



Chapter 188 ZONING

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Zoning Map

[IDSTORY: Adopted by the Board of Trustees of the Village of Nelsonville 7-31-1984 by LLN o.1-1984. Amendments noted where applicable.]

GENERAL REFERENCES

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| Planning and Zoning Boards —See Ch. 36. | Streets and sidewalks —See Ch. 165. |
| Building construction and fire prevention —See Ch. 77. | Subdivision of land —See Ch. 168. |
| Flood damage prevention —See Ch. 95. | Vehicles and traffic —See Ch. 178. |
| Freshwater wetlands —See Ch. 99. | Fees —See Ch. A191. |

ARTICLE I

General Provisions

§ 188-1. Title.

This chapter shall be known as and may be cited as the "Zoning Law of the Village of Nelsonville, New York" and is hereinafter referred to as the "Zoning Law."

§ 188-2. Purpose.

This chapter is enacted in accordance with a Comprehensive Plan for the Village of Nelsonville for the following purposes:

- A. To promote the health, safety, morals and general welfare of the Village of Nelsonville.

(Cont'd on page 18803)

- B. To lessen congestion in the streets; to secure safety from fire, panic, floods and other dangers; to provide adequate light and air; to prevent overcrowding of the land; to avoid undue concentration of population; to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight therefor; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements.
- C. To promote the orderly growth, development and preservation of the Village of Nelsonville with due consideration for economic well-being, adequate housing opportunity, the character and appearance of the village, conservation of the value of buildings and property, conservation of historic landmarks, sites, buildings and places and the appropriate use and conservation of land and water resources.

§ 188-3. Jurisdiction.

Within the Village of Nelsonville, land, buildings and other structures may be used and buildings, other structures and site development may be constructed, reconstructed, enlarged, extended, moved or altered only in conformity with this chapter. Any lot or land may be subdivided, sold, encumbered or transferred only in conformity with this chapter and only when such subdivision, sale, encumbrance or transfer does not make any use, building, other structure or site development thereon nonconforming or more nonconforming to this chapter.

§ 188-4. Nonconformity.

Any use, building or other structure which existed lawfully, whether by variance or otherwise, on the effective date of this chapter or any amendment hereto and fails to conform to one (1) or more of the provisions of this chapter or such amendment may be continued subject to the provisions and limitations of Article II.

§ 188-5. Application and building permit approval.

Buildings and other structures and site development that is subject to this chapter may be constructed, reconstructed, enlarged, extended, moved or altered only after an application for a certificate of occupancy therefor has been approved and any required building permit therefor has been issued by the Zoning Enforcement Officer. When a use of land is subject to the provisions of this chapter, such use of land may be established and site development in connection with such use may be commenced only when an application for a certificate of occupancy therefor has been approved by the Zoning Enforcement Officer. All applications shall be submitted and building permits issued in accordance with the provisions of §§ 188-53 through 188-56.

§ 188-6. Certificate of occupancy.

Land, buildings and other structures, and site development that is subject to this chapter, may be used or occupied, or changed in use, only after a certificate of occupancy therefor has been issued by the Zoning Enforcement Officer certifying compliance with this chapter. All

certificates of occupancy shall be issued in accordance with the provisions of §§ 188-53 through 188-56.

§ 188-7. Exceptions. I

No building permit and no certificate of occupancy is required under this chapter for any of the following:

A Certain signs, as specified in §§ 188-44 through 188-51.

§ 188-8. Conflict with pending amendments.

Upon issuance of an order by resolution of the Village Board, no building permit shall be issued and no application for a certificate of occupancy shall be approved by the Zoning Enforcement Officer authorizing any proposed use of land, building or other structure or any proposed construction, reconstruction, enlargement, extension, moving or alteration of a building, other structure or site development which does not conform to a proposed amendment of this chapter if first notice of a public hearing to consider such amendment has been published in a newspaper as required by law. If, however, such hearing is not held or the proposed amendment has not been adopted by the Village Board and made effective within ninety (90) days after the date of such first notice, issuance of the building permit and/or approval of the application for a certificate of occupancy by the Zoning Enforcement Officer shall not be withheld by reason of conflict with the proposed amendment.

ARTICLE II Nonconforming Uses

§ 188-9. Legislative intent.

It is the intent of this chapter that nonconformities are not to be expanded when contrary to the Comprehensive Plan of zoning; that the nonconforming uses of land, buildings and other structures should be changed to conformity; and that the existence of any nonconformity shall not of itself be considered grounds for the approval of a variance for any other property.

§ 188-10. Definition .

A nonconforming use, building, other structure, site development or lot is one which existed lawfully, whether by variance or otherwise, on the date this chapter or any amendment hereto became effective and which fails to conform to one (1) or more of the provisions of this chapter or such amendment hereto. No nonconforming use, building, other structure, site development or lot shall be deemed to have existed on the effective date of this chapter unless it was actually in being on a continuous basis on such date; and if such nonconformity is a use, such use had not been discontinued within the meaning of § 188-13D.

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

§ 188-11. Effect of previously approved certificates of occupancy.

Unless otherwise specifically provided in this chapter, nothing herein shall require any change in the use of any land, building or other structure or part thereof or in the area, location, bulk or construction of any building or other structure or site development for which any required certificate of occupancy shall have been lawfully issued even though such use, building, structure or site development does not conform to one (1) or more provisions of this chapter or any amendment hereto.

§ 188-U. Casualty; restoration of nonconforming uses.

If any nonconforming building or structure or structure containing a nonconforming use shall be damaged or destroyed by fire or other casualty, such building or structure, except nonconforming signs, may be restored and any such nonconforming use resumed to the extent that such building, structure or use existed at the time of the casualty, provided that such restoration is started within a period of one (1) year from such casualty and is diligently prosecuted to completion. In the event of failure to start such restoration within the one-year period and to complete the same within twenty-four (24) months thereafter or within such additional periods, not exceeding six (6) months, as the Village Board may grant upon written application made to it, the right under this section to restoration of such building or other structure and the right to resume any such nonconforming use shall be lost and terminated.

§ 188-13. Requirements for nonconforming uses.

The following provisions and limitations shall apply to a nonconforming use of land, building or other structure:

- A. **Enlargement.** Any nonconforming use of land shall not be enlarged, extended or altered and any building or other structure or part thereof devoted to a nonconforming use shall not be enlarged, extended, reconstructed or altered except where the result of such change is to reduce or eliminate the nonconformity. Any nonconforming use of a building or other structure shall not be extended to occupy land outside such building or other structure or space in another building or other structure. Any new use added to a preexisting nonconforming use of land, buildings or other structures shall be deemed to be an enlargement, extension or alteration of such preexisting nonconforming use. [Amended 10-16-1989 by L.L.No. 4-1989]
- B. **Change.** Any nonconforming use of land, buildings or other structures shall not be changed to any use which is substantially different in nature and purpose from: the former nonconforming use except to such uses that are permitted uses in the district in which the use is located. Any nonconforming use of land, buildings or other structures if once changed to conform or to more nearly conform to this chapter shall not thereafter be changed so as to be less conforming again. Notwithstanding the foregoing, the Zoning Board of Appeals may authorize a change from one nonconforming use to another if the Board finds that the new use will more nearly conform to this chapter, will have a lesser impact on the neighborhood and will not impair the eventual elimination of the nonconforming use.

- C. Moving. Any nonconforming use of land shall not be moved to another part of a lot or outside the lot, and any nonconforming use of a building or other structure shall not be moved or extended to any part of the building or other structure not manifestly arranged and designed for such use at the time the use became nonconforming. Any building or other structure containing a nonconforming use shall not be moved unless the result of any such move is to terminate the nonconformity .
- D. Discontinuance. Any nonconforming use of land, buildings or other structures which shall have been discontinued with intent to abandon said use shall not thereafter be resumed or replaced by any other nonconforming use. Any nonconforming use of buildings or other structures which shall have been discontinued for a continuous period of two (2) years shall not thereafter be resumed or replaced by any other nonconforming use.
- E. Performance standards. Any use of land, buildings . or other structures which do not conform to one (1) or more of the performance standards of § 188-25 shall not be changed to increase such nonconformity but may be changed to decrease or eliminate such nonconformity .Any such nonconformity so reduced or eliminated shall not be resumed.

§ 188-14. Improvement to nonconformities.

The following provisions and limitations shall apply to nonconforming buildings, other structures and site development.

- A Enlargement. Any nonconforming building, other structure or site development shall not be enlarged, extended, reconstructed or altered unless the enlargement, extension, reconstruction or alteration is conforming.
- B. Change. Any nonconforming building, other structure or site development, if once changed to conform or to more nearly conform to this chapter shall not thereafter be changed so as to be nonconforming or less conforming again.
- C. Moving. Any nonconforming building or other structure shall not be moved unless the result of such moving is to terminate the nonconformity.
- D. Signs. Signs of a size or type not permitted in the district in which they are situated or which are improperly located or illuminated or which are nonconforming in any other way shall be considered nonconforming structures under this Article, and any increase in size, illumination or flashing of such signs shall be deemed to be an enlargement or extension constituting an increase in nonconformity . Any nonconforming sign, if once removed in whole or in part, shall not thereafter be replaced by another nonconforming sign.
- E. Off-street parking and loading. Any lot, use, building or other structure which does not conform to one (1) or more of the parking and loading provisions of §§ 188-37 through 188-43 shall continue to conform to. such provisions to the extent that it conforms on the effective date of such section. Any use of land, buildings or other structures which does not conform to one (1) or more of the provisions of §§ 188-37 through 188-43 shall not be changed to a use which would need additional off-street parking or loading spaces to

comply with the provisions of §§ 188-37 through 188-43 unless such spaces are provided as required for the new use under §§ 188-37 through 188-43. [Amended 7-6-1998 by L.L. No. 1-1998)

- F. Site development and landscaping. Site development, including landscaping, which fails to conform to requirements of this chapter under §§ 188-30 through 188-36 shall be deemed a nonconformity. Any use for which such site development and landscaping are required shall not be enlarged, extended, changed or moved and any building or other structure for which such site development and landscaping are required shall not be enlarged, extended, moved or reconstructed unless such nonconformity is eliminated; provided, however, that the Planning Board may authorize continuation or reduction of the nonconformity under § 188-35M. Any use, building or other structure existing on the date of adoption of this chapter shall not be deemed nonconforming solely for the reason that a site development plan therefor has not been approved under this chapter.
- G. An enlargement to a nonconforming structure shall not be deemed to be nonconforming solely by reason of the fact that the lot upon which the structure is located does not meet the minimum area or frontage requirements of this chapter. [Added 10-16-1989 by L.L. No. 4-1989]

§ 188-15. Effect of change of title on possession.

No change of title, possession or right of possession shall be deemed to affect the right to continue a nonconforming use, building, other structure or site development.

§ 188-16. Repair.

Nothing in this article shall be deemed to prohibit work on any nonconforming building or other structure when required by law to protect the public health or safety, provided that such work does not increase the nonconformity. Nothing in this article shall be deemed to prohibit work on ordinary repair and maintenance of a nonconforming building or other structure or, except in the case of nonconforming signs, replacement of existing materials with similar materials.

§ 188-17. Certificate of nonconformity.

The owner of any lot containing a nonconforming use, building, other structure or site development is entitled to a certificate of occupancy certifying the validity of such nonconformity and the extent thereof.

ARTICLE III
Terminology

§ 188-18. Definitions and word usage.

- A. Certain words used in this chapter are hereinafter defined and explained. Other words used in this chapter shall have the meanings commonly attributed to them. Where a question

arises as to the precise meaning of a word, the Village Board may by resolution determine the meaning of the word, giving due consideration to the expressed intent and purpose of this chapter.

B. As used in this chapter, the following terms shall have the meanings indicated:

ALTERED (BUILDING, STRUCTURE) — ~~A~~ change or rearrangement in the structural or other parts of any building or other structure so as to require obtaining of a building permit under the New York State Uniform Fire Prevention and Building Code, and any change in the exterior building materials, color, roofline or ornamentation of a building or structure permitted under this chapter subject to approval of a site development plan; reconstruction, enlargement, extension and moving of a building or other structure are included within the meaning of "altered." [Amended 7-6-1998 by L.L.No.1-1998]

ALTERED (SITE DEVELOPMENT) — A change or rearrangement in existing site development that is subject to approval of a site development plan under this chapter.

BUILDING or OTHER STRUCTURE — ~~Any~~ constructed or erected structure which is located on the ground or attached to one or more supports located on the ground. Any group of two or more structures connected by a roof shall be considered to be one building for the purposes of this chapter.

CHANGE IN USE — ~~Any~~ change in the use or occupancy of land, buildings and other structures as follows:

- (1) A change in a use listed on one line of Schedule A¹ to a use listed on another line, when the off-street parking or loading standards applicable to the new use differs from the preceding use.
- (2) A change to a use for which approval of a site development plan is required under this chapter when such plan was not required for the preceding use.
- (3) A change in existing site development that is subject to approval of a site development plan.
- (4) A change in use or site development that would modify conditions imposed or stipulations made by an applicant in connection with the approval of a site development plan.

COMMERCIAL COMMUNICATIONS TOWER — ~~A~~ freestanding or building-mounted structure, including appurtenances and antennas, intended for commercial airway communication purposes, such as a television antenna, satellite dish or receiving and transmitting facility. A commercial communications cell tower shall not be considered an accessory use in any zoning district. [Added 4-3-2000 by L.L.No.1-2000]

DWELLING — Any building or part thereof containing one or more dwelling units.

¹ Editor's Note: Schedule A is located following §188-22.

DWELLING UNIT – ~~A~~ building or part of a building designed for occupancy and so occupied by one family.

FAMILY — One or more persons, related by blood, adoption or marriage, living and cooking together as a single housekeeping unit, or a number of persons living and cooking together as a single housekeeping unit though not related by blood, adoption or marriage. [Amended 7-6-1998 by L.L.No.1-1998]

GASOLINE FILLING STATION – **Any** premises, including structures and equipment thereon, that is used for the sale of gasoline or any other motor vehicle fuel and the dispensing thereof to motor vehicles on the premises.

INDOOR RESTAURANT – **An** establishment where customers are served only when seated at tables or counters and at least 75% of the customer seats are located within an enclosed building. Such an "indoor restaurant" may include incidental food takeout service for consumption off the premises.

LOT – ~~A~~ parcel of land which is either owned separately from any contiguous parcel as evidenced by conveyance recorded in the office of the Putnam County Clerk or is a building lot shown on a subdivision plat map and filed in the office of the Putnam County Clerk.

MOBILE HOME – See "trailer." [Amended 7-6-1998 by L.L.No. 1-1998]

OUTDOOR STORAGE – **Any** place of deposit or storage, not in an enclosed building or not under a structure having a roof, of merchandise, supplies, wastes, machinery or equipment and including the manufacture, processing or assembling of goods not in an enclosed building or not under a structure having a roof; provided, however, that the following are excluded from the definition of "outdoor storage."

- (1) The parking of registered motor vehicles and trailers indaily use.
- (2) The deposit and storage in connection with authorized construction of buildings, structures and site development.


PLANNING BOARD – **The** Planning Board of the Village of Nelsonville, duly appointed by the Village Board under §7-718 of the Village Law.

PUBLIC GARAGE – **Any** garage, other than a private accessory garage, available to the public, operated for gain and used for storage, major repair, body work, painting, rental, washing or equipping of automobiles or other motor vehicles. [Added 7-13-1992 by L.L. No. 2-1992]

SIGN – **Every** sign, billboard, illustration, insignia, lettering, picture, display, banner, pennant, flag or other device, however made, displayed, painted, illuminated, supported or attached, intended for use for the purpose of advertisement, identification, publicity or notice, when visible from any street or from any lot other than the lot on which the sign is located and either located out-of-doors or located indoors within 12 inches of a window and intended to be viewed from outside the building. The term "sign," however, shall not include any flag, pennant or insignia of any governmental unit or nonprofit organization nor any traffic or similar regulatory devices or legal notices of any governmental unit

SITE DEVELOPMENT — Land grading and improvements constructed, installed or planted, including but not limited to driveways, parking, loading and other paved areas, drainage, sewage disposal and water supply facilities, landscaping, outside lighting and areas for outdoor storage.

STEEPLY SLOPED LAND — Ground areas with slope of or greater than 25% over a horizontal distance of 10 feet or more and with a minimum area of 100 square feet. [Amended 7-13-1992 by L.L.No. 2-1992]

STREET —  state highway, county road or village street or other street or highway that provides access so as to enable issuance of a building permit under §7-736, Subdivision 2, of the Village Law.

STREET LINE — The right-of-way, easement or taking line of the following :

- (1) A state highway or county road.
- (2) A street maintained by the Village of Nelsonville.
- (3) A street shown on a subdivision plat on file in the office of the Putnam County Clerk.
- (4) A private street, right-of-way or easement of access having a width of 25 feet or more and providing sole access to two or more lots. [Amended 7-6-1998 by L.L. No. 1-1998]

TRAILER (and MOBILE HOME) — Any vehicle, conveyance or enclosure which:

- (1) Is used, or is designed and intended to be used, for human habitation as sleeping or living quarters,
- (2) Is comprised of frame and wheels and is designed and built to be propelled or towed on its own chassis, and
- (3) When used for sleeping or living quarters, may or may not be affixed to a permanent continuous foundation.

VILLAGE BOARD — The Board of Trustees of the Village of Nelsonville .

ARTICLE IV
District Regulations

§ 188-19. Districts designated.

For the purpose of this chapter, the Village of Nelsonville is hereby divided into the following districts.

District	Map Code
Village Residential VR	VR
Village Secondary Residential SR	SR
Hillside Residential HR	HR
Mountain Residential MR	MR
Multifamily Residential MF	MF
Village Business VB	VB
Commercial C	C

§ 188-20. Zoning Map. [Amended 7-13-1992 by L.L. No. 2-1992]

The boundaries of the districts specified in § 188-19 are hereby established on a map titled the "Zoning Map of the Village of Nelsonville," as adopted by the Village Board of Trustees, including any special maps and boundary descriptions supplementary thereto and any amendments thereof, which map is hereby declared to be a part of this chapter and is hereinafter referred to as the "Zoning Map."⁸

§ 188-21. Interpretation of map.

Where a question arises as to the exact boundary of a district, the Village Board of Trustees shall by resolution determine the location of the boundary, giving due consideration, among other factors, to the indicated location of the boundary on the Zoning Map, the scale of the Zoning Map and the expressed intent and purposes of this chapter.

§ 188-22. Permitted uses. [Amended 10-16-1989 by L.L. No. 4-1989; 7-13-1992 by L.L. No. 2-1992]

Schedule A, Permitted Uses by District, is hereby declared to be a part of this chapter. Land, buildings and other structures in a district may be used for one (1) or more of the uses, and no other, specified on Schedule A as permitted in the district Uses listed on Schedule A are permitted or prohibited in accordance with the following designation and procedure.

Schedule A
Permitted Uses by District

KEY:

P: A use permitted in the district as a matter of right.

S: A use permitted in the district, subject to submission and approval of a site development plan by the Nelsonville Planning Board in accordance with the provisions of §§188-30 through 188-36.

X: A use not permitted in the district.

⁸ Editor's Note: The Zoning Map is located at the end of this chapter.

Use	District						
	VR	SR	HR	MR	MF	VB	C
Part A: Residential Uses							
A-1	A dwelling containing one (1) or two (2) dwelling units and not more than one (1) such dwelling per lot.						
A-2	A dwelling for a watchman, caretaker or the proprietor of a use permitted in Parts B or C of this schedule.						
A-3	A dwelling containing three (3) dwelling units and not more than one (1) such dwelling per lot.						
A-4	Dwellings containing up to six (6) dwelling units.						
A-5	Accessory uses customary with and incidental to any aforesaid permitted use, including the following, subject to the additional standards of § 188-52 and subject to approval of a site development plan if required for such permitted use:						
A-5.1	A business or professional office in a dwelling unit (see § 188-52C).						
A-5.2	A customary home occupation in a dwelling unit (see § 188-52C).						
A-5.3	Letting of rooms in a dwelling unit (see § 188-52D).						
A-5.4	Recreation facilities, meeting rooms and other common facilities in connection with dwellings specified in line A-4.						
A-5.5	Signs as provided in §§ 188-44 through 188-51.						
A-5.6	No accessory structure in a residential district shall exceed one and one-half (1 1/2) stories in height [twenty (20) feet] or exceed five hundred (500) square feet in floor area.						
Part B: Community Facilities and Services							
B-1	Buildings, uses and facilities of the Village of Nelsonville, other units of municipal						

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Use	VR	SR	District		:MF	VB	C
			HR	lv.rR.			
government, the County of Putnam and State of New York, which buildings, uses and facilities shall not include corporate or proprietary uses unless otherwise permitted in this schedule.							
B-2 The following uses when conducted by a nonprofit corporation or association and not as a business or for profit:							
B-2.1 Churches, places of worship, parish halls and associated activities; private schools; private educational, charitable and philanthropic institutions; fraternal membership clubs and lodges.	S	S	S	S	S	S	X
B-2.2 Private nature preserves and wildlife sanctuaries; private outdoor recreation facilities.	S	S	S	S	S	S	X
B-2.3 Fire-protection services; emergency vehicle services.	S	S	X	X	S	S	S
B-3 Child day-care centers, licensed by the State of New York.	S	S	X	X	S	S	X
B-3.1 Family day-care homes, licensed by the State of New York.	S	S	S	S	S	S	X
B-4 Cemeteries and structures appurtenant thereto.	X	X	P	P	X	X	X
B-5 Private nursing homes, convalescent homes and similar health-care facilities, licensed by the State of New York.	S	S	S	S	S	X	X
B-6 Public utility company electric, telephone and gas substations, switching stations and equipment buildings, excluding maintenance and service facilities.	S	S	S	S	S	S	S
B-7 Underground public utility company electric, gas and water transmission lines.	P	P	P	P	P	P	P

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Use	District						
	VR	SR	HR	MR	MF	VB	C
B-8 Community water supply wells, reservoirs, storage facilities, pump stations and treatment and maintenance facilities.	S	S	S	S	S	S	S
B-9 Accessory uses customary with and incidental to any aforesaid permitted use, including signs as provided in §§ 188-44 through 188-51, subject to approval of a site development plan if required for such permitted use.	P	P	P	P	P	P	P
B-10 Commercial communications towers [Added 4-3-2000 by L.L.No.1-2000)	X	S	S	S	S	X	X
Part C: Commercial and Related Uses							
C-1 Stores and shops where goods are sold or service is rendered to the public primarily at retail.	X	X	X	X	X	S	S
C-2 Business, professional and administrative offices; banks.	X	X	X	X	X	S	S
C-3 Indoor restaurants and other indoor food and beverage service establishments, excluding live entertainment.	X	X	X	X	X	S	S
C-4 Gasoline filling stations; motor vehicle repair shops, excluding public garages.	X	X	X	X	X	X	S
C-5 Research and facilities for development of products, management systems and services.	X	X	X	X	X	X	S
C-6 Printing establishments and binderies.	X	X	X	X	X	X	S
C-7 Manufacture, processing or assembling of goods.	X	X	X	X	X	X	S
C-7.1 Manufacture, processing or assembling of goods when accessory and subordinate to a retail store on the same lot permitted on Line C-1.	X	X	X	X	X	S	S
C-8 Warehousing and distribution businesses; lumber and building materials businesses; commercial storage, sale and distribution of heating fuel.	X	X	X	X	X	X	S
C-9 Funeral homes.	X	X	X	X	S	X	S



Use	District						
	VR	SR	HR	MR	MF	VB	C
C-10 Trades shops, including painting, plumbing, electrical, carpentry, woodworking, blacksmith, welding and machine shops.	X	X	X	X	X	X	S
C-11 Forest management operations, provided that harvesting of trees is conducted under a permit and the requirements of the New York State Department of Environmental Conservation and in accordance with applicable laws of the Village of Nelsonville.	X	X	S	S	X	X	X
C-11.1 Cultivated tree farms and harvesting therefrom.	X	X	S	S	X	X	X
C-12 Accessory uses customary with and incidental to any aforesaid permitted use, including signs as provided in §§ 188-44 through 188-51, subject to the approval of a site development plan if required for such permitted use.	P	P	P	P	P	P	P

§ 188-23. Prohibited uses in all districts.

Any use not included on Schedule A as a permitted use in a district is prohibited in such district. To assist in the interpretation of Schedule A, the following uses, the listing of which is not intended to be exhaustive, are specifically prohibited.

- A The manufacture or storage of explosives or fireworks; structural steel fabrication or ironworks; rendering plants for animal products; dump for solid or liquid waste; sewage waste storage, transfer, processing or treatment (other than Board of Health approved subsurface septic disposal systems); and motor vehicle and other junkyards. **[Amended 10-16-1989 by L.L. No. 4-1989]**
- B. Trailer park or mobile home site, whether transient or permanent
- C. Carousels, skyrides, Ferris wheels, roller coasters, shooting galleries and similar commercial recreation devices; and any establishment, including an arcade, store or shop, where more than two (2) coin-operated mechanical games machines or devices are available for use by the public, and such two (2) machines or devices that are not prohibited shall be located entirely within an enclosed building.
- D. Vending machines unless located entirely within a building; open-front stores designed primarily for the sale of merchandise directly to the public on a public street or sidewalk; and outside storage of lumber and building materials, coal and automotive fuels, parts and accessories.

- E. The excavation, grading, deposit or removal of earth, loam, topsoil, sand, gravel, clay or quarry stone on any lot in an amount exceeding twenty-five (25) cubic yards in any calendar year, except as an adjunct to a bona fide building construction project, or the installation of a site development plan or subdivision plat improvements, for which a permit or other approval has been granted by the Village of Nelsonville.
- F. A kennel, consisting of a pack or collection of more than three (3) dogs, age six (6) months or older, kept in a building, shelter or enclosure located outside the walls of a dwelling.
- G. Adult bookstores, motion-picture theaters, arcades, cabarets, massage parlors, model studios or other premises that are distinguished or characterized by an emphasis on depicting, describing or actual conduct of sex acts or the anatomical areas related thereto.
- H. The storage of more than one hundred (100) gallons of compressed, flammable gas on a lot. [Added 10-16-1989 by L.L. No. 4-1989]
- I. Visibility at intersections. No structure, permanent or temporary, fence, wall hedge, shrubbery, debris, snow or other obstruction to motorists' vision in excess of three (3) feet in height as measured above adjacent street grade shall be placed or allowed to grow within or encroach upon the boundary of any street or highway in the Village of Nelsonville. [Added 10-16-1989 by L.L. No. 4-1989]
- J. Public garages. [Added 7-13-1992 by L.L. No. 2-1992]

§ 188-24. Parking and loading.

For each use of land, buildings and other structures listed on Schedule A,⁹ parking and loading spaces shall be provided off the street as specified in §§ 188-37 through 188-43.

§ ~~188~~-25. Performance standards.

A Each use of land, buildings and other structures, wherever located, shall be established and conducted in such a manner that none of the following is produced and transmitted outside the lot where it originates in any degree that is unusual, that is detrimental to the use, enjoyment and value of other land, buildings and structures or that is detrimental to the public health, safety or welfare:

- ① Smoke, gas, noxious or toxic fumes, fly ash, dirt, dust and odors.
- ② Noise, except time and alarm signals, and noise necessarily involved in the lawful construction or demolition of buildings, other structures and site development.
- ③ Vibration.
- ④ Heat.
- ⑤ Discomfort glare and disability veiling glare from lighting.

⁹ Editor's Note: Schedule A is located following § 188-22.

(6) Interference with radio and television reception, except in conformance with regulations of the Federal Communications Commission.

(7) Pollution or degradation of surface and ground waters.

B. No hazardous or toxic substances and materials which are dangerous due to radioactivity, explosion or extreme fire hazard shall be used or stored on any lot except in amounts and in a manner allowed by federal, state and local regulations.

§ 188-26. Noise. [Added 10-16-1989 by L.L. No. 4-1989]

A Without limitation to the provisions in § 188-25, it shall be unlawful for the owner, occupant and/or any person causing or permitting sound or noise to project within the boundary of a use district which exceeds the limiting noise level set forth in Table No. 1 below. Whenever an applicable federal, state or county statute sets a different limit than specified in this chapter, the lower limitation shall apply.

Table No. 1
[Amended 7-13-1992 by L.L. No. 2-1992]

District	Maximum Noise Level (dBA)
All districts except Commercial C	60
Commercial C	65

B. The measurement of sound or noise shall be made with a sound level meter meeting the standards prescribed by the American National Standards Institute made at or beyond the property line of the property on which such noise is generated and shall be taken at least four (4) feet from ground level.

§ 188-27. Interpretation of Schedule A.¹⁰

Where a question arises as to whether or not a proposed use or a change in use is permitted or prohibited on Schedule A in a district, the Village Board may by resolution make a determination, giving due consideration, among other factors, to the purpose of the district and the expressed intent and purpose of this chapter.

§ 188-28. Site plan approval for additional uses. [Added 7-13-1992 by L.L. No. 2-1992¹¹]

Site plan approval pursuant to §§ 188-30 through 188-36 herein is required for more than one (1) use on a lot, except the accessory uses set forth in § 188-22, Schedule A, Line A-5.

¹⁰ Editor's Note: Schedule A is located following § 188-22.

¹¹ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

§ 188-29. Standards by district.

- A Area, location and bulk. Schedule B, Standards by District , is hereby declared to be a part of this chapter. The area, location and bulk standards applicable in each district are as hereinafter specified and as listed on Schedule B.¹²
- B. Lot area, frontage and shape. Each lot shall have the minimum area as specified on Schedule B. Each lot shall have frontage on a street as specified on Schedule B. Where applicable, each lot shall be of such shape that a square with the minimum dimension specified on Schedule B will fit on the lot. The following additional requirements and exceptions are applicable to lots:
 - ⓪ Environmentally constrained land. Area consisting of ponds, lakes and other water bodies, freshwater wetlands, lands located within the one-hundred-year floodplain and areas of steeply sloped land may be counted for compliance with the minimum lot area standard specified on Schedule B only for such portion of the requirement that exceeds forty thousand (40,000) square feet. A required minimum square on the lot specified on Schedule B shall not include any such water body or wetlands or steeply sloped land. [Amended 7-13-1992 by L.L. No. 2-1992]
 - ⓪ Land in two (2) districts. Land in two (2) or more districts may be counted to satisfy a minimum lot area requirement, provided that the requirement of the district having the largest lot area standard is met, but no land in a residence district may be counted to satisfy a lot area requirement in a commercial district.
 - ⓪ Easements. Land subject to easements for drainage facilities, underground public utilities and aboveground electric, telephone and cable television distributin lines may be counted for compliance with minimum lot area standards specified on Schedule B, but no part of a street or highway, easement of vehicular access, private right-of-way for vehicles or easement for aboveground public utility transmission lines may be counted.
 - ⓪ Open space reservations. When authorized, land that is restricted to open space usage, including conservation and outdoor recreation, need not be in compliance with the area, frontage and shape requirements of this subsection, provided that such land is shown on a plat map approved by the Planning Board or is owned by the Village of Nelsonville, Town of Philipstown, county or state or by a nonprofit corporation.
 - ⓪ Interior lots. In HR and MR Districts, the required lot frontage on a street may be reduced to twenty (20) feet if the lot contains an area of two hundred thousand (200,000) square feet or more and is of such shape that a square with three hundred (300) feet on each side will fit on the lot. [Amended 7-13-1992 by L.L.No .2-1992]
- C. Height. Buildings and other structures shall not exceed the number of stories and maximum height specified on Schedule B.¹³ The following requirements and exceptions are applicable to height standards.

² Editor's Note: Schedule Bis located following§ 188-29 .

³ Editor's Note: Schedule B is located following§ 188-29.

- ④ Count of stories. A "story" is that portion of a building between the surface of any floor and the surface of the floor, ceiling or roof next above. Stories are counted one over the other. Attics not used for human occupancy are not a story. When the ceiling of a basement is five (5) feet or more above the average ground level within ten (10) feet of the building, the basement is considered a story. A story counted as only one-half (*lh*) story consists of any floor area having a ceiling height of seven (7) feet or more and which does not exceed one-half (1/2) of the floor area of the story next below.
- ④ Measurement of height. Height of a building or other structure is measured from the average ground level within ten (10) feet of the building or structure to:
 - (a) The highest point of the roof;
 - (b) The highest point of a parapet wall extending above a roof; or
 - (c) The highest feature of a structure, whichever is higher.
- ④ Height exceptions. The height limitations of this subsection are not applicable to the following when not used for human occupancy: chimneys; flag poles; ornamental spires, cupolas, monuments, cornices and towers; siren towers; poles, masts and towers for public utility lines and services; radio and television antennas; water tanks; elevator, heating, ventilating, air-conditioning and similar equipment occupying not more than twenty percent (20%) of the area of a roof; and windmills for power generation.

D. Setbacks.

- ④ Buildings and other structures shall be set back at least the minimum distances specified on Schedule B⁴ as follows:
 - (a) From the street line of a state highway.
 - (b) From the street line of any other street.
 - (c) In VR Districts, from one (1) side property line and from any other property line. **[Amended 7-13-1992 by L.L. No. 2-1992]**
 - (d) In other districts, from any property line.
 - (e) From a residence district boundary line.
- ④ The following additional requirements and exceptions are applicable to setback standards:
 - (a) Accessory buildings. In VR and VB Districts, accessory buildings may extend to within eight (8) feet of any property line, other than a street line, or one-half (1/2) the height of the building, whichever is the greater setback. **[Amended 7-13-1992 by L.L. No. 2-1992]**
 - (b) Projections. The following features may project into the area required for setback from a street right-of-way line or property line.

⁴ Editor's Note: Schedule B is located following § 188-29.

- [1] Cornices, canopies, eaves and similar architectural features: by thirty (30) inches.
 - [2] Open fire escapes: by five (5) feet.
 - [3] In VR and VB Districts, terraces and unenclosed porches with a floor level no higher than that of the entrance to the building: by six (6) feet, and such projecting terrace or porch may have a protective railing with a maximum height of three (3) feet. [Amended 7-13-1992 by L.L.No. 2-1992]
 - (c) Signs. Certain permitted signs, as specified in §§ 188-44 through 188-51, may extend within lesser distances of a street right-of-way line or property line.
 - (d) Fences and walls. The required setback distances shall not apply to fences or walls six (6) feet or less in height, but no fence or wall other than a retaining wall shall be located within the right-of-way of any street.
 - (e) VB Districts. Adjoining property owners in VB Districts may by mutual agreement, recorded in the office of the Putnam County Clerk, agree to eliminate the required setback from a common property line or to reduce the required setback to five (5) feet on each side of such line when access to a street by easement or right-of-way, at least ten (10) feet in width, is provided for fire-protection purposes to the rear of any buildings on the lot. [Amended 7-13-1992 by L.L. No. 2-1992]
- E. Coverage. The aggregate ground coverage of all buildings and other structures on any lot shall not exceed the percent of the area of the lot specified on Schedule B.¹⁵ The following additional requirements and exceptions are applicable to coverage standards:
- ⓪ Measurement. The aggregate ground coverage by buildings and structures is measured from the outermost edge of the building or structure, projected straight down but excluding any projections of type [§ 188-29D(2)(b)] that are eligible to extend into setback areas.
- F. Minimum floor area for dwelling and dwelling unit. Each dwelling and each dwelling unit shall have a minimum floor area as specified on Schedule B. The following additional requirements and exceptions are applicable to the computation of minimum floor area of a dwelling and a dwelling unit:
- ⓪ Eligible area. Only finished livable floor area, measured from the inside surface of exterior walls and having a ceiling height of at least seven and one-half (7 1/2) feet, is counted. Any such floor area, other than a ground floor, must have access thereto by a permanent inside stairway to be included.
 - ⓪ Exclusions. Eligible floor area does not include the following:
 - (a) Garages, carports or any other enclosed space in a building where motor vehicles may be parked or stored.
 - (b) Terraces and porches, whether covered or enclosed or not.

¹⁵ Editor's Note : Schedule B is located following § 188-29.

(c) Finished livable floor area in basements having a ceiling height four (4) or fewer feet above the average ground level within ten (10) feet of the building.

Schedule B
Standards by District
[Amended 10-16-1989 by LLNo. 4-1989;
7-13-1992 by LLNo. 2-1992]

Standards	District						
	VR	SR	HR	MR	MF	VB	C
Minimum lot area (square feet)	9,000	20,000	60,000	80,000	40,000	9,000	30,000
Minimum lot frontage on a street (feet)	75	95	135	175	135	75	100
Minimum dimension of square on lot (feet)	75	95	150	200	150	75	100
Maximum number of stories in building	2 1/2	2 1/2	2 1/1	2 1/2	2 1/2	2 1/2	2 1/2
Maximum height of a building or structure	35	35	35	35	35	35	35
Minimum setback of a building or structure (in feet) from:							
(a) Street line of a state highway	20	30	60	60	70	20	40
(b) Street line of any other street	20	20	60	60	70	20	20
(c) In VR Districts:							
On one (1) side property line	8	NA	NA	NA	NA	NA	NA
Any other property line	12	NA	NA	NA	NA	NA	NA
(d) In other districts, any property line	NA	12	25	25	70	12	20
(e) Residence district boundary line	NA	NA	NA	NA	NA	20	40
Maximum ground coverage by buildings and structures as a percent of lot (percent)	20	20	15	10	15	25	25
Minimum floor area:							
(a) Dwelling (square feet)	720	720	720	720	720	720	720

Standards	VR	SR	HR	District		VB	C
				MR	MF		
(b) Dwelling unit (square feet)	500	500	500	500	500	500	500

NOTES:

See § 188-29 for explanation of standards and for additional requirements and exceptions.

KEY:

NA: Not applicable.

ARTICLE V
Design Standards

§ 188-30. Site plan approval; additional standards.¹⁶

Pursuant to § 7-725-a of the Village Law and subject to the procedures, standards and conditions hereinafter specified, the Planning Board is authorized to approve site development plans for particular uses designated on Schedule A¹⁷ of this chapter. The use of land, buildings and other structures for which submission and approval of a site development plan is required under this chapter and the construction, reconstruction, enlargement, extension, moving or alteration of buildings, other structures and site development in connection with such use shall conform to the general standards and any applicable special standards hereinafter specified. The provisions of §§ 188-30 through 188-36 are in addition to other provisions of this chapter applicable in the district where the use is to be located.

§188-31. Preapplication review.

Prior to submission of a site development plan, the prospective applicant is invited to consult with the Planning Board concerning the nature and extent of the proposed project, the planning criteria and submission requirements that may be applicable and the procedures for review of site development plans.

§ 188-32. Submission requirements. [Amended 10-16-1989 by L.L. No. 4-1989]

A site development plan submission accompanying an application for a certificate of occupancy shall be presented at the office of the Planning Board at least fourteen (14) days prior to a regular meeting and shall consist of the following.

A Statement of use. A written statement, certified by the applicant and by the owner of the lot if different from the applicant, describing the following in sufficient detail to determine compliance with this chapter and to establish the program basis for review of the site plan and architectural plans; twelve (12) copies shall be submitted which shall contain the following information:

- ① The nature and extent of the proposed use.

⁶ Editor's Note: Amended at time of adoption of Code; see Ch. I, General Provisions, Art. I.

⁷ Editor's Note: Schedule A is located following § 188-22.

- Ⓐ The provision to be made for water supply, sewage disposal, solid waste disposal, drainage and other utilities.
- Ⓑ The number of persons to occupy or visit the premises on a daily basis, including the parking and loading requirements for the use.
- Ⓒ A disclosure of any hazardous or toxic materials to be used or stored on the premises, including provision to be made for management of such materials in accordance with applicable local, state and federal regulations.

B. Site plan.

(1) A site plan, drawn to a scale of not less than fifty (50) feet to the inch, showing all of the following information, both existing and proposed, as applicable to the particular application.

- (a) All of the information required for a plot plan under § 188-54A
- (b) If less than the entire lot is to be developed, a line delimiting the land to be used under the application.
- (c) Contours (existing and grading) at an interval not exceeding two (2) feet, or equivalent ground elevations, and the location, depth and results of soils samples, test borings, test pits and seepage tests.
- (d) Buildings and structures.
- (e) Streets, driveways, curbs, traffic controls, parking spaces, loading spaces, sidewalks, fences, walls and barriers.
- (f) Recreation facilities and facilities for water supply, sewage disposal, solid waste disposal, drainage and other utilities; provisions for control of erosion and sedimentation and facilities for fire protection.
- (g) Outdoor storage areas; outdoor illumination facilities and signs and specifications therefor.
- (h) Wooded areas and existing isolated trees having a caliper of twelve (12) inches or more when located in areas of the lot to be developed.
- (i) Landscaping, including trees, shrubs, lawn, seeded areas, mulch, washed gravel and ornamental brick or stone surface, and natural terrain not to be disturbed.
- (j) With reference to flooding having a one-percent chance of occurring in any given year in the vicinity of Foundry Brook, the floodplain, floodway, base flood elevations and lowest floor elevations, including basements, above mean sea level for any existing or proposed building.

(k) Specifications and details for proposed site improvements, including landscaping.

(l) A schedule indicating the area of the lot, the floor area of buildings and structures, the ground coverage by buildings and structures, the total ground coverage by buildings, other structures, paving and outdoor storage areas and the

computations of required off-street parking and loading spaces and eligible dwelling units.

- (2) The site plan, which may be on more than one (1) sheet, shall be prepared by and bear the seal of a land surveyor, professional engineer, landscape architect or architect, as required by law, and licensed to practice in the State of New York; six (6) copies shall be submitted.
- C. Architectural plans. Architectural plans of all proposed buildings, structures, signs and outdoor illumination facilities, as applicable to the particular applications, which plans may be preliminary in form but shall include exterior elevation drawings, generalized floor plans and perspective drawings in sufficient detail to indicate the exterior building materials, color, height, bulk, roofline, ornamentation and the interior uses and general character. With the exception of signs and outdoor illumination facilities, such plans shall be prepared by and bear the seal of an architect or professional engineer licensed to practice in the State of New York; six (6) copies shall be submitted.
- D. Program. A written program setting forth the proposed sequence and time schedule for construction, completion and occupancy of the various elements and for any phases of the project.
- E. Traffic study. If requested by the Planning Board in connection with uses of larger scale or having potential to generate large volumes of traffic, a traffic impact study, prepared by a recognized traffic engineer, reporting on:
- (1) Daily and peak-hour trips to be generated by the use.
 - (2) Traffic on the streets giving access to and near the use.
 - (3) Adequacy of the existing street to accommodate existing and projected volumes.
 - (4) Appropriate systems and facilities for traffic management.

§ 188-33. Application review.

The Planning Board shall review the application for a certificate of occupancy and the site development plan submission to determine the completeness thereof and compliance with the provisions of this chapter. The Planning Board, upon written request by the applicant, may by resolution determine that the required submission of all or part of the information specified in § 188-32B and C is deferred unless or until requested later by the Planning Board. The Planning Board may call the applicant into consultation and may request the applicant to submit such additional information that it deems necessary in order to review the submission. If the Planning Board determines that the submission is incomplete, the Board may by resolution reject it as ineligible for consideration.

§ 188-34. Action on application. [Amended 10-16-1989 by L.L. No. 4-1989; 7-13-1992 by L.L.No. 2-1992¹⁸]

Within sixty (60) days after receipt of a site development plan submission, the Planning Board shall review the submission and approve, approve with modifications or disapprove such submission. The Planning Board shall approve the site development plan or approve it with modifications when the Board determines that the submission conforms to all of the provisions of this chapter applicable in the district in which the use is located and to the general standards and any applicable special standards hereinafter specified. The following shall also apply to Planning Board review and action:

- A. Time extension. The applicant and the Planning Board may by mutual consent extend the time for review and action.
- B. Approval by other agencies. The filing by the applicant of written approvals by each other agency having approval jurisdiction over aspects of the proposed site development shall be required prior to Planning Board action to approve the site development plan.
- C. Public hearing. The Planning Board may at its discretion hold a public hearing on the submission, which hearing shall be held within sixty-two (62) days after the submission is received and upon publication of notice thereof at least five (5) days prior to the hearing in the official newspaper of the village. If the public hearing is held, the sixty-two-day period for action on the submission shall commence upon completion of the hearing.
- D. Filing. The decision of the Planning Board on the site development plan shall ediatey be filed in the office of the Village Clerk and a copy thereof mailed to the applicant and transmitted to the Zoning Enforcement Officer and the Building Inspector.
- E. Conditional permits. A site development plan approved by the Planning Board in accordance with this chapter conditions the approval of an application for a certificate of occupancy and issuance of a building permit to require conformity with the approved plan.
- F. Expiration. An approved site development plan expires one (1) year after the date of approval unless an application for certificate of occupancy has been approved therefor by the Zoning Enforcement Officer and any required building permit has been issued; provided, however, that:
 - Ø The Planning Board's approval may provide for a longer period before expiration, such as for development of the use in stages; or
 - Ø The Planning Board may extend the one-year period for additional periods of one (1) year when it determines that the circumstances of the site and basis for approval under this chapter are substantially unchanged.

§ 188-35. General standards.

The following general standards are applicable to all uses for which a site development plan is required.

¹⁸ Editor's Note: Amended at time of adoption of Code; see Cb. 1, General Provisions, Art. 1.

- A Village. The use of land, buildings and other structures, the location and bulk of buildings and other structures and site development shall be of a character as to harmonize with the neighborhood, to accomplish a transition in character between areas of unlike character, to protect property values in the neighborhood and to preserve and enhance the appearance and beauty of the Village of Nelsonville and shall conform to the purposes of this chapter as set forth in § 188-2.
- B. Access. Provision shall be made for vehicular access to the lot in such a manner as to safeguard against hazards to traffic and pedestrians in the street and on the lot and to avoid traffic congestion on any street. Access shall also conform to the following:
- ① Where reasonable alternate access is available, the vehicular access to the lot for a use permitted only in a VB or C District shall be arranged to avoid traffic use of local residential streets situated in or bordered by residence districts. **[Amended 7-13-1992 by L.L. No. 2-1992]**
 - ② Where a lot has frontage on two (2) or more streets, the access to the lot shall be provided to the lot across the frontage and to the street where there is lesser potential for traffic congestion and for hazards to traffic and pedestrians.
 - ③ The street giving access to the lot shall have traffic-carrying capacity and shall have a suitable travel way and other improvements to accommodate the amount and types of traffic generated by the proposed use.
 - ④ Where necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, provision shall be made for turning lanes, traffic directional islands, frontage road driveways and traffic controls within the street.
 - ⑤ Access driveways shall be of a design and have sufficient capacity to avoid back up of entering vehicles within any street.
- C. Existing streets. Where the lot has frontage on an existing street, proper provision shall be made for grading and improvement of shoulders and sidewalk areas within the right-of-way of the street and for provision of curbs and sidewalks in accordance with the pattern of development along the street.
- D. **[Amended 7-13-1992 by L.L. No. 2-1992]** Parking and loading. Off-street parking and loading spaces shall be provided in accordance with the provisions of §§ 188-37 through 188-43 and the following:
- ① In MF, VB and C Districts, no off-street parking or loading spaces or driveway in connection therewith pertaining to a site development plan use shall extend within less than twenty (20) feet of the street line except that access drives with no parking thereon may cross such setback area.
 - ② In VB and C Districts, no off-street parking or loading spaces or driveway in connection therewith shall extend into the area required for building setback from a residence district boundary line.
- E. Drainage.
- ① Provision shall be made on the lot for the management of stormwater, including collection and disposal thereof, in the following manner:

- (a) To assure the usability of off-street parking and loading spaces.
- (b) To avoid hazards to pedestrians and vehicular traffic on the lot and in any street.
- (c) To avoid stormwater flow across sidewalks and other pedestrian ways.
- (d) To protect watercourses and wetlands from pollution, erosion and sedimentation.
- (e) To avoid an amount of discharge and time of concentration of flow beyond the capacity of downstream drainage channels.
- (f) To avoid downstream flooding.

Ø Provision shall also be made for the protection or improvement of existing watercourses, channels and other drainage systems on the lot or downstream from the lot, as needed to accept the proposed drainage discharge, based on sound design criteria under good engineering practice, taking into account the drainage discharge from existing and potential development of the entire watershed in which the lot is located.

- F. Erosion and sedimentation. Provision shall be made for control of erosion and sedimentation and for avoiding siltation of streams and wetlands, both during construction and upon completion thereof, in accordance with the criteria of the Erosion and Sedimentation Control Handbook of the United States Department of Agriculture, Soil Conservation Service.
- G. [Amended 7-13-1992 by L.L. No.2-1992] Sanitation . Proper provision shall be made for the water supply and sewage disposal requirements of the proposed use in accordance with applicable county and/or state law and in accordance with this section. In addition, provision shall be made for the collection; storage and disposal of solid wastes accumulated in connection with the proposed use and for control of litter by means of receptacles, fences or other means.
- (1) No sewage treatment facility which discharges to any surface waters shall be permitted unless the Village of Cold Spring has refused to authorize the connection to the Cold Spring sewer system as provided in § 188-36C, and the necessary approvals are obtained for the construction thereof as required by law.
 - (2) Any surface discharge sewage treatment plant constructed in the Village of Nelsonville shall provide for at least a tertiary treatment level.
 - (3) Without limitation to the foregoing, any sewage treatment plant discharging to surface waters shall contain tanks and chambers constructed of either cast in place or precast concrete. The equipment selected for the plant shall be from a reputable manufacturer who has demonstrated the reliability of the equipment and which equipment is generally accepted as reliable in the industry. Steel package plants shall not be permitted. The minimum level of treatment for the sewage treatment plant shall be tertiary treatment designed to meet the intermittent stream limits of the New York State Department of Environmental Conservation and which shall utilize a sand filter as the third and final stage of treatment.

- H. Fire protection. Proper provision shall be made for fire protection, taking into account any recommendations of the Chief of the Nelsonville Volunteer Fire Department and including the following:
- (1) Suitable location for and access to fire hydrants and/or fire ponds and other water storage.
 - (2) Suitable access to buildings and storage areas for operation of fire-protection vehicles and equipment.
 - (3) Sufficient controls on traffic and parking to permit access by fire-protection vehicles in emergencies.
 - (4) Adequate circulation driveways within the lot, coordinated with access to other lots, to permit access by fireprotection vehicles.
- I. Lighting. The location, height, design, direction and brightness of outdoor illumination (area lighting, floodlighting and illumination of signs) shall be arranged and maintained as follows: [Amended 3-25-2003 by L.L. No. 2-2003]
- (1) To provide sufficient illumination for safety, convenience and security.
 - (2) To minimize sky glow. Use of par lamps and wall packs on buildings cause sky glow and disability veiling glare and shall be prohibited in favor of other lighting that can perform the same or similar function. Floodlights, when used, shall be shielded or baffled to redirect illumination to the object intended to be lighted.
 - (3) To safeguard against discomfort glare and disability veiling glare in any street and upon pedestrian ways and vehicular parking, loading and circulation areas of the lot where located or any other lot.
 - (4) To harmonize with the neighborhood and avoid trespass illumination on any other lot.
 - (5) Trespass lighting to other lots, especially from commercial projects into residential areas, shall be prohibited.
- J. Outdoor storage. In VB and C Districts, outdoor storage shall be located only in the areas shown on the site development plan and shall be limited as follows: [Amended 7-13-1992 by L.L. No. 2-1992; 3-25-2003 by L.L. No. 2-2003]
- (1) No outdoor storage shall extend within less than the minimum building setback distances specified on Schedule B¹ from a street line or any residence district boundary line.
 - (2) In VB Districts, outdoor storage areas on any lot shall not exceed 10% of the aggregate ground coverage of all buildings on the lot. In C Districts, outdoor storage areas shall not exceed 15% of the area of the lot.
 - (3) In VB and C Districts, outside storage shall be enclosed (except for necessary access drives) by buildings and for fences, walls, embankments or evergreen shrubs or trees so as to screen the storage area from view from any other lot or any street. In no case

¹ Editor's Note: Schedule B can be found at the end of § 188-29.

shall the height of outside storage exceed the height of the approved screening. Screening shall be of a density as to be at least 75% effective in screening such view, at the time of occupancy, except that when evergreens are used, such height and density shall be achieved within five years after establishment of the outside storage area.

K. Landscaping. *It is the intent of this subsection to recognize that the site development plan uses are likely to be located in the portion of the Village of Nelsonville that is thickly settled and where there is a mixture of dwellings and commercial uses in close proximity to one another. The character of the Village can be maintained or enhanced, the quality of housing improved and the economic well-being promoted by provision of landscaping features, including fences, walls, shrubs, lawns, trees and other features in appropriate locations and design. Landscaping shall be designed in accordance with the following criteria: [Amended 7-13-1992 by L.L. No. 2-1992; 3-25-2003 by L.L. No. 2-2003]*

- (1) areas of the lot not covered by buildings and other structures, outside storage and approved paving shall be suitably landscaped with trees and/or shrubs, lawns or other suitable landscaping or shall be left as natural terrain, if not disturbed by filling, grading or excavation.
- (2) In VB Districts, a strip of land not less than 20 feet in width and located in the area required for a building setback from a residence district boundary line, or all of such setback area on the lot if less than 20 feet in width, shall be left and maintained in its natural state if already wooded or shall be landscaped with evergreen trees planted to grow into a dense evergreen buffer strip within five years.
- (3) In C Districts, a strip of land not less than 30 feet in width and located in the area required for a building setback from a residence district boundary line, or all of such setback area on the lot if less than 30 feet in width, shall be left and maintained in its natural state if already wooded or shall be landscaped with evergreen trees planted to grow into a dense evergreen buffer strip within five years.
- (4) Off-street parking and loading areas shall be provided with landscaped planting islands within or border landscaping adjacent to such area in such a manner as to enhance the appearance of the area. Any parking area accommodating 20 or more cars shall be provided with not less than one tree for each 20 cars or fraction thereof, which trees shall be not less than three inches of caliper at breast height and 10 feet in height.
- (5) Landscaping, including grading, provided in the area required for a building setback from the street line or center line of Route 301 shall be of a type, size and height as to avoid obstruction of minimum sight lines along the highway as well as from access driveways onto the highway, whether located on the lot or any other lot, as specified by the State Department of Transportation.
- (6) All landscaping materials shall be of a type and/or species suitable for the location of the lot in the Village and suitable for the soil conditions on the lot and shall be planted and maintained in accordance with good landscaping practice.
- (7) All landscaping, including growing materials, that are specified on an approved landscape plan for a site shall be well maintained to carry out the intent of the

landscape *plan*. Failure to maintain healthy landscaping associated with a site plan approval will be a violation of said approval.

- (8) Trees, shrubs and other *plant* materials which die or are otherwise not in a condition to fulfill the approved landscape plan shall be replaced in the next planting season by similar plant material.
 - (9) Fences and *walls* used for landscaping and screening shall be made of natural materials such as wood, stone or brick or otherwise effectively landscaped.
- L. Building design, materials and finish. Buildings and site-related elements shall be designed in specification by a licensed architect or engineer, as may be required by law and with the intent to achieve quality design in accordance with local and professional design standards as follows: [Added 3-25-2003 by L.L.No. 2-2003²]
- (1) Buildings shall have a finished exterior on all sides;
 - (2) Metal buildings that are principal buildings (larger than a small storage building in an unobtrusive location) shall be of a color consistent with earth tones; shall have sufficient fenestration and trim to break continuums of metal wall areas; and shall have brick, stone, wood trim or composite materials providing a similar appearance, and features combined with the basic metal enclosure. A complete package of elevations shall accompany any proposal for a metal building.
 - (3) Mechanical equipment on the ground or on roofs shall be screened from view from the street and other property.
- M. Signs. All signs shall conform to the requirements of §§ 188-44 through 188-51.
- N. Nonconformity. As provided in Article II, the Planning Board may approve a site development plan authorizing reconstruction, enlargement, extension, moving or alteration of buildings and structures on a lot having site development which fails to conform to the standards of this section and/or authorizing enlargement, extension, moving or reconstruction of site development which fail so to conform if the Planning Board finds that the following standards are met:
- (1) The proposed construction will result in a general improvement of the lot with regard to safe access, suitable drainage and adequate landscaping.
 - (2) Nonconforming signs and lighting will be brought into a conforming or more nearly conforming condition.
 - (3) Adequate provision is made for landscaping in the area required for building setback from a residence district boundary line.
 - (4) There shall be no increase in the nonconformity of buildings and other structures and site improvements.

² Editor's Note: This local law also designated former Subsections L and M as M and N, respectively.

§ 188-36. Special standards for multiple dwellings. [Amended 10-16-1989 by L.L. No. 4-1989; 7-13-1992 by L.L. No. 2-1992]

In MF Districts, the following special standards are also applicable to site development plans:

- A. Unit occupancy program. The site development plan submission shall include a suitable written program setting forth:
- (1) The proposed schedule of dwellings and dwelling units by bedroom count.
 - (2) The basis for the schedule.
 - (3) The projected number of occupants, by age group, for each unit size.
 - (4) The proposed manner of ownership or tenancy of units.
 - (5) The relationship between projected occupants and plans for recreation, water supply and sewage disposal.
 - (6) A time schedule for occupancy of units, together with a projection of impact upon municipal services, including public school enrollment.
- B. Units and buildings.
- (1) The number of dwelling units shall not exceed one for each 9,000 square feet of net lot area. Area consisting of ponds, lakes and other water bodies, freshwater wetlands, lands located within the one-hundred-year floodplain and areas of steeply sloped land shall be identified and deducted from the gross lot area to yield the net lot area. Actual construction shall be designed so as to require no disturbance of land with slopes in excess of 25% except as may be approved by the Planning Board, in its discretion, in appendage steeply sloped areas where adverse environmental impact will be minimal.
 - (2) Dwellings shall conform to the following:
 - (a) The dwellings on one development site shall contain no more than an average of four dwelling units per building but in no event exceeding six dwelling units per building. No building shall exceed a length of 150 feet.
 - (b) No dwelling unit shall contain more than two bedrooms, and the schedule of bedrooms per unit shall be subject to the approval of the Planning Board. For the purpose of determining the number of bedrooms in the dwelling unit, any room designed, intended, furnished or occupied for sleeping quarters and any room other than a living room, dining room, kitchen or bathroom or a utility room having no more than 50 square feet of floor area shall be considered a bedroom.
 - (c) The restrictions on the number of bedrooms in a dwelling unit set forth above shall be incorporated into permanent restrictive covenants running with the land and for the benefit of the Village of Nelsonville and unit owners in the development.
 - (d) No dwelling unit shall exceed a height of two habitable floors, exclusive of attics and basements not used for human occupancy, and no building shall extend within less than 70 feet of any other building on the lot and of any property line.

The Planning Board in its discretion may allow setbacks between buildings of not less than 40 feet where buildings abut end to end or corner to corner.

- (e) Dwellings and other buildings on the lot shall have exterior architectural design, including finish, color, mass and character, that is compatible with built-up areas of the Village. Without limitation to the foregoing, no building shall have the appearance of a row house.
- C. Utilities. All electric, telephone and cable television lines on the lot shall be located underground. An on-site community water supply system, including wells, storage and distribution, shall be provided to serve the dwellings, and such system shall have a fire-

(Cont'd on page 18831)

rated capacity. Or, in the alternative, if public water is available, the applicant shall provide for a connection to such public water system. When there are ten (10) or more dwelling units on any lot, all dwelling units and buildings shall be connected to the Village of Cold Spring sanitary sewer system, in accordance with the standards and specifications of such village, provided that the Village of Cold Spring authorizes such connection for the number of dwelling units approved by the Planning Board of the Village of Nelsonville after environmental review in accordance with the zoning and other land use regulations²⁰ of the village as well as all other applicable state and local governmental agencies having jurisdiction over the property.

- D. Access and parking. Access to a multiple-dwelling development shall be provided by a major driveway(s) that provides access to parking courtyards and minor driveways that feature direct access to dwellings and garages. The major driveway shall be improved to a twenty-four-foot-wide travel way. All minor driveways serving parking spaces, dwellings and garages shall be improved to a twenty-four-foot-wide travel way. In addition, the following shall apply:
- (1) All driveways and parking areas shall have a minimum ten-inch base course of Item 4 stone (New York State Department of Transportation standard) and a two-and-one-half-inch binder course and a one-and-one-half-inch finish course (compacted thickness) of bituminous concrete.
 - (2) All parking spaces shall be in garages, lots or bays.
 - (3) Cement concrete curbs shall be provided along the edge of all driveways and parking areas.
 - (4) The Planning Board may, in its discretion, waive or adjust the paving and curbing requirements with respect to minor driveways and parking areas.
 - (5) Proposed structures shall be set back no less than forty-five (45) feet from the center line of major driveways.
- E. Other site development. For other site development, the following shall apply:
- Ø The dwellings shall be provided with an outdoor recreation site or sites and facilities on the lot, suitably graded and improved, meeting the needs of the types of dwelling units to be established.
 - Ø Cement concrete sidewalks at least four (4) feet in width shall be provided along one (1) or both sides of major driveways and in other appropriate locations, such as between dwellings, between parking areas and dwellings and to recreation facilities as determined by the Planning Board.
 - Ø All outdoor illumination of access driveways and parking areas shall be by means of cutoff-type luminaries. Luminaries shall not exceed a height of fifteen (15) feet.
 - Ø Use of retaining walls where grade differentials exceed four (4) feet shall be done with reinforced concrete walls or gabion walls.

²⁰ Editor's Note: See Ch. 188, Subdivision of Land.

- Ⓞ A central television antenna system shall be provided.
- Ⓞ Suitable fire-protection equipment and facilities shall be provided.

§ 188-37. Parking and loading general requirements.

For each use of land, buildings and other structures, parking spaces and loading spaces shall be provided off the street in accordance with the standards hereinafter specified. The number of off-street parking and loading spaces required by this chapter shall be permanently maintained and made available for occupancy in connection with and for the full duration of the use for which such spaces are herein required . If any existing use of land, buildings or other structures is changed to a use for which additional off-street parking or loading spaces are required under this chapter, the additional spaces shall be provided for the new use in accordance with the standards hereinafter specified. All off-street parking and loading spaces hereafter established, whether required by this section or not, shall conform to the standards of § 188-38.

§ 188-38. Design and construction.

All off-street parking and loading spaces shall be designed and constructed in accordance with the following standards.

- A Specifications for a space. A parking space and a loading space shall consist of the following:
- Ⓞ Parking space. A space of such shape as to contain a rectangle not less than nine and one-half (9 1/2) feet in width and eighteen (18) feet in length and having vertical clearance, access and slope as to accommodate an automobile having an overall length of eighteen (18) feet; when reserved for physically handicapped persons, such space shall have a width of twelve (12) feet.
 - Ⓞ Loading space. A space of such shape as to contain a rectangle not less than twelve (12) feet in width and thirty (30) feet in length and having a vertical clearance of not less than fifteen (15) feet and such access and slope as to accommodate a truck having an overall length of thirty (30) feet.
- B. Turning. Each parking space shall be provided with adequate area for approach, turning and exit of an automobile having an overall length of eighteen (18) feet without need to use any part of a street right-of-way, except that this provision shall not apply to spaces provided in connection with a dwelling containing one (1) or two (2) dwelling units, rooms to let in a dwelling unit and customary home occupations in a dwelling unit. No loading space, including any truck loading bay, ramp or dock, shall be designed or arranged in a manner that a truck must use any part of a street right-of-way to enter, back into and/or exit from such space.
- C. Improvement. All off-street parking and loading spaces shall be suitably improved, graded, stabilized, marked and maintained so as to cause no nuisance or danger from dust or from stormwater flow onto any street right-of-way. Except for necessary driveway entrances and except for parking spaces provided in connection with a dwelling for one (1) or two (2)

families, all off-street parking and loading spaces located within twenty (20) feet of any street right-of-way line shall be separated from such line by a curb, a fence or wall or an embankment and shall be provided with the curb, fence, wall or embankment in such a manner that cars will not overhang the street right-of-way line. (See also § 188-35D.)

D. Layout.

- Ø All off-street parking areas shall be provided with parking space stalls of suitable angle, width and length and with access aisles of sufficient width and suitable alignment to such stalls as to allow safe and convenient use of each required parking space. Provision shall be made for safe and convenient use of parking spaces and for circulation within parking areas as follows:
 - (a) By provision of suitable circulation driveways giving access to parking aisles and stalls.
 - (b) By provision for safe pedestrian circulation within parking areas.
 - (c) By providing for channelized traffic flow within parking areas.
 - (d) By suitable markings, curbs, end islands, fences or other devices to encourage proper and efficient use of each parking stall.
- Ø All off-street loading spaces shall be provided with a suitable angle of approach and sufficient width and length to accommodate the types of trucks expected to use the space. No loading space shall be arranged in such a manner as, when the space is in use, to block use of required parking spaces or traffic circulation within parking areas. (See also § 188-35D.)

§ 188-39. Parking space standards.

The purpose and intent of this section is to assure that off-street parking spaces are provided to accommodate the automobiles of all persons normally using or visiting a use, building or other structure at any one (1) time.

- A Off-street parking spaces shall be provided in accordance with the following minimum standards and shall be located on the same lot with the use.

Use Classification	Standard
Dwellings containing 1,2 or 3 dwelling units [Amended 7-13-1992 by L.L. No. 2 1992]	2 spaces for each dwelling unit
Dwellings containing 4 or more dwelling units [Amended 7-13-1992 by L.L. No. 2-1992]	3 spaces for each dwelling unit
Rooms to let in a dwelling unit	1 space for each room

Use Classification	Standard
Business or professional office or customary home occupation in a dwelling unit	1 space for each nonresident person engaged in conduct of the office or occupation
Churches, places of worship, parish and assembly halls and funeral homes	1 space for each 5 fixed seats or 1 space for each 75 square feet of assembly area without fixed seats
Nursing homes and convalescent homes	1 space for each 2 beds
Buildings containing stores, offices or banks available to the public at retail and all service businesses [Amended 10-16-1989 by L.L. No. 4-1989]	1 space for every 200 square feet of floor area occupied by such use, but in no event shall be less than 2 spaces for each such use
Indoor restaurants and other food and beverage service establishments	1 space for each 50 square feet of patron floor area
Gasoline filling stations and motor vehicle repair establishments	10 spaces or 5 spaces for each garage bay, whichever is greater
Research and development facilities; printing and binding establishments (in excess of 1,500 square feet); establishments for the manufacture, processing or assembling of goods; warehousing and distribution businesses; and lumber and building materials businesses	1 space for each 1.5 employees or 1 space for each 500 square feet of gross floor area, whichever is greater

B. Other uses. Sufficient parking spaces shall be provided in connection with any use not listed in Subsection A above to preserve the purpose and intent of this section.

§ 188-40. Loading space standards. [Amended 10-16-1989 by L.L. No. 4-1989]

Each building, other than a dwelling or a farm building, having a ground floor area in excess of four thousand (4,000) square feet shall have one (1) off-street loading space for each four thousand (4,000) square feet of gross floor area or fraction thereof, excluding basements used only for utilities or storage.

§ 188-41. Classification of uses.

Whenever two (2) or more use classifications listed in § 188-39 shall be applicable to a use of land, buildings or other structures, the standard requiring the larger number of parking spaces shall apply. Where separate parts of a building or structure are used for different use classifications, the number of required spaces shall be determined by adding the number of spaces required for each type of use.

§188-42. Joint use.

Joint parking areas and loading spaces may be established by the owners of separate lots in order to provide the total number of off-street parking and loading spaces required for each lot.

§ 188-43. Modification of standards.

The Planning Board, in connection with its development plan for a lot, may authorize off-street spaces less in number than specified in §§ 188-39 and 188-40 or authorize such spaces to be located on a lot other than the lot where the use is located if the Planning Board determines that the following standards and conditions are met:

- A. The number of spaces provided on the site development plan are sufficient to accommodate the vehicles of all persons using and visiting the particular use or occupancy of land, buildings or other structures specified in the statement of use accompanying the plan.
- B. There is sufficient and suitable area on the lot to provide in the future the full number of spaces specified in §§ 188-39 and 188-40.
- C. That spaces located on another lot are conveniently accessible to persons normally using or visiting the use, that traffic congestion and on-street parking and loading will not result and that such other lot is located in a district where the use is permitted.
- D. The authorization shall be applicable only to the particular use or occupancy of land, buildings or other structures specified in the statement of use, and such authorization and any certificate of occupancy issued for the use shall become null and void in the event that such use or occupancy is changed to another use or occupancy.

§ 188-44. Sign requirements; purpose.

Except as hereinafter provided, signs may be established, constructed, reconstructed, enlarged, extended, moved or altered only after a building permit and/or certificate of occupancy therefor has been issued as for buildings and other structures. All signs shall conform to the provisions hereinafter specified. It is the purpose of this section to:

- A. Provide for sufficient identification of a lot occupied by one (1) or more uses as a convenience primarily for residents of the village.

- B. Provide for a size, illumination and character of signs that is appropriate for and consistent with the purpose of each district.
- C. Avoid a size, illumination, character and proliferation of signs that intrude upon the view of persons in any street or highway or on any lot other than where the sign is located or that cause discomfort glare or disability veiling glare on the lot, on any other lot or in any street.

§188-45. Sign standards.

Signs shall conform to the following standards applicable in all districts:

- A Purpose. All signs, except as hereinafter provided, shall advertise, identify or give publicity or notice only with respect to a use of land, buildings or other structures, including goods sold, services rendered, establishments and occupants, actually in being on the lot where the sign is located. When such use has been discontinued for a continuous period of six (6) months, all signs pertaining thereto shall be removed or otherwise eliminated unless such signs are illustrations, insignia or lettering which are an integral and permanent part of the architecture of a building approved under a site development plan.
- B. Location. No sign shall be located within or hang over the street line of any street; provided, however, that a permitted sign attached to the wall of a building may project not more than fifteen (15) inches from the building and thereby may be within or over such street line.
- C. Projecting and hanging signs. No sign shall project over or hang over any sidewalk, driveway, roadway or accessway; provided, however, that a permitted sign attached to the wall of a building may thus project not more than fifteen (15) inches from the building.
- D. Obstructions. No sign shall be located or maintained so as to be a hazard to traffic or pedestrians, to obstruct any door, window, ventilation system or fire escape or exit or to cause any other hazard to the public health or safety.
- E. Prohibited signs. The following signs are prohibited in all districts.
 - Ø Any flashing, intermittent light-reflecting and revolving, waving and other moving sign.
 - Ø Continuous strip lighting of buildings and other structures by exposed lamps or luminous tubes.
 - Ø Signs with letters taller than twelve (12) inches.
 - Ø Exposed lamp, luminous tube and plastic- or glass-covered internally illuminated signs.

§188-46. Signs in residential districts.

In addition to the standards specified in § 188-45, the following are applicable to signs in residential districts:

A Purpose. Signs in residential districts are limited to the following:

- ① On premises which are for sale or rent, one (1) sign is permitted which shall not exceed two (2) square feet in area, advertising such sale or rental for the premises only.
- (2) On premises containing a community facility or service use under Part B of Schedule A²¹ or a project of multiple dwellings in MF Districts, one (1) sign on the lot and not exceeding sixteen (16) square feet in area and six (6) feet in any dimension shall be permitted. [Amended 7-13-1992 by L.L.No. 2-1992]
- (3) One (1) sign, not exceeding two (2) square feet in area, identifying the occupant of the premises, including a permitted business or professional office or customary home occupation, is permitted; no building permit is required for such sign.
- (4) Signs on private premises intended primarily as warning and traffic signs with no advertising thereon and not exceeding three (3) square feet in area, located and intended primarily for warning and traffic control purposes, are permitted; no building permit is required for such signs.
- (5) Building contractors' and designers' signs pertaining to buildings under construction on the lot where the signs are located are permitted, provided that the aggregate area of such signs shall not exceed sixteen (16) square feet, and such signs shall be removed within thirty (30) days after completion of the project.

B. Location. Signs in any residence district shall not extend within less than ten (10) feet of any street line or property line except signs permitted under Subsections A(3) and A(4) above. No sign shall be located on any roof, and no sign attached to a building shall project above the top of the wall of the building. Signs attached to buildings may project into the area required for setbacks, provided that the sign does not project more than fifteen (15) inches from the building.

C. Height. Any sign that is not attached to a building shall not exceed a height of four (4) feet.

D. Illumination. Illumination of signs in residence districts shall be limited to signs permitted under Subsection A(2). Such illuminated signs shall be either luminous background silhouette signs with opaque letters or floodlighted signs.

§188-47. Signs in VB and CDistricts. [Amended 7-13-1992 by L.L.No. 2-1992]

In addition to the standards specified in § 188-45, the following are applicable to signs in VB and CDistricts:

A Setbacks. Signs shall observe all setbacks required for buildings and other structures except as follow:

- ① Signs shall be as permitted under § 188-46A(3) and (4).

²¹ Editor's Note: Schedule A is located following § 18822.

- ⓪ Signs attached to buildings may project into the area required for setbacks, provided that the signs do not project more than fifteen (15) inches from the building.
 - Ⓢ On any lot, one (1) sign attached to the ground may extend to within ten (10) feet of any street line, provided that the sign does not exceed sixteen (16) square feet in area and more than six (6) feet in any dimension.
- B. Number, height and area. Except for signs identified in Subsection A(1) above, the number, height and area of signs shall not exceed the following:
- ⓪ No more than one (1) sign on any lot, including the sign identified in Subsection A(3), shall be attached to or rest on the ground, and such sign shall not exceed a height of four (4) feet, an area of sixteen (16) square feet and more than six (6) feet in any dimension.
 - ⓪ Signs attached to buildings shall not extend above the top of the wall of the building.
 - Ⓢ Signs attached to buildings shall not project more than fifteen (15) inches from the wall of the building.
 - Ⓢ Signs attached to one (1) wall of a building, including projecting signs and all signs designed to be viewed from the particular side of the building where the wall is located, may have a total area of as much as five percent (5%) of the area of such wall measured to a height of twelve (12) feet above ground level.

§ 188-48. Determining sign measurements.

Any sign may be double facing, and only one (1) face shall be counted in determining conformity to sign area limitations. All dimensions for signs shall be based on measurements to the outside edge of the sign excluding any structure necessary to support the sign. The area of signs shall be computed from either the outer dimensions of the frame or as the area of a quadrilateral, including the outer edges of all lettering, whichever is greater.

§ 188-49. Relationship to site development plans.

The provision for signs which may be imposed in connection with approval of a site development plan under §§ 188-30 through 188-36 are in addition to the requirements of §§ 188-44 through 188-51.

§ 188-50. Special events.

In accordance with general or special rules and procedures adopted by resolution of the Village Board, the Zoning Enforcement Officer may authorize the establishment of temporary signs which advertise, identify or give publicity or notice of a permitted special event in the village, whether such event has a commercial or a nonprofit community purpose, provided that such event has a duration of not more than fourteen (14) days and such signs are removed within forty-eight (48) hours after the termination of such event.

§ 188-51. Directional signs.

In accordance with general *oi* special rules and procedures adopted by resolution of the Village Board, the Zoning Enforcement Officer may issue a conditional building permit for the establishment of directional signs within the right-of-way of a street, provided that:

- A. Such sign shall pertain to a local establishment;
- B. The permit shall expire three (3) years after issuance but may be renewed for an additional three (3) year period; and
- C. The sign does not exceed eight by thirty-six (8 x 36) inches and is of a standard design and construction approved by the Village Board.

§ 188-52. Additional standards for signs.

- A. The requirements hereinafter specified are supplementary to and in addition to requirements and standards set forth elsewhere in this chapter.
- B. Accessory uses. Permitted accessory uses do not include dwelling units but include signs in accordance with §§ 188-44 through 188-51 and shall be limited to uses which are customary with and clearly incidental to the principal permitted use on the lot. In residence districts, accessory uses shall also conform to the following:
 - ① The accessory use shall be located on the same lot with the principal permitted use to which it is accessory.
 - ② Accessory uses may include off-street parking and loading spaces and private garages and driveways giving access thereto, but shall not include driveways to a use permitted only in a VC or GC District. No more than one (1) commercial vehicle (self-propelled or towed) may be parked in a parking space accessory to a dwelling unit, and such vehicle shall not exceed ten thousand (10,000) pounds gross vehicle weight.
- C. [Amended 10-16-1989 by L.L. No. 4-1989] Office or occupation in dwelling unit. A professional office in a dwelling unit shall consist of the office of a member of a recognized profession to which the public is invited or may visit. A customary home occupation shall consist of a home industry such as dressmaking, tailoring, cooking and products of arts and crafts customarily conducted in a dwelling unit. Such offices and occupations are an additional use for which a certificate of occupancy is required under this chapter, and each such use shall conform to the following conditions:
 - ① The person or persons conducting the occupation shall be a member of the family occupying the dwelling unit; there shall be no more than two (2) nonfamily members or nonresident persons engaged in the occupation at any time.
 - ② The floor area used for such occupation shall not exceed an area equal to twenty percent (20%) of the floor area of the dwelling unit or four hundred (400) square feet, whichever is less.
 - ③ No finished consumer goods shall be acquired outside the dwelling unit for sale on the premises in connection with such occupation.

- ④ There shall be no evidence of the occupation outside the building in which it is located, except one (1) sign of the type permitted under §§ 188-44 through 188-51 and identifying only the name of the occupant and the activity conducted.
 - ⑤ The occupation and the conduct thereof shall not impair the residential character of the premises nor impair the reasonable use, enjoyment and value of other residential property in the neighborhood.
 - ⑥ The application for a certificate of occupancy shall be signed by the person or persons proposing to conduct the occupation and shall be accompanied by a detailed description of the proposed use. Each such certificate of occupancy shall automatically terminate when the applicant no longer resides in the dwelling unit.
- D. Letting of rooms. The letting of rooms in a dwelling unit shall be limited to not more than two (2) persons. The person or persons letting the rooms shall reside in the dwelling unit. The letting of rooms shall not include the provision of cooking facilities in or for such rooms but may include furnishing of board or sharing of the cooking facilities of the dwelling unit.

ARTICLE VI

Administration and Enforcement

§ 188-53. Appointment of enforcement officer.

Zoning Enforcement Officer. This chapter shall be administered and enforced by the Zoning Enforcement Officer who shall be appointed by the Village Board. The Village Board may appoint deputy zoning enforcement officers to assist and act for the Zoning Enforcement Officer. The Village Board may by resolution adopt rules, procedures and forms necessary for the administration and enforcement of **this** chapter.

§ 188-54. Application requirements.

Each application for a certificate of occupancy and building permit shall be submitted to the Zoning Enforcement Officer and shall be accompanied by the following:

A Plot plan.

- (1) Two (2) copies of a plot plan, drawn approximately to scale, showing all of the following information, both existing and proposed.
 - (a) The area of the lot and the dimensions and angles or bearings of all boundaries of the lot and of any easements, encroachment lines, building lines and open space reservations upon the lot.
 - (b) The location, setbacks, dimensions, height, use, floor area and ground coverage of all buildings and other structures.
 - (c) The location, number, area and dimensions of off-street parking and loading spaces, any construction, including paved areas. proposed in connection therewith and the means of access to such spaces.

- (d) The location of any water supply well site and any private sewage disposal system.
- (e) The location of watercourses, water bodies and wetlands.
- (f) The location, area and dimensions of any signs.
- (g) Such additional information as may be necessary to determine compliance with the provisions of this chapter.

(2) The plot plan is not required for interior alterations of an existing building, for exterior alterations of an existing building when there is no enlargement or extension of floor area nor for buildings, structures or improvements having a value of less than one thousand dollars (\$1,000.) unless the Zoning Enforcement Officer finds that a plot plan is necessary in order to determine compliance with this chapter. The Zoning Enforcement Officer may require that plot plans accompanying applications which pertain to a nonconforming building, structure or lot be prepared by and bear the seal of a land surveyor or professional engineer licensed to practice in the State of New York.

- B. Site development plan. For uses permitted in a district subject to submission and approval of a site development plan, a site development plan submission shall be made as provided in §§ 188-30 through 188-36 and may be substituted for the plot plan specified in Subsection A above.
- C. Additional information. When requested by the Zoning Enforcement Officer, the application shall also be accompanied by other plans, drawings, data and documents necessary for him to determine compliance with the provisions of this chapter.

§ 188-55. Notification.

When an application for a certificate of occupancy and a building permit may be approved only after submission and approval of a site development plan, the Zoning Enforcement Officer shall promptly notify the Village Board, in writing, that such an application has been received and shall transmit a copy of the application and the site development plan submission to the Planning Board.

§ 188-56. Approval and issuance of permits and certificates.

The Zoning Enforcement Officer shall approve an application for a certificate of occupancy and issue a building permit under this chapter when such officer determines that the proposed use, buildings, other structures and development conform to the provisions of this chapter. One (1) copy of the plot plan shall be returned by the Zoning Enforcement Officer to the applicant. Within ten (10) days after notification by an applicant that the premises are ready for occupancy, the Zoning Enforcement Officer shall issue or deny a certificate of occupancy. The following are also applicable to the approval of applications and issuance of building permits and certificates of occupancy:

- A. Conditions. The approval of an application for and issuance of a building permit or certificate under this chapter shall be conditioned upon establishment of the use and the

construction of buildings, structures and site development in accordance with any maps, plans, documents and statements approved by the Planning Board or Zoning Board of Appeals, as applicable, including any modifications, conditions and applicant stipulations that are part of such approval.

- B. Staking. No building permit shall be issued by the Zoning Enforcement Officer for any new construction until the applicant has accurately placed stakes or markers on the lot indicating the location of proposed construction and areas not to be disturbed. The Zoning Enforcement Officer may require the applicant to place stakes or markers on the lot indicating the location of lot lines and may require the placement of stakes or markers to be made and certified by either a land surveyor or professional engineer, licensed to practice in the State of New York.
- C. Measurements. If deemed necessary to determine compliance with this chapter and before issuance of a certificate of occupancy, the Zoning Enforcement Officer may require the applicant to furnish measurements of any construction features subject to the requirements of this chapter, including setback distances, which measurements shall be prepared and certified by a land surveyor licensed to practice in the State of New York.
- D. Sanitation. Where a proposed use or a proposed building or other structure involves the installation, extension, relocation or reconstruction of a sewage disposal or water supply system, no building permit shall be issued until plans for such system have been approved by the county, state or any other regulatory agency having jurisdiction as required by law; no certificate of occupancy shall be issued until such system has been completed and approved by such agency as required by law.
- E. Temporary certificate. Upon certification by the applicant that the public health and safety will not be impaired and that there will be compliance with all other laws pertaining to health and safety, the Zoning Enforcement Officer may issue a temporary certificate of occupancy under this chapter having a duration of not more than six (6) months and renewable only for one (1) additional six-month period, for the temporary use of land, buildings and other structures in the process of improvement and completion in accordance with an approved building permit, provided that all projected water supply, sewage disposal and electrical work has been completed and certified.
- F. Other permits. Issuance of a building permit and certificate of occupancy shall not be construed to constitute compliance with any other regulations or law nor to relieve the applicant from responsibility to obtain a permit thereunder. The Zoning Enforcement Officer may at his discretion withhold issuance of a building permit or certificate until any such permit has been obtained by the applicant.

§188-57. Fees.

The Village Board may from time to time by resolution adopt a schedule of fees²² concerning applications, inspections, petitions and other matters specified in this chapter.

²² Editor's Note: See Ch. A191, Fees.

§ 188-58. Inspections and orders.

The Zoning Enforcement Officer is authorized to inspect or cause to be inspected any land, building or other structure to determine compliance with this chapter. The Zoning Enforcement Officer is authorized to issue a stop-work order if in his judgment the use of land, buildings and other structures or the construction, reconstruction, enlargements, extension, moving or alteration of a building or other structure or site development are not being carried out in compliance with this chapter, including the approvals hereunder ; he shall withdraw such order when he determines that there is compliance with this chapter, including such approvals. The Zoning Enforcement Officer is authorized to order, in writing, the remedying of any condition found to be in violation of this chapter, including approvals hereunder.

§ 188-59. Complaints.

The Zoning Enforcement Officer shall investigate all written complaints of violation of this chapter and shall maintain a file thereof and the action taken thereon.

§ 188-60. Zoning Board of Appeals established; powers and duties.

The Zoning Board of Appeals, consisting of five (5) members, is continued as established pursuant to § 7-712 of the Village Law. The Zoning Board of Appeals shall have the powers and duties prescribed by the Village Law and this chapter, including the following:

- A To hear and decide appeals from and review any order, requirement, decision or determination made by the Zoning Enforcement Officer, which appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the Village of Nelsonville.
- B. Inpassing upon appeals and where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this chapter, to vary or modify the application of any of the regulations and provisions of this chapter relating to the use, construction or alteration of buildings or structures or the use of land so that the spirit of this chapter is observed, public safety and welfare secured and substantial justice done.
- C. To hear and decide all matters referred to the Board or upon which the Board is required to pass under this chapter.

§188-61.Procedures.

The Zoning Board of Appeals shall carry out its powers and duties as prescribed by the Village Law and shall, subject to the approval of the Village Board, adopt rules and procedures for the filing of appeals, conduct of meetings and hearings and other matters pertaining to the proceedings of the Board.

§ 188-62. Amendments.

This chapter, including the Zoning Map²³ which is a part hereof, may from time to time be amended, supplemented, changed, modified or repealed by the Village Board on its own initiative, on recommendation of the Planning Board or on petition . Any such amendment or change may be adopted by local law after due notice and public hearing as required for adoption of zoning laws under the Village Law.

§188-63. Referral to Planning Board.

Any proposal to amend, supplement, change, modify or repeal this chapter or any part thereof shall be referred by the Village Board to the Planning Board for a report thereon prior to any public bearing, unless such proposal is the recommendation of the Planning Board.

§ 188-64. Petitions.

Any person may petition the Village Board to amend, supplement, change, modify or repeal this chapter, including the Zoning Map which is a part hereof . It is within the discretion of the Village Board to decide whether or not the request of the petition has sufficient merit to be proposed for adoption by local law after due notice and hearing. Any petition that is accepted by the Village Board for consideration for adoption shall be signed and shall be accompanied by the following:

- A For petitions concerning the text of this chapter, ten (10) copies of the existing and proposed text shall be submitted.
- B. For petitions concerning the Zoning Map, three (3) copies of a map shall be submitted, drawn to a scale of not less than two hundred (200) feet to the inch, covering the area of the proposed change and all area in the village within five hundred (500) feet of the proposed change, and showing for such area the existing and proposed zoning district boundary lines, the existing property lines and the names of the current property owners as indicated in the current Town of Philipstown Assessor's records.
- C. A petition fee shall be secured as determined under §§ 188-53 through 188-59.

§ 188-65. Penalties for offenses; remedies.²⁴

Any violation of this chapter is hereby declared to be an offense punishable by a fine not exceeding two hundred fifty dollars (\$250.) or imprisonment for a period not to exceed fifteen (15) days, or both. Each week's continued violation shall constitute a separate additional violation. The proper authorities of the Village of Nelsonville may institute any appropriate action or proceedings to prevent, restrain, correct or abate any violation of this chapter.

23 Editor's Note: The Zoning Map is located at the end of this chapter.

24 Editor's Note: Amended at time of adoption of Code; see Ch. I, General Provisions, Art. I.

1.) § 188-66. Validity; conflict with other provisions.

- A. If any article, section, paragraph or provision of this chapter is declared by a court of competent jurisdiction to be invalid, the effect of such decision shall be limited to the article, section, paragraph or provision expressly stated in the decision to be invalid, and all other articles, sections, paragraphs or provisions of this chapter shall continue to be valid and fully effective.
- B. If any article, section, paragraph or provision of this chapter is declared by a court of competent jurisdiction to be invalid as applied to a particular building, structure or lot, the effect of such decision shall be limited to the particular building, structure or lot, and the general application of such article, section, paragraph or provision to other buildings, structures or lots shall not be affected.
- C. It is the specific intent of this chapter to supersede the provisions of New York State Environmental Conservation Law § 17-0509 and any rules and regulations enacted by the New York State Department of Environmental Conservation in accordance therewith to the extent that they may authorize a lesser degree of treatment than required in this chapter. This chapter is enacted pursuant to the provisions of the Municipal Home Rule Law. [Amended 7-13-1992 by L.L. No. 2-1992]

ARTICLE VII

Commercial Communications Towers [Added 4-3 2000 by L.L. No. 1-2000²]

) § 188-67. Collocation on eligible building or structure.

- A. Structures eligible for placement of additional antenna installations. The following structures are eligible for collocation, if such collocation is permitted by the use schedule and by the other applicable provision of this article:
 - (1) Towers receiving all necessary approvals under § 188-67B of the Zoning Law to allow commercial communications activity. Any proposed alterations to the tower to accommodate additional antennas, including any alteration or expansion of the tower base, and any increase heights, shall require special permit approval as part of the review on the application for the special permit for the antenna installation. Noncommercial towers, including facilities used for private citizen's bands, amateur radio and other private residential communications, are not eligible for collocation. Commercial towers which did not receive approvals under § 188-67B are not eligible for collocation unless the tower first received approvals under this article.
 - (2) Commercial communications towers lawfully placed after the enactment of this article, provided that the structure can safely support the additional antenna installations as set forth in this article.

² Editor's Note: This local law stated that it was intended to supersede any inconsistent provision of state or local law, including Village Law §§ 7-702, 7-706, 7-708, 7-709, 7-710, 7-7U, 7-712(a), 7-712-(b), 7-72S(a), 7-725(b); 239 m and 239-n of the General Municipal Law; and the provisions of the Nelsonville Code which are inconsistent therewith, including the schedule of uses showing public utilities structures as permitted uses.

- (3) Other tall structures, including buildings, water towers, salt sheds, roadway maintenance facilities, recreation facilities, scoreboards, lighting at recreation fields and similar facilities; or water towers, power transmission lines, public utility poles and other similar structures or buildings, as interpreted by the Zoning Board of Appeals.
- B. Application for proposed collocated antenna installation on existing tower; placement on eligible structure.
- (1) An applicant proposing to collocate a commercial telecommunications antenna installation on an existing tower or to place same on an eligible structure, as allowed in the use schedules, shall apply to the Zoning Board for special permit approval. The review shall generally follow the procedures and standards set forth in §§ 188-68, 188-69, 188-70 and 188-71 of the Village Code. The applicant shall submit the following information:
 - (a) A completed application for a building permit.
 - (b) All applicable requirements for a special permit under § 188-68 of the Village Code.
 - (c) An engineer's report describing the proposed changes, expansions or modification to the existing tower or other structure and certifying that the proposed collocation will not diminish the structural integrity and safety of the existing tower or other structure upon which collocation is proposed.
 - (d) Proof of compliance with the New York State Fire Prevention and Building Code.
 - (e) Documentation of consent by the owner of the structure upon which the antenna is to be located.
 - (f) Where collocation is proposed on a building or structure, the applicant shall provide architectural elevations and perspective illustrations of the proposed commercial telecommunications antenna installation at appropriate scales, but no smaller than one inch equals 10 feet. Elevations shall be provided for the building front and the side nearest the proposed antenna installation. For collocation on structures, two significant perspective vantage points shall be presented by the applicant as part of its submission to the Zoning Board. The Zoning Board may, during its consideration of an application, require perspective and other visual evaluations of other significant vantage points as are necessary to evaluate the visual impacts of each installation.
 - (g) A completed long-form environmental assessment form (EAF) with visual addendum.
 - (2) The application shall be reviewed by the Zoning Board in accordance with the standards and criteria set forth in § 188-70.

§ 188-68. Application for special permit to place new tower.

- A. In addition to site plan approval from the Planning Board, an applicant proposing to construct a new commercial communications tower, as pennitted in the use schedules, shall apply to the Zoning Board for special permit approval. It shall contain, at a minimum:
- (1) A report providing documentation of an actual need by an actual provider of communications services or the construction of the tower in order to provide communications services. Special permits are to be based on actual need and not on speculation of possible future needs which may or may not materialize.
 - (2) Radial plots depicting the anticipated radio frequency levels and coverage for the proposed site.
 - (3) Radial plots depicting evidence that the proposed area to be provided coverage by the proposed new tower is currently deficient in radio frequency coverage.
 - (4) The frequency spectrum (output frequency) to be used at the proposed site (cellular, personal communications systems, broadcast frequency, analog or digital, etc.).
 - (5) A map depicting the applicant's network of towers within 10 air miles of the proposed site, including planned or proposed towers or antenna installations to be erected within the next 24 months of the date of the application.
 - (6) A copy of a current Federal Communications Commission (FCC) license that authorizes the applicant to provide service.
 - (7) The type, manufacturer and model number of the proposed tower.
 - (8) The height of the proposed tower, including the height of any antenna(s) structure above the supporting structure of the tower.
 - (9) The number of proposed antennas, type, manufacturer, model number, dB gain, size and orientation of the proposed tower.
 - (10) Proof of compliance with all the provisions of this section.
 - (11) A statement of how the application meets the following siting objectives for new towers:
 - (a) A new tower and ancillary buildings and parking shall, to the extent possible, be sited where their visual impact is least detrimental. If a visual impact is identified, the applicant shall demonstrate that suitable landscaping, buffering or other techniques will be used, and that they are able to mitigate such impacts to a level of insignificance. Such mitigation shall include, in the discretion of the Board, fencing, berms, trees, shrubs and other landscaping, together with the requirement that they shall be maintained in a vigorous growing condition.
 - (b) A new tower shall, to the extent possible, be sited distant from residential properties and where visual impacts upon residential properties can be minimized.
 - (c) Collocation.

- [1] Antenna installations shall, when possible, be collocated either on existing towers or on eligible structures, unless it is clearly shown that shared use of existing tall structures and existing or approved communications towers is undesirable or unattainable due to:
- [a] The absence of existing towers or eligible structures for collocation;
 - [b] The technical infeasibility of collocation in light of the applicant's system requirements, frequency incompatibilities or engineering limitations;
 - [c] The existence of physical constraints that render the collocation infeasible;
 - [d] The inability to secure permission to collocate, in spite of good faith efforts; or
 - [e] The applicant's proposed collocation on the site would result in impacts on the surrounding area which exceed that of a new tower or would create a need for a greater number of towers to provide service, which, when considered together, would have a cumulative adverse effect on surrounding areas which exceed that of a new tower.
- [2] The application shall include a report with an inventory of all existing eligible tall structures and existing or approved communications towers eligible for collocation within a two-mile radius of the proposed site. The site inventory shall include a map showing the exact location of each site inventoried, including latitude and longitude (degrees, minutes, seconds), ground elevation above sea level, height of the structure and/or tower and accessory buildings on the site. The report shall outline opportunities for shared use of these facilities as an alternative to the proposed new communications tower. The report shall demonstrate good faith efforts to secure shared use from the owner of each potential existing eligible tall structure and existing or approved communications tower. The report shall document the physical, technical and/or financial reasons why shared usage is not practical in each case. Copies of any written requests for collocation, and the responses thereto, shall be submitted to the Board.
- [3] The application shall include an agreement to accept reasonable collocations on the proposed tower in the future. An applicant proposing to place a new commercial communications tower, or modify an existing tower to accept a new antenna installation, shall commit, on behalf of itself and its successors, to negotiate in good faith for reasonable shared use of the tower by other providers, should same be proposed in the future, and to rent or lease available space under the term of a fair market lease, without discrimination to other providers. A letter documenting the applicant's intent to negotiate in good faith for such use shall be part of the application for any special permit or site plan approval and shall be filed with the Building Inspector as part of any building permit application. Where the applicant is other than the owner of the site, the applicant shall provide

assurance to the Board that the owner will also consent to the collocation in the future.

- (d) Towers and antenna installations shall be sited to minimize the total number of towers and antennas to the extent possible within the limits of technology and economic feasibility.
- (12) A long-form EAF, including an analysis of visual impacts. The applicant shall submit a view-shed analysis to determine the visual impacts of the proposed tower's siting. The analysis shall include a completed SEQRA visual EAF addendum, assessment of the tower's siting from significant vantage points and/or historic and scenic resources, by balloon testing or similar methodology, as well as visual simulations of the proposed tower's siting by means of photomontage or architectural renderings.
- (a) Significant vantage points potentially impacted by the proposed facility shall be determined by the Zoning Board, such as views from state and local roads adjacent to the proposed site, recreation areas, housing developments and local, state or national historic and scenic resources. The view-shed assessment should be performed, when possible, in the winter months to ensure a thorough examination of potential impacts. Even if this is not possible, the view-shed analysis should include an evaluation of anticipated visual impacts during the winter months when leaves are not on the trees. Findings presented shall include color photography illustrating the prescribed assessments and a key map which identifies the project site, photographic locations and target points.
 - (b) The methodology, date and time of all testing related to prescribed view-shed assessments shall be approved by the Zoning Board prior to preparation. The Zoning Board shall direct the applicant to provide public notification in the village's official newspaper, of the assessment, including date, time and testing location, at least seven and no more than 14 days in advance of the test date, together with such other notification as the Board may deem appropriate.
- (13) A report, by a qualified engineer, regarding nonionizing electromagnetic radiation for the proposed site. Such report shall provide sufficient information to detail the amount of radio frequency radiation expected from the proposed site. The report will comply with FCC reporting criteria for a cumulative report, reporting levels of anticipated exposure from all users on the site. The report shall indicate whether or not the proposed tower will comply with FCC emission standards.
- (14) The applicant must show that the property on which the proposed tower is located is in compliance with any previously approved site plan. If the site does not comply, it must be brought into compliance prior to any approval of the cell tower application.
- B. The Zoning Board may also, during its review of an application, request such other and further information as it finds necessary to make a thorough evaluation of the applicant's proposal.

§ 188-69. Notice and public hearing.

- A. A public hearing shall be held pursuant to the provisions of Village Law for any applicant under §§ 188-67 and 188-68 above.
- B. Notice.
- (1) In addition to any other notice requirements imposed by these sections, the Board may direct the applicant to send notice of such public hearing to:
 - (a) All owners of any land within 250 feet of any property line of the lot on which the tower is to be located, or such further distance as it deems appropriate in light of the anticipated visibility of the tower.
 - (b) The administrator of any local, state or federal parklands within 1/2 mile of the proposed tower.
 - (2) Additionally, the Board Secretary shall send notice to any of the following agencies which have requested notice of such applications:
 - (a) The legislative body of each town or village that borders the Village of Nelsonville.
 - (b) The County Planning Department

§ 188-70. Standards for issuing special permits.

- A. No special permit for a communications tower or a communications antenna installation shall be granted absent a finding by the Zoning Board that the applicant has met the following criteria:
- (1) That the application complies with all requirements of New York State Fire Prevention and Building Code, as well as all applicable state and federal regulations.
 - (2) That the application meets the requirements of § 188-67 for collocation or placement on an eligible building or structure or § 188-68 for a new tower, including the siting objectives.
 - (3) That, where a new tower is proposed, the applicant has shown an actual need for construction of the new tower.
 - (4) That, where a new tower is being proposed, the applicant has demonstrated that shared use of existing tall structures and existing or approved communications towers is undesirable or unattainable due to:
 - (a) The absence of existing towers or eligible structures for collocation.
 - (b) The technical feasibility of collocation in light of the applicant's system requirements, frequency incompatibilities or engineering limitations.
 - (c) The existence of physical constraints that render the collocation infeasible.
 - (d) The inability to secure permission to collocate, in spite of good-faith efforts.

- (e) The adverse impact of the applicant's proposed collocation on the site on the surrounding area which exceeds that of the proposed new tower, or the creation of a need for a greater number of towers to provide service, which, when considered together, would have a cumulative adverse effect on surrounding areas which exceeds that of the proposed tower.
- (5) That the tower owner, and its agents, if applicable, have agreed to rent or lease available space on the tower, under the terms of a fair-market lease, without discrimination to other providers.
- (6) That the proposed antenna installation or tower will not have a significant adverse impact on scenic or historic resources. If a significant adverse visual impact is identified, the applicant shall demonstrate that suitable landscaping, buffering or other techniques will be used, and that they are able to minimize such impacts to a level of insignificance.
- (7) That the proposal shall comply with applicable FCC regulations regarding emissions of electromagnetic radiation and that the required monitoring program is in place and paid for by the applicant.
- B. Conditions on special permits. Special permits may be issued subject to conditions, as authorized by law, including the following:
- (1) The Board may require the use of camouflage communications towers where necessary to minimize visual impacts and to blend the communications tower and/or its accessory structures into the natural surroundings. "Camouflage" is defined as the use of materials incorporated into the communications tower design that give communications towers the appearance of tree branches and bark coatings, church steeples and crosses, sign structures, lighting structures or other similar structures.
- (2) The Board shall require testing and inspection.
- (a) RF emission standards.
- [1] Pretransmissions testing. Any building permit, site plan or special permit shall be deemed to be issued subject to the condition that, prior to the issuance of a certificate of occupancy and the commencement of transmission, the applicant shall provide adequate proof to the Village Zoning Administrator, subject to review by the village's engineering or other consultants, that the EMF radiation around the proposed tower or antenna installation site complies with FCC requirements. All tests shall be performed by engineers or consultants qualified in the field of telecommunications and radio frequency and approved by the Village of Nelsonville. Such tests shall be conducted in accordance with the requirements of 47 CFR and shall be certified to the Village of Nelsonville.
- [2] Post-commencement testing. After transmission begins, testing and certification of EMG radiation shall be required in accordance with the requirements set forth in the preceding subsection at the time of any change or alteration of the operating characteristics of the tower. These results shall be reported to the Zoning Enforcement Officer within 30 days of the change

or alteration . If there is no change or alteration in the operating characteristics of the tower, the owner shall provide the results of such testing every three years, together with the testing required in Subsection B(2)(b) below, and shall also file, at least yearly on January 2 of each year, a written certification that the operating characteristics of the tower or installation have not changed or been altered.

[3] Any noncompliance with applicable FCC RF emission standards shall be promptly cured.

(b) Structural and safety testing. Tower owners shall cause their towers to be inspected for structural integrity and safety by an independent licensed professional structural engineer, at least every three years. The first inspection shall be within three years of the date approvals were granted. Safety inspection shall include, at a minimum, inspection of the condition of the tower, its supports, foundations, anchor bolts, coaxial cable, cable supports, ice shields, cable trays, guy wires and antennas affixed to the tower. The tower shall also be inspected for fire, electrical, natural and other man-made hazards that could pose a potential hazard to the tower or surrounding area. A report of the inspection results shall be certified and submitted to the Zoning Enforcement Officer. Any modification of an existing tower which includes changes to tower dimensions or numbers or types of antenna shall require a new structural and safety inspection. Any defects revealed in such an inspection shall be promptly cured.

(3) The Board shall require assurances regarding the removal and repair of towers.

- (a) The applicant shall submit to the Board an agreement committing the property owner, its agents and successors to keep the tower and accessory structures in good order and repair, and in compliance with any approval, and to promptly notify the Zoning Enforcement Officer within 60 days of the discontinuance of use of the tower. If there are two or more operators or users of a tower, then the notice need only be served when all have ceased using the tower.
- (b) The owner shall notify the Board within three months when any user of a communications tower has discontinued its use of the tower, regardless of whether one or more other users continue to use the tower.
- (c) The owner shall promptly remove an unused commercial communications tower within four months of cessation of operation. The failure to remove such towers in accordance with this article shall be punishable as a violation of the Zoning Law. Additionally, the village may bring proceedings to require the removal of such unused towers, at the owner's expense; and the village may also forfeit any security posted by the applicant to insure such removal.
- (d) When the Zoning Enforcement Officer has reason to believe that a tower has been unused for more than six months, but has not received notice of discontinuance from the owner, the Zoning Enforcement Officer (ZEO) may serve a notice upon the owner, at its last known address, stating the date on which the ZEO believes that the use of the tower was discontinued, requesting the owner to take responsibility for removal of the tower and stating that the

failure of the owner to take responsibility for the tower will result in a determination of abandonment of the approvals previously issued for the tower. If the owner fails to appear to assure the ZEO that he will take responsibility for timely removal of the tower, or to establish that the tower is actually in use, within 60 days of the mailing of the notice to the owner's last known address, then the ZEO may make a finding that the tower has been abandoned, and all approvals previously granted by the village of such tower shall be considered abandoned and forfeited. A copy of this determination shall be mailed to the owner and filed in the Building Inspector's office.

§ 188-71. Design and construction requirements; consultant fees; security.

All newly constructed towers, all modifications of existing towers and all newly installed antenna installations shall comply with the following design and construction requirements:

A. Towers and antennas. New or modified commercial telecommunications towers and antenna installations shall meet the following design and construction requirements:

- (1) Allow collocation in the future. An applicant proposing to place a new tower shall cause it to be designed in a manner which will accept collocation of other commercial telecommunications antenna installations in the future in accordance with this article. Commercial telecommunications towers shall be designed structurally, electrically and in all respects to accommodate shared use for at least one other user if the tower is over 60 feet in height and at least two additional users if the tower is over 100 feet in height. Towers must be designed to allow for future rearrangement of antennas mounted at varying heights. The applicant shall document the tower's capacity, including the number and type of antennas it can accommodate and potential mounting locations. Where an existing tower is being modified to accept one additional antenna, the reviewing board may require that the owner shall take reasonable steps to modify the tower so that it may accommodate another potential future user if the tower, as modified to accommodate the additional user, will be over 100 feet tall.
- (2) Color. Towers shall be painted with a flat paint in a gray or blue shade, except in instances where a different color is mandated by federal or state authorities. Any antenna component of a commercial communications antenna installation shall, when feasible, be painted in a shade which blends with the color of the host tower, building or structure to which it is attached.
- (3) Facilitation of future collocation. Where practicable, towers should be designed and constructed in a manner which will accommodate future collocation.
- (4) Structural design. Towers shall be designed structurally to collapse within themselves wherever possible in order to minimize damage to nearby structures and properties.
- (5) Compliance with state and federal law. Towers shall comply with all applicable provisions of the New York State Uniform Fire Prevention and Building Code and all applicable FAA and FCC requirements.

- (6) Noise. Towers and commercial telecommunications antenna installations, and their accessory structures and improvements, shall be designed to minimize noise generation by power generators, heating, ventilating and air conditioning, and any other noise source, particularly if there is a residence or other sensitive receptor, such as a park or other open space use or historic use, within 200 feet of the site.
- B. Accessory buildings and structures. All buildings and structures accessory to the operation and use of a commercial telecommunications tower shall meet the following requirements:
- (1) They shall be designed to blend with the surrounding natural environment and minimize the visibility of the building or structure. The building shall not be more than 12 feet high.
 - (2) They shall comply with all applicable provisions of the New York State Uniform Fire Prevention and Building Code.
 - (3) They shall be used only for housing equipment related to the particular site. Wherever possible, the buildings shall be joined or clustered so as to appear as one building.
- C. Site layout requirements.
- (1) Access.
 - (a) Adequate emergency and service access shall be provided in a manner which minimizes ground disturbance, vegetation cutting and site erosion. Road grades shall follow natural contours to minimize visual disturbance and reduce soil erosion potential.
 - (b) All network interconnections to and from the telecommunications site and all power to the site shall be installed underground, unless the applicant satisfactorily establishes that this is not possible because of the nature of the subsurface conditions, or is not desirable for environmental reasons or would have adverse visual impacts. At the initial construction of the access road to the site, sufficient conduit shall be laid to accommodate the maximum possible number of communications providers that might use the facility.
 - (2) Parking. A minimum of two parking spaces shall be provided for each commercial telecommunications tower which houses a commercial telecommunications antenna installation.
 - (3) Fencing. Towers and any accessory structures ancillary thereto shall be adequately enclosed by a fence and gated for aesthetic purposes, screening and security purposes. All proposed guy wires shall be located within any required fencing. The Zoning Board shall approve the height and design of the fence.
 - (4) Signs and advertising. The use of any portion of a commercial telecommunications tower for other than warning or equipment information signs is prohibited. Commercial telecommunications towers or antennas shall not be used for advertising by the provider. A sign no greater than two square feet may be placed, indicating the name of the facility, its owners and a twenty-four-hour emergency phone number. "No Trespassing" or other similar warning signs may also be placed on the fenced border of the property.

(5) Lighting.

- (a) Commercial telecommunications towers shall not be illuminated by any artificial means, including strobe lighting, unless lighting is required by the Federal Aviation Administration (FAA), the Federal Communications Commission (FCC) or other federal or state authority. If a tower is within two miles of an airport, the applicant shall provide written documentation by the FCC as to whether or not it will require lighting of the tower.
- (b) Lighting of the grounds of the facility shall be in keeping with the needs of safety and the surrounding neighborhood. No light shall spill from the site onto surrounding properties.

(6) Screening.

- (a) To the extent possible, the applicant shall preserve existing vegetation in a band at least 50 feet deep along the borders of the property which screen views of a commercial communications tower and accessory structures from nearby properties.
- (b) The reviewing board may require the applicant to provide supplementary landscaping to screen views of the base of the tower and accessory buildings or structures in situations where adverse visual impacts are identified. In such cases, landscape screening shall be provided to screen views from such property, around the perimeter fencing of the tower and around all accessory structures. At a minimum, screening shall include evergreen plantings and/or fencing and berms, as determined by the Zoning Board, to ensure that views of accessory structures are suitably screened from neighboring uses and that views of the base of the tower are screened to the extent reasonably practical.

D. Locational placement requirements . Commercial communications towers and antenna installations shall meet the following minimum requirements in any zone where they are permitted. These criteria are in addition to the bulk requirements applicable in the zone. Where the bulk regulations and these regulations impose different requirements, the more restrictive will control.

- (1) Permissible number of towers on a lot There shall be no more than one commercial communications tower on any lot, together with any permitted ancillary buildings, structures and parking facilities.
- (2) Required separation from nearest habitable structure.No tower shall be placed closer than 300 feet, on a horizontal plane, to the nearest house or other residential habitable structure or proposed house or other residential habitable structure.
- (3) Required separation between towers in residential zones.Ina residential zone, a tower shall not be placed closer than 500 feet to any existing commercial communications tower,whether such existing tower is in a residential zone or any otherzone.
- (4) Minimum lot size.
 - (a) Freestanding new commercial telecommunication s tower as primary use: one acre or the underlying minimum lot size in the zone, whichever is greater.

- (b) Collocated commercial telecommunications antenna installation placed on existing building, structure or tower: one acre or the underlying minimum lot size in the zone, whichever is greater.
- (5) Minimum yards/setback.
 - (a) Freestanding new commercial telecommunications tower or collocation on existing tower.
 - [1] The minimum front setback to a tower in all zones shall be 150 feet or 125% of the height of the tower, whichever is greater.
 - [2] The minimum side setback in all zones shall be 50 feet or 125% of the height of the tower, whichever is greater.
 - [3] The minimum setback from Route 301 shall be 500 feet.
 - (b) Collocated commercial telecommunications antenna installation on existing building or structure other than tower. The building or other structure must comply with the applicable setback for commercial communication towers as provided in the chapter. Antennas shall not be placed on buildings or structures that do not comply with applicable setbacks.
 - (c) Accessory structures.
 - [1] No buildings or other structures accessory to the operation of a commercial telecommunications tower or commercial telecommunications antenna installation may be constructed in any required front yard and must provide at least 50 foot side and rear setback from the property line.
 - [2] No guy wires shall be located within fifty-foot side and rear setback.
 - [3] On any lot line abutting a residential district, the required setback shall be 100 feet.
- (6) **Maximum** height of freestanding commercial telecommunications tower and collocated antenna installation. The maximum height of a freestanding tower shall be 110 feet above ground elevation. In all cases, the permissible height is measured from ground elevation to the top of any antenna projecting above the top of the tower.
- E. Engineers' and consultants' fees. The Planning Board or Zoning Board may request a review of the application at the applicant's expense by a qualified engineer and/or consultant selected by the village in order to evaluate the application and/or test and certify radiation emissions around the proposed tower and the structural integrity of the tower as well as any ancillary structures. Fees for the review of the application by a qualified engineer and/or consultant are in addition to the application fee, shall be the responsibility of the applicant and shall be deposited with the Village Clerk.
- F. Financial security. The applicant shall, as a condition of final approval, provide the village with financial security acceptable to the village sufficient to provide for the removal or repair of the tower as described in § 188-70 above and to maintain any of the site improvements, including screening and landscaping. Acceptable financial security

includes, but is not limited to, irrevocable bank letters of credit, escrow accounts and bonds issued by insurance companies.

§ ~~188~~-72. Fees.

All fees associated with applications for commercial communications towers shall be set forth from time to time by resolution of the Board of Trustees.

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