

Chapter 1226: Use Regulations

1226.01 Table of Allowed Uses

Table 1226-1 below lists the uses allowed within all zoning districts. Each of the listed uses is defined in Chapter 1231: Definitions and Rules of Construction.

(1) Explanation of Table Abbreviations and Columns

(A) Permitted Uses (P)

A “P” in a cell indicates that a use is permitted by-right in the respective zoning district. Permitted uses are subject to all other applicable regulations of this Code, including the use-specific standards set forth in this chapter and the development standards of Chapter 1227: Site Development Standards and Chapter 1229: Development Standards.

(B) Conditional Uses (C)

A “C” in a cell indicates that, in the respective zoning district, a use is permitted if reviewed and approved as a conditional use pursuant to Section 1224.08: Conditional Use Permit. Conditional uses are subject to all other applicable regulations of this Code, including the use-specific standards set forth in this chapter and the development standards of Chapter 1227: Site Development Standards and Chapter 1229: Development Standards.

(C) Prohibited Uses (Shaded Cells)

A shaded cell indicates that the listed use is prohibited in the respective zoning district.

(D) Additional Regulations

Regardless of whether a use is permitted by-right or permitted as a conditional use, there may be additional regulations that are applicable to the use. The existence of these use-specific standards is noted through a cross-reference in the last column of Table 1226-1. These standards apply in all districts unless otherwise specified.

(E) Unlisted Uses

- 1.) If a zoning permit, site plan review, or a certificate of use and compliance application is submitted for a use that is not listed in Table 1226-1, the Planning Director is authorized to classify the new or unlisted use into an existing land use category that most closely fits the new or unlisted use. The Planning Director may consult with the PZC and obtain a motion of concurrence or objection to the use classification through the PZC hearing process.
- 2.) If no similar use determination can be made, the Planning Director shall refer the use to the PZC who may initiate an amendment to the text of this Code to clarify where and how the use should be permitted.

Table 1226-1: Allowed Uses											
Uses P = Permitted C = Conditional	R-R	R-1	R-2	B-1	B-2	B-3	B-4	B-5	I-1	PD	Additional Regulations See Section:
Agricultural Uses											
Agriculture – animal husbandry and keeping of livestock	P	P						C	P		1226.02(2)
Agriculture – raising of crops	P	P	P	P	P	P	P	P	P	P	
Nurseries and greenhouses	C			P		C	C	C	P		
Residential Uses											
Adult family homes (3 to 5 adults)	P	P	P								
Adult group homes (6 to 16 adults)			C								
Multi-Family dwellings			P							P	
Nursing homes and assisted living facilities			C	C	C	C				P	1226.02(10)
Open Space Subdivisions	P	PC	C							P	
Single-Family dwellings	P	P	P							P	
Two-family dwellings		C	P							P	
Commercial Uses											
Airport and airport related facilities								P			
Automotive body repair				P			P	P	P		
Automotive car washes				P			P	P			
Automotive fuel sales				P		C	P	P		P	1226.02(3)
Automotive rental				P			P	P	P		
Automotive repair and service & body repair				P			P	P	P		1226.02(3)
Automotive sales				P		C	P	P			
Banquet halls				P			P	P		P	
Bars and taverns				P		C	P	P		P	
Bed and breakfast establishments	C	C	C							P	
Day care centers				P	P	P		C	C	P	1226.02(5)
Day care home, Type A (7 to 12 children, or 4 to 12 children when 4 or more are under two years old)				C	C	C			C		1226.02(5)
Day care home, Type B (1 to 6 children, no 3 children are under two years old)	P	P	P							P	
Drive-through facilities				C	C	C	P	P		P	
Financial institutions				P	P	P	P	P		P	
Funeral homes				P	C	C	P	P	P		
Hotels and motels				P			P	P		P	
Kennels				P				C	P		1226.02(8)

Table 1226-1: Allowed Uses

Uses P = Permitted C = Conditional	R-R	R-1	R-2	B-1	B-2	B-3	B-4	B-5	I-1	PD	Additional Regulations See Section:
Medical and dental offices				P	P	C	P	P	C	P	
Offices				P	P	C	P	P	P	P	
Parking lots/Decks	C	C	P	P	P	P	P	P	P	P	
Personal service establishments				P	C	C	P	P		P	
Recreation and indoor entertainment facilities				P			P	P	P	P	
Research facilities and laboratories				P	C	C	P	P	P	P	
Restaurants				P	C	C	P	P	P	P	
Retail and service commercial uses				P	C	C	P	P	P	P	
Self-storage facilities				C				C	P		1226.02(11)
Sexually oriented businesses							P				1226.02(12)
Social clubs and fraternal organizations				P		C	P	P		P	
Theaters				C		C	P	P		P	
Veterinarian clinics				P	C	C	P	P	P		
Wireless telecommunications towers	C	C	C	C	C	C	C	C	C	C	1226.02(13)
Industrial Uses											
Distribution facilities, truck terminals, and warehouses							C	P	P		
Heavy industrial uses								C	C		
Light industrial uses								P	P		
Mineral extraction	C	C	C	C	C	C	C	C	C		1226.02(9)
Public and Institutional Uses											
Active parks, playgrounds and recreational facilities	C	C	C	P	P	P	P	P	P	P	1226.02(1)
Cemeteries	C	C	C	C	C	C	C	C	C	P	1226.02(4)
Community centers and clubhouses	C	C	C	P	C	C	P	P	P	P	
Educational facilities (public or private)	C	C	C	P	C	C	P	P	P	P	1226.02(6)
Governmental offices and facilities	C	C	C	P	P	P	P	P	P	P	1226.02(7)
Hospitals and clinics				P			P	P	P	P	
Libraries, museums, galleries, and cultural centers	C	C	C	P	P	P	P	P		P	
Passive parks and conservation areas	P	P	P	P	P	P	P	P	P	P	
Public and private utility services	P	P	P	P	P	P	P	P	P	P	
Public safety/service facilities	C	C	C	P	C	C	P	P	P	P	1226.02(7)
Religious places of worship	C	C	C	C	C	C	C	C	C	P	

1226.02 Use-Specific Regulations

(1) Active Parks, Playgrounds, and Recreational Facilities

The following regulations shall apply to when the principal use of a lot is an active park, playground, or recreational facility:

- (A) Unless otherwise approved by the PZC, active parks, and playgrounds which include outdoor play areas, tot lots, or activity centers designed to be used by children under eight years of age shall be fully enclosed by a fence subject to approval by the PZC.
- (B) All structures shall be located at least 25 feet from all property lines or as approved by the PZC.
- (C) Vehicle access points of entrance or exit shall be located a minimum of 200 feet from the intersection of two major thoroughfares, or a minimum of 100 feet from the intersection of a major thoroughfare and a local or collector thoroughfare.
- (D) Retail business uses shall be only those customarily accessory or incidental to the main recreational use, such as refreshment, souvenir, and concession stands.
- (E) The minimum gross lot area or portion of a lot required for golf courses, country clubs, horse riding academies, and campgrounds for camping in tents, travel trailers and other vehicles, cabins or lodges, including day camps, summer camps and health camps, shall be subject to review by the PZC.
- (F) Active parks, playgrounds, and recreational facilities within a subdivision or PD District shall require review and approval by the PZC.

(2) Agricultural Uses-Animal Husbandry and Keeping of Livestock

A lot may be used for agricultural purposes in accordance with the following regulations:

- (A) The minimum area of a lot for animal and poultry husbandry shall be five acres.
- (B) Apiculture, horticulture, floriculture, and viticulture shall be permitted on any size lot, however, buildings and structures accessory to an agricultural use shall be on a lot with a minimum area of five acres.
- (C) Dwellings shall conform to the minimum site development requirements for the applicable zoning district.
- (D) All structures used for keeping of farm animals, fowl, fur-bearing animals, horses, and/or ponies shall be set back a minimum of 20 feet from the property line.
- (E) Fenced enclosures for the keeping of farm animals, fowl, fur-bearing animals, horses and/or ponies closer than 5 feet from any lot line may be approved by the PZC as a conditional use according to the procedures, review criteria, and public hearing requirements set forth in Section 1224.08: Conditional Use Permit under the following conditions:
 - 1.) The fenced enclosures shall be located a minimum of 50 feet from any existing dwelling except for a dwelling on the same lot as the fenced enclosure; or
 - 2.) Neighboring property owners within 100 feet shall be notified, in writing, when the proposed placement of the fence is less than five feet from the lot lines.

(3) **Automotive Fuel Sales and Automotive Repair and Service Facilities**

In addition to the applicable provisions of this chapter, automotive fuel sales and automotive repair and service facilities shall comply with the following:

- (A) Automotive fuel sales and automotive repair and service facilities that are located on a corner lot shall have a minimum of 150 feet frontage on each street to allow for adequate ingress and egress without creating congestion at an intersection;
- (B) Fuel pumps and related driveways and paved areas may be erected in a front yard, but not less than 30 feet from an existing or proposed street right of way, except for lots with frontage on Massillon Road or Arlington Road, in which case the minimum distance shall be 40 feet from the right-of-way line.
- (C) A canopy may be constructed over the pump island, provided that the canopy shall extend no closer than 20 feet from an existing or planned right of way, except for lots with frontage on Massillon Road or Arlington Road, in which case the minimum distance shall be 30 feet from the right-of-way line.
- (D) If repair or service activities are performed on a vehicle, such vehicle shall be entirely within a building.
- (E) Outdoor sales, displays, and storage shall be in conformance with Section 1229.12: Outdoor Sales, Displays, and Storage.
- (F) On a corner lot, access drives shall be placed as far from the intersection as possible and shall be limited to no more than one access drive per fronting street.

(4) **Cemeteries**

The lot or the area of a lot proposed for a cemetery shall be used for cemetery purposes only and shall meet the following requirements:

- (A) A new cemetery shall have a minimum area of 10 acres. Expansion of an existing cemetery is exempt from this requirement.
- (B) The required building setback for all structures, including mausoleums and maintenance garages, shall be 25 feet from any property line.
- (C) Graves and burial lots shall be located no less than 15 feet from all property lines.
- (D) There shall be access to a collector street so that residential neighborhoods are not burdened by funeral processions.
- (E) For private cemeteries, the owner shall demonstrate to the PZC that there is adequate administrative and financial capacity to ensure perpetual maintenance and operation of the cemetery.

(5) **Day Care Centers and Type A Day Care Homes**

- (A) Outdoor play areas, tot lots, or activity centers designed to be used by children under eight years of age shall be fully enclosed by a fence subject to approval by the PZC.
- (B) The parking and circulation plan shall include a drop-off/pick-up point for children.
- (C) In residential districts, Type A day care homes shall meet the minimum applicable site development standards established in Chapter 1227: Site Development Standards.

- (6) **Educational Facilities**
Educational facilities, which have outdoor play areas, tot lots, or activity centers designed to be used by children under eight years of age shall ensure that the activity areas are fully enclosed by a fence subject to approval by the PZC.
- (7) **Governmental Offices, Facilities and Public Safety/Service Facilities**
Governmental offices, facilities, and public safety/service facilities, shall meet the minimum site development standards established for the applicable zoning district.
- (8) **Kennels**
In addition to the applicable provisions of this chapter, kennels shall comply with the following:
 - (A) All structures and activities related to the subject kennel use shall be located a minimum distance of 50 feet from side and rear property lines, except that when located adjacent to a residential district, the following additional restrictions shall apply:
 - 1.) All non-soundproofed structures or areas where animals are confined shall be located a minimum distance of 250 feet from any residential district.
 - 2.) Soundproofed, air-conditioned buildings shall be located a minimum distance of 100 feet from any residential district.
 - (B) All non-soundproofed structures for the confinement of animals shall be screened by a solid fence or wall a minimum of six feet in height located within 50 feet of the structure.
 - (C) Animals shall be confined in an enclosed building between the hours of 10:00 p.m. and 6:00 a.m.
 - (D) There shall be no burial or incineration of animals on the premises.
- (9) **Mineral Extraction**
Mining, soil, sand and gravel removal and processing may be conditionally permitted in all zoning districts (except PD districts) provided that all proposed uses and the continuation through expansion of existing mining and extracting uses shall, at a minimum, meet the following conditions and limitations:
 - (A) There shall be a minimum setback of 150 feet from all lot lines, outside of the site where the mineral extraction is taking place, within which there shall be no disturbance of land and no mineral extraction. This setback may be reduced to 100 feet along lot lines that have frontage on a public right-of-way.
 - (B) All points of entrance or exit shall be located a minimum of 200 feet from the intersection of two major thoroughfares, and/or a minimum of 200 feet from the intersection of a major thoroughfare and a local or collector street.
 - (C) Site locations should be preferred that offer natural or man-made barriers that would lessen the effect of intrusion into an area.
 - (D) Truck routes shall be established for movement in and out of the development in such a way as to minimize the wear on public roads and prevent hazards and damage to other properties in the community.

- (E) Any temporary structures must be indicated as such on site plans submitted to the PZC for approval. Such structures shall not be continued as permanent structures. The period of continuance shall be set by the PZC. A temporary use permit for each structure shall be issued by the Zoning Division.
- (F) Truck parking areas, maneuvering lanes and accessways to public roads shall be designed to cause no interference with the safe and convenient movement of automobile and pedestrian traffic on, and adjacent to, the site, and shall be built and paved or treated to prevent the creation of dust and drainage problems.
- (G) All facilities, structures and activities shall meet all County and/or State health, building, electrical and other applicable codes. In cases of overlapping codes and/or jurisdictions, the more restrictive shall apply.
- (H) The area being mined or excavated shall be enclosed by a fence six feet or more in height for the entire periphery of the development. Fences shall be adequate to prevent trespass and shall be placed no closer than 50 feet to the top or bottom of any slope.
- (I) No sand or gravel shall be removed or stored, or overburden stored, within 100 feet of any lot line not owned or controlled by the developer or operator of the business, or his or her agent, nor shall such mineral extraction business be conducted closer to any lot line or road so that areas contiguous and adjacent thereto do not have adequate lateral support.
- (J) Equipment and trucks shall be operated no earlier than 7:00 a.m. nor later than 8:00 p.m., except on Sundays and holidays, when there shall be no equipment operations.
- (K) Asphalt, cement or resins shall not be brought to the site to be processed, nor shall any stone, gravel or sand or another resource not extracted from the site be processed at the site.
- (L) A conditional use permit shall pertain to a specific site and acreage covered by the performance guarantees. Expansion shall require a new or renewed conditional use permit, which may be applied for any time prior to the 12-month expiration date of the current certificate.
- (M) A plan showing provisions for control of erosion and sedimentation during and after the development, construction, extraction or other use of the site shall be prepared. Such plan shall show proposals for restoration, rehabilitation and reclamation, where necessary, and shall be accompanied by documentation indicating the review and recommendation on such plan by the County Soil and Water Conservation District, the Division of Lands and Soil of the Department of Natural Resources, or other competent agency or soils scientist.
- (N) Effective erosion and sediment controls shall be planned and applied according to the following principles:
 - 1.) The smallest practical area of land should be exposed at any one time during development, construction, extraction or other use.
 - 2.) When land is exposed during development, use, extraction, etc., the exposure should be kept to the shortest practical period of time.
 - 3.) Temporary vegetation and/or mulching shall be used to protect critical areas exposed during development, use, etc.

- 4.) Sediment basins (debris basins, desilting basins or silt traps) shall be installed and maintained to remove sediment from run-off waters from land undergoing development, use, etc.
 - 5.) Provisions shall be made to effectively accommodate the increased runoff caused by changed soil and surface conditions during and after development, use, etc.
 - 6.) The permanent final vegetation and structures shall be installed as soon as practical in the development, use, restoration, rehabilitation, etc.
 - 7.) The development, extraction or use plan shall be fitted to the topography and soils so as to create the least erosion potential.
 - 8.) Wherever feasible, natural vegetation should be retained and protected.
 - 9.) All excavations shall be made to either a water producing depth, such depth to be not less than five feet below the low water mark, or shall be graded or backfilled with non-noxious, nonflammable and noncombustible solids, to secure:
 - a.) That the excavated area shall not collect and permit to remain therein stagnant water; or
 - b.) That the surface of such area which is not permanently submerged is graded or backfilled as necessary to reduce the peaks and depressions thereof so as to produce a gently running surface that will minimize erosion due to rainfall and which will be in substantial conformity to the adjoining land area. The banks of all excavations shall be sloped to the water line at a slope which shall not be greater than three feet horizontal to one foot vertical, and said bank shall be needed.
- (O) A conditional use permit issued for mineral extraction purposes shall be issued for a period of no more than twelve consecutive months, subject to renewal for no more than an additional 12 month period, provided that the Mayor and/or City Council is satisfied that the holder of the Conditional Use Certificate is complying with the this Code, and with all conditions set forth in the conditional use permit.
- (P) Regarding all conditional use permits issued pursuant to Section 1224.08: Conditional Use Permit, if either the Mayor or City Council determines that the holder of the conditional use permit is violating the zoning code or any of the conditions set forth in the conditional use permit, the Mayor or City Council may authorize the Law Director to immediately notify the Certificate Holder of the violation(s) and demand the permit holder to remedy the violation(s) within 10 calendar days of the date of the notice. The Mayor and City Council shall also have the authority to request the Law Director immediately institute legal action for a temporary restraining order and/or preliminary injunction against the permit holder to cease operations until such time that the permit holder proves that they are conducting operations in compliance with this Code and any conditions set forth in the conditional use permit.
- (Q) In addition to the right to seek injunctive relief, the City of Green may also assess a fine in the amount of \$100.00 for each day a violation of the conditional use permit exists and/or continues up to a maximum fine of \$10,000.00.

- (R) A bond or other financial provision acceptable to City Council guaranteeing performance according to plan and the removal from the site, after termination of operations, of any abandoned equipment and accessories, shall be submitted to Council, in an amount per acre, or fraction thereof, of not less than \$2,500, and in a total amount of not less than \$25,000. The amount of the bond or guarantee shall be sufficient to ensure rehabilitation for the number of acres planned for operations during at least the ensuing twelve consecutive months. Such bond shall be of the type recognized in the State.
 - (S) The conditions and limitations provided in this subsection, as well as others deemed necessary by the PZC, shall be specified as conditions for the issuance of a conditional use permit and shall be so specified on the certificate.
- (10) **Nursing Homes and Assisted Living Facilities**
Nursing homes and assisted living facilities may be permitted, provided that:
- (A) The minimum lot area shall be two acres.
 - (B) All structures and activities shall be set back a minimum of 50 feet from all lot lines.
 - (C) The density shall not exceed 18 patient rooms per acre.
 - (D) All site entrance and exit drives shall be located a minimum of 200 feet from the intersection of two main roads and a minimum of 100 feet from main road and local road intersections.
- (11) **Self-Storage Facilities**
In addition to the applicable provisions of this chapter, self-service storage facilities shall comply with the following:
- (A) All items shall be stored within a building.
 - (B) Buildings shall not exceed one story, with a maximum overall height of 22 feet.
 - (C) No door shall exceed 15 feet in either height or width.
 - (D) Access to the facility shall be limited to one entrance and one exit per abutting street.
 - (E) Loading and unloading of storage units shall be oriented towards the side and rear lot lines.
- (12) **Sexually Oriented Business**
- (A) A sexually oriented business may only be located in the B-4 District.
 - (B) A sexually oriented business may be located only in accordance with the following restrictions:
 - 1.) No such business shall be located on any parcel within 500 feet of any residential zoning district;
 - 2.) No such business shall be located on any parcel within 1,000 feet of any public library, public or private educational facility, public park, or religious place of worship;
 - 3.) No such business shall be located on any parcel within 1,000 feet of another sexually oriented business.

- (C) For purposes of Subsection (B) above, the measurement of distance shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a religious place of worship or public or private educational facility, or to the nearest boundary of an affected public park, residential zoning district or residential lot.
- (D) For purposes of Subsection (B) above, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.
- (E) No person shall establish, operate or cause the establishment or operation of any sexually oriented business in violation of the provisions of this section. Nothing in this section shall be construed to prohibit or limit the display, sale or rental of descriptive, printed, film or video material, or any live performance, which, taken as a whole, contains serious literary, artistic, political, medical, educational or scientific value.

(13) **Wireless Telecommunications Towers**

(A) **General**

All new construction, or the placement of equipment related to wireless telecommunications shall conform to the regulations of the district in which it is located and to the additional development standards and supplementary regulations contained herein.

(B) **Construction Standards**

Proposed new telecommunications towers shall comply with the following development standards. Wireless telecommunications towers/facilities are permitted as a sole use on a lot or when combined with another use, subject to all existing regulations in each district and the following:

- 1.) The tower must be set back from any property line or any existing structure on lots adjacent to the lot on which the tower is to be located by a distance equal to the vertical height of the tower.
- 2.) The tower must not exceed a height of 150 feet (including antenna) if designed for use by a single user; 175 feet if designed for use by two co-users; and 200 feet if designed for use by three co-users. Due to the proximity of the Akron-Canton Airport, all wireless telecommunications towers must also receive Federal Aviation Administration (FAA) clearance and concurrence of the FAA decision by the Airport Director before construction may proceed.
- 3.) The maximum size of the equipment shelter shall be 300 square feet, or, if there is more than one shelter, a total of 750 square feet.
- 4.) When a wireless telecommunications tower/facility is to be located on a property with an existing use:
 - a.) The existing use need not be affiliated with the wireless telecommunications provider.

- b.) The wireless telecommunications facility shall be fully automated and unattended on a daily basis and shall be visited only for periodic and necessary maintenance (except during construction or an emergency).
 - c.) The service access to the equipment shelter shall, whenever feasible, be provided along the circulation driveways of the existing use.
 - d.) Security fencing, eight feet in height, shall surround the tower, the equipment shelter and any guy wires, either completely or individually, as determined by the PZC.
- 5.)** A vegetative screen shall be planted that consists of one row of a mixture of evergreen and deciduous trees or privet hedge planted five feet on center maximum. A landscaping plan is required to be submitted that indicates how the wireless telecommunications facility will be screened from adjoining properties.
- 6.)** Existing vegetation (trees and shrubs) shall be preserved to the maximum extent possible.
- 7.)** Any applicant requesting permission to install a new tower shall provide evidence of written contact with all wireless service providers who supply service within a mile of the proposed facility. The applicant shall inquire about potential co-location opportunities at all technically feasible locations. The contacted providers shall be requested to respond in writing to the inquiry within sixty days. The applicant shall present proof of mailing as well as responses to the PZC as a means of demonstrating the need for a new tower. If a contacted wireless service provider fails to respond to a written request for co-location from the applicant within 60 days, the PZC may accept the non-response as proof that co-location on an existing tower is not feasible.
- 8.)** No advertising is permitted anywhere on the facility, with the exception of identification signage.
- 9.)** "No Trespassing" signs shall be posted around the facility, with a telephone number of who to contact in the event of an emergency.
- 10.)** Applicants will provide evidence of legal access to the tower site and maintain this access regardless of other developments that may take place on the site.
- 11.)** No tower shall be artificially lighted except to assure safety or as required by the Federal Aviation Administration (FAA). Security lighting around the equipment shelter is prohibited, unless specifically requested by the applicant and a need is proved to the PZC.
- 12.)** The tower shall be painted a neutral tone, i.e. desert sand/khaki, so as to minimize its visibility, unless otherwise required by the Federal Communications Commission (FCC) or the FAA.
- 13.)** Any application to locate an antenna on a building or structure that is listed in the City's Inventory of Historic Structures shall be subject to review by the Historic Preservation Commission.

- 14.) The electromagnetic field levels of the tower shall conform to the standards developed by the National Council on Radiation Protection and Measurement (NCRP Report No. 86) or by the American National Standards Institute and the Institute of Electrical and Electronics Engineers (ANSI/IEEE C95.1-1992).

(C) Construction in Residential Districts

The construction of wireless telecommunications towers/facilities in residential zoning districts shall conform to all applicable existing zoning regulations, all development standards contained herein and the following supplementary regulations:

- 1.) In applying for site plan review to construct a wireless telecommunications tower/facility in any residential district, the applicant must present substantial evidence as to why it is not technically feasible to locate in a more appropriate nonresidential zone. Once those efforts to locate in a nonresidential zone have been exhausted, a wireless telecommunications facility may be located in a residential district.
- 2.) When the telecommunications facility is located on property with another principal use, the applicant shall present documentation that the owner of the property has granted an easement or entered into a lease for the proposed facility and that vehicular access is provided to the facility.

(D) Placement of Antennas and Equipment

The placing of wireless telecommunications antennas on any legal tower, building or structure within the City is determined to be a conditionally permitted use in all zoning districts. The placement of equipment shall conform to the regulations of the zone in which it is located, as well as the following:

- 1.) **Business and Industrial Zoning Districts**
No wireless telecommunications antenna shall be higher than 20 feet or 20 percent of the building height, whichever is greater, above the existing tower, building or structure in a nonresidential zoning district.
- 2.) **Residential Zoning Districts**
No wireless telecommunications antenna shall be higher than 20 feet above the existing tower, building or structure in a residential zoning district.
- 3.) **Equipment Shelters**
If the applicant proposes to locate the telecommunications equipment in a separate shelter (not located on or attached to the building), the shelter shall comply with all applicable development standards contained herein. Also, vehicular access to the shelter shall not interfere with the parking or vehicular circulation on the site for the principal use.

(E) Review and Approval of Plans

No person or entity shall construct a wireless telecommunications tower and facility, or place a wireless telecommunications antenna, on any legal tower, building or structure, without a site plan review; (a public hearing and approval by the PZC), as specified below:

- 1.) The site plan for the construction of a wireless telecommunications tower and related facility shall be reviewed and approved according to the standards and procedures set forth in Section 1224.07: Site Plan Review and Section 1224.08: Conditional Use Permit of this Code.
- 2.) The placing of a wireless telecommunications antenna on any legal tower, building or structure (which may or may not involve co-location with another wireless service provider) shall be reviewed and approved according to the standards and procedures set forth in this section of this Code, and the site plan shall consist of a drawing or depiction which accurately conveys the following information:
 - a.) A vicinity map indicating the location of the site and the existing structure;
 - b.) The location of the antenna on the structure;
 - c.) The length of any projection above the existing structure (if applicable); and
 - d.) The location of the equipment shelter. If the equipment shelter is separate from the structure, its size, fencing, landscaping, setbacks and evidence of legal access to the site shall be indicated.
- 3.) All other applicable site plan review procedures, as set forth in Section 1224.07: Site Plan Review shall also be adhered to.

1226.03 Accessory Uses

(1) Purpose

This section authorizes the establishment of accessory uses that are incidental and customarily subordinate to principal uses.

(2) General Accessory Use and Structure Standards

Accessory uses or structures shall be permitted provided:

- (A) The building or use is incidental to and customarily found in connection with a principal building or use permitted in the district in which it is located;
- (B) It is subordinate to and serves the principal building or use;
- (C) It is subordinate in size, area, extent, and purpose to the principal building or use;
- (D) It is located on the same lot as the principal use for which it serves;
- (E) An owner obtains the required zoning permit unless exempted in Table 1226-2;
- (F) The maximum height of an accessory detached garage shall be 18 feet in overall height;
- (G) The maximum height of any other accessory use or building shall be 15 feet in overall height;
- (H) Accessory uses and structures shall be prohibited in any common open space area that is preserved by covenant in a subdivision or PD, unless otherwise authorized by the PZC;
- (I) Unless otherwise specified in this Code, accessory buildings and uses shall be located a minimum of five feet from all side and rear lot lines; and
- (J) Comply with the maximum lot coverage ratios established in Chapter 1227: Site Development Standards

(3) Table of Allowed Accessory Uses

Table 1226-2 lists the accessory building and uses allowed within all zoning districts.

(A) Explanation of Table Abbreviations

1.) Permitted Uses (P)

A “P” in a cell indicates that an accessory building or use is permitted by-right in the respective zoning district. Permitted accessory uses are subject to all other applicable regulations of this Code, including the use-specific standards set forth in this chapter.

2.) Conditional Uses (C)

A “C” in a cell indicates that, in the respective zoning district, an accessory building or use is permitted if reviewed and approved as a conditional use pursuant to Section 1224.08: Conditional Use Permit. Conditional uses are subject to all other applicable regulations of this Code, including the use-specific standards set forth in this chapter.

3.) Prohibited Uses (Shaded Cells)

A shaded cell indicates that the listed accessory building or use is prohibited in the respective zoning district.

4.) Maximum Lot Coverage Provision

The column of Table 1226-2 titled “Maximum Lot Coverage” notes if the size of the accessory building or use shall be used in the calculation of maximum lot coverage of accessory buildings or uses as defined in Subsection 1227.02 (3): Maximum Lot Coverage/Maximum Accessory Use Square Footage.

5.) Permit Required

The “Permit Required” column identifies if a zoning permit and/or a certificate of use and compliance is required for the applicable accessory building or use.

6.) Yards Permitted

The “Yards Permitted” column identifies what yards the applicable accessory building or use is permitted in unless otherwise exempted.

7.) Additional Regulations

Regardless of whether an accessory building or use is permitted by-right or permitted as a conditional use, there may be additional regulations that are applicable to the use. The existence of these use-specific standards is noted through a cross-reference in the last column of Table 1226-2. These standards apply in all districts unless otherwise specified.

Table 1226-2 Allowed Accessory Uses

Uses P = Permitted C = Conditional	R-R and R-1	R-2	B-1	B-2 and B-3	B-4	B-5	I-1	PD	Maximum Lot Coverage	Permit Required		Yards Permitted F = Front S = Side R = Rear	Additional Regulations See Subsection:
										Zoning Permit	Certificate of Use and Compliance		
Accessory dwelling units			C	C				P	Yes	Yes	Yes	R	1226.03 (5)(A)
Accessory garages or buildings	P	P	P	P	P	P	P	P	Yes	Yes	No	R	
Dining areas or restaurants			P	P	P	P	P	P	No	No	Yes	In Principal Building	1226.03 (5)(B)
Fences	P	P	P	P	P	P	P	P	No	No	Yes	See Additional Regulations	1226.03 (5)(C)
Home occupations	P	P	P	P	P	P	P	P	No	No	Yes	In Principal Building	1226.03 (5)(D)
Private stables or kennels	P						P	P	Yes	Yes	Yes	R	1226.03 (5)(E)
Retail commercial uses			P	P		P	P	P	No	No	Yes	In Principal Building	
Roadside stand	P						P		Yes	Yes	Yes	F, S, or R	1226.03 (5)(F)
Satellite dishes	P	P	P	P	P	P	P	P	No	See Additional Regulations		R	1226.03 (5)(G)
Stand alone automated teller machines (ATMs)			P		P	P	P	P	Yes	Yes	Yes	F, S, or R	
Swimming pools (outdoor)	P	P	P		P	P		P	Yes	Yes	No	R	1226.03 (5)(H)
Swing or gym sets	P	P	P	P	P	C	C	P	No	No	No	R	
Tennis courts or other ball courts	P	P						P	Yes	Yes	No	R	
Unenclosed patios	P	P	P	P	P	P	P	P	No	No	No	R	
Wood or solid surface decks	P	P	P	P	P	P	P	P	Yes	Yes	No	R	1226.03 (5)(I)
Other accessory uses	C	C	C	C	C	C	C	C	As determined by PZC				

(4) Exceptions to the Location of Accessory Buildings and Uses

(A) Exemptions

For accessory buildings and uses that may only be permitted in the rear yard pursuant to Table 1226-2, the following exemptions shall apply:

- 1.) On a corner lot, accessory buildings and uses may be located in the side yard as illustrated in Section 1227.01: Measurements, Computations, and Exceptions.
- 2.) On a double frontage lot, accessory buildings may be located in the front yard located to the rear of the principal structure as illustrated in Section 1227.01: Measurements, Computations, and Exceptions.

(B) Attached Versus Detached Accessory Buildings

- 1.) Typical accessory uses, such as a private garage, that are an integral part of a principal building shall be considered to be part of the principal use and shall be subject to the site development standards of the applicable zoning district.
- 2.) Accessory buildings located within five feet of a principal structure and connected by a permanently enclosed porch, walkway, breezeway, or other similar structure shall be subject to the site development standards of the applicable zoning district.
- 3.) Accessory buildings located more than five feet from a principal structure shall be considered a detached accessory building and shall be subject to the provisions of this section even if the accessory building is connected by a permanently enclosed breezeway, walkway, or other similar structure.

(5) Use-Specific Standards

(A) Accessory Dwelling Units

- 1.) An accessory dwelling unit shall only be permitted when attached to the principal or another accessory structure and where approved by the PZC.
- 2.) Mobile homes, recreational vehicles, and travel trailers shall not be used as accessory dwelling units.
- 3.) The gross floor area associated with an accessory dwelling unit shall be at least 400 square feet, but shall not exceed 50 percent of the gross floor area of the principal dwelling unit, or 800 square feet, whichever is less.
- 4.) There shall be no more than one accessory dwelling unit per parcel.
- 5.) At least one off-street parking space shall be provided for an accessory dwelling unit in addition to the required off-street parking serving the principal use, but in no instance shall more than two off-street parking spaces be provided with an accessory dwelling unit.
- 6.) The exterior materials of the accessory dwelling unit shall consist of the same materials as the principal structure.

- 7.) Accessory dwelling units shall not be sold apart from the principal dwelling unit. Accessory dwelling units shall not be leased or rented.
- (B) Dining Areas or Restaurants
- 1.) Accessory dining areas or restaurants shall be restricted to 10 percent of the gross floor area of the principal building.
 - 2.) Accessory dining areas that are outdoors shall be subject to the applicable standards of Section 1229.12: Outdoor Sales, Displays, and Storage.
- (C) Fences
- 1.) In all districts, fences and walls shall comply with the following:
 - a.) In a front yard, a fence or wall shall not exceed 36 inches in height except that within 20 feet of a public right of way a fence shall not exceed 24 inches in height.
 - b.) In a side or rear yard in a residential district, a fence or wall shall not exceed six feet in height.
 - c.) In a side or rear yard in the B-1, B-2, B-3, or B-4 Districts, a fence or wall shall not exceed eight feet in height.
 - d.) In a side or rear yard in the B-5 or I-1 Districts, a fence or wall shall not exceed twelve feet in height.
 - e.) Decorative fencing used along the boundary of a major subdivision or a PD development shall require review and approval from the DRB and PZC.
 - f.) The use of barbed wire, razor wire, or similar fencing shall require approval by the DRB and PZC during site plan review.
 - 2.) Any fence or wall proposed for a use that requires site plan review and which is not in a front or required rear or side yard pursuant to paragraph (1) above shall be reviewed and approved as part of a site plan pursuant to Section 1224.07: Site Plan Review. However, when a fence or wall is proposed at a separate time from any other development for new construction, additions or site renovation, fences or walls may be approved administratively by the Zoning Division when the Zoning Division determines that the proposal:
 - a.) Complies with paragraph 1 above;
 - b.) Is consistent with any previously approved plan;
 - c.) Is compatible with the current site development if there is no approved plan; and
 - d.) Will have a minimum adverse impact to the surrounding areas.
 - 3.) If, because of the nature of the proposed fence, the Zoning Division does not make such a determination, the request shall be referred to the BZA and considered by the Board according to the appeals procedures set forth in Section 1224.11: Appeals.
- (D) Home Occupations – Accessory to a Dwelling in Residential Districts
- 1.) A home occupation may be conducted in a dwelling unit provided that the following standards are maintained:

- 2.) The occupation shall be conducted only by members of the family residing in the dwelling, and no one from outside the family shall be employed within the dwelling unit.
 - 3.) The occupation shall be conducted wholly within a principal building, and any space used for sales, service or production shall occupy no more than 35 percent of the total floor area of the dwelling.
 - 4.) Homes that serve as a gathering point for employees engaged in the business that takes place off the premises shall be prohibited. This may include, but it is not limited to, landscape business offices, construction offices, or a trucking business where drivers or employees gather at the home before being dispatched from the home for the purposes of the home occupation.
 - 5.) The occupation shall not generate a significantly greater volume of traffic than would normally be expected in a residential area, and all parking shall be accommodated in the resident's driveway.
 - 6.) There shall be no change in the outside appearance of the dwelling or other visible evidence of the conduct of such home occupation.
 - 7.) No home occupation, or any aspect thereof, including the storage of materials and supplies, shall be conducted in any accessory building or in an open yard.
- (E) Private Stables or Kennels
- 1.) Private stables for the keeping of one or more horses or ponies shall be permitted as an accessory use on a lot having a minimum of five acres and shall be permitted only for the use of the property owner, or a lessee thereof, and his or her family and/or friends invited to use such animals without the payment of any fee.
 - 2.) Private stables and associated structures, buildings and structures accessory to a permitted agricultural use, and any fenced enclosure in which farm animals, fowl, fur-bearing animals, horses or ponies are kept, shall be set back a minimum of five feet from every lot line. A perimeter fence shall be permitted along a lot line, provided that such fence does not constitute a corral or fenced area used for the purpose of containing such animals.
- (F) Roadside Stand
- 1.) Roadside stands shall only be permitted for the sale of products grown on the premises.
 - 2.) Roadside stands shall be set back a minimum of 30 feet from the road right-of-way and located in front yard or side yard in relation to primary structures.
 - 3.) Roadside stands shall not exceed 100 square feet in floor area.

(G) Satellite Dishes

Satellite dishes shall be permitted, without a zoning permit or certificate of use and compliance, provided that such items are not located in the front yard and are smaller than 18 inches in diameter. Where such use exceeds 18 inches in diameter, the following shall apply:

- 1.) A zoning permit and a certificate of use and compliance is required to be issued by the Zoning Division;
- 2.) The satellite dish shall only be located in the rear or side yard;
- 3.) The satellite dish shall not exceed 10 feet in diameter.

(H) Swimming Pools

1.) **At-Grade or Below-Grade Swimming Pools**

Any swimming pool below-grade or at-grade, when containing water to a depth of one and one-half feet or more, shall be completely surrounded by a fence or wall with a minimum height of four feet in order to minimize the attraction of the site to young children.

2.) **Above-Grade Swimming Pools**

Above grade pools, when raised a minimum of four feet above grade, shall not require fencing. However, access shall be restricted by a gate to minimize the attraction of the site to young children.

3.) **Other Requirements**

- a.) Swimming pools and associated structures (such as pool deck and diving board) shall be set back a minimum of 15 feet from the side and rear lot line.
- b.) The construction and operation of a swimming pool shall meet all State and County regulations.

(I) Wood or Solid Surface Decks and Porches

Decks and porches shall meet all applicable safety and building codes.

1226.04 Temporary Uses

(1) Purpose

This section allows for the establishment of certain temporary uses of limited duration and special events, provided that such uses do not negatively affect adjacent properties, and provided that such uses or events are discontinued upon the expiration of a set time period. Temporary uses and special events shall not involve the construction or alteration of any permanent building or structure.

(2) General Temporary Use Standards

Temporary uses, structures, or events shall:

- (A) Obtain a temporary use permit pursuant to Subsection 1224.12 (8): Temporary Use Permits;
- (B) Not be detrimental to property or improvements in the surrounding area or to the public health, safety, or general welfare;
- (C) Be compatible with the principal uses taking place on the site;

- (D) Not have substantial adverse effects or noise impacts on nearby residential neighborhoods;
- (E) Not include permanent alterations to the site;
- (F) Not maintain temporary signs associated with the use or structure after the activity ends;
- (G) Comply with the sign and parking regulations of this Code;
- (H) Not violate the applicable conditions of approval that apply to a site or use on the site;
- (I) Not interfere with the normal operations of any permanent use located on the property; and
- (J) Contain sufficient land area to allow the temporary use, structure, or special event to occur, as well as adequate land to accommodate the parking and traffic movement associated with the temporary use, without disturbing environmentally sensitive lands.

(3) Table of Allowed Temporary Uses

Table 1226-3 lists the temporary uses allowed within all zoning districts.

Table 1226-3: Temporary Uses and Structures			
Temporary Use or Structure per Parcel	Allowable Duration (per site)	Permit Required	Districts
Construction Dumpster, Trailers, or Equipment Storage [1]	Until Completion of Construction [2]	Temporary Use Permit	Permitted in All Zoning Districts
Real Estate Sales Office/Model Sales Home	2 years [3]	Temporary Use Permit	Permitted in All Zoning Districts
Temporary Storage in a Portable Container	Once a year for a total of 60 days per year	Temporary Use Permit	Permitted in All Zoning Districts on a Driveway
Temporary Structure (as part of an educational facility or institutional use)	2 years [3]	Temporary Use Permit	Permitted in All Zoning Districts
Garage/Yard Sales/Sidewalk Sales	3 days per event; 6 total days per calendar year	No Permit Required	Permitted in All Zoning Districts
Temporary Sales[4] and Tents for the purpose of Temporary Sales	Up to 3 times per year with a maximum of 30 days of sales per year	Temporary Use Permit and Transient Vendor's License	Permitted in All Zoning Districts
Temporary Events	14 days per calendar year	Temporary Use Permit	Permitted in All Zoning Districts
<p>NOTES:</p> <p>[1] Construction dumpsters, trailers, and equipment storage shall not be located on a public street.</p> <p>[2] Construction dumpsters, trailers, and equipment storage used during construction shall be removed prior to the issuance of the certificates of use and compliance.</p> <p>[3] Annual extensions may be granted by the Planning Director if conditions warrant.</p> <p>[4] Temporary sales must take place on lot of existing or vacated building and the temporary use permit application must include a written statement from the property owner authorizing such sales. The temporary use permit shall be prominently displayed at the site.</p>			

1226.05 Nonconforming Uses

(1) Purpose

In the provisions established by this Code, there exist uses of land, structures, lots of record, towers, and signs that were lawfully established before this Code was adopted or amended, that now do not conform to its terms and requirements. The purpose and intent of this section is to regulate the continued existence of those uses, structures, and lots of record that do not conform to the provisions of this Code, or any amendments thereto.

(2) General Provisions

(A) Authority to Continue

The lawful use of any dwelling or structure and of any land or premises existing and lawful at the time of the enactment of this Code, or any amendment thereto, may continue, although such use does not conform to the provisions of this Code or amendment thereto. Nevertheless, while it is the intent of this Code that such nonconformities be allowed to continue until removed, they should not be encouraged to survive. Therefore, no nonconformity may be moved, extended, altered, expanded or used as grounds for any other use or structure prohibited elsewhere in the district without the approval of the BZA, except as otherwise specifically provided for in this Code.

(B) Conditional Uses

Any use which is permitted as a conditional use in a district under the terms of this Code shall not be deemed a nonconforming use in such district, but shall without further action be considered a conforming use provided the use meets all approval criteria and conditions established by the PZC for the conditional use.

(C) Accessory Uses

A nonconforming use that is accessory to a principal use shall not make the principal use nonconforming.

(D) Determination of Nonconformity Status

The burden of establishing that a nonconformity lawfully exists shall be on the owner of the land on which the purported nonconformity is located.

(E) Exception Due to Variance

The requirements of this section shall not apply to a development standard or feature that is the subject of an approved variance. Where a variance has been granted for a development standard or feature that does not otherwise conform to the requirements of this Code, that development standard or feature shall be deemed conforming.

(F) Minor Repairs and Normal Maintenance

Minor repairs and normal maintenance that are required to keep nonconforming uses, structures, and lots of record in a safe condition are permitted, provided the minor repair or maintenance does not extend, expand, or enlarge the nonconforming use, structure or, lot of record. For the purposes of this section, "minor repair or normal maintenance" shall mean:

- 1.) **Maintenance of Safe Condition**
Repairs necessary to maintain a nonconforming use, structure, and lot of record in a safe condition;
 - 2.) **Correction of Damage or Deterioration**
Repairs necessary to correct any damage or deterioration to the structural soundness or interior appearance of a structure without altering the structure; and/or
 - 3.) **Maintenance of Land for Safety**
Maintenance of land areas to protect against health hazards and to promote the safety of surrounding uses.
- (G) Change of Tenancy or Ownership
Changes of tenancy or ownership of an existing nonconformity are permitted but shall continue to be subject to the requirements of this section.
- (3) Substitution of Nonconforming Uses
If no structural alterations are made, a nonconforming use of a building may be changed to another nonconforming use of the same or a more restricted classification, as determined by the BZA. Whenever a nonconforming use has been changed to a more restricted use or to a conforming use, such use shall not thereafter be changed to a less restricted use.
- (4) Continuation of Nonconforming Uses
Where, at the time of adoption of this Code, lawful uses of land exist which would not be permitted by the regulations imposed by this Code, the uses may be continued so long as they remain otherwise lawful, provided that:
- (A) Any structure existing on or before the effective date of this Code which does not conform to the provisions of this Code for the district in which it is located, and which has been or may hereafter be damaged by fire or other causes to the extent of less than 60 percent of its replacement value at the time of destruction or damage, may be restored or reconstructed, provided that such structure, when completed, will not differ in location or size from the previously existing structure. However, when the damage or destruction to said structure is to the extent of 60 percent or more of its replacement value at the time of destruction or damage, it shall not be restored except in conformity with the regulations of the district in which the structure is situated.
 - (B) In the event that a nonconforming use of any dwelling, building, or structure, or of any land or premises, is voluntarily discontinued for a period of six months or more, any future use of said dwelling, building, structure, land or premises shall be in conformity with the provisions of this Code.
 - (C) Any partially completed building, the actual construction of which has commenced on or before the effective date of this Code, which building or its intended use, when completed, would not conform to the provisions of this Code for the district in which it is located, may be completed and used as a nonconforming use only for the purpose for which it was originally designed, provided that the building is completed and/or put to use within two years after the adoption of this Code.

- (D) Any dwelling existing in a residential district at the time such district becomes a Business or Industrial District, shall have the same right that it had before the zone change without having to apply to the BZA, until it ceases to be used as a dwelling.

- (5) Continuation of Nonconforming Sexually Oriented Business Uses
Any sexually oriented business lawfully operating on the effective date of this ordinance that is in violation of this Code shall be deemed a nonconforming use. A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the subsequent location of a church, public or private elementary or secondary school, public park or library within 1,000 feet, or a residential district within 500 feet, of the sexually oriented business. When a nonconforming sexually oriented business use of a structure or premises is voluntarily discontinued or abandoned for more than six months, the structure, building or premises shall not thereafter be used except in conformity with the requirements of the zoning district in which it is located.

- (6) Nonconformity Due to Site Conditions
Where a dwelling is nonconforming only because the front yard setback does not meet the requirements of this Code, the Zoning Division shall issue a zoning permit for the extension, enlargement, or alteration of said dwelling without requiring an appeal to the BZA provided that no other requirement of this Code is violated and that the extent of the nonconformity is not increased.

- (7) Variance of the Provisions of this Chapter
 - (A) Any dwelling, building or other structure, or any land or premises, the use of which does not conform to the provisions of this Code or any amendment thereto, for the district in which it is located, may not be extended, enlarged or altered for the purpose of any nonconforming use as carried on in such structure or on such land.
 - (B) The property owner or applicant may apply for a variance with the BZA to allow for the extension, enlargement, or alteration of a nonconforming use if, in the BZA's opinion, such variance will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of this Code will result in unnecessary hardship and so that the spirit of this Code shall be observed and substantial justice done.

- (8) Modifications for Lots of Record
Any lot of record or lot for which a land contract has been issued, or any parcel within an unrecorded allotment of which at least one-half of the lots are of record or have been sold on land contract before the effective date of this Code, shall be subject to all of the requirements of this Code, except that:
 - (A) For any lot having a width less than the minimum dimension specified in Chapter 1227: Site Development Standards, each side yard may be 10 percent of the width of the lot at the building line, but no less than ten feet wide.
 - (B) For any lot having an area less than the minimum dimension specified in Chapter 1227: Site Development Standards, the rear yard shall be at least 20 percent of the average depth of the lot, but no less than 40 feet deep.