
 - F (FLOOD PLAIN)
 - L-F (LANDFILL)
 - M-1 (MANUFACTURING)
 - M-H (MOBILE HOME)
 - R-80 (RESIDENTIAL)
 - R-100 (RESIDENTIAL)
 - R-200 (RESIDENTIAL)



REV. NO.	BY	DATE	REMARKS
1		6/16/04	ZONING MAP AMENDMENT (CIDER ST.)
2		5/04/05	ZONING MAP AMENDMENT (UTICA ST.)
3		7/20/05	JR (COMMERCIAL) ZONE DISTRICT (NEW)
4		9/18/19	ZONING MAP AMENDMENT (LOCAL LAW 2-2019)

THIS ZONING MAP WAS PREPARED UTILIZING TAX MAPPING OF THE TOWN OF WHITESTOWN AS MADE AVAILABLE BY ONEIDA COUNTY, THE ORIGINAL ZONING MAP OF THE TOWN OF WHITESTOWN (DATED JULY 16, 1980), AND SUBSEQUENT ZONING CHANGES TO THE JULY 16, 1980 MAP.

I CERTIFY THAT THIS IS THE ZONING MAP OF THE TOWN OF WHITESTOWN AS OFFICIALLY ADOPTED BY THE TOWN BOARD ON 9/18/2019.

Mary J. Jonegan
TOWN CLERK

9/18/2019
DATE



O'BRIEN & GERE ENGINEERS, INC.
101 FIRST STREET
UTICA, NEW YORK