

Chapter 1226: Review Authority and Procedures

1226.01 REVIEW AND DECISION-MAKING AUTHORITIES

(a) City Council (New)

In addition to any other authority granted to the City Council by charter, ordinance, or State law, the City Council shall have the following powers and duties, as it relates to this code.

- (1) Appoint members to the Planning and Zoning Commission, Historic Commission, and the Board of Zoning Appeals, in accordance with the charter and this code;
- (2) Initiate, hear, review, and make decisions related to amendments to the text of this code, the zoning map, or planned developments;
- (3) Review and accept, where appropriate, any proposed dedication of street, utilities, other public improvements, financial guarantees in lieu of construction of those public improvements, and maintenance bonds as may be required by these regulations;
- (4) Establish fees for development review and permits; and
- (5) Perform any other duties related to the administration and enforcement of this code as authorized by the charter, this code, and the ORC.

(b) Planning Commission (Revised Chapter 1202)

(1) Establishment

- A. The Middletown Planning Commission is hereby established by City Council.
- B. The Middletown Planning Commission may be hereafter referred to as the "Planning Commission."

(2) Membership

The Planning Commission shall be comprised of nine members as follows:

- A. The City Council shall appoint six voting members of the Planning Commission who shall each be a citizen of the United States and a resident of the City.
- B. One additional voting member shall be appointed by the Board of Education for the Middletown City School District.
- C. In addition to the seven voting members, there shall be the following two additional members who shall not vote on any matters before the Planning Commission:
 - i. One member of City Council, as designated by Council; and
 - ii. The Development Code Administrator or other staff member as may be appointed by City Council.

- D. Each member shall serve four-year terms. The terms of existing members shall continue until expiration.
- E. Any such member of the Planning Commission may serve on other administrative boards of the City, if such other office is not incompatible with membership on the Planning Commission.
- F. Members of the Planning Commission may be removed for misfeasance, malfeasance, or nonfeasance by City Council.
- G. A vacancy occurring during the term of any member of the Planning Commission shall be filled, by appointment from City Council or Board of Education, as applicable, for the unexpired term in a manner authorized for the original appointment.

(3) Roles and Powers of the Planning Commission

The Planning Commission shall have the following roles and powers to:

- A. Consider all questions relating to the City's planning policies;
- B. Advise on all matters involving acquisition or disposal of public real estate;
- C. Advise in the preparation of a budget for capital improvements and recommend the priority of acquisition of such improvements;
- D. Initiate, hear, review, and make recommendations to City Council related to amendments to the text of this code, the zoning map, or PD plans and related zoning map amendments;
- E. Hear, review, and make decisions related to the PD final development plans;
- F. Hear, review, and make decisions on conditional uses in the respective zoning district;
- G. Hear, review and make decisions on alternative equivalent review applications on standards except for historic preservation standards;
- H. Hear, review, and decide on any proposed amendments to previously approved planned use modification approvals and documents;
- I. Review and make decisions on minor subdivisions when such application is forwarded to the Planning Commission by the Development Code Administrator;
- J. Review and make decisions on the preliminary plat, construction drawings, and final plats of major subdivisions;
- K. Review and make decisions on requests for subdivision modifications; and
- L. Perform any other duties related to the administration and enforcement of this code as authorized by the charter, this code, and the ORC.

(4) Bylaws, Rules, and Regulations

The Planning Commission, shall, by a majority vote of its entire membership, adopt bylaws, rules, or regulations for the governance of Planning Commission activities provided they are consistent with State law or with any other ordinances of the City.

(5) Meetings

- A.** The Planning Commission shall hold such meetings as it may require for conducting its business.
- B.** The Development Code Administrator or staff appointee to the Planning Commission shall serve as secretary of the Planning Commission.
- C.** The Planning Commission shall elect a Chairperson and a Vice-Chairperson from among the members of the Planning Commission at the Commission's first meeting of the year. During the temporary absence of the Chairperson, the Vice-Chairperson shall fulfill the duties of the Chairperson. If both the Chairperson and Vice-Chairperson are absent, a member of the Planning Commission may make a motion to appoint an acting Chairperson for that meeting.
- D.** All meetings shall be open to the public, except as exempted by law.

(6) Quorums and Decisions

- A.** Any combination of four or more regular voting members of the Planning Commission shall constitute a quorum.
- B.** The Planning Commission shall act when at least four voting members concur.
- C.** Non-decision items, such as continuance or approval of minutes, shall require a majority of the quorum to concur.
- D.** The Planning Commission may be required to make an annual report and such other reports as may be requested by the City Council.

(c) Historic Commission (Revised 1210.03)

(1) Establishment

- A.** The Middletown Historic Commission is hereby established by City Council.
- B.** The Middletown Historic Commission may be hereafter referred to as the "Historic Commission."

(2) Membership

- A.** The Historic Commission shall be comprised of seven members, all of whom shall be residents of the City and appointed to the Historic Commission by City Council.

- B.** All members shall have, to the greatest extent practical, interest and proficiency in historic preservation, reconstruction, rehabilitation and restoration. Every attempt shall be made to include the following areas of expertise in the appointment of members:
 - i. A registered architect;
 - ii. A professional landscape architect, historian, archaeologist, or city planner;
 - iii. A person whose education and experience qualify him or her in building construction;
 - iv. A member of the Middletown Historical Society;
 - v. One elector who neither resides nor owns property in a designated historic district or a zoning district which requires approval of the City Council for alterations and/or modifications;
 - vi. One elector from each historic district or zoning district which requires approval of this City Council for alterations and/or modifications, who shall reside or own property in such district;
 - vii. An attorney; and
 - viii. A member of the Planning Commission.
- C.** Each member shall serve four-year terms. Terms shall be staggered so as no more than two members are up for appointment each year. The terms of existing members shall continue until expiration.
- D.** Any such member of the Historic Commission may serve on other administrative boards of the City, if such other office is not incompatible with membership on the Historic Commission.
- E.** Members of the Historic Commission may be removed for misfeasance, malfeasance, or nonfeasance by City Council.
- F.** A vacancy occurring during the term of any member of the Historic Commission shall be filled, by appointment from City Council for the unexpired term in a manner authorized for the original appointment.

(3) Roles and Powers of the Historic Commission

The Historic Commission shall have the following roles and powers to:

- A.** Conduct a continuous survey of all areas, places, structures, works of art, or similar objects in the City which the Historic Commission has reason to believe are or will be eligible for designation as historic sites, landmarks or districts;
- B.** Work for the continuing education of the residents of the City in regard to the archaeological, historical, and architectural heritage of the City and the historic sites and historic districts designated under the provisions of this chapter;

- C. Provide a public forum for the review of nominations of areas, places, structures, works of art, landmarks or similar objects within the City to the National Register of Historic Places of the U.S. Department of the Interior. Review shall include the relationship of the proposed nomination to the Historic Preservation Plan of the City and any other consideration which may be relevant to the proposed nomination. Such nominations may be generated from the Historic Commission or from any other source;
- D. Adopt and periodically modify the Historic Preservation Plan as the general policy for designation of Historic Landmarks and Historic Districts and for the issuance or denial of certificates of appropriateness;
- E. Hear, review, and make decisions on alternative equivalent review applications related to the historic preservation standards;
- F. Review and make decisions on certain certificates of appropriateness;
- G. Perform any other duties related to the administration and enforcement of this code as authorized by the charter, this code, and the ORC.

(4) Bylaws, Rules, and Regulations

The Historic Commission, shall, by a majority vote of its entire membership, adopt bylaws, rules, or regulations for the governance of Historic Commission activities provided they are consistent with State law or with any other ordinances of the City.

(5) Meetings

- A. The Historic Commission shall hold such meetings as it may require for conducting its business.
- B. The Development Code Administrator or staff appointee shall serve as secretary of the Historic Commission.
- C. The Historic Commission shall elect a Chairperson and a Vice-Chairperson from among the members of the Historic Commission at the Commission's first meeting of the year. During the temporary absence of the Chairperson, the Vice-Chairperson shall fulfill the duties of the Chairperson. If both the Chairperson and Vice-Chairperson are absent, a member of the Historic Commission may make a motion to appoint an acting Chairperson for that meeting.
- D. All meetings shall be open to the public, except as exempted by law.

(6) Quorums and Decisions

- A. Any combination of four or more members of the Historic Commission shall constitute a quorum.
- B. The Historic Commission shall act when at least four members concur. Non-decision items, such as continuance or approval of minutes, shall require a majority of the quorum to concur.

- C. The Historic Commission may be required to make an annual report and such other reports as may be requested by the City Council.

(d) Architectural Review Board (Revised 1225.05)

(1) Establishment

- A. The Middletown Architectural Review Board is hereby established by City Council.
- B. The Middletown Architectural Review Board may be hereafter referred to as the "Architectural Review Board" or the "ARB."

(2) Membership

- A. The ARB shall be comprised of three members that shall include one member of City Council and two members of Planning Commission. The members shall be selected by their respective board.
- B. Each member shall serve four-year terms or until the expiration of their term on their respective board. Terms shall be staggered so as one member is up for appointment each year. The terms of existing members shall continue until expiration.
- C. Each member shall name one alternate, from the same body as that from which the member was appointed, who shall attend meetings of the ARB and vote in their absence.
- D. A vacancy occurring during the term of any member of the ARB shall be filled by appointment of a new board member from the respective boards and shall be for the unexpired term in a manner authorized for the original appointment.

(3) Roles and Powers of the ARB

The ARB shall have the following roles and powers to:

- A. Review and make decisions on the architectural and landscaping standards that apply to developments in cases where the Development Code Administrator determines that the plans and elevations do not meet the standards of Section [1210.03](#).
- B. Perform any other duties related to the administration and enforcement of this code as authorized by the charter, this code, and the ORC.

(4) Bylaws, Rules, and Regulations

The ARB shall, by a majority vote of its entire membership, adopt bylaws, rules, or regulations for the governance of ARB activities provided they are consistent with State law or with any other ordinances of the City.

(5) Meetings

- A. The ARB shall hold such meetings as it may require for conducting its business.

- B. The Development Code Administrator or staff appointee shall serve as secretary of the ARB.
- C. The ARB shall elect a Chairperson from among the members of the ARB at the Board's first meeting of the year. If the Chairperson is absent, a member of the ARB may make a motion to appoint an acting Chairperson for that meeting.
- D. All meetings shall be open to the public, except as exempted by law.

(6) Quorums and Decisions

- A. Any combination of two or more regular or alternate members of the ARB shall constitute a quorum.
- B. The ARB shall act when at least two voting members concur.
- C. The ARB may be required to make an annual report and such other reports as may be requested by the City Council.

(e) Board of Zoning Appeals (BZA) (Revised Chapter 1282)

(1) Establishment

- A. The Middletown Board of Zoning Appeals is hereby established by City Council.
- B. The Middletown Board of Zoning Appeals may be hereafter referred to as the "Middletown Board of Zoning Appeals," "Board of Zoning Appeals," or "BZA."

(2) Membership

- A. The BZA shall be comprised of seven members, all of whom shall be residents of the City and appointed to the BZA by City Council. Every attempt shall be made to include the following areas of expertise in the appointment of members:
 - i. A member of the Planning Commission;
 - ii. An attorney;
 - iii. A registered architect or a builder
 - iv. A person engaged in the real estate business; and
 - v. The remaining members may be selected from any residents of the City.
- B. Each member shall serve four-year terms except that the term of the member of the Planning Commission shall expire at the same time as their term on the Planning Commission. Terms shall be staggered so at least one member is up for appointment each year. The terms of existing members shall continue until expiration.
- C. Any such member of the BZA may serve on other administrative boards of the City, if such other office is not incompatible with membership on the BZA.

- D. Members of the BZA may be removed for misfeasance, malfeasance, or nonfeasance by City Council.
- E. A vacancy occurring during the term of any member of the BZA shall be filled by appointment from City Council for the unexpired term in a manner authorized for the original appointment.

(3) Roles and Powers of the BZA

The BZA shall have the following roles and powers to:

- A. Hear, review, and decide on appeals of any administrative decision where it is alleged there is an error in any administrative order, requirement, decision, or determination made by the Development Code Administrator, Planning Commission, or Historic Commission, unless another appeals board is established by this code;
- B. Hear, review, and decide on variance requests as established in Section [1226.10](#); and
- C. Perform any other duties related to the administration and enforcement of this code as authorized by the charter, this code, or the ORC.

(4) Bylaws, Rules, and Regulations

- A. The BZA may, by a majority vote of its entire membership, adopt bylaws for the governance and procedures of the BZA provided they are consistent with State law or with any other ordinances of the City.
- B. The privilege of cross-examination of witnesses shall be accorded all interested parties or their counsel in accordance with the rules of the BZA.
- C. The Chairperson, or, in his or her absence, the Vice-Chairperson, shall administer oaths and compel the attendance of witnesses.

(5) Meetings

- A. The BZA shall hold such meetings as it may require for conducting its business.
- B. The BZA shall elect a Chairperson and a Vice-Chairperson from among the members of the BZA at the board's first meeting of the year. During the temporary absence of the Chairperson, the Vice-Chairperson shall fulfill the duties of the Chairperson. If both the Chairperson and Vice-Chairperson are absent, a member of the BZA may make a motion to appoint an acting Chairperson for that meeting.
- C. All meetings shall be open to the public, except as exempted by law.
- D. The BZA shall act by resolution or motion and shall keep minutes of its proceedings, showing the vote of each member or if any member is absent or fails to vote, the facts of each application considered by the BZA, and, where applicable, the section of this code, under which the BZA has considered the application, petition or other matter brought before the BZA.

- E. The BZA shall make and enter findings and conclusions which support all of its decision. The findings and conclusions shall set forth and demonstrate the manner in which the decision recommended carries out and helps to implement the goals and objectives of the master plan, the purpose of this code, and other official policies and objectives of the City, and that the granting of the request for which application is made will not be unreasonably incompatible with or detrimental to the affected properties and to the general public.

(6) Quorums and Decisions

- A. Any combination of four or more members of the BZA shall constitute a quorum.
- B. The BZA shall act when at least four members concur.
- C. Non-decision items, such as continuance or approval of minutes, shall require a majority of the quorum to concur.

(f) Development Code Administrator (Revised 1280.01)

(1) Appointment

The City Manager shall appoint a Development Code Administrator to administer and enforce the provisions of this code. The City Manager may also appoint additional staff to provide assistance to the Development Code Administrator.

(2) Roles and Powers of the Development Code Administrator

The Development Code Administrator shall have the following roles and powers to:

- A. Enforce the provisions of this code. All officials and employees of the City may assist the Development Code Administrator by reporting to the Development Code Administrator any new construction, reconstruction, land uses, or violations that are observed;
- B. Review and prepare a staff report, as needed, for the various procedures where the Planning Commission, Historic Commission, ARB, BZA, or City Council reviews an application;
- C. Serve as the secretary for any board where such role is required;
- D. Review and make decisions on certificate of zoning compliance and administrative waiver applications;
- E. Review and make decisions on certain certificates of appropriateness;
- F. Review and make decisions on questions of interpretation related to this code;
- G. Participate in any pre-application conferences as may be encouraged or required by this code;
- H. Review and make decisions on minor subdivision applications;

- I. Refer requests for appeals of decisions to the BZA pursuant to the procedures established in Section [1226.13](#);
- J. Maintain permanent and current records of all applications and the decisions related to those application;
- K. Review, inspect property, and make decisions on compliance with the provisions of this code;
- L. Investigate complaints and issue citations or other forms of enforcement and penalties for any violations and keep adequate records of all violations;
- M. Order discontinuance of any illegal work being done;
- N. Revoke a permit or approval issued contrary to this code or based on a false statement or misrepresentation on the application; and
- O. Take any other action authorized by this code to ensure compliance with or to prevent violation(s) of this code.

(3) Decisions of the Development Code Administrator

A decision of the Development Code Administrator may be appealed to the BZA in accordance with Section [1226.13](#) unless another appeals board is established by this code.

(g) City Engineer (New)

(1) Appointment

The City Manager shall appoint a City Engineer to administer and enforce the provisions of this code under the City Engineer's authority, where stated. The City Manager may also appoint additional staff to provide assistance to the City Engineer.

(2) Roles and Powers of the City Engineer

In addition to any other authority granted to the City Engineer by charter, ordinance, or State law, the City Engineer shall have the following powers and duties related to these regulations:

- A. Develop and recommend the City of Middletown Streets Master Plan, City of Middletown *Manual of Design for Public Improvements*, and other documents as may be approved by City Council related to subdivision improvement specifications;
- B. Review and make comments or recommendations on any applications where the Development Code Administrator or a review board requests such feedback;
- C. Review and make recommendations to the Planning Commission and City Council on major subdivision applications;
- D. Maintain permanent and current records of all public improvements and construction drawings that are part of major subdivision applications;

- E. Inspect, or cause to be inspected, all construction or installation work related to public improvements as required by this code; and
- F. Take any other action authorized by this code to ensure compliance with or to prevent violation(s) of this code.

1226.02 COMMON REVIEW REQUIREMENTS (NEW)

The requirements of this section shall apply to all applications and procedures subject to development review under this code, unless otherwise stated.

(a) Authority to File Applications

- (1) Unless otherwise specified in this code, development review applications defined in this code may be initiated by:
 - A. An owner of the property that is subject of the application; or
 - B. An agent authorized by the owner, which may include a lessee of the property.
- (2) For zoning map amendments, all property owners subject to the amendments application shall be required to sign the application.
- (3) If the application applies to more than one lot or property, the owner or their authorized agent of each property shall be required to sign the application.
- (4) The Planning Commission or City Council may initiate code text and map amendments under this code with or without written authorization or application from the property owner who may be affected.

(b) Application Submission Schedule

The schedule for the submission of applications in relation to scheduled meetings and hearings of the review bodies shall be established by the Development Code Administrator, and made available to the public.

(c) Application Contents

- (1) Applications required under this code shall be submitted in a form and in such numbers as established by the Development Code Administrator, and made available to the public.
- (2) Applications shall be accompanied by a fee as established by City Council pursuant to Section [1226.02\(g\)](#).
- (3) **Complete Application Determination**
 - A. The Development Code Administrator shall only initiate the review and processing of applications submitted under this chapter if such application is determined to be complete.

- B.** An application shall be determined to be complete if the applicant has submitted all of the forms, maps, and other submittal requirements required for the specified application as identified in Section [1226.02\(c\)](#).
- C.** The Development Code Administrator shall make a determination of application completeness within five business days of the application filing.
- D.** If the application is determined to be complete, the application shall then be processed according to the procedures and timelines set forth in this code.
- E.** If an application is determined to be incomplete, the Development Code Administrator shall provide written notice to the applicant along with an explanation of the application's deficiencies. No further processing of an incomplete application shall occur until the deficiencies are corrected and the Development Code Administrator determines that the application is complete.
- F.** The City shall not be required to process an incomplete application, forward an incomplete application to any decision-making body, or be subject to any required timelines of review for incomplete applications.
- G.** If the applicant fails to correct all deficiencies and submit a complete application within 60 days of the notice provided by the Development Code Administrator, the incomplete application shall not be reviewed, the applicant's original filing fee shall be forfeited, and the incomplete application shall be deemed withdrawn. The Development Code Administrator may grant one 60 day extension if just cause is shown.
- H.** No reconsideration of an incomplete application shall occur after expiration of the 60-day period, and an applicant in need of further development approval under the code shall, pursuant to all of the original requirements of Section [1226.02](#), submit a new application, and submit a new filing fee.
- I.** If any false or misleading information is submitted or supplied by an applicant on an application, that application shall be deemed incomplete.

(d) Simultaneous Processing of Applications

- (1)** Whenever two or more forms of review and approval are required under this code, the Development Code Administrator shall determine the order and timing of review.
- (2)** The Development Code Administrator may authorize a simultaneous review of applications, so long as all applicable requirements are satisfied for all applications.

(e) Pre-Application Conferences or Meetings

- (1)** Prior to filing an application, an applicant may request a meeting with the Development Code Administrator or other City staff for a pre-application conference to discuss the proposed application.

- (2) The purpose of the pre-application conference shall be to discuss the proposed development, review submittal requirements, and discuss compliance with the provisions of this code prior to the submission of an application.
- (3) No action can be taken by the staff and/or any boards until the applicant submits an actual application and/or plan to the City pursuant to the laws and policies of the City. Therefore, all discussions that occur between the applicant and/or applicant's representative(s) and staff, and/or City boards, that occur prior to the date applicant submits an actual application and/or plan including, but not limited to, any informal meetings with City staff, boards, any pre-application conferences or meetings, are not binding on the City and do not constitute official assurances or representations by the City or its officials regarding any aspects of the plan or application discussed.

(f) Amendment or Modifications after an Approval

Unless otherwise stated in this chapter, any request for an amendment or modification to the approved plans or conditions shall be done in accordance with the procedures and standards established for its original approval.

(g) Fees

- (1) Any application for development review under this code shall be accompanied by such fee as shall be specified by ordinance of City Council. There shall be no fee, however, in the case of applications filed by City Council or the Planning Commission.
- (2) The fees shall be in addition to any other fees that may be imposed by the City, State, the applicable county, or other agency having jurisdiction.
- (3) Such fees are adopted to cover the cost to the City for investigations, legal advertising, postage, and other expenses resulting from the administration of the respective zoning activities.
- (4) No application shall be processed or determined to be complete until the established fee has been paid.
- (5) If the City determines that the costs on a particular application will exceed the filing fee as established by City Council as a result of preparation of legal descriptions, maps, studies, or other required information, or as a result of the need for professional expert review, study, or testimony, the Development Code Administrator is authorized to collect such additional costs from the applicant.
- (6) Application fees are not refundable except where the Development Code Administrator determines that an application was accepted in error, or the fee paid exceeds the amount due, in which case the amount of the overpayment will be refunded to the applicant.

(7) Subdivision Related Fees (Revised 1206.19 and 1212.03)

All application fees established in Section 1226.02(g) are due upon submission of the application. Additional fees related to the subdivision process are due as established below or otherwise approved as part of the preliminary plat.

- A.** The park impact fee required by Chapter 1214: Park Dedication, shall be paid, in full, at the time the final plat is submitted to the City for review. The fee shall be based on the total number of units contained in the final plat. The number of units in a multi-family dwelling shall be calculated based on the maximum number permitted by this code, unless the plat specifically limits the number of units to be constructed.
- B.** All required engineering review fees shall be paid, in full, at the time the final plat is submitted to City Council.
- C.** Fees for inspections made during and upon completion of all public improvements for subdivisions shall be paid, in full, at the time the final plat is submitted to City Council. If the applicant chooses to submit a financial guarantee in lieu of completion of improvements prior to submission of the final plat, fees shall be paid prior to the City accepting any improvements.

(h) Public Notification for Public Meetings

Applications for development approval that require public meetings shall, at a minimum, comply with Chapter 208 (Public Meetings) of the City of Middletown Code of Ordinances and all applicable State requirements.

(i) Public Notification for Public Hearings

- (1)** Applications for development approval that require public hearings shall comply with all applicable State requirements and the public meeting notice requirements established in Section 1226.02(h), above.
- (2)** The Development Code Administrator shall be responsible for providing the published and written notice as required by this subsection.

(3) Content

Notices for public hearings, whether by publication or mail (written notice), shall, at a minimum:

- A.** Identify the address or location of the property subject to the application and the name and address of the applicant or the applicant's agent;
- B.** Indicate the date, time, and place of the public hearing;
- C.** Describe the land involved by street address or by the applicable county parcel identification number, and project area (size);
- D.** Describe the nature, scope, and purpose of the application or proposal;
- E.** Identify the location (e.g., the offices of the Development Code Administrator) where the public may view the application and related documents;

- F. Include a statement that the public may appear at the public hearing, be heard, and submit evidence and written comments with respect to the application; and
- G. Include a statement describing where written comments will be received prior to the scheduled hearing.

(4) Notice Requirements

Published and mailed notice for public hearings shall be provided as defined in [Table 1226-1](#), below.

TABLE 1226-1: NOTICE REQUIREMENTS		
DEVELOPMENT REVIEW PROCEDURE	PUBLISHED NOTICE	WRITTEN (MAILED) NOTICE
Code Text Amendment	Published notice required a minimum of 30 days before the initial public hearing of Planning Commission and City Council	No written notice is required for a text amendment.
Zoning Map Amendment and PD Preliminary Development Plan		For rezonings that include 10 or fewer properties owned by different property owners, written notice shall be sent to all owners of property within 200 feet from the boundary of all properties subject to the rezoning application. The notice shall be required a minimum of 14 days before the initial public hearing of Planning Commission and City Council.
Conditional Use	Published notice required a minimum of 10 days before a public hearing	Written notice to the applicant and all property owners contiguous and directly across the street or public right-of-way of the subject property shall be required a minimum of 10 days prior to the hearing.
Alternative Equivalent Review		
Variance		
Appeals		
Historic Designation (See Section 1212.02.)	Published notice required a minimum of 14 days before a public hearing	Written notice to the all property owners subject to the designation shall be required a minimum of 14 days prior to the hearing.

(5) Published Notice

- A. Published notice shall be provided in a newspaper of general circulation.
- B. The content and form of the published notice shall be consistent with the requirements of this section, Chapter 208 (Public Meetings) of the City of Middletown Code of Ordinances, and State law.

(6) Written (Mailed) Notice

- A. Written notification shall only be required for the initial public hearing for an application in front of the applicable review board. A continuation of the hearing shall not require additional written notice.
- B. Written notice shall be postmarked no later than number of days specified in [Table 1226-1](#) prior to the hearing date where the item will be considered.

(7) Constructive Notice

- A.** Minor defects in any notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with applicable notice requirements. Minor defects in notice shall be limited to errors in a legal description, typographical or grammatical errors, or errors of actual acreage that do not impede communication of the notice to affected parties. Failure of a party to receive written notice shall not invalidate subsequent action. In all cases, however, the requirements for the timing of the notice and for specifying the time, date, and place of a hearing shall be strictly construed. If questions arise at the hearing regarding the adequacy of notice, the decision-making body shall direct the department having responsibility for notification to make a formal finding as to whether there was substantial compliance with the notice requirements of this code, and such finding shall be made available to the decision-making body prior to final action on the request.
- B.** When the records of the City document the publication, mailing, and/or posting of notices as required by this chapter, it shall be presumed that notice of a public hearing was given as required by this section.

(j) Conduct of Public Hearing

(1) Rights of All Persons

Any person may appear at a public hearing and submit information or evidence, either individually or as a representative of a person or an organization. Each person who appears at a public hearing shall be identified, state his or her address, and if appearing on behalf of a person or organization, state the name and mailing address of the person or organization being represented.

(2) Continuance of a Public Hearing or Deferral of Application Review

- A.** An applicant may request that a review or decision-making body's consideration of an application at a public hearing be deferred by submitting a written request for deferral to the Development Code Administrator prior to the publication of notice as may be required by this code. The Development Code Administrator may grant such requests, in which case, the application will be considered at the next regularly scheduled meeting.
- B.** A request for deferral of consideration of an application received by the Development Code Administrator after publication of notice of the public hearing as required by this code shall be considered as a request for a continuance of the public hearing, and may only be granted by the review or decision-making body.
- C.** The review or decision-making body conducting the public hearing may, on its own motion or at the request of the applicant, continue the public hearing to a fixed date, time, and place.

(k) Withdrawal of Application

Any request for withdrawal of an application shall be submitted in writing to the Development Code Administrator prior to action by the review or decision-making body.

- (1) The Development Code Administrator shall approve a request for withdrawal of an application if it has been submitted prior to publication of notice for the public hearing on the application in accordance with this code.
- (2) If the request for withdrawal of an application is submitted after publication of notice for the public hearing in accordance with this code, the request for withdrawal shall be placed on the public hearing agenda and acted upon by the review or decision-making body.
- (3) In all cases where the applicant has requested the withdrawal of an application, the application fee paid shall not be refunded.

(l) Examination and Copying of Application and Other Document

Documents and/or records may be inspected and/or copied as provided for by State law.

(m) Effect of any Approvals

- (1) The issuance of any approval or permit under this code shall authorize only the particular development, alteration, construction, or use approved in the subject application.
- (2) All approvals shall run with the land or use and shall not be affected by change in ownership.

(n) Amendments or Modifications of Approvals

Any approval may be amended, extended or modified only in accordance with the procedures and standards established for its original approval unless the Development Code Administrator determines that the request amendment, extension, or modification, is minor in nature and does not substantively change the approval and is in compliance with this code.

(o) Subsequent Development

- (1) Development authorized by any approval under this section and this code shall not be carried out until the applicant has secured all other approvals required by this code or any other applicable provisions of the City, or other agencies having jurisdiction over the development.
- (2) The granting of any approval or permit shall not guarantee the approval of any other required permit or application.
- (3) The City shall not be responsible for reviewing the application for compliance with any permits, certificates, or other approvals that may be required by the county, State, or other agencies having jurisdiction.

(p) Computation of Time

- (1)** In computing any period of time prescribed or allowed by this code, the date of the application, act, decision, or event, from which the designated period of time begins shall not be included. The last date of the period of time to be computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which case the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday as observed by the City of Middletown where the City administrative offices are closed for the entire day.
- (2)** When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation (i.e., business days and not calendar days).
- (3)** When the City offices are closed to the public for the entire day which constitutes the last day of the period of time, then such application, act, decision, or event may be performed on the next succeeding day which is not a Saturday, a Sunday, or a legal holiday observed by the City of Middletown in which the City administrative offices are closed for the entire day.

1226.03 CODE TEXT AND MAP AMENDMENTS

(a) Purpose

The purpose of the code text and zoning map amendment procedure is to provide a process for amending the zoning map and text of this code.

(b) Applicability

This section shall apply to requests to amend the text of this zoning code or amend the Official Zoning Map of the City of Middletown, Ohio, hereafter referred to as the "zoning map."

(c) Initiation

- (1)** For a zoning map amendment of a specific property, any person who has authority to file an application (See Section [1226.02\(a\)](#).) for such property may initiate an amendment by filing an application with the Development Code Administrator.
- (2)** City Council may initiate a code text or map amendment by referring a recommendation on an amendment to the Planning Commission by adopting a motion to make such an amendment.
- (3)** The Planning Commission may initiate a code text or map amendment by adopting a motion to make such amendment.

(d) Code Text or Map Amendment Review Procedure (Revised Chapter 1284)

The review procedure for a code text or map amendment shall be as follows:

- (1) Step 1 – Application**
 - A. For amendments that are not initiated by the Planning Commission or City Council, the applicant shall submit an application in accordance with Section [1226.02](#), and with the provisions of this section.
 - B. Amendments initiated by City Council shall be referred to the Planning Commission for review.

- (2) Step 2 – Staff Review and Staff Report**
 - A. Upon determination that a text or zoning map amendment application is complete, the Development Code Administrator shall schedule the review of the application at the next available Planning Commission meeting.
 - B. Prior to the Planning Commission hearing for the text or map amendment, the Development Code Administrator shall review the application and prepare a staff report.

- (3) Step 3 – Planning Commission Review and Recommendation**
 - A. The Planning Commission shall hold a public hearing on the code text or map amendment at its next regularly scheduled meeting or at a special meeting after the application is determined to be complete, subject to the submittal deadlines established by the Development Code Administrator.
 - B. Notification of the public hearing shall be provided in accordance with Section [1226.02\(i\)](#).
 - C. In reviewing the application, the Planning Commission shall at a minimum, consider the staff report from the Development Code Administrator and the review criteria of this section.
 - D. Within a reasonable amount of time from the close of the public hearing, the Planning Commission shall make a recommendation to City Council on the application. In making its recommendation, the Planning Commission may recommend approval, approval with some modification, or denial of the application.

- (4) Step 4 – City Council Review and Decision**
 - A. Following receipt of the recommendation from the Planning Commission (Step 4), City Council shall set a time for a public hearing on the proposed amendment.
 - B. Notification of the public hearing shall be provided in accordance with Section [1226.02\(i\)](#).
 - C. City Council shall review a text or zoning map amendment application during a public hearing. In reviewing the application, City Council shall at a minimum, consider the staff report from the Development Code Administrator, recommendation from Planning Commission, and the review criteria of this section.

- D. City Council shall adopt, adopt with some modification, or deny the recommendation of the Planning Commission. City Council shall not alter or make a decision that varies from the Planning Commission without a concurring vote of a minimum of four members of City Council.
- E. The effective date of any amendment shall be 30 days following final action by City Council unless subject to a referendum in accordance with the Ohio Revised Code.

(e) Review Criteria (New)

Recommendations and decisions on code text or map amendment applications shall be based on consideration of the following review criteria. Not all criteria may be applicable in each case, and each case shall be determined on its own facts.

- (1) The proposed amendment is consistent with the master plan, other adopted City plans, and the stated purposes of this code;
- (2) The proposed amendment is necessary or desirable because of changing conditions, new planning concepts, or other social or economic conditions;
- (3) The proposed amendment will promote the public health, safety, and general welfare;
- (4) The proposed amendment, if amending the zoning map, is consistent with the stated purpose of the proposed zoning district;
- (5) The proposed amendment is not likely to result in significant adverse impacts upon the natural environment, including air, water, noise, storm water management, wildlife, and vegetation, or such impacts will be substantially mitigated; and/or
- (6) The proposed amendment is not likely to result in significant adverse impacts upon other property in the vicinity of the subject lot.

1226.04 PLANNED DEVELOPMENT DISTRICT REVIEW (REVISED 1266.03)

(a) Purpose

The purpose of the planned unit development procedure is to provide a special review process for developments that are subject to Section [1204.06\(b\)\(16\)](#) of this code.

(b) Applicability

This section shall apply to all applications for the creation of a Planned Development District or modification of a Planned Use Modification District that was approved prior to the effective date of this code.

(c) Planned Development Review Procedure

The review procedure for planned unit development shall be as follows:

(1) Step 1 – Application (Preliminary Development Plan and Zoning Map Amendment)

The applicant shall submit an application in accordance with Section [1226.02](#), and with the provisions of this section.

(2) Step 2 – Staff Review and Staff Report

- A.** Upon determination that a planned development application and related preliminary development plan is complete, the Development Code Administrator shall schedule the review of the application at the next available Planning Commission meeting.
- B.** Prior to the Planning Commission hearing for the PD preliminary development plan and zoning amendment, the Development Code Administrator shall review the application and prepare a staff report.

(3) Step 3 – PD Preliminary Development Plan and Zoning Map Amendment

- A.** The PD preliminary development plan approval procedure involves a zoning map amendment to rezone the subject property to a PD District with an approved PD preliminary development plan.
- B.** The procedure for this stage shall comply with the requirements of Section [1226.03](#).
- C.** The preliminary PD plan shall be reviewed as part of the zoning map amendment. Upon approval of the zoning map amendment and preliminary PD plan, the zoning map shall be revised to show the PD District on the applicable property.
- D.** The applicant may only proceed with the PD final development plan approval (Step 4) after the PD zoning map amendment becomes effective.

(4) Step 5 – PD Final Development Plan Approval

- A.** Within one year after the approval of the PD preliminary development plan, the applicant shall file with the Development Code Administrator a PD final development plan for the entire development, or when submission in stages was authorized by the Planning Commission during the PD preliminary development plan review (Step 4), for the first phase of the development. If more than one year passes from the date of approval of the PD preliminary development plan and the PD final development plan has not been submitted for approval or a request for an extension not to exceed 12 months has been filed with Planning Commission, the PD preliminary development plan shall be deemed expired and the applicant will have to resubmit such plan. In no case shall PD preliminary development plan be valid for more than two years.

- B.** The PD final development plan shall be sufficiently detailed to indicate fully the ultimate operation and appearance of the development. Copies of legal documents required by the Planning Commission for the dedication or reservation of public facilities, or for the creation of a homeowners' association shall also be submitted.
- C.** Upon receipt of the PD final development plan, the plan shall be submitted to the City Engineer for review and approval of plans regarding water, sewerage and drainage, and street construction drawings.
- D.** The Planning Commission shall review the PD final development plan at a public meeting to determine whether it conforms to all substantial respects to the previously approved PD preliminary development plan and to all other applicable standards of this code.
 - i.** The Planning Commission may approve, approve with modifications, or deny the PD final development plan.
 - ii.** In its decision, the Planning Commission may impose such conditions of approval as are in its judgment necessary to insure conformity to the applicable criteria and standards. In so doing, the Planning Commission may permit the applicant to revise the plan and resubmit it as a PD final development plan within 60 days of such action.

(d) Review Criteria

(1) Review Criteria for the PD Preliminary Development Plan and Zoning Map Amendment

The following criteria shall serve as conditions that should generally be satisfied before the approval of the PD preliminary development plan and zoning map amendment:

- A.** The proposed development is consistent with the master plan, other adopted City plans, and the stated purposes of this code and Section [1204.06\(b\)\(16\)](#);
- B.** The proposed development is necessary or desirable because of changing conditions, new planning concepts, or other social or economic conditions;
- C.** The proposed development will not be detrimental to present and potential surrounding uses, but will have a beneficial effect which could not be achieved as well under other zoning districts;
- D.** The proposed development will promote the public health, safety, and general welfare;
- E.** The proposed development is not likely to result in significant adverse impacts upon the natural environment, including air, water, noise, storm water management, wildlife, and vegetation, or such impacts will be substantially mitigated; and
- F.** The preliminary development plan has been transmitted to all other agencies and departments charged with responsibility of review.

(2) Review Criteria for the PD Final Development Plan

The following criteria shall serve as conditions that should generally be satisfied before the approval of the PD final development plan:

- A.** Appropriate arrangements with the applicant have been made which will ensure the reservation of common greenspace as indicated on the PD preliminary development plan and PD final development plan.
- B.** Appropriate agreements with the applicant have been made to ensure the proper completion of public improvements in compliance with [Chapter 1222: Subdivision Design](#);
- C.** The proposed PD final development plan for the individual section(s) of the overall PD is consistent in contents (building location, land uses, densities and intensities, yard requirements, and area and frontage requirements) with the approved PD preliminary development plan;
- D.** The minimum common greenspace area(s) have been designated and shall be duly transferred to a legally established homeowner's association or has been dedicated to the City or another public or quasi-public agency.
- E.** Each individual phase of the development can exist as an independent unit that is capable of creating an environment of sustained desirability and stability, or that adequate assurance will be provided that such objective can be obtained;
- F.** That any part of the planned development not used for structures, parking and loading areas, or streets, shall be landscaped or otherwise improved; or if approved by the Planning Commission, left in its natural state;
- G.** That any exception from the design standards provided in the PD preliminary development plan is warranted by the design and amenities incorporated in the detailed PD final development plan;
- H.** That the internal streets and thoroughfares proposed are suitable and adequate to accommodate the anticipated traffic within and through the development; and
- I.** The PD final development plan has been transmitted to all other agencies and departments charged with responsibility of review.

(e) Time Limit

- (1)** Any PD final development plan shall be valid for a period of two years after the date of approval by the City Council. If no development has begun (development being defined as the start of construction of the required public/private improvements as shown on the approved final development plan for one or more phases of the project) in the PD within two years from the date of approval, such approval shall lapse and be of no force and effect.

- (2) Two one-year extensions of the time limit set forth in subsection (1) hereof may be granted by the Planning Commission, provided that such extension is not in conflict with the most current master plan and that such extension is in the best interests of the entire community. The developer/owner shall apply for an extension and shall state the reason for the extension. The City Council shall be notified of all extensions granted.
- (3) If an approved PD shall lapse as provided in subsection (1) hereof, notice of such lapse shall be filed by the Planning Commission and forwarded to the City Council. The City Council may initiate a rezoning to a base zoning district in accordance with Section [1226.03](#).

(f) Changes to Approved Planned Developments

A planned development shall be constructed and completed in accordance with the approved PD final development plan and all supporting data. The PD final development plan and supporting data, together with all recorded amendments, shall be binding on the applicants, their successors, grantees and assignees, and shall limit and control the use of premises (including the internal use of buildings and structures) and the location of structures in the planned unit development as set forth therein.

(1) Major Change

- A.** Major changes to a PD generally require the prior approval of the Planning Commission and the City Council. The Development Code Administrator shall have the authority to determine if a proposed change is a major change. Such changes include, but are not limited to:
 - i. Expansion of the PD project beyond the original lot coverage;
 - ii. Removal or subtraction of land from the original lot coverage; and
 - iii. Proposed changes in the mix or combination of land uses.
- B.** Changes that require the approval of only the Planning Commission include, but are not limited to, the following:
 - i. Changes in the plans relative to the size and arrangement of buildings, the layout of streets or circulation patterns, the size, configuration and location of common open space, and changes in any approved elements of the PD that may affect adjacent property owners; and
 - ii. Amendments to the conditions that were attached to the original PD approval.

(2) Minor Changes

- A.** Minor changes are those proposed by the developer/owner which do not disturb or affect the basic design and approved preliminary development plan of the PD and which are essentially technical in nature, as determined by the Development Code Administrator.

- B. Examples of minor changes include, but are not limited to, change in the intensity of lighting, changes in the size and location of water and sewer lines within approved easements and changes in the location and number of fire hydrants.
- C. The Development Code Administrator shall notify the Planning Commission of all such approved minor changes.

1226.05 CONDITIONAL USE APPROVAL (REVISED 1278)

(a) Purpose

The purpose of a conditional use procedure is to allow consideration for certain uses that due to their unique and special nature relative to location, design, size, operations, circulation, and general impact on the community, need to be evaluated on an individual basis.

(b) Applicability

This section shall apply to all applications for establishment of a conditional use as may be identified in this code.

(c) Conditional Use Review Procedure

The review procedure for a conditional use review shall be as follows:

(1) Step 1 – Application

The applicant shall submit an application in accordance with Section [1226.02](#), and with the provisions of this section.

(2) Step 2 – Staff Review and Staff Report

- A. Upon determination that a conditional use application is complete, the Development Code Administrator shall refer the application to the Planning Commission.
- B. Prior to the Planning Commission hearing for the conditional use application, the Development Code Administrator shall review the application and prepare a staff report.

(3) Step 3 – Planning Commission Review and Decision

- A. The Planning Commission shall hold a public hearing on the conditional use application at its next regularly scheduled meeting or at a special meeting after the application is determined to be complete, subject to the submittal deadlines established by the Development Code Administrator.
- B. In reviewing the application, the Planning Commission shall at a minimum, consider the staff report from the Development Code Administrator and the review criteria of this section.
- C. Notification of the public meeting or hearing shall be provided in accordance with Section [1226.02\(h\)](#) or Section [1226.02\(i\)](#), as applicable.

- D. In making its decision, the Planning Commission may approve, approve with modifications or supplementary conditions, or deny the application.
- E. If approved, the Planning Commission shall direct the Development Code Administrator to issue a conditional use certificate listing any conditions specified by the Planning Commission in granting its approval.
- F. If approved, the applicant shall be required to submit revised plans to the Development Code Administrator that illustrate plans as approved by the Planning Commission. Only after such plans have been submitted may the applicant submit an application for a certificate of zoning compliance.

(d) Review Criteria (Revised 1244.08)

Decisions on a conditional use application shall be based on consideration of the following review criteria. All conditional uses shall be subject to review under the criteria of this section, as applicable, and may be subject to additional use-specific standards.

- (1) The proposed conditional use is established as an allowed conditional use in the applicable zoning district;
- (2) The proposed use is consistent with the spirit, purpose and intent of the master plan and the general purpose of this code;
- (3) The proposed use complies with any use-specific standards as may be established for the use;
- (4) Any building or structure constructed, reconstructed, or altered as part of a conditional use in a residential zoning district shall, to the maximum extent feasible, maintain the exterior appearance of residential buildings of the type otherwise permitted and shall have suitable landscaping, screening, and fencing wherever deemed necessary by the Planning Commission;
- (5) The proposed use will comply with all applicable development standards, except as specifically altered by the Planning Commission in the approved conditional use;
- (6) The proposed use will be harmonious with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area;
- (7) The proposed use will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors;
- (8) The circulation on and access to the property shall be so designed as not to create an interference with traffic on surrounding public thoroughfares;
- (9) The design of the buildings, structures, and site will not result in the destruction, loss or damage of a natural, scenic, or historic feature of major importance;

- (10) The proposed use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district; and
- (11) Wherever no specific areas, frontage, height, or setback requirements are specified in provision for a specific conditional uses, then such use shall be subject to the site development standards for the applicable zoning district.

(e) Additional Criteria and Conditions

- (1) The Planning Commission shall be authorized to waive or modify requirements that apply to the conditional use as may be necessary to achieve compatible development with adjacent land areas as well as in the interest of the community in general where the Planning Commission finds that such waiver or modification will further the protection of the general welfare, protect individual property rights, and ensure that the conditional use will meet the intent and purposes of this code.
- (2) The Planning Commission may also impose additional conditions, guarantees, and safeguards as it deems necessary to protect the general welfare and individual property rights, and to ensure that the conditional use will meet the intent and purposes of this code.

(f) Revocation of a Conditional Use Approval

Planning Commission may revoke a conditional use approval after holding a hearing if it is determined that the terms and conditions of the conditional use approval have not been or are not presently being met.

(g) Time Limit

- (1) A conditional use permit shall be deemed to authorize only one particular conditional use and said permit shall automatically expire if, for any reason, the conditional use shall cease for more than one year.
- (2) The applicant shall submit a completed application for a certificate of zoning compliance within one year of the date the conditional use permit was issued or the approval shall expire.
- (3) Upon expiration of a conditional use permit approval, a new application, including all applicable fees, shall be required before a conditional use application will be reviewed.
- (4) Upon written request, one extension of six months may be granted by the Development Code Administrator if the applicant can show good cause for a delay.
- (5) As part of the conditional use approval, the Planning Commission may authorize alternative time limits for issuing a certificate of zoning compliance based on the scale of the proposed development.

(h) Appeals

Any person or entity claiming to be injured or aggrieved by any final action of the Planning Commission shall have the right to appeal the decision to the BZA as established in Section [1226.13](#).

1226.06 MINOR SUBDIVISIONS (NEW)

(a) Purpose

The purpose of the minor subdivision process is to allow for small subdivisions of land, consolidation of lots, or transfer of a portion of a lot to an adjacent lot where there will not be the creation of a new street, dedication of right-of-way, or a need for any public improvements.

(b) Applicability

- (1)** For the purposes of these regulations, a minor subdivision is a lot split, lot consolidation, or transfer of land between adjacent property owners that complies with all of the following requirements:
 - A.** The subdivision shall not result in or create more than five lots, including the remainder of the original lot;
 - B.** The subdivision shall be in compliance with all applicable site development standards in this code or with any approved variance from such standards;
 - C.** All lots resulting from the minor subdivision shall have frontage and access on an existing street and shall not require the construction, expansion, or improvement of any street;
 - D.** The subdivision shall not require any public improvements or the dedication of rights-of-way;
 - E.** The property has been surveyed and a survey sheet or record plan, in the form provided for in this code, and a full legal description of the changes resulting from the split, are submitted with the application; and
 - F.** No landlocking of lots shall occur as a result of the minor subdivision.
- (2)** A minor subdivision also includes the recombination of land, consolidation of lots, transfer of property from one lot to an adjacent lot, and for the dedication of additional land for the widening of existing streets, where no new lots are created.
- (3)** Any subdivision of land within a previously platted subdivision which results in six or more additional lots shall adhere to the procedures for an amendment to a major subdivision, as applicable, and as set forth in Section [1226.07](#).

(c) Sale of Land in Subdivisions; Start of Construction

- (1)** No owner, or authorized agent, of any land located within a subdivision shall transfer, sell, agree to sell or negotiate to sell any land by reference to, by exhibition of, or by the use of, a plan or plat of a subdivision, nor proceed with any construction work before such plan or plat has been approved and recorded in the manner prescribed in these regulations. Any sale or transfer contrary to the provisions of this section is void. The description of such lot by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring shall not exempt the transaction from the provisions of these regulations.
- (2)** The Development Code Administrator shall not issue certificates of zoning compliance for any structure or activity on a lot in a subdivision for which a plat has not been approved and recorded in the manner prescribed in these regulations.

(d) Minor Subdivision Review Procedure

The review procedure for a minor subdivision shall be as follows:

(1) Step 1 – Application

- A.** The applicant shall submit an application in accordance with Section [1226.02](#).
- B.** The application shall include a deed or other instrument of conveyance in compliance containing an accurate and current legal description based on a boundary survey, of each proposed new lot.
- C.** If the minor subdivision involves the transfer of land area from one lot to an adjacent lot, both property owners shall be required to authorize the application and deeds or other instruments of conveyance shall be submitted for both lots.

(2) Step 2 – Review and Comment by Applicable Agencies

- A.** Upon determination that the application for a minor subdivision is complete, the Development Code Administrator may transmit copies of the application for review by applicable agencies including, but not limited to, the City Engineer and any other agencies having authority over streets, water, sewer, gas, or other utilities and other public improvements.
- B.** Such agencies may supply comments, recommendations, and approvals as applicable, to the Development Code Administrator for consideration prior to the Development Code Administrator's decision (Step 3).

(3) Step 3 – Review and Decision by the Development Code Administrator

- A.** Within 14 days of the determination that the application (Step 1) is complete, the Development Code Administrator shall review the application and approve or deny the application for a minor subdivision based on the review criteria established in this section.

- B.** In reviewing the minor subdivision, the Development Code Administrator, on recommendation of the City Engineer or other agencies having authority over streets, water, sewer, gas, or other utilities and other public improvements, may require the addition of easements and/or setbacks as part of a transfer of land area between two lots.
- C.** If the Development Code Administrator denies an application for a minor subdivision, the Development Code Administrator shall provide the applicant with written finding for the denial.
- D.** If the application is approved, the Development Code Administrator shall be required to sign the minor subdivision/plat.
- E. Authority to Forward to the Planning Commission**
 - i. The Development Code Administrator shall have the authority to forward the minor subdivision application to the Planning Commission for review and final action if the Development Code Administrator determines that the subdivision's complexity, projected impacts, or proximity to conflicting land uses merit such action.
 - ii. At their next regularly scheduled meeting, the Planning Commission shall review the minor subdivision and make a final decision to either approve, approve with conditions, or deny the application based on the review criteria for minor subdivisions.

(e) Review Criteria

In order to approve a minor subdivision, the Development Code Administrator shall determine the following:

- (1)** That the minor subdivision complies with all applicable provisions of this code;
- (2)** That the minor subdivision complies with all other applicable regulations and plans of the City; and
- (3)** That the applicable review agencies have no objections that cannot be resolved by the applicant.

(f) Recording

- (1)** The Development Code Administrator shall sign and date the minor subdivision/plat.
- (2)** The subdivider shall then be responsible for submitting the signed conveyance with the applicable county's auditor office for the transfer of property and to applicable county's recorder office for the recording of the lots as legal lots of record and providing a copy of said minor subdivision/plat to the Development Code Administrator after recording.²¹

²¹ We are working with the counties to find out how best to get word back to the City that the minor subdivision has been official recorded so the certificates of zoning compliance can be issued.

(g) Administrative Waivers and Variances

If the proposed subdivision requires a deviation from the minimum site development standards (e.g., lot area, lot width, etc.) or other standards mandated by this code in Section [1204.09](#), the applicant will be required to apply for and received all the necessary variance or administrative waiver approvals, as established in this chapter, prior to approval of the minor subdivision.

(h) Time Limit

The minor subdivision approval shall expire one year after the Development Code Administrator signs and dates the minor subdivision unless the minor subdivision is recorded in the office with the applicable county's recorder office during said period.

(i) Appeals

Any person or entity claiming to be injured or aggrieved by any final action of the Development Code Administrator shall have the right to appeal the decision to the BZA as established in Section [1226.13](#).

1226.07 MAJOR SUBDIVISIONS (NEW)

(a) Purpose

The purpose of the major subdivision process is to provide a method of review for any subdivision that exceeds the scope of a minor subdivision and which includes multiple lots, the creation or expansion of new streets, and/or the installation of public improvements.

(b) Applicability

Any subdivision of land or replat of an existing subdivision that does not meet the applicability requirements of a minor subdivision in Section [1226.06\(b\)](#) shall be subject to the requirements of this section.

(c) Sale of Land in Subdivisions; Start of Construction

(1) No owner, or authorized agent, of any land located within a subdivision shall transfer, sell, agree to sell or negotiate to sell any land by reference to, by exhibition of, or by the use of, a plan or plat of a subdivision, nor proceed with any construction work before such plan or plat has been approved and recorded in the manner prescribed in these regulations. Any sale or transfer contrary to the provisions of this section is void. The description of such lot by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring shall not exempt the transaction from the provisions of these regulations.

(2) The Development Code Administrator shall not issue certificates of zoning compliance for any structure or activity on a lot in a subdivision for which a plat has not been approved and recorded in the manner prescribed in these regulations.

(d) Major Subdivision Review Procedure

(1) Step 1 – Application and Filing of the Preliminary Plat

- A.** The applicant shall submit an application along with a preliminary plat in accordance with Section [1226.02](#).
- B.** The preliminary plat shall be prepared, signed, and sealed by an engineer or surveyor who is qualified and registered in the State of Ohio.
- C.** Upon determination by the Development Code Administrator that the application is complete, the preliminary plat shall be accepted as being officially filed.

(2) Step 2 – Staff Review and Staff Report on the Preliminary Plat

- A.** Upon determination that the application for a major subdivision is complete, the Development Code Administrator shall transmit copies of the application for review by applicable agencies including, but not limited to, the City Engineer, City Manager, Middletown Fire Department, Middletown Police Department, agencies having jurisdiction for water and/or sanitary sewer, or other agencies the Development Code Administrator deems appropriate.
- B.** Such agencies shall supply comments and recommendations to the Development Code Administrator prior to the regularly scheduled Planning Commission meeting where the preliminary plat will be reviewed.
- C.** Prior to the Planning Commission meeting where the preliminary plat is scheduled for review, the Development Code Administrator shall review the preliminary plat and prepare a staff report.

(3) Step 3 – Review and Decision on the Preliminary Plat by the Planning Commission

- A.** The Planning Commission shall hold a public meeting to review and decide on the preliminary plat. The Planning Commission shall approve, approve with conditions, or deny the preliminary plat. The Planning Commission may also continue the meeting if questions regarding the plat are not satisfactorily addressed by the applicant.
- B.** If the Planning Commission denies the preliminary plat, the applicant shall not move forward in the review process until a preliminary plat is approved by the Planning Commission.
- C.** In the event the Planning Commission denies the preliminary plat or approves with conditions, the City staff, on behalf of the Planning Commission shall provide the subdivider with a statement in writing setting forth the reasons for the denial or the conditions of approval.
- D.** Approval of the preliminary plat by the Planning Commission does not constitute approval of the subdivision, but is merely an authorization to proceed with the preparation of the final plat and construction drawings.

(4) Step 4 – Submission and Review of Construction Drawings

- A.** The applicant shall submit the construction drawings and specifications for the subdivision or applicable phase in accordance with [Chapter 1222: Subdivision Design](#) and with the provisions of this section. Construction drawings shall be submitted to the City Engineer.
- B.** In cases where the applicant proposes to develop the subdivision in phases, the construction drawings shall be submitted for each individual phase.
- C.** The applicant shall submit all necessary construction drawings for review within one year of the decision on the preliminary plat (if a preliminary plat was submitted) unless an alternative schedule is approved as part of the preliminary plat approval or the subdivider can show just cause for extending the deadline. For phased subdivisions, the deadline shall apply to the first phase of the subdivision. Failure to submit the construction drawings within this time frame shall void the preliminary plat approval and the subdivider will be required to submit a new application in accordance with these regulations.
- D.** If the applicant proposes to provide a financial guarantee for the public improvements in-lieu of installing all public improvements prior to approval of the final plat, the applicant shall be required to provide all information required as part of [Section 1222.02\(f\)](#).
- E.** Upon determination by the City Engineer that the final plat has been properly submitted, the final plat shall be accepted as being filed.
- F.** The construction drawings shall be prepared, signed, and sealed by an engineer or surveyor who is qualified and registered in the State of Ohio.
- G.** The City Engineer shall review the construction drawings and make a decision to approve, approve with conditions, or deny the construction drawings. In reviewing the drawings, the City Engineer may seek input from any other agency having jurisdiction over public improvements.
- H.** Prior to starting any of the work covered by the construction drawings approved as set out in this section, arrangements shall have been made to provide for inspection of the work which are sufficient, in the opinion of the City Engineer, to insure compliance with the plan and specifications as approved. The signature of the City Engineer on the title sheet of the plans shall constitute approval of the construction plans. Construction activities may commence upon receipt of written notification from the City Engineer to proceed, to be issued after a preconstruction meeting of the applicant's contractor and the City Engineer.

I. Completion of Improvements

- i. Applicants shall have the choice to construct all public improvements prior to the approval of the final plat, without a financial guarantee, but such public improvements must be completed and then inspected and approved by the City Engineer before the City can approve the final plat. The improvements shall be constructed within a reasonable time as determined by the City Engineer, but not to exceed two years.
 - ii. All required subdivision improvements shall be maintained in a satisfactory condition by the subdivider during any interim period between their construction and final approval and acceptance of the subdivision by the City. See Section [1222.02\(f\)](#).
 - iii. If the applicant requests approval of a final plat prior to installation of the public improvements, the applicant shall be required to provide a financial guarantee in accordance with the regulations of this code at the time the final plat is submitted for review.
 - iv. The only exception shall be the completion of sidewalks which shall be completed in accordance with Section [1222.02\(a\)](#).
- J.** After completion of all improvements, except for the final course of asphalt, the Engineering Division will perform a pre-final inspection at the request of the applicant. The construction of sidewalks throughout the subdivision is not required prior to the pre-final inspection.

(5) Step 5 – Submission of the Final Plat

- A.** The applicant shall submit the final plat in accordance with Section [1226.02](#) and with the provisions of this section. The final plat shall be submitted to the Development Code Administrator.
- B.** In cases where the applicant proposes to develop the subdivision in phases, the final plat shall be submitted for each individual phase.
- C.** If a preliminary plat has been previously approved, the final plat shall have incorporated all changes in the preliminary plat approval.
- D.** The applicant shall submit a final plat for review within one year of the decision on the preliminary plat (if a preliminary plat was submitted) unless an alternative schedule is approved as part of the preliminary plat approval or the subdivider can show just cause for extending the deadline. For phased subdivisions, the deadline shall apply to the first phase of the subdivision. Failure to submit the final plat within this time frame shall void the preliminary plat approval and the subdivider will be required to submit a new application in accordance with these regulations.
- E.** Upon determination by the Development Code Administrator that the final plat has been properly submitted, the final plat shall be accepted as being filed.

- F. The final plat shall be prepared, signed, and sealed by an engineer or surveyor who is qualified and registered in the State of Ohio.

(6) Step 6 – Staff Review and Staff Report on the Final Plat

- A. Upon determination that the submission of the final plat is complete, the Development Code Administrator shall transmit copies of the application for review by applicable agencies including, but not limited to, the City Engineer, City Manager, Middletown Fire Department, Middletown Police Department, agencies having jurisdiction for water and/or sanitary sewer, or other agencies the Development Code Administrator deems appropriate.
- B. Such agencies shall supply comments and recommendations to the Development Code Administrator prior to the regularly scheduled Planning Commission meeting where the final plat and construction drawings will be subject to review.
- C. Prior to the Planning Commission meeting where the final plat is scheduled for review, the Development Code Administrator shall review the final plat and prepare a staff report.

(7) Step 7 – Review and Decision on the Final Plat by the Planning Commission

- A. The Planning Commission shall hold a public meeting to review and decide on the final plat. The Planning Commission shall approve, approve with conditions, or deny the final plat. The Planning Commission may also continue the meeting if questions regarding the plat are not satisfactorily addressed by the applicant.
- B. If the Planning Commission denies the final plat, the applicant shall not move forward in the review process until a final plat and the construction drawings are approved by the Planning Commission.
- C. In the event the Planning Commission denies the final plat or approves with conditions, the Planning Commission shall provide the subdivider with a statement in writing setting forth the reasons for the denial or the conditions of approval.
- D. The Planning Commission, with approval of the City Council, may give final approval on the final plat before all required public improvements are installed, provided that a construction agreement and a financial guarantee (See Section [1222.02\(f\)](#).) is provided and accepted by the City Council.
- E. Approval of the final plat by the Planning Commission shall not be an acceptance by the public of the offer of dedication of any street, public improvement, or other public ways or open space on the final plat unless they are accepted by the City Council in the form of the adoption of a motion.
- F. No final plat shall be recorded until all areas offered for parks, open space, or public rights-of-way been accepted by the City Council.

(8) Step 7 – Acceptance of Improvements by the City Council (Revised 1206.16)

The City, through action by the City Council, may accept public improvements made by a subdivider which meet the following conditions:

- A.** The public improvements have been made in accordance with the requirements of this code and City of Middletown *Manual of Design for Public Improvements*;
- B.** Installation of the public improvements has been completed in accordance with the applicable design standards;
- C.** All final inspections required by these regulations have been carried out by the City, and said public improvements were found to be acceptable by the City Engineer and the Development Code Administrator; and
- D.** After all public improvements have been installed to the satisfaction of the City, the applicant shall submit an original copy of as-built construction drawings (showing how all public improvements were actually installed) to the City Engineer in a format acceptable to the City.
- E.** After all public improvements have been installed in accordance with the construction agreement and these regulations and the subdivider has complied with this section, the City Council may, by motion, accept the public improvements for maintenance with any applicable guarantee.

(9) Step 8 – Disposition of Approved Plat and Recordation

- A.** After approval of the original drawing of the final plat by the Planning Commission, such final plat shall be transmitted to the City Council or other appropriate public body for necessary acceptance of all public dedications.
- B.** After approval of the final plat and after acceptance of all land to be dedicated on the plat by the City Council or other appropriate public bodies, the plat shall be filed with the applicable county's recorder office in a format set by the county. The plat shall be filed within 60 days after date of final approval and after all necessary certifications have been noted thereon. Failure to record the approved final plat within the 60 days shall result in the final plat being considered void.
- C.** Upon recording of the final plat with the applicable county, the applicant shall return one original tracing for the City's permanent records, the return of which shall demonstrate compliance with this section.

(e) Review Criteria

In order to approve a major subdivision, the Planning Commission and City Council, as appropriate, shall determine the following:

- (1)** That the major subdivision complies with all applicable provisions of this code;
- (2)** That the major subdivision does not conflict with other regulations, plans, or policies of the City;

- (3) That applicable review agencies have no objections that cannot be resolved by the applicant; and
- (4) That the final plat and construction drawings conform to the approved preliminary plat, if submitted and approved.

(f) Amendments and Withdrawal of Application

- (1) No changes, modifications, or revisions shall be made in any plat of a subdivision after final approval has been given by the Planning Commission and an endorsement is made in writing on the plat, unless the plat is first resubmitted and the changes approved by the Planning Commission.
- (2) If the applicant finds, in the process of preparing construction drawings, that the approved preliminary plat is not workable and changes in layout are required, the applicant shall inform the Development Code Administrator and City Engineer. The Development Code Administrator may require that a revised preliminary plat be submitted for re-approval following the review procedure in Section [1226.07\(d\)](#) above if the changes significantly alter the design of the subdivision. The Development Code Administrator and City Engineer are authorized to allow minor changes related to the public improvements or design where there is minimal impact to the overall design of the subdivision. This shall not give the Development Code Administrator or City Engineer the authority to vary the requirements of this code.
- (3) Before approval of the final plat, the submitted plat may be withdrawn or modified. If modified, the review process shall be repeated. If the application is withdrawn, any application fees shall be forfeited.
- (4) If during the course of construction, any changes or modifications are encountered that are not in conformance with the original approved construction drawings, the subdivider shall submit the modified construction drawings (which have now become as-built drawings) to the City Engineer, who, if in agreement with such modifications, shall affix their signature to these drawings indicating approval of the modifications.

(g) Subdivision Modifications (Revised 1206.17)

In any case where the subdivider can show that, by reason of exceptional topographic or other physical conditions, strict compliance with the provisions of [Chapter 1222: Subdivision Design](#) would cause practical difficulty or exceptional or undue hardship, the Planning Commission may relax the requirements to the extent deemed just and proper so as to relieve such difficulty or hardship, provided that such relief may be granted without detriment to the public good and without impairing the intent and purpose of this chapter or the desirable general development of the neighborhood and the community in accordance with the master plan.

(1) Applicability

- A.** If the proposed subdivision requires a deviation from the minimum site development standards (e.g., lot area, lot width, etc.) or other standards identified in Section 1204.09, the applicant will be required to apply for and receive all the necessary variance (See Section 1226.10.) or administrative waiver (See Section 1226.11.) approvals prior to approval of any plat.
- B.** If the applicant seeks a modification of standards required by Chapter 1222: Subdivision Design, then the request for a modification shall be accomplished through the procedure outlined in this section.

(2) Consideration

A request for a subdivision modification shall be made simultaneously with the initial plat submitted to the Planning Commission.

(3) Review Criteria

The review criteria for a subdivision modification shall be the same as those for a variance as established in Section 1226.10(c)(3).

(4) Modification Review Timing

If the preliminary plat is denied or if the approval of the preliminary plat expires, so does the approval of the subdivision modification. Any future request for preliminary plat approval that includes the same modifications shall require a new review and decision on the request for modifications.

(h) Appeals

Any person or entity claiming to be injured or aggrieved by any final action of the Planning Commission has all the rights of appeal as set forth in R.C. Ch. 711 or any other applicable section of the Ohio Revised Code.

1226.08 CERTIFICATE OF APPROPRIATENESS (COA) (REVISED 1210.07-1210.08)

(a) Purpose

The purpose of the certificate of appropriateness (COA) is to provide a procedure by which to review construction, renovation, expansion, and demolition projects on designated historic buildings or within historic districts. In an effort to preserve the character of this area, the City has established reasonable development standards and design guidelines for buildings and structures within the district and this procedure allows for a comprehensive review of the activities against the adopted standards and guidelines.

(b) Applicability

- (1)** No person shall carry out any exterior alteration, restoration, reconstruction, demolition, new construction or moving of a historic landmark or property within a historic district, nor shall any person make any material change in appearance of such property, its light fixtures, signs, awnings, windows, siding, roof, doors, shutters, sidewalks, fences, walls, retaining walls, steps, paving, or other exterior elements which affect the appearance and cohesiveness of the historic landmark or historic district, without first obtaining a certificate of appropriateness from the Historic Commission or Development Code Administrator, as applicable. No permits for zoning, building or demolition shall be issued without first obtaining a certificate of appropriateness.
- (2)** Site improvements such as the establishment of a parking lot or structure, landscaping, or other site work shall also be subject to this section unless otherwise waived by the Historic Commission.
- (3)** Projects and activities that are exempt from the design review process are the following:
 - A.** Ordinary repair and maintenance of a building or structure which does not change or alter the exterior appearance of the building or structure;
 - B.** Changes in occupancy not involving structural or exterior work;
 - C.** Interior electrical wiring, VAC or plumbing work on an existing structure;
 - D.** Work that is related to the replacement of existing materials and architectural elements with the same materials, colors, and designs; and
 - E.** Interior building renovations which will not alter and/or affect the exterior elevations and facade of the building or structure or any architectural features that are visible from the outside, unless otherwise prohibited in Section [1212.03](#).

(c) Determining the Significance of a Structure (New)

- (1)** When making decisions or recommendations about changes to structures subject to the COA requirement, the Historic Commission shall have the authority to make a determination of the historical or architectural significance of the structure based on this section.
- (2)** For structures that the Historic Commission finds are not historically or architecturally significant, the Historic Commission may relax or waive the standards or guidelines that apply to the project.
- (3)** If the Historic Commission finds that the structure is historically or architecturally significant, the standards and guidelines of this code may be fully applied at the discretion of the Historic Commission.
- (4)** The Historic Commission shall determine whether a structure or site is significant based on the structure's:

- A. Value as a reminder of the cultural, historical, or archaeological heritage of the City, State, or nation;
- B. Location as a site of a significant local, State, or national event;
- C. Identification with a person or persons who significantly contributed to the development of the City, State, or nation;
- D. Identification as the work of a master builder, designer, or architect whose individual work has influenced the City, State, or nation;
- E. Value as a building that is recognized for the quality of its architecture and that it retains sufficient elements showing such architectural significance;
- F. Example of an architectural style or period; and/or
- G. Character as a contributing element in the applicable historic district.

(d) Review Authority

- (1)** All applications for a COA that include any of the following work shall be subject to review by the Historic Commission :
- A. Construction, expansion, or demolition (partial or complete) of all new or existing buildings and structures;
 - B. Any application that includes a related alternative equivalent review application;
 - C. Exterior fences and walls; or
 - D. Any substantial change in building materials, building elements (e.g., doors, windows, architectural ornamentation, etc.) as may be determined by the Development Review Committee.

(e) COA Review Procedure by the Development Code Administrator

The review procedure for a COA subject to review by the Development Code Administrator shall be as follows:

(1) Step 1 - Application

The applicant shall submit an application in accordance with Section [1226.02](#) and with the provisions of this section.

(2) Step 2 - Development Code Administrator Review and Decision

- A. Within 30 days after the application is determined to be complete, the Development Code Administrator shall make a decision on the application. In making its decision, the Development Code Administrator may approve or deny the application. The Development Code Administrator shall also have the authority to forward the application to the Historic Commission for a full board review.

- B. Prior to making a decision on the application, the Development Code Administrator shall have the authority to provide comments to the applicant regarding necessary revisions to bring the application into full compliance. The application shall not be deemed formally approved until the applicant makes all of the appropriate changes and submits all necessary revised forms, maps, and documents to the Development Code Administrator through the Development Code Administrator.

(3) Step 3 - Certificate of Zoning Compliance Application

- A. Following the formal approval of the COA application, the Development Code Administrator shall issue a COA.
- B. Following issuance of a COA, the applicant may immediately submit an application for a certificate of zoning compliance.

(f) COA Review Procedure by the Historic Commission

(1) Step 1 - Application

- A. The applicant shall submit an application in accordance with Section [1226.02](#) and with the provisions of this section.
- B. In making application, the Development Code Administrator or the Historic Commission may request that the applicant provide exhibits, sketches, examples of materials, renderings, or other documentation to assist in their decision.

(2) Step 2 - Staff Review and Staff Report

- A. Upon determination that a COA application is complete, the Development Code Administrator shall refer the application to the Historic Commission.
- B. Prior to the Historic Commission meeting for the subject application, the Development Code Administrator shall review the application and present a staff report at the meeting when the application is reviewed.

(3) Step 3 – Historic Commission Review and Decision

- A. The Historic Commission shall review the application during a public meeting. In reviewing the application, the Historic Commission shall at a minimum, consider the staff report from the Development Code Administrator, the applicable standards, and the review criteria of this section.
- B. Notification of the public meeting shall be provided in accordance with Section [1226.02\(h\)](#).
- C. The Historic Commission may review any related alternative equivalent compliance applications simultaneously with the COA application.

- D. Within 45 days after the COA application is determined to be complete or is forwarded to them by the Development Code Administrator, the Historic Commission shall hold a public meeting to review the application and make a decision on the application. In making its decision, the Historic Commission may approve, approve with modifications, or deny the application.
- E. If the Historic Commission does not make a decision within 60 days of the date the application is determined to be complete, the COA shall be deemed approved unless the applicant authorizes an extension of the deadline.

(4) Step 4 - Certificate of Zoning Compliance Application

- A. Following the formal approval of the COA application, the Development Code Administrator shall issue a COA.
- B. Following issuance of a COA, the applicant may immediately submit an application for a certificate of zoning compliance.

(g) Review Criteria

Decisions on a COA application shall be based on consideration of the following criteria:

- (1) The proposed development is in compliance with all the requirements of this code and other related codes and ordinances enforced by the City;
- (2) Properties which contribute to the character of the historic district shall be retained, with their historic architectural features intact and altered as little as possible;
- (3) Any alteration of an existing property shall be compatible with its historic character, as well as with the surrounding district;
- (4) New construction shall be compatible with the district in which it is located;
- (5) The application demonstrates compliance with any historic guidelines or policies adopted by the Historic Commission that are applicable to the subject application;
- (6) In determining compatibility the Historic Commission shall consider the following:
 - A. The general design, character, and appropriateness to the property of the proposed alteration or new construction;
 - B. The scale of the proposed alteration or new construction in relation to the property itself, surrounding properties, and the neighborhood;
 - C. The texture, materials, and color and their relation to similar features of other properties in the neighborhood;
 - D. The visual compatibility with surrounding properties, including proportion of the properties façade, roof shape, and the rhythm of spacing of properties on streets, including setback; and
 - E. The importance of historic, architectural, or other features to the significance of the property.

- (7) The proposed development is in compliance with the applicable base zoning district and any applicable overlay districts; and
- (8) The proposed development meets all the requirements or conditions of any applicable development approvals (e.g., PD approvals, conditional use approvals, variance approvals, etc.).

(h) Time Limit

- (1) The applicant shall submit a completed application for a certificate of zoning compliance within one year of the date the COA was approved or the approval shall expire. The date of approval shall be the date the Development Code Administrator issues the COA.
- (2) Upon expiration of a COA, a new application, including all applicable fees, shall be required before a new application will be reviewed.
- (3) Upon written request, one extension of one year may be granted by the Development Code Administrator if the applicant can show good cause for a delay.
- (4) The Historic Commission may authorize alternative time limits for certificate of zoning compliance issuance based on the scale of the proposed development.

(i) Appeals

Any person or entity claiming to be injured or aggrieved by any final action of the Development Code Administrator or the Historic Commission shall have the right to appeal the decision to the BZA as established in Section [1226.13](#).

1226.09 ALTERNATIVE EQUIVALENT REVIEW (NEW)

(a) Purpose

Alternative equivalent review is a procedure that allows applicants to propose unique design options as an alternative to a development standard established in this code provided it meets or exceeds the intent of the design-related provisions of this code. It is not a variance, waiver or weakening of regulations; rather, this procedure permits a site-specific plan that is equal to or better than the strict application of a design standard specified in this code. Alternative equivalent compliance shall apply only to the specific site for which it is requested and does not establish a precedent for assured approval of other requests.

(b) Applicability

The alternative equivalent review procedure shall be available only for the following sections of this code:

- (1) Section [1208.04: Outdoor Lighting Standards](#);
- (2) [Chapter 1210: Architectural Standards](#);
- (3) [Chapter 1212: Historic Preservation](#);

- (4) [Chapter 1216: Landscaping and Buffering](#); and
- (5) [Chapter 1218: Parking, Access, and Mobility](#).

(c) Review Authority

- (1) A request for alternative equivalent review related to standards in [Chapter 1212: Historic Preservation](#) shall be made concurrently with a COA application and decided by the Historic Commission.
- (2) All other requests for alternative equivalent review shall be heard and decided by the Planning Commission.

(d) Alternative Equivalent Review Procedure

The review procedure for any alternative equivalent review application shall be as follows:

(1) Step 1 – Application

The applicant shall submit an application in accordance with Section [1226.02](#) and with the provisions of this section.

(2) Step 2 – Staff Review and Staff Report

- A. Upon determination that an alternative equivalent review application is complete, the Development Code Administrator shall refer the application to the applicable commission.
- B. Prior to the applicable commission's hearing for the alternative equivalent review application, the Development Code Administrator shall review the application and prepare a staff report.

(3) Step 3 – Commission Review and Decision

- A. The applicable commission shall consider the alternative equivalent review at its next regularly scheduled meeting or at a special meeting after the application is determined to be complete, subject to the submittal deadlines established by the Development Code Administrator.
- B. If the alternative equivalent review application is related to other applications such as a COA, conditional use, planned development, or other application subject to review by the same commission, both reviews may take place simultaneously.
- C. In reviewing the application, the applicable commission shall at a minimum, consider the staff report from the Development Code Administrator and the review criteria of this section.
- D. Notification of the public meeting or hearing, whichever is applicable, shall be provided in accordance with Section [1226.02\(h\)](#) or Section [1226.02\(i\)](#), as applicable.

- E.** The applicable commission shall make a decision on the application. In making its decision, the applicable commission may approve, approve with modifications or supplementary conditions, or deny the application.
- F.** If approved, any certificate of zoning compliance or other related applications shall demonstrate compliance with the alternative equivalent review approval.

(e) Review Criteria

Decisions on an alternative equivalent review application shall be based on consideration of the following criteria:

- (1)** That the proposed alternative achieves the intent of the subject design or development standard to the same or better degree than the subject standard;
- (2)** That the proposed alternative achieves the goals and policies of the master plan;
- (3)** That the proposed alternative results in benefits to the community that are equivalent to or better than compliance with the subject standard; and
- (4)** That the proposed alternative imposes no greater impacts on adjacent properties than would occur through compliance with the specific requirements of this code.

(f) Conditions

The applicable review board may impose conditions on an approval for alternative equivalent review provided such conditions are related to ensuring the performance of the alternative equivalent review to meet or exceed the subject standard. Such conditions may include financial guarantees, required timeframes, amendments or revisions to the proposal, or the ability to revoke an approval for alternative equivalent review.

(g) Decisions

Any decision on an alternative equivalent review application shall not be binding on the City related to future applications requesting an alternative to any of the applicable standards. Each case shall be review and decided upon based on the individual circumstances.

(h) Time Limit

- (1)** An approval of an alternative equivalent review application shall expire if the certificate of zoning compliance or COA to which it applies expires.
- (2)** Upon expiration of an alternative equivalent review approval, a new application, including all applicable fees, shall be required before a new application will be reviewed.

(i) Appeals

Any person or entity claiming to be injured or aggrieved by any final action of the Planning Commission or the Historic Commission shall have the right to appeal the decision to the BZA as established in Section [1226.13](#).

1226.10 VARIANCES

(a) Purpose

The purpose of a variance is to provide limited relief from the requirements of this code in those cases where strict application of a particular requirement will create a practical difficulty or unnecessary hardship prohibiting the use of land in a manner otherwise allowed under this code. It is not intended that a variance be granted merely to remove inconveniences or financial burdens that the requirements of this code may impose of property owners in general. Variances are intended to address extraordinary, exceptional, or unique situations that were not caused by the applicant's act or omission.

(b) Variance Review Procedure

The review procedure for variances shall be as follows:

(1) Step 1 – Application

The applicant shall submit an application in accordance with Section [1226.02](#) and with the provisions of this section.

(2) Step 2 – Staff Review and Staff Report

- A.** Upon determination that a variance application is complete, the Development Code Administrator shall refer the application to the BZA.
- B.** Prior to the BZA hearing for the variance application, the Development Code Administrator shall review the application and prepare a staff report.

(3) Step 3 – BZA Review and Decision

- A.** The BZA shall hold a public hearing on the variance application at its next regularly scheduled meeting or at a special meeting after the application is determined to be complete, subject to the submittal deadlines established by the Development Code Administrator.
- B.** The BZA shall review the variance application during a public hearing. In reviewing the application, the BZA shall at a minimum, consider the staff report from the Development Code Administrator and the review criteria of this section.
- C.** Notification of the hearing shall be provided in accordance with Section [1226.02\(i\)](#).
- D.** In making its decision, the BZA may approve, approve with modifications or supplementary conditions, or deny the application.

- E. In approving a variance, the BZA may impose conditions on the approval, the proposed use, and the premises to be developed or used pursuant to such approval as it determines are required to be ensure compliance with the standards of this section and the purpose of this code. Any violation of the conditions of approval shall be a violation of this code, subject to the enforcement and penalties of [Chapter 1228: Enforcement and Penalties](#).
- F. For use variances, an automatic condition to any approval shall be that should the existing structure be torn down or damaged beyond 50 percent of the market value as established by the applicable county auditor, the use variance shall expire.²²

(c) Review Criteria

- (1)** Where an applicant seeks a variance to any of the area or dimensional standards in this code, said applicant shall be required to supply evidence that demonstrates that the literal enforcement of this code will result in practical difficulty for an area/dimensional variance as defined in Section [1226.10\(c\)\(3\)](#) below.
- (2)** Where an applicant seeks a use variance that would allow for a use not otherwise permitted in the applicable zoning district, said applicant shall be required to supply evidence that demonstrates that the literal enforcement of this code will result in an unnecessary hardship as defined in Section [1226.10\(c\)\(4\)](#) below.

(3) Area and Dimensional Variance Review Criteria

- A.** The following factors shall be considered and weighed by the BZA to determine practical difficulty:
 - i. Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district; examples of such special conditions or circumstances are: exceptional irregularity, narrowness, shallowness or steepness of the lot, or adjacency to nonconforming and inharmonious uses, structures or conditions;
 - ii. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
 - iii. Whether the special conditions and circumstances are a direct result from the actions of the applicant, his or her agents, or prior property owners;

²² Use variances are usually only appropriate for the adaptive reuse of existing structures. A rezoning would allow for the elimination of the structure and construction of anything permitted in that district. A use variance recognizes the unique circumstance of existing building (e.g., an old school in a residential district) and allows for a unique use only while the building remains. This is a replacement for the current use adjustment procedure. The major difference is the stronger standards and the BZA will review instead of the Planning Commission.

- iv. Whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land or structures;
 - v. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;
 - vi. Whether the variance would adversely affect the delivery of governmental services such as water, sewer, electric, refuse pickup, or other vital services;
 - vii. Whether special conditions or circumstances exist as a result of actions of the owner;
 - viii. Whether the property owner's predicament can feasibly be obviated through some method other than a variance;
 - ix. Whether the spirit and intent behind the code requirement would be observed and substantial justice done by granting a variance; and/or
 - x. Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.
- B.** No single factor listed above may control, and not all factors may be applicable in each case. Each case shall be determined on its own facts.

(4) Use Variance Review Criteria²³

In order to grant a use variance, the BZA shall determine that strict compliance with the terms of this code will result in unnecessary hardship to the applicant. The applicant must demonstrate such hardship by clear and convincing evidence that all of the following criteria are satisfied:

- A.** The property cannot be put to any economically viable use under any of the permitted uses in the zoning district in which the property is located;
- B.** The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district;
- C.** The variance requested cannot otherwise be resolved by a zoning map amendment or a zoning map amendment is not the most beneficial approach;
- D.** The essential character of the neighborhood will not be substantially altered as a result of the variance;
- E.** There is an existing structure that cannot be reasonably used for a permitted use or a conditionally permitted use in the applicable zoning district;
- F.** The proposed use is listed in [Table 1204-3](#);
- G.** The hardship condition is not created by actions of the applicant;

²³ This will still allow for the possibility of a use variance but only under very strict criteria, including that there is an existing building on site.

- H. The granting of the variance will not adversely affect the rights of adjacent property owners or residents;
- I. The granting of the variance will not adversely affect the public health, safety or general welfare;
- J. The variance will be consistent with the general spirit and intent of this code;
- K. The requested use is permitted in another district in this code; and
- L. The variance sought is the minimum that will afford relief to the applicant.

(d) Time Limit

- (1) The applicant shall submit a completed application for a certificate of zoning compliance within one year of the date the variance was approved or the approval shall expire.
- (2) Upon expiration of a variance approval, a new application, including all applicable fees, shall be required before a new variance will be reviewed.
- (3) Where a variance applies to a structure, the variance approval shall expire if the structure is demolished or otherwise torn down unless the requirements of [Chapter 1224: Nonconformities](#) applies.

(e) Appeals

Any person or entity claiming to be injured or aggrieved by any final action of the BZA shall have the right to appeal the decision the court of common pleas as provided in ORC Chapters 2505 and 2506.

1226.11 ADMINISTRATIVE WAIVERS

(a) Purpose

This section sets out the procedures to follow when an applicant requests a very minor waiver to a certain area or dimensional requirement of this code.

(b) Applicability

- (1) The Development Code Administrator may grant administrative waivers for any area or dimensional regulation that does not exceed 10 percent of the applicable minimum or maximum regulation. Area and dimensional regulations include, but are not limited to, minimum front, side, and rear yard setbacks; maximum height of structures; maximum sign height; maximum sign area, etc.
- (2) An administrative waiver request regarding a minimum lot area or lot width requirement is prohibited.
- (3) The minimum number of parking spaces required may be reduced in accordance with [Section 1218.04\(b\)](#), without an administrative waiver.

- (4) The applicant shall be required to apply for a variance for any waiver request that exceeds 10 percent or other variations from the code that do not qualify for administrative waivers.

(c) Administrative Waiver Review Procedure

The review procedure for an administrative waiver shall be as follows:

(1) Step 1 - Application

The applicant shall submit an application in accordance with Section [1226.02](#) and with the provisions of this section.

(2) Step 2 – Development Code Administrator Review and Decision

- A. The Development Code Administrator shall review the administrative waiver application within 30 days after the application (Step 1) is determined to be complete.
- B. In making a decision on the administrative waiver, the Development Code Administrator may approve or deny the application.
- C. The Development Code Administrator may refer the administrative waiver to the BZA to request assistance in determining the reasonableness of an administrative waiver request.

(d) Review Criteria

Decisions on an administrative waiver shall be based on consideration of the following criteria:

- (1) The waiver will allow the proposed development to reflect the predominant development character of surrounding, similar uses and properties (e.g., similar setbacks, similar sign areas, etc.).
- (2) Special circumstances exist that make the precise compliance with the subject standards impractical or unreasonable;
- (3) The waiver request is minor in nature;
- (4) The waiver request does not substantially deviate from the development character of the surrounding properties; and
- (5) The waiver request does not deviate from the overall purpose of this code or the intent and objective of the original regulation.

(e) Time Limit

- (1) The applicant shall submit a completed application for a certificate of zoning compliance within one year of the date the administrative waiver was approved or the approval shall expire.
- (2) Upon expiration of an administrative waiver approval, a new application, including all applicable fees, shall be required before a new administrative waiver will be reviewed.

(f) Appeals

Any person or entity claiming to be injured or aggrieved by any final action of the Development Code Administrator shall have the option to seek a variance in accordance with the procedures in Section [1226.10](#) or the right to appeal the decision of the Development Code Administrator to the BZA as established in Section [1226.13](#).

1226.12 CERTIFICATE OF ZONING COMPLIANCE (REVISED 1280.03)

(a) Purpose

A certificate of zoning compliance shall be required in accordance with the provisions of this section in order to ensure that proposed development complies with the standards of this code, and to otherwise protect the public health, safety, and general welfare of the citizens of the City.

(b) Applicability

- (1)** No land shall be used and no permits for excavation or construction shall be issued by the Chief Building Official, other than alterations or remodeling not affecting the size, character or use of a structure, until a plan showing such intended use and construction of structures or alterations thereof has been submitted to the Development Code Administrator for their review, and a certificate of zoning compliance issued. Such certificate shall show that the proposed building or premises, or parts thereof, and the proposed use thereof, are in conformance with all provisions of this code.
- (2)** A change in tenancy or ownership of a residential dwelling unit shall be exempt from the certificate of zoning compliance requirement.
- (3)** A certificate of zoning compliance shall be required for the establishment of any temporary or accessory use as established in [Chapter 1206: Accessory and Temporary Use Regulations](#).
- (4)** Unless otherwise exempted in [Chapter 1220: Signage](#), signs shall require a certificate of zoning compliance.
- (5)** Certificates of zoning compliance shall be issued only in conformity with the provisions of this code unless the Development Code Administrator receives a written order from the BZA or Planning Commission providing for conditions or modifications of such compliance as may be permitted by this section and this code.
- (6)** Failure to obtain a certificate of zoning compliance shall be a violation of this code subject to the provisions of [Chapter 1228: Enforcement and Penalties](#).

- (7) The Development Code Administrator shall have the authority to develop separate application forms and permits or certificates for special purposes that are reviewed in the same manner as the certificate of zoning compliance. These special permits or certificates may include, but are not limited to, sign permits, temporary use permits, fence permits, etc. For the purposes of this code, such permits shall be considered a certificate of zoning compliance.

(c) Certificate of Zoning Compliance Review Procedure

The review procedure for a certificate of zoning compliance shall be as follows:

(1) Step 1 – Application

The applicant shall submit an application in accordance with Section [1226.02](#) and with the provisions of this section.

(2) Step 2 – Development Code Administrator Review and Decision

- A.** The Development Code Administrator may distribute the application to other staff members and other City departments to solicit comment on the certificate of zoning compliance application.
- B.** Within seven days after the application is determined to be complete, the Development Code Administrator shall make a decision on the application. In making its decision, the Development Code Administrator may approve or deny the application.
- C.** Prior to finalizing approval of the application, the Development Code Administrator shall have the authority to provide comments to the applicant regarding necessary revisions to bring the application into full compliance. The application shall not be deemed formally approved until the applicant makes all of the appropriate changes and submits all necessary revised forms, maps, and documents to the Development Code Administrator.

(d) Review Criteria

In order to approve any certificate of zoning compliance, the Development Code Administrator shall determine the following:

- (1)** The application complies with all applicable provisions of this code and the applicable zoning district;
- (2)** The application complies with all other applicable codes in the Middletown Code of Ordinances including, but not limited to, Chapter 1026 (Traffic Impact Study, Access Management, and Curb Cut Regulations); and
- (3)** The application complies with all approved plans, conditions, or other development approvals.

(e) Occupancy and Use of Property or Building (Revised 1280.05)

- (1)** No person shall use or occupy, or permit the use or occupancy of any building or premises or part thereof, hereafter created, erected, changed, converted or enlarged wholly or in part, in its use or structure until a certificate of occupancy has been issued by the Chief Building Official. Such certificate shall only be issued after the final construction inspection has been conducted and all water, sanitary, electrical and/or heating systems are determined by the Chief Building Official to be operable. A copy of the certificate of occupancy shall be forwarded to the Development Code Administrator upon issuance to the applicant.
- (2)** A temporary certificate of occupancy may be issued by the Chief Building Official for a period not exceeding 12 months during alterations, for partial occupancy of a building pending its completion, provided that such temporary certificate may require such conditions and safeguards as will protect the safety of the occupants and the public. In no case shall such a temporary certificate be issued for a new structure.

(f) Time Limit

- (1)** The applicant shall obtain an approved building permit within one year of the date the certificate of zoning compliance was approved or the approval shall be revoked. The date of approval shall be the date the Development Code Administrator provides a signed copy of the permit to the applicant.
- (2)** Time limits for permitted temporary uses and structures shall be as authorized in Section [1206.02](#). An approval of a certificate of zoning compliance for a temporary use shall include the approved start and end dates for the proposed temporary use.
- (3)** Upon written request, up to two extensions of six months may be granted by the Development Code Administrator if the applicant can show good cause for a delay.
- (4)** If a certificate of zoning compliance expires, a new application, including all applicable fees, shall be required before a new certificate of zoning compliance application will be reviewed.
- (5)** The above time limits shall not apply if alternative time limits that have been approved by the Development Code Administrator or Planning Commission in accordance with the applicable review procedure.

(g) Appeals

Any person or entity claiming to be injured or aggrieved by any final action of the Development Code Administrator shall have the right to appeal the decision to the BZA as established in Section [1226.13](#).

1226.13 APPEALS

(a) Purpose

This section sets out the procedures to follow when a person claims to have been aggrieved or affected by an administrative decision made in the administration or enforcement of this code.

(b) Applicability

- (1) An appeal may be made regarding any administrative decision made in the administration and enforcement of this code including administrative decisions by the Development Code Administrator, Planning Commission, Historic Commission, City Engineer, or other staff member authorized to make decisions under this code.
- (2) An appeal may not be made to the BZA when the Planning Commission is making a recommendation to City Council as part of a legislative action such as a code text or map amendment.

(c) Initiation

Appeals shall be initiated by the person aggrieved or affected by any order, decision, determination, or interpretation made by the authority having jurisdiction who is charged with the administration or enforcement of this code.

(d) Appeals Review Procedure

The review procedure for appeals shall be as follows:

(1) Step 1 – Submission of Appeal

Within 20 days of the administrative order, decision, determination, or interpretation, the person appealing the decision or their authorized agent shall submit all required information in accordance Section [1226.02](#).

(2) Step 2 – Forwarding of the Record to the BZA

Upon receiving the written appeal of an administrative decision or determination, the Development Code Administrator shall transmit the written appeal with all papers, documents, and other materials related to the appealed decision or determination to the BZA. This material shall constitute the record of the appeal.

(3) Step 3 – BZA Review and Decision

- A. The BZA shall hold a public hearing within a reasonable amount of time of the filing of the appeal.
- B. Notification of the public hearing shall be provided in accordance with Section [1226.02\(i\)](#).
- C. Any person affected by the appeal may appear at the public hearing and testify in person, or by attorney or agent.

- D.** In making its decision, the BZA may uphold, overturn, or modify the decision being appealed. The Development Code Administrator shall notify the appellant in writing of the decision of the Board.

(e) Review Criteria

A decision or determination shall not be reversed or modified unless there is competent, material, and substantial evidence in the record that the decision or determination fails to comply with either the procedural or substantive requirements of this code.

(f) Stay

A properly submitted appeal shall stay all administrative proceedings by the City in furtherance of the action appealed, unless the Development Code Administrator certifies to the BZA that a stay would cause imminent peril to life or property, in which case the administrative proceedings shall not be stayed unless a restraining order is granted by the BZA or by a court of competent jurisdiction, for good cause shown.

(g) Appeals of BZA Decisions

Any person or entity claiming to be injured or aggrieved by any final action of the BZA shall have the right to appeal the decision to the applicable court of common pleas as provided in ORC Chapters 2505 and 2506.

1226.14 INTERPRETATION OF THE CODE (NEW)

It is the intent of this code that all questions of interpretation related to the administration and enforcement of this code shall be first presented to the Development Code Administrator, and that such questions shall be presented to the BZA only on appeal from the decision of the Development Code Administrator. Such appeals shall be in accordance with Section [1226.13](#).