

Chapter 180

ZONING

ARTICLE I General Provisions

- § 180-1. Short title.
- § 180-2. Definitions; word usage.

ARTICLE II Establishment of Districts

- § 180-3. Classes of districts.
- § 180-4. Interpretation of district boundaries.
- § 180-5. Application of regulations.

ARTICLE III R-1 Districts — One-Family Residential Districts

- § 180-6. Applicability.
- § 180-7. Uses permitted.
- § 180-8. Required lot frontage and area.
- § 180-9. Percentage of lot covered.
- § 180-10. Yards required.
- § 180-11. Building height limit.
- § 180-12. Floor area.
- § 180-13. Length and width restriction.
- § 180-14. Accessory buildings and uses.

ARTICLE IV R-2 Districts — One-Family Residential Districts

- § 180-15. Applicability.
- § 180-16. Uses permitted.
- § 180-17. Required lot frontage and area.
- § 180-18. Percentage of lot covered.

- § 180-19. Yards required.
- § 180-20. Building height limit.
- § 180-21. Floor area.
- § 180-22. Length and width restriction.
- § 180-23. Accessory buildings and uses.

ARTICLE V R-3 Districts — One-Family Residential Districts

- § 180-24. Applicability.
- § 180-25. Uses permitted.
- § 180-26. Required lot frontage and area.
- § 180-27. Percentage of lot covered.
- § 180-28. Yards required.
- § 180-29. Building height limit.
- § 180-30. Dwelling area.
- § 180-31. Length and width restriction.
- § 180-31.1. Square footage.
- § 180-32. Accessory buildings and uses.

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

- § 180-33. Applicability.
- § 180-34. Uses permitted.
- § 180-35. Applicability of R-3 District regulations.
- § 180-36. Mobile homes in certain districts.
- § 180-37. New home construction.
- § 180-38. Rebuilding due to destruction.
- § 180-39. Agricultural property.

WESTMORELAND CODE

- § 180-40. Miscellaneous regulations.
§ 180-41. Addition of five or more animal units.

ARTICLE VII

B-1 Districts — General Business Districts

- § 180-42. Applicability.
§ 180-43. Uses permitted.
§ 180-44. Required lot frontage and area.

ARTICLE VIII

B-2 Districts — General Business Districts

- § 180-45. Applicability.
§ 180-46. Uses permitted.
§ 180-47. Applicability of B-1 District regulations.

ARTICLE IX

General Industrial Districts — I Districts

- § 180-48. Applicability.
§ 180-49. Uses permitted.
§ 180-50. Uses prohibited.
§ 180-51. Building height limit.
§ 180-52. Yards required.

ARTICLE X

Light Industrial Districts

- § 180-53. Intent.
§ 180-54. Permitted uses.
§ 180-55. Special permit uses.
§ 180-56. Prohibited uses.
§ 180-57. Required lot frontage and area.
§ 180-58. General requirements.

ARTICLE XI

Planned Development Districts (PD-R, PD-C and PD-E Districts)

- § 180-59. Purpose.
§ 180-60. Classifications of planned development.
§ 180-61. Procedures.
§ 180-62. Site plan review process.

ARTICLE XII

Supplementary Regulations

- § 180-63. Height exceptions.
§ 180-64. Visibility at intersections.
§ 180-65. Lots with less than required dimensions.
§ 180-66. Signage.
§ 180-67. Mobile homes.
§ 180-68. Apartments permitted.
§ 180-69. Off-street parking.
§ 180-70. Off-street loading space requirement.
§ 180-71. Location of gas pressure reduction valves.
§ 180-72. Recreational vehicles.
§ 180-72.1. Fencing.
§ 180-72.2. Trees/hedges.

ARTICLE XIII

Nonconforming Uses

- § 180-73. Continuance of uses.
§ 180-74. Nonconforming use of land.
§ 180-75. Nonconforming use of buildings.
§ 180-76. Building under construction.
§ 180-77. Removal.
§ 180-78. Discontinuance.

§ 180-79. Mobile homes.

ARTICLE XIV

Administration and Enforcement

§ 180-80. Enforcement.

§ 180-81. Building permits.

§ 180-82. Certificate of occupancy.

§ 180-83. Duration and renewal of permits.

§ 180-84. Interpretation; conflict with other laws.

§ 180-85. Board of Appeals.

§ 180-86. Amendments.

§ 180-87. Penalties for offenses.

§ 180-88. Fees.

ARTICLE XV

Regulation of Automobile Junkyards

§ 180-89. Intent.

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

§ 180-90. Definitions.

§ 180-91. Requirements for operation or maintenance.

§ 180-92. Application for license and certificate of approval.

§ 180-93. Hearing.

§ 180-94. License requirements.

§ 180-95. Location requirements.

§ 180-96. Aesthetic considerations.

§ 180-97. Grant or denial of application; appeal.

§ 180-98. License fees.

§ 180-99. Fencing.

§ 180-100. Established junkyards.

§ 180-101. Certain locations not allowed; applications for permits.

Appendix A, Zoning Map

GENERAL REFERENCES

Adult uses — See Ch. 75.

Building code administration and enforcement — See Ch. 86.

Flood damage prevention — See Ch. 108.

Site plan review — See Ch. 138.

Storage devices — See Ch. 146.

Storm sewers — See Ch. 149.

Stormwater management — See Ch. 152.

ARTICLE I

General Provisions

§ 180-1. Short title.

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

§ 180-2. Definitions; word usage.

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

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

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

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

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

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

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

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

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

HOME OCCUPATION — An occupation or a profession which:

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

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

JUNKYARD — A lot, land or structure, or part thereof, used for the collecting, storage and sale of wastepaper, rags, scrap metal or discarded materials; or for the collecting, dismantling, storage and salvaging of machinery or vehicles, and for the sale of the parts thereof. "Automobile junkyard" shall mean any place of storage or deposit, whether in connection with another business or not, where two or more unregistered, old, or secondhand motor vehicles, no longer intended or in condition for legal use on the public highways, are held, whether for purpose of resale of used parts therefrom, for the purpose of reclaiming for use some or all of the materials therein, whether metal, glass, fabric or otherwise, for the purpose of disposing of the same or for any other purpose. Such term shall include any place of storage or deposit for any such purposes of used parts or materials.

scrap whose principal produce is scrap iron steel or nonferrous scrap for sale for remitting purposes only. "Motor vehicle" shall mean all vehicles propelled or drawn by power other than muscular power originally intended for use on public highways. **[Amended 2-11-2013 by L.L. No. 2-2013]**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II Establishment of Districts

§ 180-3. Classes of districts.

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

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

- R-4 District — One-Family Residential Districts (Mobile Homes)
- B-1 District — General Business Districts
- B-2 District — General Business Districts
- I District — Industrial District
- LI District — Light Industrial Districts
- PD-R Districts — Planned Development-Residential
- PD-C Districts — Planned Development-Commercial
- PD-E Districts — Planned Development-Extraordinary

- B. Said districts are bounded and divided as shown on a map entitled "Town of Westmoreland Zoning Map," which is hereby adopted by the Town Board and certified by the Town Clerk which, with all explanatory matter thereon accompanies and is hereby made a part of this chapter. A true copy of such map shall be maintained by the Town Clerk at his office, available for inspection by the public during the regular office hours of the Town Clerk. A copy of same is attached hereto at Appendix A.³ See also, Local Law No. 1 of the Year 2005, attached hereto as Appendix B.⁴

§ 180-4. Interpretation of district boundaries.

In determining the boundaries of the districts shown on the Zoning Map, the following rules shall apply:

- A. Where district boundaries are indicated as approximately following streets or highways, the center lines of such streets or highways shall be deemed to be such boundaries.
- B. Unless otherwise shown on the Zoning Map where the boundaries of any district are parallel to any road, such district shall be deemed to be 500 feet in depth measured from the center of the road.
- C. Where district boundaries are so indicated that they approximately follow lot lines, such lot lines shall be deemed to be such boundaries.

§ 180-5. Application of regulations.

Except as otherwise provided herein:

- A. No building shall be erected, constructed, reconstructed or altered and no land or building or part thereof shall be used for any purpose except as permitted for the district in which such building or land is located.
- B. No building shall be erected, constructed, reconstructed or altered, nor shall any open space surrounding any building be encroached upon or reduced in any manner except in

3. Editor's Note: Appendix A is included at the end of this chapter.

4. Editor's Note: Former Appendix B, consisting of amendments made by L.L. No. 1-2005, has been incorporated into the text of this chapter. See § 180-3 and Art. XI.

conformity to the yard, lot area and building location regulations hereinafter designated for the district in which such building or open space is located.

- C. No part of a yard or other open space required about any building for the purpose of complying with the provisions of this chapter shall be included as a part of a yard or other open space similarly required for another building.

ARTICLE III

R-1 Districts — One-Family Residential Districts

§ 180-6. Applicability.

The following regulations shall apply to all R-1 Districts.

§ 180-7. Uses permitted.

Uses permitted are as follows:

- A. Detached one-family dwellings.
- B. Churches or similar places of worship.
- C. Public parks and playgrounds and other municipal recreation uses.
- D. Public and private elementary schools.
- E. Golf courses and country clubs operated by membership organizations for the benefit of their members, and not for profit.
- F. Fire stations or other public service, including public utility buildings or structures necessary for protection or servicing of the neighborhood; provided, however, that such buildings shall be so designated and landscaped as to conform with the general character of the area in which they may be located.
- G. Customary agricultural operations but only if the property falls within a county adopted, New York State Certified Agricultural District; provided, however, that no storage of manure or odor- and/or dust producing substance shall be within 25 feet of any property line, and provided further than any building in which farm animals or poultry are kept is at least 25 feet from any side or rear lot lines. [Amended 12-14-2007 by L.L. No. 1-2010]
- H. Other customary accessory uses and buildings, provided such uses are incidental to the principal use and do not include any activity commonly conducted as a business.

§ 180-8. Required lot frontage and area.

Each lot in a Residential R-1 District shall have a frontage of not less than 150 feet and an area of not less than 40,000 square feet.

§ 180-9. Percentage of lot covered.

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

§ 180-10. Yards required.

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

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

§ 180-11. Building height limit.

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

§ 180-12. Floor area.

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

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

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

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

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

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

ARTICLE IV

R-2 Districts — One-Family Residential Districts

§ 180-15. Applicability.

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

§ 180-16. Uses permitted.

Uses permitted are as follows:

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

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

D. Customary agricultural operations; provided, however, that no storage of manure or odor- and/or dust-producing substance shall be permitted within 25 feet of any property line; and provided further that any building in which farm animals or poultry are kept is at least 25 feet from any side or rear lines. [Added 12-14-2009 by L.L. No. 1-2010]

- (1) In a R-2 District, from the adoption of this subsection forward, there shall not be permitted the equivalent of one animal unit, as defined in § 180-2, on lots/parcels which contain less than 40,000 square feet to open, unused land.
- (2) In a R-2 District there shall be allowed one animal unit or the equivalent for every 40,000 square feet of open, unused land.
- (3) In a R-2 District, for a landowner who wishes to have more than five animal units on their land, said landowner shall be required to undergo a site plan review from the Westmoreland Planning Board. The Westmoreland Planning Board will then submit the site plan proposal to the Oneida County Soil and Water Conservation District for their review and recommendation. Said proposal, after site plan review, must be approved by the Town of Westmoreland Planning Board and filed with same. All costs associated with this site plan proposal and the mandatory review shall be the responsibility of the landowner. [Amended 8-9-2010 by L.L. No. 2-2010]

§ 180-17. Required lot frontage and area. [Amended 2-11-1991 by L.L. No. 1-1991]

Each lot in a Residential R-2 District shall have a frontage of not less than 150 feet and an area of not less than 40,000 square feet, except where said lot is on a public water supply, in which case the frontage shall not be less than 100 feet and the total area shall not be less than 20,000 square feet.

§ 180-18. Percentage of lot covered.

All buildings, including accessory buildings, shall not cover more than 35% of the area of the lot.

§ 180-19. Yards required.

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

- A. Front yards shall have a depth of not less than 100 feet where the house is located on a state road and not less than 75 feet where located on a Town or county road; provided, however, that, if at the effective date of this chapter, 25% of the lots comprising the frontage along the street between two intersecting streets on the same side of the street upon which a dwelling is to be located are occupied by houses having a front yard depth of less than that herein prescribed, a house may be located on any remaining unoccupied lot so as to have a front yard depth equal to the average depth of all lots so occupied, unless such house is located a distance of 500 feet or more from the next nearest house, in which event the minimum front yard requirements shall apply regardless of the location of other houses on such street.

- B. Each side yard shall have a minimum width of 15 feet.
- C. Each rear yard shall have a minimum depth of 35 feet.

§ 180-20. Building height limit.

No building shall be erected to a height in excess of 30 feet; provided, however that parapet walls or cornices for ornamental purposes only, and without windows, may be permitted to extend a distance of five feet above the height limit permitted.

§ 180-21. Floor area.

Each dwelling house hereafter erected in a R-2 District shall have a minimum floor area, exclusive of attached garage, on the ground level enclosed by main walls of such house of 832 square feet for a house having more than one story.

§ 180-22. Length and width restriction. [Added 5-12-1992 by L.L. No. 1-1992]

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

§ 180-23. Accessory buildings and uses. [Amended 6-8-1987 by L.L. No. 3-1987]

- A. Permit. All accessory buildings or uses shall require a permit to be issued prior to their initiation as elsewhere required in this chapter, except that no permit shall be required for a single accessory building with dimensions that do not exceed a maximum of 100 square feet in size, providing all minimum required yard dimensions are observed.
- B. Number. There shall not be more than two accessory buildings to the residential lot, except that an agriculture operation shall not be subject to such provisions.
- C. Height. Maximum height of accessory buildings shall be one story or 15 feet, whichever is less.
- D. Location. Accessory buildings or structures in residential districts which are not attached to a principal building may be erected within the side or rear yard in accordance with the following requirements:
 - (1) For garage, toolhouse or similar storage building, and swimming pool: 10 feet from side or rear lot line. Distance for in-ground pools will be measured from water line and distance for aboveground pools will be measured from the most external portion of the structure, including decking. [Amended 12-12-1988 by L.L. No. 3-1988]
 - (2) For barn, stable, poultry house, kennel or other animal shelter or farm structure: 25 feet from side or rear lot line. [Amended 12-14-2009 by L.L. No. 1-2010]

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

ARTICLE V

R-3 Districts — One-Family Residential Districts

§ 180-24. Applicability.

The following regulations shall apply in all R-3 Districts.

§ 180-25. Uses permitted.

Uses permitted are as follows:

- A. The same uses permitted in a R-2 District.
- B. Riding stables only upon obtaining a special use permit from the Zoning Board of Appeals and subject to such reasonable restrictions as may be prescribed by the Zoning Board of Appeals.
- C. Two-family houses upon obtaining a special permit from the Zoning Board of Appeals.
- D. Customary agricultural operations; provided, however, that no storage of manure or odor- or dust-producing substances shall be permitted within 100 feet of any property line. [Amended 12-14-2009 by L.L. No. 1-2010; 8-9-2010 by L.L. No. 2-2010]
- E. Additional depth for any business use may be acquired in R-3 Districts adjoining business districts by obtaining a special permit from the Zoning Board of Appeals in accordance with the provisions of § 180-85B(2) hereof. [Amended 12-14-2009 by L.L. No. 1-2010; 8-9-2010 by L.L. No. 2-2010]
- F. The following uses only upon obtaining a permit from the Town Board and subject to such reasonable restrictions as may be prescribed by the Town Board: [Amended 12-14-2009 by L.L. No. 1-2010; 8-9-2010 by L.L. No. 2-2010]
 - (1) Dump.
 - (2) Natural land production uses.
 - (3) Summer recreation camps.
 - (4) Golf courses operated for profit together with facilities customarily incidental thereto.

- (5) Aircraft landing fields operated for profit.
 - (6) Riding academies where adjacent to R-3 and R-4 Residential Districts.
 - (7) Mobile courts where adjacent to B-1 and B-2 Districts.
 - (8) Temporary commercial parking of more than 25 vehicles.
- G. The following use, only upon undergoing a site plan review and receiving a special permit from the Zoning Board of Appeals. [Added 8-9-2010 by L.L. No. 2-2010]
- (1) Migrant labor camps.

§ 180-26. Required lot frontage and area. [Amended 2-11-1991 by L.L. No. 1-1991]

Each lot in a Residential R-3 District shall have a frontage of not less than 150 feet and an area of not less than 40,000 square feet, except where said lot is on a public water supply, in which case the frontage shall not be less than 100 feet and the total area shall not be less than 20,000 square feet.

§ 180-27. Percentage of lot covered.

All buildings, including accessory buildings, shall not cover more than 35% of the area of the lot.

§ 180-28. Yards required.

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

- A. Front yards shall have a depth of not less than 100 feet where the house is located on a state road and not less than 75 feet where located on a Town or county road; provided, however, that, if at the effective date of this chapter, 25% of the lots comprising the frontage along the street between two intersecting streets on the same side of the street upon which a dwelling is to be located are occupied by houses having a front yard depth of less than that herein prescribed, a house may be located on any remaining unoccupied lot so as to have a front yard depth equal to the average depth of all lots so occupied, unless such house is located a distance of 500 feet or more from the next nearest house, in which even the minimum front yard requirements shall apply regardless of the location of other houses on such street.
- B. Each side yard shall have a minimum width of 15 feet.
- C. Each rear yard shall have a minimum depth of 35 feet.

§ 180-29. Building height limit.

No building shall be erected to a height in excess of 30 feet; provided, however, that parapet walls or cornices for ornamental purposes only, and without windows, may be permitted to extend a distance of five feet above the height limit permitted.

§ 180-30. Dwelling area.

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

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

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

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

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

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

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

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

ARTICLE VI

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

§ 180-33. Applicability.

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

§ 180-34. Uses permitted.

Uses permitted are as follows:

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

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

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

§ 180-36. Mobile homes in certain districts.

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

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

- B. At least 60 days before the expiration of the two-year period, the holder of said permit shall notify the Building Inspector, in writing, of his intentions to renew said permit, and the Building Inspector shall, upon reapplication and the payment of any fees specified in this chapter, renew said permit.

§ 180-37. New home construction.

- A. A one-year trailer permit may be granted in I, B-1, B-2 and R-3 districts for the sole purpose of constructing a home subject to the following:
- (1) That the foundation or excavation has been started evidencing the good faith of the applicant, and the location of said site has been approved by the Code Enforcement Officer or Deputy and a building permit issued for said construction. **[Amended 6-8-1987 by L.L. No. 3-1987]**
 - (2) The location of the mobile home is approved by the Building Inspector prior to the placement of the trailer.
- B. The Zoning Board of Appeals is empowered to grant a variance as to sidelines and setbacks for the mobile home if the regular setback and sidelines restriction would interfere with the property construction of the home. Said mobile home must be removed from the premises as soon as the home can be occupied.
- C. The Building Inspector may grant a six-month extension of said permit after application by the owner can evidence good faith in attempting to complete the construction.

§ 180-38. Rebuilding due to destruction.

A one-year mobile home permit will be granted to the owner of a house in any district that is wholly or partially destroyed subject to the following provisions:

- A. That no other facilities for housing are available to the owner; and
- B. The location of the mobile home is approved by the Building Inspector prior to its placement.

§ 180-39. Agricultural property. [Added 12-14-2009 by L.L. No. 1-2010]

Where land is used for active farming, although zoned other than agriculturally, the owner may place a temporary mobile home for the use of a person actively engaged in the work of the farm, provided other facilities are not available and subject to the following restrictions:

- A. The location must be approved by the Building Inspector prior to the placement of the mobile home to assure compliance with the Town Code and the Building Code of the State of New York.
- B. The size of the mobile home shall be in accordance with the definition in § 180-2.

§ 180-40. Miscellaneous regulations. ⁷

No permits granted under § 180-36 shall be transferable, and all septic systems must be approved by the Building Inspector as set forth in § 180-81. No more than one mobile home shall be allowed under a permit.

§ 180-41. Addition of five or more animal units. [Added 12-14-2009 by L.L. No. 1-2010; amended 8-9-2010 by L.L. No. 2-2010]

If, after the adoption of this section, a property in a New York State Certified Agricultural District, which did not contain any animal husbandry practices and/or livestock operations immediately previously thereto, wishes to add over five animal units to the property, said landowner shall be required to undergo a site plan review from the Westmoreland Planning Board. The Westmoreland Planning Board will then submit the site plan proposal to the Oneida County Soil and Water Conservation District for their review and recommendation. Said proposal, after site plan review, must be approved by the Town of Westmoreland Planning Board and filed with same. All costs associated with this site plan proposal and the mandatory review shall be the responsibility of the landowner.

ARTICLE VII**B-1 Districts — General Business Districts****§ 180-42. Applicability.**

The following regulations shall apply in all B-1 Districts.

§ 180-43. Uses permitted.

Uses permitted are as follows:

- A. All uses permitted in R-2 Residential Districts subject to all provisions specified for such residential districts.
- B. Stores, shops and showrooms for the conduct of any retail business.
- C. Personal service shops, including, but not limited, to barbershops and beauty parlors.
- D. Banks, offices, restaurants and similar community services.
- E. Hotels and motels.
- F. Theaters, assembly halls, bowling alleys and other public recreation uses.
- G. Places for conducting the following and similar businesses that may be conducted without unreasonable noises, odors or disorder, provided that any manufacturing or processing of goods on the premises is clearly incidental to a retail business conducted on the premises; i.e., barber, caterer, cleaner, confectioner, decorator, dressmaker, dyer,

7. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

florist, furrier, hand laundry, milliner, optician, photographer, printer, shoeshiner, shoemaker or repairer, tailor, telegraph and telephone office, undertaker, upholsterer.

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

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

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

**ARTICLE VIII
B-2 Districts — General Business Districts**

§ 180-45. Applicability.

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

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

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

§ 180-46. Uses permitted.

Uses permitted are as follows:

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

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

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

ARTICLE IX
General Industrial Districts — I Districts

§ 180-48. Applicability.

The following regulations shall apply in all I Districts.

§ 180-49. Uses permitted.

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

§ 180-50. Uses prohibited.

Uses prohibited are as follows:

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

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

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

§ 180-51. Building height limit.

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

§ 180-52. Yards required.

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

ARTICLE X

Light Industrial Districts

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

§ 180-53. Intent.

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

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

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

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

§ 180-54. Permitted uses.

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

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

§ 180-55. Special permit uses.

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

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

§ 180-56. Prohibited uses.

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

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

§ 180-57. Required lot frontage and area.

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

§ 180-58. General requirements.

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

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

ARTICLE XI

Planned Development Districts (PD-R, PD-C and PD-E Districts)**[Added 7-11-2005 by L.L. No. 1-2005]****§ 180-59. Purpose.**

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

§ 180-60. Classifications of planned development.

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

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

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

or dominant use or function, and in which the proposed uses of interior and exterior spaces, although diverse or mixed, bear extraordinary design qualities resulting in a completely logical and complimentary conjunction of uses and functions not ordinarily encountered in normal development. Permitted uses include:

- (1) Any permitted use in a PD-R or PD-C District, as well as a combination of such uses. Additionally, any use determined by the Planning Board and Town Board to be in harmony with the goals of the Town of Westmoreland Comprehensive Master Plan may be permitted in a PD-E district.

§ 180-61. Procedures.

A. Procedures for PD District zone change designation.

- (1) Preapplication conference. Before submission of a petition for a zone change to a PD District, the applicant is encouraged to meet with the Town Board to determine the feasibility and suitability of the application. A meeting shall also be conducted with the Town Planning Board to monitor application procedures and requirements.
- (2) Application procedure.
 - (a) Application for the establishment of a PD District shall be made to the Town Board. Each application shall be accompanied by but not necessarily limited to the following:
 - [1] A petition for the zoning change.
 - [2] The applicant must provide proof of full legal and beneficial ownership of the property or proof of an option or contractual right to purchase the property.
 - [3] A payment in accordance with the adopted fee schedule.
 - [4] A completed environmental assessment form (EAF) [or draft environmental impact statement (DEIS)] complying with the provisions of the state environmental quality review process (SEQR).
 - [5] A conceptual land use, circulation and utility plan of the property in question. Such a plan shall include:
 - [a] All existing and proposed structures, lots, roads, parking areas and other improvements and shall indicate facilities for public transit and pedestrian circulation, the general site location of all proposed land use areas, building densities within areas, the approximate acreage in each type of use, the proposed number of dwelling units and proposed square footage of nonresidential buildings and the amount, proposed use and location of all open space and recreation areas.

- [b] Primary vehicular and pedestrian routes and linkages must be shown.
 - [c] An indication of the conceptual source and arrangement of all utilities and proposed expansions and/or any alternative concepts for dealing with water supply, sewage disposal, stormwater drainage, gas and electric service.
 - [d] An indication of the use and location of existing structures on adjoining parcels.
- [6] A preliminary engineering report which shall include but not necessarily be limited to:
- [a] A written description of the proposal, including the major planning assumptions and objectives, schedule and project phases, the probable effect on adjoining properties and the extent to which the plan achieves the objective of the overall Town development plan.
 - [b] A written description of the probable impacts on the resources and the utility systems of the Town.
 - [c] A written description of the probable fiscal impacts, including a summary of new costs and revenues to the Town due to the development.
- (b) It is expected that the Town Board will serve as lead agency under most circumstances, however, the Town Board may refer the role of SEQR lead agency to the Planning Board. The Town Board shall refer the zone change application and all application materials to the Town Planning Board upon receipt of the application. The lead agency will distribute the application materials to all other involved agencies.
- (3) Planning Board review.
- (a) Within 62 days of the date that the application is determined to be complete, the Planning Board shall recommend approval, approval with modifications or disapproval of the application to the Town Board. Failure of the Planning Board to act within 62 days or such longer period as may be consented to shall be deemed to be a recommendation for approval of the plan as submitted.
 - (b) Review criteria.
 - [1] In considering the application for the zone change to a PD District, the Planning Board may request such changes in the conceptual plans and specify such additional requirements as are deemed reasonably necessary to protect the established or permitted uses in the vicinity and to promote and protect the orderly growth and sound development of the community. In reaching its recommendation on the proposed

development and changes, if any, in the conceptual plans, the Planning Board shall consider, among other things, the following:

- [a] The public benefit of the proposed PD District.
 - [b] The existing character of the neighborhood.
 - [c] The location of principal buildings on the site in relation to one another and in relation to buildings and uses on properties adjoining the proposed district.
 - [d] The general circulation and open space pattern relative to the structures.
 - [e] The traffic circulation features within the site and the amount, location and access to automobile parking areas.
 - [f] The environmental factors on the environmental assessment form (EAF).
- [2] In the event that approval subject to modifications is granted, the applicant may, within 10 days after receiving a copy of the Planning Board's decision, notify the Town Board, in writing, of acceptance or refusal of all such modifications. If modifications are refused, the Planning Board shall be deemed to have recommended disapproval of the application. In the event that the applicant does not notify the Town Board within said period of acceptance or refusal of all said modifications, the recommendation of approval of the application, subject to such modifications, shall stand.
- (c) Establishment of a PD District is a rezoning action and is subject to the state environmental quality review process (SEQR). It is expected that the Town Board will initially serve as lead agency. Under SEQR provisions, it is expected the Town Board will refer lead agency status to the Planning Board. The lead agency may hold a public hearing pursuant to SEQR status. If it is determined that an environmental impact statement will be prepared for the proposal in question, all time periods and deadlines are delayed until a draft environmental impact statement has been filed. An application is not complete and, therefore, the review process does not start, until a determination of no significance has been made or until a draft environmental impact statement (EIS) or generic EIS has been completed and the SEQR process concluded.
- (d) The recommendations of the Planning Board shall be in the form of a written resolution which shall include findings of fact and shall set forth the reasons for granting or denying tentative approval, specifying with particularity in what respects the proposal contained in the application would or would not be in the public interest and factors considered under the review. The resolution shall be filed with the Town Clerk and shall be available during regular office hours for inspection by any interested person.

- (4) Town Board SEQR review (if not referred to the Planning Board). The Town Board will perform the SEQR investigations and reviews described in the preceding subsection. SEQR requirements for the PD plans will have been met during the zoning change/conceptual plan approval phase of the process, provided that the thresholds established under the DEIS/GEIS have not been exceeded.
- B. Period of eligibility. In the event that construction has not commenced within 180 days from the date that the Zoning Map amendment establishing the PD District became effective, the Planning Board may so notify the Town Board and the Town Board may, on its own motion, institute a Zoning Map amendment to return the PD District to its former classification, unless the applicant shall obtain written extension of time from the Planning Board.

§ 180-62. Site plan review process.⁹

Site plan review procedures for planned unit developments shall comply with the site plan review procedures contained in Chapter 138, specifically §§ 138-4 through 138-9.

**ARTICLE XII
Supplementary Regulations**

§ 180-63. Height exceptions.

The height limits of this chapter shall not apply to church spires, belfries, cupolas, penthouses and domes not used for human occupancy or to chimneys, ventilators, skylights, water tanks or necessary mechanical appurtenances usually carried above the roof level, nor to flagpoles, monuments, transmission towers, and cables, radio or television antennas or towers and similar structures. Such features, however, shall be erected only to such height as is necessary to accomplish the purpose they are to serve, and provided further that no such structure shall be permitted to be so located or built to such height as to extend above the normal flight path of aircraft landing at or leaving the Oneida County Airport.

§ 180-64. Visibility at intersections.

On corner lots, no fence, wall, hedge, or other structure or planting more than three feet in height shall be erected, placed or maintained so as to obstruct visibility or vehicular traffic within the triangular area formed by the intersecting street lines and a straight line joining said street lines at points which are 20 feet distant from the point of intersection measured along said street lines.

§ 180-65. Lots with less than required dimensions.

Any lot with an area of a width less than that required in the district in which said lot is located may be used for any purpose permitted in the district, provided that all other

9. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

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

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

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

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

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

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

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

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

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

§ 180-68. Apartments permitted.

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

§ 180-69. Off-street parking.

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

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

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

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

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

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

§ 180-72. Recreational vehicles.

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

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

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

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

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

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

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

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

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

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

ARTICLE XIII Nonconforming Uses

§ 180-73. Continuance of uses.

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

§ 180-74. Nonconforming use of land.

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

§ 180-75. Nonconforming use of buildings.

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

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

§ 180-76. Building under construction.

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

§ 180-77. Removal.

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

§ 180-78. Discontinuance.

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

§ 180-79. Mobile homes. [Added 2-12-2007 by L.L. No. 2-2007]

- A. Notwithstanding the provisions of any other section or subsection of this chapter, the nonconforming use of any mobile home shall not be changed.
- B. Notwithstanding the provisions of any other section or subsection of this chapter, no nonconforming mobile home shall be replaced with another nonconforming structure or, if damaged by fire, structural failure, wind, exposure or other event to the extent of 50% or more of its market value at the time of such damage, restored, repaired or rebuilt.
- C. Any nonconforming mobile home that ceases to be a residence or that is damaged to the extent of 50% or more of its market value shall be removed and not replaced.

ARTICLE XIV**Administration and Enforcement****§ 180-80. Enforcement. [Amended 6-8-1987 by L.L. No. 3-1987]**

This chapter shall be enforced by the Code Enforcement Officer or Deputy, who shall be appointed annually by the Town Board.

§ 180-81. Building permits. [Amended 6-8-1987 by L.L. No. 3-1987]

- A. No buildings or structure shall be erected, added to or structurally altered, nor shall any septic tank be installed, until a permit therefor has been issued by the Code Enforcement Officer or Deputy. Except upon a written order of the Zoning Board of Appeals, no such building permit or certificate of occupancy shall be issued for any building where said construction, addition or alteration or use thereof would be in violation of any the provisions of this chapter. A certificate of occupancy shall not be denied to the owner of a building the exterior of which is complete because incidental details of work remain to be completed on the interior, provided that necessary sewage and water facilities have been installed.
- B. There shall be submitted with all applications for building permits two copies of the layout or plot plan, drawn to scale, showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of the building and accessory buildings to be erected, with such other information as may be necessary to determine and provide for the enforcement of this chapter.
- C. One copy of such layout or plot plan shall be returned when approved by the Code Enforcement Officer or Deputy, upon the payment of the required fees.
- D. There shall be paid to the Code Enforcement Officer or Deputy a fee upon each application for a building permit as follows: (NOTE: Fees subject to change by Town, Board.)
 - (1) Single-family residence: \$150 for the first 1,500 square feet, plus \$0.12/square foot over 1,500 square feet.

- (2) Multifamily residence: \$150 per unit up to 1,500 square feet, plus \$0.12/square foot over 1,500 square feet.
- (3) Single-/doublewide: \$150.
- (4) Additions (residential): \$0.10/square foot.
- (5) Additions (commercial): \$0.15/square foot.
- (6) Accessory buildings: \$0.06/square foot (\$20 minimum).
- (7) Alterations (residential): \$0.06/square foot.
- (8) Alterations (commercial): \$0.12/square foot.
- (9) Commercial buildings: \$0.15/square foot.
- (10) Site plan review (residential): \$50.
- (11) Site plan review (commercial): \$150.
- (12) ZBA conference (residential): \$50.
- (13) ZBA conference (commercial): \$150.
- (14) Cell tower (new construction): \$500.
- (15) Cell tower (retrofit): \$50.
- (16) Fire inspection (solid fuel-burning device): \$50.
- (17) Septic permit: \$45.
- (18) Dye test: \$45.
- (19) Sign permit: \$15.
- (20) Demolition permit: \$20.
- (21) Pool permit: \$30.

§ 180-82. Certificate of occupancy. [Amended 6-8-1987 by L.L. No. 3-1987¹²]

- A. Certificates of occupancy required. A certificate of occupancy shall be required for any work which is the subject of a building permit and for all structures, buildings, or portions thereof, which are converted from one use or occupancy classification or subclassification to another. Permission to use or occupy a building or structure, or portion thereof, for which a building permit was previously issued shall be granted only by issuance of a certificate of occupancy.

12. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- B. Issuance of certificates of occupancy. The Code Enforcement Officer shall issue a certificate of occupancy if the work which was the subject of the building permit was completed in accordance with all applicable provisions of the Uniform Code and Energy Code and, if applicable, that the structure, building or portion thereof that was converted from one use or occupancy classification or subclassification to another complies with all applicable provisions of the Uniform Code and Energy Code. The Code Enforcement Officer or an inspector authorized by the Code Enforcement Officer shall inspect the building, structure or work prior to the issuance of a certificate of occupancy. In addition, where applicable, the following documents, prepared in accordance with the provisions of the Uniform Code by such person or persons as may be designated by or otherwise acceptable to the Code Enforcement Officer, at the expense of the applicant for the certificate of occupancy, shall be provided to the Code Enforcement Officer prior to the issuance of the certificate of occupancy:
- (1) A written statement of structural observations and/or a final report of special inspections; and
 - (2) Flood hazard certifications.
- C. Contents of certificates of occupancy. A certificate of occupancy shall contain the following information:
- (1) The building permit number, if any;
 - (2) The date of issuance of the building permit, if any;
 - (3) The name, address and Tax Map number of the property;
 - (4) If the certificate of occupancy is not applicable to an entire structure, a description of that portion of the structure for which the certificate of occupancy is issued;
 - (5) The use and occupancy classification of the structure;
 - (6) The type of construction of the structure;
 - (7) The assembly occupant load of the structure, if any;
 - (8) If an automatic sprinkler system is provided, a notation as to whether the sprinkler system is required;
 - (9) Any special conditions imposed in connection with the issuance of the building permit; and
 - (10) The signature of the Code Enforcement Officer issuing the certificate of occupancy and the date of issuance.
- D. Temporary certificate.
- (1) The Code Enforcement Officer shall be permitted to issue a temporary certificate allowing the temporary occupancy of a building or structure, or a portion thereof, prior to completion of the work which is the subject of a building permit.

However, in no event shall the Code Enforcement Officer issue a temporary certificate unless the Code Enforcement Officer determines:

- (a) That the building or structure, or the portion thereof covered by the temporary certificate, may be occupied safely;
 - (b) That any fire- and smoke-detecting or fire protection equipment which has been installed is operational; and
 - (c) That all required means of egress from the building or structure have been provided.
- (2) The Code Enforcement Officer may include in a temporary certificate such terms and conditions as he or she deems necessary or appropriate to ensure safety or to further the purposes and intent of the Uniform Code. A temporary certificate shall be effective for a period of time, not to exceed six months, which shall be determined by the Code Enforcement Officer and specified in the temporary certificate. During the specified period of effectiveness of the temporary certificate, the permit holder shall undertake to bring the building or structure into full compliance with all applicable provisions of the Uniform Code and the Energy Code.
- E. Revocation or suspension of certificates. If the Code Enforcement Officer determines that a certificate of occupancy or a temporary certificate was issued in error because of incorrect, inaccurate or incomplete information, and if the relevant deficiencies are not corrected to the satisfaction of the Code Enforcement Officer within such period of time as shall be specified by the Code Enforcement Officer, the Code Enforcement Officer shall revoke or suspend such certificate.
- F. Fee. The fee specified in or determined in accordance with the provisions set forth in § 86-16, Fees, of the Code of the Town of Westmoreland must be paid at the time of submission of an application for a certificate of occupancy or for temporary certificate.

§ 180-83. Duration and renewal of permits. [Amended 6-8-1987 by L.L. No. 3-1987¹³]

Building permits shall expire 12 months after the date of issuance. A building permit which has become invalid or which has expired pursuant to this section may be renewed upon application by the permit holder, payment of the applicable fee, and approval of the application by the Code Enforcement Officer.

§ 180-84. Interpretation; conflict with other laws. ¹⁴

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements adopted for the promotion of the public health, morals, safety and general welfare. Wherever the requirements of this chapter are at variance with any other

13. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

14. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

lawfully adopted regulations, rules, ordinances or statutes, the most restrictive, or that imposing the higher standard, shall govern.

§ 180-85. Board of Appeals.

- A. Creation, appointment and organization. A Board of Appeals is hereby created. Said Board shall consist of five members, whose Chairman shall be designated by the Town Board. Of the members of the Board first appointed, one shall hold office for the term of one year; one for the term of two years; one for the term of three years; one for the term of four years; and one for the term of five years from and after his appointment. Their successors shall be appointed for the term of five years from and after the expiration of the terms of their predecessors in office. If any vacancy shall occur otherwise than by expiration of term, it shall be filled by the Town Board by appointment for the unexpired term. The Board of Appeals shall appoint a Secretary and prescribe rules for the conduct of its affairs.
- B. Powers and duties. The Board of Appeals shall have all of the powers and duties prescribed by law and by this chapter, which powers and duties are more particularly specified as follows:
- (1) Interpretation. Upon appeal from a decision by the Code Enforcement Officer or Deputy or other administrative official, to decide any question involving the interpretation of any provision of this chapter, including determination of the exact location of any district boundary, if there is uncertainty with respect thereto.
[Amended 6-8-1987 by L.L. No. 3-1987]
 - (2) Special permits. To issue special permits for any of the uses for which this chapter requires the obtaining of special permits from the Zoning Board of Appeals. Such permit shall be granted only after a public hearing, upon due notice as prescribed by § 274-b of the Town Law and upon mailing notice of such hearing to the owners of property immediately adjacent, extending 100 feet from the property in connection with which such permit is sought and of that directly opposite thereto, extending 100 feet from the street frontage of such opposite land. In granting such permits, the Board may specify the appropriate conditions and safeguards as a condition thereof, and may grant such permit only upon its determination that:¹⁵
 - (a) The use proposed is reasonably consistent with the public health, morals and general welfare;
 - (b) The proposed use will be so located and of such a size and character that it will be in harmony with the appropriate and orderly development of the district in which it is situated, and will not be detrimental to the orderly development of the adjacent districts;
 - (c) Location and size of the proposed use, the nature and intensity of the operations involved in or conducted in connection with it, with its site, layout and its relation to streets giving access to it shall be such that traffic to and

15. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

from the use and the assembly of persons in connection with it will not be hazardous or inconvenient to the neighborhood, or conflict with the normal traffic of the neighborhood. In applying this standard, the Board shall consider, among other things, convenient routes of pedestrian traffic, particularly of children; relation to main traffic thoroughfares and to street and road intersections; and the general character and density of population of the neighborhood;

- (d) The proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal and similar facilities;
 - (e) Surrounding property values will be reasonably safeguarded; and
 - (f) Use for which such permit is sought will not, in the circumstances of the particular case and under any conditions that the Board considers to be necessary or desirable, be injurious to the neighborhood or otherwise detrimental to the public welfare.
- (3) Use variances and area variances. To vary or adapt the strict application of any of the requirements of this chapter by the granting of use variances or area variances as provided in Town Law § 267-b.¹⁶
- C. Procedure. The Zoning Board of Appeals shall act in strict accordance with the procedure specified by law and by this chapter. All appeals and applications made to the Board shall be in writing on forms prescribed by the Board. Every appeal or application shall refer to the specific provision of this chapter involved, and shall exactly set forth the interpretation that is claimed, the use for which the special permit is sought, or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be. At least five days before the date of the hearing required by law on an application or appeal to the Zoning Board of Appeals, the Secretary of said Board shall transmit to the Planning Board of the Town of Westmoreland a copy of the notice of the aforementioned hearing, and shall request that the Planning Board submit to the Zoning Board of Appeals its advisory opinion on said application or appeal, and the Planning Board shall submit a report of such advisory opinion prior to the date of said hearing. Every decision of the Zoning Board of Appeals shall be by resolution, each of which shall contain a full record of the findings of the Board in the particular case. Each such resolution shall be filed in the office of the Code Enforcement Officer or Deputy by case number under one or another of the following headings: 1) interpretations; 2) special permits; or 3) variances, together with all documents pertaining thereto. The Zoning Board of Appeals shall notify the Town Board and the Planning Board of the Town of Westmoreland of each special permit and each variance granted under the provisions of this chapter. **[Amended 6-8-1987 by L.L. No. 3-1987]**

16. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- D. Fees. Applications for a special permit or variance shall be accompanied by a fee as set by resolution of the Town Board. [Amended 6-8-1987 by L.L. No. 3-1987; 9-9-1991 by L.L. No. 3-1991¹⁷]

§ 180-86. Amendments.

- A. The Town Board may from time to time, on its own motion or on petition of one or more residents of the Town or on recommendation of the Planning Board, amend, supplement, or repeal the regulations and provisions of this chapter. Every such proposed amendment or change, whether initiated by the Town Board or by petition, shall be referred to the Planning Board for report thereon before the public hearing hereinafter provided for. The Town Board, by resolution adopted at a regular meeting, shall fix the time and place of a public hearing on the proposed amendment and cause notice to be given as follows: [Amended 8-9-2010 by L.L. No. 2-2010]
- (1) At least 10 days' notice of the time and place of hearing shall be published in a newspaper of general circulation in the Town of Westmoreland.
 - (2) A written notice of change or amendment affecting property within the protectively zoned area of a housing project authorized under the Public Housing Law, as such area is shown on an approved Zoning Map filed with the Building Inspector, shall be given to the Housing Authority erecting or owning the project and to the government providing financial aid for assistance thereto at least 10 days prior to the date of such hearing.
 - (3) A written notice of any proposed change or amendment affecting property within 500 feet of the boundaries of any state park or parkway shall be given to the Regional State Park Commission having jurisdiction over such state park or parkway at least 10 days prior to the date of such public hearing.
 - (4) A written notice of any proposed change or amendment affecting property within 500 feet of the boundaries of any city, village, town or county shall be given to the Clerk of the Board of Supervisors at least 10 days prior to the date of hearing.
 - (5) A written notice of any proposed change or amendment shall be given to every association of residents of the Town which shall have registered its name and address for this purpose with the Town Clerk at least 10 days prior to date of such public hearing.
- B. Whenever a protest against such change signed by the owners of 20% or more of the area of land included in such proposed change or that immediately adjacent, extending 100 feet therefrom, or of that directly opposite thereto, extending 100 feet therefrom, or of that directly opposite thereto, extending 100 feet from the street frontage of such opposite land, is filed with the Town Clerk, such amendment shall not become effective except by the favorable vote of at least four members of the Town Board.

17. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- C. Subject to the provision of § 278 of the Town Law, the Planning Board of the Town of Westmoreland is hereby empowered, simultaneously with the approval of any subdivision plat, either to confirm the zoning regulations of the land so platted, as shown on the official Zoning Map, or to make any reasonable change therein after a public hearing preceded by the same notice as in the case of the approval of the plat itself.¹⁸
- D. Every petition for an amendment of this chapter shall be accompanied by a fee as set forth by resolution of the Town Board. [Amended 6-8-1987 by L.L. No. 3-1987¹⁹]

§ 180-87. Penalties for offenses.

- A. Complaints of violations. Whenever a violation of this chapter occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Code Enforcement Officer or Deputy of the Town of Westmoreland, who shall properly record such complaint and immediately investigate and report thereon to the Town Board. [Amended 6-8-1987 by L.L. No. 3-1987]
- B. In case any building or structure is erected, constructed, reconstructed, altered, converted or maintained or any building, structure or land is used in violation of this chapter, the Town Board of the Town of Westmoreland may institute any appropriate action or proceedings to prevent such unlawful erection, construction, alteration, conversion, maintenance or use to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises, and upon failure or refusal of the Town Board of the Town of Westmoreland to institute any such appropriate action or proceeding for a period of 10 days after written request by a resident taxpayer of the Town so to proceed, any three taxpayers of the Town residing in the district wherein such violation exists, who are jointly or severally aggrieved by such violation, may institute such appropriate action or proceeding in like manner as such Town Board of the Town of Westmoreland is authorized to do by the authority granted in Town Law § 268(2).²⁰
- C. Penalties. A violation of this chapter is hereby declared to be an offense, punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and, upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this chapter shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation

18. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

19. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

20. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

shall constitute a separate additional violation. [Amended 6-8-1987 by L.L. No. 3-1987²¹]

§ 180-88. Fees. [Added 6-8-1989 by L.L. No. 3-1987]

All fees enumerated in this chapter, as amended, will be established by resolution of the Town Board.

**ARTICLE XV
Regulation of Automobile Junkyards**

§ 180-89. Intent.

A clean, wholesome, attractive environment is declared to be of importance to the health and safety of the inhabitants of the Town of Westmoreland and the safeguarding of their material rights against unwarrantable invasion and, in addition, such an environment is deemed essential to the maintenance and continued development of the economy of the Town and the general welfare of its citizens. It is further declared that the unrestrained accumulation of junk motor vehicles is a hazard to such health, safety and welfare of citizens of the Town necessitating the regulation, restraint and elimination thereof. At the same time, it is recognized that the maintenance of junkyards, as hereinafter defined, is a useful and necessary business and ought to be encouraged when not in conflict with the express purpose of this chapter.

§ 180-90. Definitions.

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

AUTOMOBILE JUNKYARD — Any place of storage or deposit, whether in connection with another business or not, where two or more unregistered, old, or secondhand motor vehicles, no longer intended or in condition for legal use on the public highways, are held, whether for purpose of resale of used parts therefrom, for the purpose of reclaiming for use some or all of the materials therein, whether metal, glass, fabric or otherwise, for the purpose of disposing of the same or for any other purpose. Such term shall include any place of storage or deposit for any such purposes of used parts or waste materials from motor vehicles which, taken together, equal in bulk two or more such vehicles; provided, however, the term "junkyard" shall not be construed to mean an establishment having facilities for processing iron, steel or nonferrous scrap whose principal produce is scrap iron steel or nonferrous scrap for sale for remitting purposes only.

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

21. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

MOTOR VEHICLE — All vehicles propelled or drawn by power other than muscular power originally intended for use on public highways.

§ 180-91. Requirements for operation or maintenance.

No person shall operate, establish or maintain a junkyard until he:

- A. Has obtained a license to operate a junkyard business; and
- B. Has obtained a certificate of approval for the location of such junkyard.

§ 180-92. Application for license and certificate of approval.

Application for license and the certificate of approved location shall be made, in writing, to the Town Board and the application shall be accompanied by a certificate from the Planning Board that the proposed location is not within an established district restricted against such uses or otherwise contrary to the prohibitions of this chapter. The application shall contain a description of the land to be included within the junkyard.

§ 180-93. Hearing.

A hearing on the application shall be held within the Town not less than two nor more than four weeks from the date of receipt of the application by the legislative body. Notice of the hearing shall be given to the applicant by mail, postage prepaid, to the address given in the application and shall be published once in the official newspaper of the Town, which publication shall be not less than seven days before the date of the hearing.

§ 180-94. License requirements.

At the time and place set for hearing, the Town Board shall hear the applicant and all other person wishing to be heard on the application for a license to operate, establish or maintain the junkyard. In considering such application, it shall take into account the suitability of the applicant with reference to his ability to comply with the fencing requirements or other reasonable regulations concerning the proposed junkyard, to any record of convictions for any type of larceny or receiving stolen goods, and to any other matter within the purpose of this chapter.

§ 180-95. Location requirements.

At the time and place set for hearing, the Town Board shall hear the applicant and all other persons wishing to be heard on the application for certificate of approval for the location of the junkyard. In passing upon same, it shall take account, after proof of legal ownership or right to such use of the property for the license period by the applicant, the nature and development of surrounding property, such as the proximity of churches, schools, hospitals, public buildings or other places of public gatherings; and whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of offensive or unhealthy odors or smoke, or of other causes.

§ 180-96. Aesthetic considerations.

At the hearing regarding location of the junkyard, the Town Board may also take into account the clean, wholesome and attractive environment which has been declared to be of vital importance to the continued welfare of its citizens by considering whether or not the proposed location can be reasonably protected from having an unfavorable effect thereon. In this connection, the Town Board may consider collectively the type of road servicing the junkyard or from which the junkyard may be seen, the natural or artificial barriers protecting the junkyard from view, the proximity of the proposed junkyard to established residential and recreational areas or main access routes thereto, as well as the reasonable availability of other suitable sites for the junkyard.

§ 180-97. Grant or denial of application; appeal.

After hearing the Town Board shall, within two weeks, make a finding as to whether or not the application should be granted, giving notice of their findings to the applicant by mail, postage prepaid, to the address given on the application. If approved, the license, including the certificate of approved location, shall be forthwith issued to remain in effect until the following April 1. Approval shall be personal to the applicant and not assignable. Licenses shall be renewed thereafter upon payment of the annual license fee without hearing, providing all provisions of this article are complied with during the license period, the junkyard does not become a public nuisance under the common law and the applicant is not convicted of any type of larceny or the receiving of stolen goods. The determination of the Town Board may be reviewed under Article 78 of the Civil Practice Law and Rules.

§ 180-98. License fees. [Amended 10-8-1987 by L.L. No. 3-1987]

The annual license fee shall be paid at the time the application is made and annually thereafter in the event of renewal. In the event the application is not granted, the fee shall be returned to the applicant. In addition to the license fee, the Town may assess the applicant with the costs of advertising such application and such other reasonable costs incident to the hearing as are clearly attributable thereto and may make the license conditional upon payment of same.

§ 180-99. Fencing.

Before use, a new junkyard shall be completely surrounded with a fence at least eight feet in height which substantially screens and with a suitable gate which shall be closed and locked except during the working hours of such junkyard or when the applicant or his agent shall be within. Such fence shall be erected not nearer than 50 feet from a public highway. All motor vehicles and parts thereof stored or deposited by the applicant shall be kept within the enclosure of the junkyard except as removal shall be necessary for the transportation of same in the reasonable course of the business. All wrecking or other work on such motor vehicles and parts and all burning of same within the vicinity of the junkyard shall be accomplished within the enclosure. Where the topography, natural growth of timber or other considerations accomplish the purposes of this chapter, in whole or in part, the fencing requirements hereunder may be reduced by the Town Board upon granting the license; provided, however, that such natural barrier conforms with the purposes of this chapter.

§ 180-100. Established junkyards.

For the purpose of this chapter, the location of junkyards already established shall be considered approved by the Town Board where located and the owner thereof deemed suitable for the issuance of a license. Within 60 days from the passage of this chapter, however, the owner shall furnish the Board the information as to location which is required in an application, together with the license fee, and the Town Board shall issue him a license valid until next April 1, at which time such owner may apply for renewal as herein provided. Such owner shall comply with all other provisions of this chapter, including the fencing requirements set forth herein.

§ 180-101. Certain locations not allowed; applications for permits.

Notwithstanding any of the foregoing provisions of this article, no junkyard, hereafter established, shall be licensed to operate as such yard or any part thereof shall be within 500 feet of a church, school, public building or place of public assembly. All applications for a permit may be obtained from the Town Clerk.²²

22. Editor's Note: Original § 22N, regarding penalties for junkyard violations, which immediately followed this section, was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

APPENDIX

**DISPOSITION
LIST**

Chapter DL

DISPOSITION LIST

§ DL-1. Disposition of legislation.

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

§ DL-1. Disposition of legislation.

Enactment	Adoption Date	Subject	Disposition
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Chapter DL

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§ DL-1. Disposition of legislation.

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

