

**BOROUGH OF WEST CAPE MAY  
COUNTY OF CAPE MAY  
STATE OF NEW JERSEY**

**ORDINANCE NO. 428-09**

**ORDINANCE AMENDING WEST CAPE MAY CODE CHAPTER 27-2 (PURPOSE); CHAPTER 27-6 (DEFINITIONS); CHAPTER 27-7 (ESTABLISHMENT OF ZONING DISTRICTS); CHAPTER 27-15 (C-1 COMMERCIAL DISTRICT); CHAPTER 27-16 (C-2 COMMERCIAL DISTRICT); CHAPTER 27-17 (C-3 COMMERCIAL DISTRICT); CHAPTER 27-18 (P-PRESERVATION DISTRICT); CHAPTER 27-27.3 (PARKING REQUIREMENTS); CHAPTER 27-27.4 (SIGNS); CHAPTER 27-27.8 (BUFFERING); CHAPTER 27-27.14 (BULK REGULATIONS); CHAPTER 27-28 (DESIGN STANDARDS); AND ADDING CHAPTER 27-27.16 (OUTDOOR DINING STANDARDS); CHAPTER 27-30 (NON-CONFORMING USES, STRUCTURES AND LOTS); AND DELETING CHAPTER 27-27.12 (NON-CONFORMING USES)**

The proposed commercial regulations are supported by the goals set forth in New Jersey Municipal Land Use Law; the West Cape May Master Plan; and the West Cape May Business District Urban Design Plan (2008). West Cape May received Plan Endorsement by the New Jersey Office of Smart Growth in 2008. As a designated Town Center, the Borough's economic development plan requires redevelopment of its commercial district through revitalization and infill development. These zoning regulations support and encourage redevelopment through increased density, mixed use structures, affordable housing inclusionary zoning, appropriate permitted uses, and form-based zoning requirements. The overall goal is a thriving commercial district that attracts visitors, serves the needs of the residents, and provides jobs and housing.

Purposes stated in **MLUL**, to:

- Promote a desirable visual environment through creative development techniques and good civic design and arrangements.
- Prevent urban sprawl.
- Encourage more efficient use of the land.

Purposes stated in the **West Cape May Master Plan (2005)**, to

- Create a thriving commercial district with uses designed to support the existing tourist economy and provide business and employment opportunities to Borough residents.
- Encourage low-impact commercial development in the commercial zones, including development of galleries, shops, restaurants and other development which encourages the growth of a resort economy; provides employment opportunities to the citizens of the Borough; enhances the tax structure of the Borough and generally helps to commercialize (appropriate areas of) the Borough without disrupting the rural character of the community.

- Promote diversity in services and accommodations by maintaining a balance of small businesses, hotels and motels, guest homes and more creative accommodations and services along Sunset.
- Use Historic Preservation as a means by which small-scale, low impact commercial development can be promoted without disrupting the rural residential nature of the community.
- Encourage expansion of commercial use through the reuse of valuable historic buildings that do not disrupt the tranquility of the area.
- Create a “critical mass” of commercial properties in close proximity in order to sustain a successful commercial district.

Purposes identified by the public in June 2007, as stated in the **Business District Urban Design Plan (2008)**

- Maintain the quality of life that has attracted residents to move to West Cape May and is the reason they remain in the Borough.
- Retain or slightly increase the year-round population.
- Retain and encourage more year-round stores that serve the community (i.e. grocery store, book store, coffee shop), rather than allow West Cape May’s commercial economy to be dominated by businesses that cater almost exclusively to tourists.

## **27-2 PURPOSE. (add)**

- n. To create a walkable community.
- o. To create a vibrant mixed use commercial district where residents can live, work, shop, and dine.
- p. To provide a more viable opportunity for small businesses.

## **27-6 DEFINITIONS (new)**

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

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

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

*Bed and Breakfast, Guest house* shall mean overnight accommodations with or without a morning meal provided to guests for compensation, which is designed, intended and used for transient travelers and not for permanent residency.

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

*Guest House* – see Bed and Breakfast.

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

*Green Roof, Extensive* allows only for low level and low maintenance plantings and requires little to no additional structure.

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

*Hotel and motel* shall mean a dwelling having three (3) or more individual sleeping units and which is designed, intended and used for transient travelers and not for permanent residency.

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

*Personal and financial services establishments* shall mean any commercial establishment that provides services to customers, including, but not limited to banks, salons, day spas, fitness centers, dry cleaners and self-service Laundromats.

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

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

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

*Shopping Center* – Two or more commercial establishments on one property, managed as a unit, and providing retail goods and personal services. (also add definition to general def. section)

~~*Sign* shall mean any device for unusual communication that is used or designed for the purpose of bringing a subject to the attention of the public. Any sign shall be considered as including all sides thereof as well as the enclosure therefore if not attached directly to the wall of a building.~~ any object, device, display, or structure, or part thereof, situated outdoors or indoors, that is used to advertise, identify, display, direct, or attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination, or projected images. Excluded are national and state flags, window displays (but not window signs).

*Tourist House* - see Bed and Breakfast.

## **27-7 ESTABLISHMENT OF ZONING DISTRICTS.**

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

- a. R-1 Urban Residential District
- b. R-2 Rural Residential/Agriculture District
- c. R-3 Rural Residential District

- d. R-4 Rural Residential/Agricultural District
- e. R-5 Rural Residential/Agriculture District
- f. C-1 Broadway/Historic Commercial District
- g. C-2 Park/Neighborhood Commercial District
- h. C-3 Sunset/Retail Commercial District
- i. P - Preservation District ~~W - Wetland District~~

(Ord. No. 130-88 § A7; Ord. No. 153-89 § 2; Ord. No. 302-01 § 2; Ord. No. 348-05 § 2)

**27-15 C-1 BROADWAY/HISTORIC COMMERCIAL DISTRICT**

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

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

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

27-15.1 Permitted Uses in the C-1 District

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

- a. Bed and Breakfasts, hotels and motels;
- b. Retail stores, excluding car dealerships, service stations and gas stations;
- c. Personal and financial services establishments, excluding drive-through service;
- d. Professional Offices;
- e. Single family and two-family dwellings;

- g. Mixed Use - residential dwelling units and/or professional offices above ground floor permitted commercial uses;
- h. Roadside Markets, Nurseries and Garden Centers, and Roadside Stands;
- i. Churches and other charitable, educational, civic or nonprofit uses or facilities;
- j. Public recreational facilities and public parking facilities.
- k. Restaurants, including outdoor dining (per 27-27.15 Outdoor Dining Standards) and excluding drive-thru service. Restaurants that serve alcoholic beverages are permitted as conditional uses, subject to the requirements in Section 27-29 Conditional Uses.
- l. Liquor stores (for off-premises consumption only), either as a separate establishment or in conjunction with a retail establishment, and subject to the following:
  - (a) No outside storage or outside display of merchandise of any type.
  - (b) All cooling, refrigeration and generation equipment must be contained within the building area.

(Ord. No. 130-88 § A15)

27-15.2 Minimum Area and Bulk Requirements for Residential Uses in the C-1 zoning district.

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

27-15.3 Minimum Area Bulk Requirements for Bed and Breakfasts and Hotels and Motels in the C-1 zoning district shall be as follows:

Lot area	<u>B &amp; B</u> 5,000 sq. ft. for first 6 units and 1500 sq. ft. per unit thereafter	<u>Hotel/Motel</u> 5,000 sq. ft. for first 6 units and 1500 sq. ft. per unit thereafter
a. Lot frontage	100'	100'
b. Lot width	100'	100'
c. Front yard setback	20'	20'
d. Each side yard setback	10'	10'
e. Total side yard setback	20'	20'
f. Rear yard setback	20'	20'
g. Lot coverage	50%	50%
h. Building height	35'	35'

(Ord. No. 130-88 § A13)

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

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

- a. Detached garages.
- b. Tool sheds.
- c. Private ~~residential~~ swimming pools.
- d. Private tennis courts.
- e. Fences and walls.
- f. Off street parking areas.
- g. Storage sheds.
- h. Animal shelters for customary residential pets.
- i. Restaurants in B&Bs and hotels and motels which shall have a maximum number of seats equal to two (2) times the total number of units in the hotel or motel.
- j. Health club facilities in B&Bs and hotels and motels provided such are limited to no more than five percent (5%) of the total floor area of the facility.
- k. Conference and meeting rooms in B&Bs and hotels and motels provided such are limited to no more than twenty percent (20%) of the total floor area of the facility.  
(Ord. No. 130-88 § A13)

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

The minimum area and bulk requirements for accessory uses to Bed and Breakfasts/Guest Houses in the C-1 district for uses not located within the principal building shall be as follows:

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

(Ord. No. 130-88 § A13)

(Ord. No. 130-88 § A15; Ord. No. 144-89 § 3; Ord. No. 157-90 § 2)

27-15.6 Minimum Area and Bulk Requirements for Commercial only and Mixed Use structures (residential dwelling units and/or professional offices above ground floor permitted commercial uses)

	<u>Commercial/Mixed Use</u>
a. Lot area	5,000 sq. ft.
b. Lot frontage	50'
c. Lot width	50'
d. Front yard setback	10'
e. Each side yard setback	6'
f. Total side yard setback	16'
g. Rear yard setback	20'
h. Max. lot coverage	60%
i. Max. building height	35'; <u>40' if 50% of residential units are "affordable housing units"</u>
j. <u>Max. stories</u>	<u>2; 3 if min. 50% of residential units are "affordable housing units"</u>
k. <u>Min. gross floor area per unit residential</u>	<u>650 sq. ft.</u>
l. <u>Min. gross floor area per unit "affordable housing unit"</u>	<u>300 sq. ft.</u>

27-15.7 Accessory Uses to Commercial and Mixed Use.

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

- a. Detached garages.
- b. Tool sheds.
- c. Private residential swimming pools.
- d. Private tennis courts.
- e. Fences and walls.
- f. Off street parking areas.
- g. Storage sheds.
- h. Animal shelters for customary residential pets.  
(Ord. No. 130-88 § A15)

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

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

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

(Ord. No. 130-88 § A15)

**27-16 C-2 PARK/NEIGHBORHOOD COMMERCIAL DISTRICT**

The purpose of the C-2 Park/Neighborhood district is to encourage a mix of residential uses within commercial shopping centers serving the needs of year around residents within the zone, and residents of adjacent neighborhoods and communities.

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

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

- a. Retail stores, excluding car dealerships, service stations and gas stations;
- c. Personal and financial services establishments, including drive-through service;
- d. Professional Offices;
- e. Mixed Use - residential dwelling units and/or professional offices above ground floor permitted commercial uses;
- g. Roadside Markets, Nurseries and Garden Centers, and Roadside Stands;
- h. Churches and other charitable, educational, civic or nonprofit uses or facilities;
- i. Public recreational facilities and public parking facilities.
- j. Restaurants, including outdoor dining (per 27-27.15 Outdoor Dining Standards) and excluding drive-thru service. Restaurants that serve alcoholic beverages are permitted as conditional uses, subject to the requirements in Section 27-29 Conditional Uses.
- k. Liquor stores (for off-premises consumption only), either as a separate establishment or in conjunction with a retail establishment, and subject to the following:
  - (a) No outside storage or outside display of merchandise of any type;
  - (b) All cooling, refrigeration and generation equipment must be contained with the building area.

27-16.2 Minimum Area and Bulk Requirements.

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

- a. Lot area 7500 sq. ft.
- b. Lot frontage 50'
- c. Lot width 50'
- d. Front yard setback 20'
- e. Each side yard setback 6'
- f. Total side yard setback 16'
- g. Rear yard setback 20'
- h. Max. lot coverage 60%
- i. Max. building height 35'; 40' if 50% of residential units are "affordable housing units"
- j. Max. stories 2; 3 if min. 50% of residential units are "affordable housing units"
- k. Min. gross floor area per unit residential 650 sq. ft
- l. Min. gross floor area per unit "affordable housing unit" 300 sq. ft.

(Ord. No. 130-88 § A14)

**27-16.3 Accessory Uses.**

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

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

(Ord. No. 130-88 § A14)

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

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

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

(Ord. No. 130-88 § A14; Ord. No. 144-89 § 2; Ord. No. 157-90 § 1)

## 27-17 C-3 SUNSET/~~RETAIL~~ COMMERCIAL DISTRICT

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

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

### 27-17.1 Permitted Uses in the C-3 District

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

- a. Retail stores, excluding car dealerships, service stations and gas stations;
- b. Personal and financial services establishments, excluding drive-through service;
- c. Bed and Breakfasts and hotels and motels above ground floor permitted uses (lobby/registration may be on ground floor, but may not occupy greater than 20% of floor area).
- d. Mixed Use - Residential units above ground floor permitted uses; and Professional offices above ground floor permitted uses;
- e. Churches and other charitable, educational, civic or nonprofit uses or facilities;
- f. Public recreational and public parking facilities;
- g. Restaurants, including outdoor dining (see 27-27.15 Outdoor Dining Standards) and excluding drive-thru service. Restaurants that serve alcoholic beverages are permitted as conditional uses, subject to the requirements in Section 27-29 Conditional Uses.
- h. Liquor stores (for off-premises consumption only), either as a separate establishments or in conjunction with a retail establishment, and subject to the following:
  - (a) No outside storage or outside display of merchandise of any type.
  - (b) All cooling, refrigeration and generation equipment must be contained within the building area.

(Ord. No. 130-88 § A13)

27-17.2 Minimum Area and Bulk Requirements.

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

	<i>All Permitted Uses</i>
a. Lot area	5,000 sq. ft.
b. Lot frontage	50'
c. Lot width	50'
d. Front yard setback	<del>20</del> <u>Minimum 0', maximum 4'</u>
e. Each side yard setback	<del>6</del> <u>Minimum 0', maximum 4'</u>
f. Total side yard setback	<del>16</del> <u>Minimum 0', maximum 8'</u>
g. Rear yard setback	<del>20</del> <u>10'</u>
h. Max. lot coverage	<del>60</del> <u>80%</u> ,
i. Max. building height	35'; <u>40' if 50% of residential units are "affordable housing units"</u>
j. <u>Max. stories</u>	<u>2; 3 if min. 50% of residential units are "affordable housing units"</u>
k. <u>Min. gross floor area per unit residential</u>	<u>650 sq. ft</u>
l. <u>Min. gross floor area per unit "affordable housing unit"</u>	<u>300 sq. ft.</u>

27-17.3 Accessory Uses for Permitted Uses.

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

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

(Ord. No. 130-88 § A13)

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

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

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

(Ord. No. 130-88 § A13)

27-17.5 Building Form Requirements in the C-3 Zone (**new section**)

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

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

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

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

27-18.1 Permitted Uses.

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

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

(Ord. No. 153-89 § 2)

(27-27 Supplemental Regulations)

**27-27.3 Parking Requirements.**

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

<i>Use</i>	<i>Number of Spaces</i>
Residential dwelling unit in R-1, <u>C-1, C-2, C-3</u>	1 space per unit
Residential dwelling unit in all other zones	2 spaces per unit
Bed & Breakfast, Guest House, Hotel, Motel	1 space per unit, plus one space for owner/manager
Campground	1 space per unit plus 1 space for each employee
Mobile home park	1 space per unit plus 1 space for each employee
Farms	3
Banks and offices	1 space per <del>150</del> <u>400</u> square feet of floor area
Retail businesses	1 space per <del>150</del> <u>300</u> square feet of floor area

Restaurant	1 space for each <del>3</del> <u>6</u> seats or 1 space per 150 square feet of total restaurant floor area (including outdoor dining area), whichever is greater.
Medical offices	1 space per <del>400</del> <u>150</u> square feet of floor area
Personal Service Shops	One (1) parking space per 400 square feet of floor area
<u>Laundry, Self-service</u>	One space per 400 square feet of floor area
<u>Liquor Stores</u>	1 space per 300 square feet of floor area. Liquor stores shall also provide one truck loading and unloading area for every 10,000 square feet, or part thereof, of gross floor area. Each truck area shall be adjacent to the store, and shall be 14 feet wide by 60 feet long (14' x 60').

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

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

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

a. Contribution to Dedicated Parking Fund- . In the event that an applicant has insufficient land for 100% of the required off-street parking spaces based on the proposed use or uses of the site, the Planning Board may still approve the application conditioned upon the applicant installing the parking spaces for which there is sufficient land and making a contribution for each additional parking space omitted, up to the required number, to a Borough Parking Fund maintained by the Borough specifically for the periodic purchase, lease, acquisition or maintenance of off-street parking lots to serve the Borough. The contribution for each parking space shall be paid prior to issuance of a building permit or, at the option of the applicant at the time of approval, in installments over a five year period, with the first payment due prior to the issuance of the building

permit and additional payments due on the annual anniversary of the first payment. Payments not received by the Borough on the anniversary due date shall be delinquent and added to the tax liability of the property owner subject to penalty and interest. Upon sale of the property, any unpaid portion of the contribution will be payable in full.

Contributions are required as follows:

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

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

Driveways may be utilized to satisfy these parking requirements for one (1) and two (2) family dwellings only.

~~All parking areas, including drive aisles, shall be paved except stone or concrete ribbons may be utilized for one (1) and two (2) family dwellings.~~

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

~~Except for one (1) and two (2) family dwellings, and in the C-1 zone, no parking space or drive aisle shall be located within five (5') feet of any lot line.~~

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

Parking areas for commercial or mixed use that border a residential use or residential zone, shall be screened and buffered as stated in **27-27.8 Buffering**. Such buffering shall be at least four (4') feet in width and four (4') feet in height and of a dense evergreen or similar species as may be determined by the Planning Board in connection with site plan review. See Landscaping and Vegetation section 27-36 of this ordinance. (Ord. No. 130-88 A16 § 8)

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

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

In the C-1 Broadway/~~Historic~~ zoning district, except for restaurants and B&B's, Guest Houses and Hotel/ Motels providing greater than 6 units(including owners quarters if present) , parking requirements shall be waived for pre-existing structures, except in the case of new construction (expansion of existing structure or entirely new structure).

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

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

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

(Ord. No. 130-88 A16 § 3; Ord. No. 153-89 § 3; Ord. No. 396-07 § 31)

#### **27-27.4 Signs (replacing previous section 27-27.4)**

a. Purpose: The purpose of this section is to protect the safety and orderly development of the community through the regulation of signs and sign structures. The intent of this ordinance is to balance businesses' need to optimize visibility with the cumulative safety and aesthetic impact of all signs in the community. This ordinance is consistent with the downtown vision as outlined in the 2008 Business District Urban Design Plan; community goals and objectives as stated in the 2005 Master Plan; and Chapter 27 zoning regulations regarding historic preservation, landscaping, and design standards.

b. Definitions – when a specific definition is not provided, standard definitions shall be used:

*Animated or Moving Sign* – a sign employing actual motion or the illusion of motion.

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

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

*Awning Sign* – a sign attached to, affixed to, or painted on an awning.

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

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

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

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

*Canopy Sign* – a sign affixed to the visible surface(s) of a canopy.

*Changeable Signs* –

*Fixed-message electronic signs* – signs whose basic informational content has been preprogrammed to include only certain types of information projection, such as time and temperature.

*Electronic Message Sign*– an electronically activated changeable sign whose variable message capability can be electronically programmed.

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

*Directory Sign* – a sign listing the tenants or occupants of a building or group of buildings and that may also indicate their respective professions or business activities.

*Face, Sign* – the area or display surface used for the message.

*Façade, Principal* – the exterior wall of a building or structure that fronts on a public street.

*Façade Sign* – the sign on the principal façade of a building.

*Freestanding Sign* – a sign supported by a structure affixed to the ground, and not supported by a building, including pole signs.

*Ground Sign or Monument Sign* - a freestanding sign in which the entire bottom is in contact with or is close to the ground, supported by internal structural framework.

*Hanging Sign* – A freestanding sign supported by the extended arm of a single post.

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

*Inflatable Sign* – any display capable of being expanded by air or other gas and used on a permanent or temporary basis to advertise a product or event.

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

*Marquee sign* – any sign part of a marquee and designated to have changeable copy, either manually or electronically.

*Memorial Sign* – a sign, tablet, or plaque memorializing a person, event, structure, or site.

*Monument Sign* – see *ground sign*

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

*Non-conforming sign* – a sign lawfully erected and maintained prior to the adoption of the current ordinance that does not conform with the requirements of the current ordinance.

*Pole Sign* – a sign that is mounted on a freestanding pole.

*Portable Sign* – a sign that is moveable and not permanently attached to a structure or the ground, including A-frame or sandwich board signs.

*Projecting Sign* – a sign attached to a projecting out from a building face or wall, generally at right angles to the building.

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

*Shopping Center* – Two or more commercial establishments on one property, managed as a unit, and providing retail goods and personal services. (also add definition to general def. section)

*Shopping Center Sign* – A free-standing sign that identifies all the businesses in the shopping center.

*Sign Area* – the entire face of a sign, including the surface and any frame, trim or molding, but not including the supporting structure.

*Wall Sign* – a sign fastened to, or painted on, the wall of a building or structure in such a manner that the wall becomes the supporting structure for, or forms the background surface of the signs, and that does not project more than 18 inches from such building or structure.

*Window Sign* – a sign affixed to the surface of a window with its message intended to be visible to and readable from the public right of way or from adjacent property.

### c. General Provisions

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

11. Wall signs shall not exceed 5% of any wall.
12. Projecting signs are permitted to encroach over the public right of way by a maximum of two (2) feet. The bottom of the sign shall be at least eight (8) feet from grade.
13. Awning signs are only permitted on the vertical fringe of the awning. Awning lettering shall be a maximum of 8". Vinyl or other plastic material is not permitted. Awnings and canopies may project a maximum of four (4) feet into the right of way, but the total projection shall not be any greater than five (5) feet from the face of the building. The bottom of the awning or canopy shall be at least seven (7) feet from grade. Awning supports are not permitted within the setback requirement, or in the public right of way. Awnings shall not be closer than 24" from the face of the curb.
14. Institutional signs for schools, churches and other public or semi-public institutions are permitted in all zoning districts. There shall not be more than one freestanding sign per frontage, or one sign per wall. Sign area of the freestanding sign shall not exceed 24 square feet, and the wall sign shall not exceed 5% of the wall.
15. Computations
  - a. Sign Area Measurement – for those signs with a defined background, the calculated sign area includes the defined background. For signs that have no defined background, such as letters affixed to or painted on a wall, the area shall be computed by measuring the outline of the letters or graphics. The area for a sign with more than one face includes the sum of all the area of signs visible from any one point. For double-sided identical signs, and V-shaped signs at a 15% or more acute angle, only one side is included in sign area.
  - b. Sign Height Measurement – sign height is measured at the highest point of the sign or sign structure.
  - c. Computation of Total Permitted Sign Area - includes all sign types except those listed as *Exempt* or as *Signs Not Requiring a Permit* herein.
  - d. For properties that have more than one side facing a street, additional signage may be permitted in accordance with the standards for this section, for each major street upon which the parcel fronts, but may not be combined and placed facing one street.

d. Prohibited Signs

1. Electronic message signs.
2. Animated, blinking, flashing, moving or revolving signs.

3. Neon signs.
4. Roof signs.
5. Signs attached to trees or utility poles.
6. Inflatable signs
7. Billboard signs
8. Bench signs
9. Any sign attached to or place on a vehicle except for those vehicles actively used in the daily function of the business to which such signs relate.
10. Banners, except where permitted herein, and pennants.

e. Permits Required

All signs except those listed as *Exempt* or as *Signs Not Requiring a Permit* herein, require a zoning permit prior to installation. Certain sign types also require a construction permit to ensure proper, safe and secure installation.

f. Exempt Signs – signs exempt from regulations.

1. Official traffic, parking and street signs. Also exempt are trespassing signs and signs indicating private ownership of roadways or other private property.
2. Signs installed by or at the direction of the Borough upon Borough streets, road, sidewalks, rights of way or other real property owned or controlled by the Borough.

g. Signs that do not require a permit

1. Roadside farm stand signs where approved as an accessory use. Maximum size of roadside farm stand sign is twelve (12) square feet.
2. Historical signs. Historical signs, stating the historical name of a building and a date (e.g., John Doe House, circa 1850) shall be permitted, subject to the following restrictions:
  - a) The area of a historical sign shall not exceed one and one-half square feet.
  - b) A historical sign shall be one-sided and may only be affixed to the front of a structure.
  - c) Only one historical sign per structure shall be permitted.

3. Signs identifying a resident's name and/or street number, limited to one (1) square foot.

4. Temporary Signs – Temporary signs generally lack good design, are made of substandard material, and are often located in the public right of way. Enforcement is difficult due to their ability to be removed easily. Recognizing that temporary signs serve an important commercial and economic function, this ordinance seeks to balance these issues through reasonable, appropriate and measurable regulation.

- a) For sale or rent – One for sale or rent sign per property is permitted with a maximum sign area of five (5) square feet. “For sale” and/or “sold” signs must be removed from the premises within seven (7) days of closing/settlement.
- b) Open house signs, including one (1) directional sign and balloons may be placed only on the property for which the open house is being held, and only during the hours of the open house. Pennants are prohibited.
- c) Contractor signs - Contractor signs shall be permitted at a maximum of five (5) square feet, but must be removed within thirty (30) days of the completion of the contractor's work on the premises.
- d) Construction Sign - During new construction, one temporary sign announcing the builder, architect, lending institution, and/or real estate broker is permitted and shall be no larger than 16 square feet on lots that are 5,000 square feet or less, and 32 square feet on lots greater than 5,000 square feet. The sign must be removed upon issuance of a certificate of occupancy.
- e) Political campaign and election signs shall be no larger than 16 square feet.
- f) Signs with a maximum size of 2 square feet, posted inside windows advertising a sale, help wanted, and public and non-profit events.
- g) Yard sale and/or garage sale signs. Signs advertising yard sales and/or garage sales shall be permitted but must be removed within twenty-four (24) hours after the event.
- h) Banners indicating a sale event or grand opening are permitted for a total of 30 days in any one year period, and require prior written notification of and written confirmation by the zoning officer or code official.

5. Decorative or informational flags such as “open” or “welcome”, with a limit of one flag per business.

6. Information posted regarding hours of operation, credit cards accepted. Such information shall be permitted only where attached to the building. No letter or number in excess of four (4) inches vertical height shall be permitted.

#### h. Substandard or Illegal Signs

1. Unsafe Signs – If any sign is deemed unsafe by the construction official, zoning officer, or code official, the owner thereof or the person or firm responsible for the property, upon written or verbal notice shall make the sign safe or remove the sign. If the sign is not removed in the time period indicated, the sign can be removed by the Borough

at the expense of the property owner, and shall be cause for the issuance of a summons to appear in municipal court.

2. Obsolete Sign Copy – any individual, corporation or entity who owns or leases a sign shall remove said sign within thirty (30) days after the party no longer conducts business on the premises.

3. Illegal Signs - Any sign is unlawfully installed shall be removed by the owner immediately upon notification with reason by the construction official, zoning officer, or code official. Failure to remove an illegal sign shall be cause for the issuance of a summons to appear in municipal court.

4. Dilapidated signs – A sign determined to be substantially dilapidated as determined by the zoning officer or code official, shall be removed in accordance with Paragraph 1 above.

5. Durable materials – All signs shall be made of durable material and fastened securely with non –rusting hardware. Cardboard, poster board, corrugated plastic, and other similar materials are considered substandard and unacceptable sign materials and shall be removed.

i. Non-conforming signs

1. Non-conforming signs as defined herein, shall not be structurally altered, enlarged, relocated, extended or increased, unless they are to conform to these regulations and receive a zoning and construction permit.

2. Non-structural changes such as color and name changes, and normal maintenance and repair, such as light bulb replacement or painting, is permitted for nonconforming sign.

j. Design Guidelines

1. Every sign shall be designed as an integral architectural element of the structure, building and site to which it principally relates. It shall be in good scale and proportion in design and visual relationship to structures, building and other surroundings.

2. The colors, materials, and lighting of every sign shall be harmonious with the structure, building and site to which it relates.

3. Each sign shall be compatible with, and shall not block the visibility of signs on adjoining premises.

4. Freestanding signs shall be landscaped using Section 27-36 Landscaping and Vegetation Plan as a guide.

k. Administration and Enforcement

1. Enforcement of all sections of the within Chapter shall be commenced by the issuance of a violation notice with order to comply. If no action is taken by the property owner, there shall be a filing of a complaint in the Municipal Court.

2. Any person found guilty of violation of this Chapter, or any Section therein, shall be subject to a fine not to exceed the sum of two hundred (\$200.00) dollars for a first offense. For a second offense or subsequent offense, a fine of not less than two hundred (\$200.00) dollars nor more than five hundred (\$500.00) dollars, provided, however, that the Court shall waive or suspend any fines if the Court determines it is appropriate to do so. An individual need not be charged as a subsequent offender in order to be fined as a subsequent offender. Each day the violation continues may constitute a separate offense.

(Ord. No. 342-05)

l. District Regulations

1. Signs in C-1 Broadway/~~Historic~~ Commercial District

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

- awning signs, only on vertical fringe of awning
- façade signs, maximum 15% of first floor facade
- hanging signs, maximum size 12 square feet , maximum height 6 feet
- monument signs, maximum size 12 square feet, maximum height 4 feet
- portable signs, maximum 6 square feet
- projecting signs, maximum 6 square feet
- wall signs, maximum 5% of wall
- window signs, maximum 25% of window

b) There shall be no more than two (2) signs per 50 feet of **lot** frontage. Undersized lots are permitted no more than one (1) sign.

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

2. Signs in C-2 Park/~~Neighborhood~~ Commercial District

a) Sign types permitted in the C-2 zoning district include:

- awning signs, only on vertical fringe of awning
- hanging signs, maximum size 12 square feet, maximum height 6 feet
- façade signs, maximum 15% of first floor facade
- monument signs, maximum size 12 square feet, maximum height 4 feet

- portable signs, maximum 6 square feet
  - projecting signs, maximum 6 square feet
  - shopping center signs, one (1) square foot of signage per foot of storefront, with a maximum size of 100 square feet, and maximum height 10’.
  - wall signs, maximum 5% of wall
  - window signs, maximum 25% of window
- b) There shall be no more than two (2) signs per 50 feet of **store** frontage.
- c) For shopping centers, in addition to a main shopping center sign, each individual store front may have two additional signs, (such as a facade sign and window sign) with a maximum of two (2) square feet per foot of **store** frontage.

3. Signs in C-3 Sunset/~~Park~~ Retail Commercial District

- a) Sign types permitted in the C-3 zoning district include:
- awning signs, only on vertical fringe of awning
  - façade signs, maximum 15% of first floor facade
  - portable signs, maximum six (6) square feet per side
  - projecting signs, maximum six (6) square feet
  - wall signs, maximum 5% of wall
  - window signs, maximum 25% of window
- b) There shall be no more than three (3) signs per 50 feet of **store** frontage. Undersized lots are permitted no more than two (2) signs.

4. Signs in Residential Districts

- a) Institutional Signs as permitted in section c.14 of these sign regulations.
- b) Free-standing sign for multi-family residential complex at a limit of one square foot per ten (10) feet of frontage dedicated to such use, with a maximum of twenty four (24) square feet. Waivers from this requirement can be requested as part of the site plan application.

**27-27.8 Buffering.**

Except in the C-3 ~~Park~~ District, all commercial uses, including hotels, motels and tourist guest houses shall have buffering at least four (4) ~~five (5)~~ feet in width along rear and side ~~all~~ lot lines. Such buffering shall be at least four (4') feet in height and of a dense evergreen or similar such material as may be determined by the Planning Board in connection with site plan review. (Ord. No. 130-88 A16 § 8)

## **27-27.14 Exceptions to Bulk Regulations**

b. Lot Coverage – where green roofs or solar panels are installed, lot coverage may be increased at a 1:1 ratio, up to 10% of the lot area. Green roofs shall be comprised of an engineered roofing system that enables the growth of vegetation. The engineered rooftop is typically comprised of the following components: an insulation layer, a waterproof membrane, a root barrier, a drainage layer, a geotextile or filter mat, and a growing medium. Green roofs should only be irrigated (if necessary) with water obtained from a rainwater collection system integrated into the building and/or block.

## **27-27.15 Outdoor Dining Standards (new section)**

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

- a. Definition. *Restaurant, Outdoor Dining* shall mean any part of a food establishment located outdoors, not used for any other purposes, and open to the sky, with the exception that it may have a retractable awning or umbrellas, and may contain furniture, including tables, chairs, railings, and planters that are readily moveable.
- b. Permitted zones – outdoor dining is permitted in the C-1, C-2, and the C-3 commercial zoning districts.
- c. Outdoor Dining Design Standards
  1. Outdoor dining shall be permitted only in conjunction with, and adjacent to, an existing restaurant. Outdoor dining shall only be permitted from May 1<sup>st</sup> to September 30<sup>th</sup>. No furniture, apparatus, decoration or appurtenance used in connection with outdoor dining shall be permitted outside from October 1<sup>st</sup> through April 30<sup>th</sup>.
  2. No furniture, apparatus, decoration or appurtenance used in connection with the operation of the sidewalk cafe shall be located in such a way that less than five (5') feet of paved sidewalk remains for the exclusive use of pedestrians, nor shall any such furniture, apparatus, decoration or appurtenance project or protrude into, on or above the required 5' wide pedestrian passageway.
  3. No signs are permitted on the sidewalk except that the name and type of establishment may appear on umbrellas or the valance of an awning.
  4. Adequate lighting shall be provided to promote safe passage of pedestrians and for patrons.
  5. Awnings and/or umbrellas may be used in conjunction with outdoor dining. Awnings shall be adequately secured and retractable. Supporting structure must be attached to the building and may not be set on the ground. The bottom of the awning shall be seven (7') feet from the ground. No screening or weather protection panels will be permitted. No heating or cooling equipment will be permitted.
  6. Any outdoor dining area that is next to a residential use or residential district must be a minimum of 5' from the shared property line.

- d. The hours of operation of a outdoor dining area shall be limited to the hours of operation of the associated restaurant. In no event shall hours of operation exceed 12 midnight.
- e. *Administration.* An application for an outdoor dining license shall be submitted as a separate mercantile license with an associated fee of \$50. Along with the application shall be the following:
  - 1. Plans showing the dimensions of the area and all furniture, planters, etc.
  - 2. A survey of the property may also be required.
  - 3. Proof of insurance for such operation shall also be provided as part of the mercantile application. The term of license shall be one (1) year.

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

### **Section 27-28 Design Standards**

c. Mechanical equipment shall only be located in the side or rear yards, or on the roof, and ~~is encouraged to be located in the rear yard and meet setback requirements. If mechanical equipment is not located in the rear yard, or it does not meet setback requirements, it shall be~~ buffered or screened with natural or manmade barriers, such as shrubbery, fencing or architectural features.

h. (new section) In order to contribute to the goals of orderly design, aesthetics, and pedestrian compatibility, the façade of a building or structure, as indicated by front entry, shall face the street. On corner lots, the façade shall face the primary or wider street.

### **27-29 Conditional Uses (new section)**

- a. Restaurants serving alcoholic beverages.
  - 1. Restaurants serving alcoholic beverages shall have a minimum lot area of 5,000 square feet.
  - 2. On-premises alcoholic beverage services will be limited to restaurant establishments serving food. Restaurants may have an ancillary bar area, but only in conjunction with the restaurant as a place for restaurant patrons waiting for a table. No stand-alone or bar-only operations are permitted.
  - 3. The bar area shall contain no more than 20% of the number of seats in the dining area.

4. All refrigeration and generator equipment shall be contained within the building. Mechanical heating and cooling shall be located on the roof.
5. There shall be a specified area for collection of trash and recycling. The area shall be suitably enclosed. There shall be separate collection areas for trash and recycling, and cooking oil and grease.
6. There shall be a specified exterior “wash down” or cleanup area” for the cleaning of floor mats, furniture, etc.
7. Each restaurant shall provide parking for patrons as specified in Section 27-27.3 Parking, including both dining area and bar seats.
8. Trash pickup/removal shall occur a minimum of two (2) times per week.

## **27-30 Nonconforming Uses, Structures and Lots (new section)**

### **27-30.1 Nonconforming Uses**

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

Any non-conforming use of buildings or land may be continued indefinitely, but such buildings or uses:

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

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

### **27-30.2 Nonconforming Structures**

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

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

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

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

### **27-30.3 Nonconforming Lots**

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

- a. The lot has frontage of at least ~~fifty (50)~~ thirty (30) feet.
- b. The lot area is not less than 3,000 square feet.
- c. The lot is, and always has been, in separate ownership and not contiguous to lots in the same ownership.
- d. The height of the dwelling shall be reduced in direct proportion to the percentage of the shortfall of the required lot width.

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

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

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

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

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

### **NOTICE OF PENDING ORDINANCE**

The foregoing Ordinance was introduced at a Regular Meeting of the Board of Commissioners of the Borough of West Cape May held on June 10, 2008 when it was read for the first time and then ordered to be published according to law. This Ordinance will be further considered for final passage by the Board of Commissioners of the Borough of West Cape May at a meeting to be held at Borough Hall, 732 Broadway, West Cape May, New Jersey on July 8, 2009 at 7:00 p.m. or as soon thereafter as possible, at which time and place, all persons interested will be given an opportunity to be heard concerning such ordinance.

### **NOTICE OF FINAL ADOPTION**

The above captioned Ordinance was passed on Second Reading, Public Hearing and Final Adoption by the Board of Commissioners of the Borough of West Cape May, in the County of Cape May, State of New Jersey, at a Regular Meeting of the Board of Commissioners held on July 8, 2009. This ordinance shall become effective 20 days after final passage and publication, according to law.