

CHAPTER 79

ZONING

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Appendix A - Urban Renewal Plan

[HISTORY: Adopted by the Common Council of the City of Dunkirk on 1-25-1995 as L.L. #2 (Intro No. 1) 1995; Added § 79-26160, Regulation of Telecommunication Facilities 7-7-1998 as L.L. #1, 1998

Part I
Scope and Application

ARTICLE I
Title and Purpose

§ 79-1010 Intent.

The purpose of this zoning law is to provide for the orderly growth in the City of Dunkirk in accordance with the City's comprehensive plan. The zoning law offers guidance on the use, height and bulk of uses that are proposed in the City. Areas have been designated for residential, commercial and industrial growth to ensure the development of cohesive neighborhoods, conflicts are minimised and the overall character of the City is protected. The zoning law is developed to:

- 1) secure safety from fire, flood and other dangers;
- 2) provide adequate light, air and outdoor uses to include public, common and private open space areas;

- 3) prevent overcrowding of land and ensure structure and land use arrangements are aesthetically harmonious to surrounding areas and structures;
- 4) avoid undue concentration of population or sparse, uncoordinated development;
- 5) facilitate the adequate provision of transportation, water, sewer, school, parks and other public services;
- 6) protect the character and values of residential, institutional, public, business, commercial and industrial uses and to ensure their orderly and beneficial development;
- 7) regulate the location of buildings and intensity of uses in relation to streets to ensure minimal interference with and by traffic movements, reduce congestion on City streets and improve public safety;
- 8) preserve and protect significant natural features and vegetation, thereby preventing ecological damage and visual blight which occur when those features or vegetation are eliminated or substantially altered to serve development purposes only;
- 9) accommodate solar energy systems and equipment and access to necessary sunlight;
- 10) promote the health, safety and general welfare of the general public.

§ 79-1020 Title.

This law shall be known as "The City of Dunkirk Zoning Law" for the City of Dunkirk in the County of Chautauqua, State of New York.

This zoning law has been made with consideration, among other things, for the character of each district and its suitability for specific uses, conserving the property values and the direction of building development, enhancing the value of land and encouraging the most appropriate use of land throughout the City of Dunkirk.

§ 79-1030 Effective Date.

This local law shall take effect immediately upon filing with the Secretary of State.

This local law shall apply on its effective date to all uses which have not commenced and structures which have not been constructed regardless of the status of permits or certificates of occupancy issued pursuant to the New York State Uniform Fire Prevention and Building Code.

§ 79-1040 Interpretation.

No building, structure or land shall be used and no building, structure or any of their parts shall be erected, moved or altered, unless for a use expressly permitted by, and in conformance with, the zoning regulations specified for the district in which it is located.

The provisions of this Chapter shall not annul, or in any way interfere with, existing deed or plat restrictions, easements or other agreements between persons, codes, laws, rules, regulations or permits previously adopted or issued, except those ordinances or sections which are contrary to, or in conflict with, this Chapter.

Wherever this Chapter imposes greater restrictions upon the use of structures or land, the height or bulk of buildings or requires larger land or building areas, yards or other open spaces than are otherwise required or imposed by deed or plat restrictions or laws, this Chapter shall control; other regulations shall control where they impose greater restrictions than this Chapter and for that purpose, it shall not annul, modify or impair the provisions of any existing deed or plat restrictions, easements or other agreements.

In interpreting and applying the provisions of this Chapter, its provisions shall be held to be the minimum requirements for the promotion of public health, safety, convenience, comfort, prosperity and general welfare. Except as specifically provided, it is not intended by the adoption of this Chapter to repeal, abrogate or annul any existing provisions of any law previously adopted relating to the use of structures and land and the design, erection, alteration or maintenance of structures.

Titles and headings have been inserted for convenience of reference and are not intended to define or limit the scope of or otherwise affect any provision in this Chapter.

§ 79-1050 Repeal Existing Chapter.

Unless otherwise provided in this Chapter, Chapter 79 of the City of Dunkirk City Code and the zoning map of 1981, together with all subsequent amendments, are repealed on the effective date of this Chapter.

§ 79-1060 Severability.

If any portion of this Chapter is for any reason held to be unconstitutional or otherwise unenforceable, such determination shall not affect the validity of the remaining portions of this Chapter. The enacting body declares that it would have, and does approve and enact each subsection, subdivision, paragraph, sentence, clause and phrase, irrespective of the fact that any one or more portions be held unconstitutional or otherwise unenforceable.

Part II
Zoning Districts and Requirements

ARTICLE II
Districts and Maps

§ 79-2010 Establishment of Districts.

For the purpose of this law, the City of Dunkirk is divided into the following districts:

- R-1 SINGLE FAMILY RESIDENTIAL DISTRICT**
- R-2 GENERAL RESIDENTIAL DISTRICT**
- R-3 MULTI-FAMILY DISTRICT**
- C-1 TOURISM COMMERCIAL**
- C-2 COMMUNITY BUSINESS DISTRICT**
- CBD CENTRAL BUSINESS DISTRICT**
- M-1 LIGHT INDUSTRIAL DISTRICT**
- M-2 GENERAL INDUSTRIAL DISTRICT**
- O-S OPEN SPACE DISTRICT**
- H-1 HARBORFRONT - 1 DISTRICT OVERLAY**
- H-2 HARBORFRONT - 2 DISTRICT OVERLAY**
- H-D HISTORIC DISTRICT OVERLAY**

§ 79-2020 Zoning Map.

Such districts are shown, defined and bounded on the map entitled "Zoning Map" dated 1994 that accompanies this Chapter and is filed in the office of the City

Clerk. The zoning map and all explanatory matter is incorporated by this reference into this Chapter.

§ 79-2030 Interpretation of Boundaries.

Where uncertainty exists with respect to the boundaries of the various districts, as shown on the zoning map, the following rules shall apply:

- 1) where the designation on the zoning map indicates a boundary approximately upon a road, the center line of the road shall be construed to be the boundary;
- 2) where the designation on the zoning map indicates a boundary approximately upon a lot line, such lot line shall be construed to be the boundary;
- 3) distances shown on the zoning map are perpendicular distances from road center lines measured to the district boundary, which boundaries in all cases where distances are given are parallel to the road center line;
- 4) in other cases, the district boundary shall be determined by the use of the scale of the zoning map.

Where a district boundary divides a lot of record at the time such boundary is adopted, the district requirements of the greater portion of the lot will become the requirements of the entire lot.

§ 79-2040 Contiguous Parcels.

When two or more parcels of land, each of which lacks adequate area and dimension to qualify for a permitted use under the requirements of the use district in which they are located, are contiguous and are held in one ownership, they shall be used as one lot for such use.

Article III
R-1 Single Family District

§ 79-3010 Intent.

The R-1 District is designed to provide for the development of neighborhoods that are dominated by single family residences. The areas designated R-1 will result in neighborhoods that provide the opportunity for larger yards and larger houses. The zoning law recognizes the importance of offering diversity in housing types for all types of users and potential property owners. The following regulations shall apply in all R-1 Single Family Districts.

§ 79-3020 Permitted Uses and Structures.

The following are permitted uses:

- 1) single family dwelling.

§ 79-3030 Accessory Uses.

The following are the accessory uses, building and structures permitted in the R-1 District provided that such accessory uses and buildings shall not be constructed until the main building has been constructed:

- 1) private garages, carports, workshops, pool houses, gazebos, patio covers;
- 2) off street parking for residents and guests of the principle use;
- 3) not more than one (1) commercial vehicle, not including trucks over one (1) ton capacity, driven by the residents which may be stored on the premises;
- 4) private family swimming pools as regulated in Article XXVI-Supplemental Regulations;
- 5) not more than one (1) each of the following: storage of camp trailers, but not mobile homes as defined in Article XXX - Definitions of this law, utility trailers or boats owned by the occupant of the premises for personal use, but only in driveways, side or rear yards of the lot;
- 6) signs subject to the provisions of Article XXI - Sign Restrictions;
- 7) satellite television receiving antennas subject to the provisions of Article XXVI - Supplemental Regulations;
- 8) fences, walls and hedges subject to the provisions of Article XXVI - Supplemental Regulations;

- 9) other uses and structures that are customarily incidental and clearly subordinate to permitted uses or uses that require site plan review or special permits.

§ 79-3040 Site Plan Review.

The following uses are allowed subject to site plan review as outlined in Article XVII - Site Plan Review:

- 1) churches and other religious institutions;
- 2) public and semi public facilities including parks, playgrounds and recreational areas, cemeteries, schools, public libraries, fire, ambulance and public safety buildings, public meeting halls, community centers and post offices;
- 3) home occupations engaged in by the occupants of a dwelling, including the office of a resident member of a learned profession, real estate, insurance sales, musicians, dressmakers, hair dressers and tailors.

§ 79-3050 Special Permitted Uses.

The following are special permitted uses subject to the conditions outlined in Article XVII - Special Permits:

- 1) essential facilities;
- 2) bed and breakfast.

§ 79-3060 Lot, Area and Yard Requirements.

The following lot requirements apply to the R-1 District:

Lot Requirements

Single Family and Two Family

Minimum Lot Frontage 25 feet

Minimum Lot Frontage at Building Line 10 feet

Other Uses

Minimum Lot Frontage 70 feet

Minimum Lot Area 8,400 sq. feet

Maximum Building Coverage 35%

Maximum Lot Coverage 50%

Yard Requirements

Minimum Front Yard Depth 30 feet

Minimum Side Yard - Principal Use 10 feet

Minimum Side Yard - Ancillary Use 5 feet

Minimum Rear Yard - Principal Use 35 feet

Minimum Rear Yard - Ancillary Use 25 feet

Corner Lots

The minimum width of the lot at the building line parallel to the street considered to be the front street shall be one hundred (100) feet. Additional yard requirements, for both yards abutting streets, shall be determined as provided in this Chapter.

§ 79-3070 Buildings.

The following requirements apply to buildings constructed in the R-1 District

Height

Maximum Building Height 2 1/2 stories not to exceed 30 feet

Floor Area

Minimum Floor Area One Story Dwelling 900 sq. feet

Minimum Floor Area One-and-one-half or two story 800 square feet
main floor

§ 79-3080 Supplemental Regulations and Exceptions.

See Part III - Regulations Applying to all Districts for additional regulations applying to the R-1 District.

Article IV
R-2 General Residential District

§ 79-4010 Intent.

The R-2 District is designed to provide for the development of neighborhoods that include a mixture of single and two family housing and complementary services. Lot sizes are generally smaller than the R-1 zone to accommodate the smaller housing types that are allowed in the R-2 District. Limited types of commercial uses are allowed in the zone to ensure the residential character is protected and enhanced. The following regulations shall apply in all R-2 General Residential Districts.

§ 79-4020 Permitted Uses and Structures.

The following are permitted uses:

- 1) all uses permitted in the R-1 District, subject to all the restrictions specified for the R-1 District;
- 2) two family dwellings;
- 3) accessory apartments.

§ 79-4030 Accessory Uses.

The following are the accessory uses, building and structures permitted in the R-2 District:

- 1) all accessory uses permitted in the R-1 District, subject to all the restrictions specified for the R-1 District.

§ 79-4040 Site Plan Review.

The following uses are permitted subject to site plan review as outlined in Article XVII - Site Plan Review:

- 1) all uses permitted subject to site plan review in the R-1 District, subject to all the restrictions specified for the R-1 District;
- 2) accessory office;
- 3) day care centers.

§ 79-4050 Special Permitted Uses.

The following are special permitted uses subject to the conditions outlined in Article XVIII - Special Permits:

- 1) all uses permitted subject to special permits in the R-1 District, subject to all the restrictions specified for the R-1 District;
- 2) tourist home.

§ 79-4060 Lot, Area and Yard Requirements.

The following lot requirements apply to the R-2 District:

Lot Requirements

Single Family and Two Family

Minimum Lot Frontage 25 feet

Minimum Lot Frontage at Building Line 60 feet

Other Uses

Minimum Lot Frontage 60 feet

Minimum Lot Area 6,000 sq. feet

Maximum Building Coverage 35%

Maximum Lot Coverage 50%

Yard Requirements

Minimum Front Yard Depth 25 feet

Minimum Side Yard - Principal Use 10 feet

Minimum Side Yard - Ancillary Use 5 feet

Minimum Rear Yard 25 feet

Corner Lots

The minimum width of the lot at the building line parallel to the street considered to be the front street shall be seventy five (75) feet. Additional yard requirements, for both yards abutting streets, shall be determined as provided in this Chapter.

§ 79-4070 Buildings.

The following requirements apply to buildings constructed in the R-2 District

Height

Maximum Building Height - Single Family 2 1/2 stories not to exceed 30 feet

Maximum Building Height - Two Family Dwelling 3 stories not to exceed 35 feet

Floor Area

Minimum Floor Area One Story Dwelling 800 sq. feet

Minimum Floor Area One-and-one-half
or two story Dwelling 720 sq. feet

Minimum Floor Area Two Family Dwelling 500 sq. feet per unit

§ 79-4080 Supplemental Regulations and Exceptions.

See Part III - Regulations Applying to all Districts for additional regulations applying to the R-2 District.

ARTICLE V
R-3 Multi Family District

§ 79-5010 Intent.

The R-3 District is designed to provide for the development of neighborhoods that include a mixture of all housing types, neighborhood commercial and complementary uses. While the residential character of the R-3 District is protected by the standards in this Article, commercial uses and activities are located in or near the District to service the higher concentration of population. In the R-3 District, lots are generally smaller and housing types are more varied. Commercial uses that do not diminish the quality of the neighborhood are also allowed in the R-3 District. The following regulations shall apply in all R-3 Multi Family Districts.

§ 79-5020 Permitted Uses and Structures.

The following are permitted uses:

- 1) all uses permitted in the R-2 District, subject to all the restrictions specified for the R-2 District.

§ 79-5030 Accessory Uses.

The following are the accessory uses, building and structures permitted in the R-3 District:

- 1) all accessory uses permitted in the R-2 District, subject to all the restrictions specified for the R-2 District.

§ 79-5040 Site Plan Review.

The following uses are permitted subject to site plan review as outlined in Article XVII - Site Plan Review:

- 1) all uses permitted subject to site plan review in the R-2 District, subject to all the restrictions specified for the R-2 District;
- 2) multiple family dwelling;
- 3) attached single family;
- 4) public garage;
- 5) private clubs and clubhouses;
- 6) nursing or convalescent homes;

- 7) mobile Home Park;
- 8) convenience stores with no gas service.

§ 79-5050 Special Permitted Uses.

The following are special permitted uses subject to the conditions outlined in Article XVIII - Special Permits:

- 1) all uses permitted subject to special permits in the R-2 District, subject to all the restrictions specified for the R-2 District;
- 2) boarding or rooming house;
- 3) lodging house;
- 4) fraternity or sorority house.

§ 79-5060 Lot, Area and Yard Requirements.

The following lot requirements apply to the R-3 District:

Lot Requirements

Residential

| | |
|--|----------------------------------|
| Minimum Lot Frontage - Single Family | 50 feet |
| Minimum Lot Frontage - Other Dwellings | 60 feet |
| Minimum Lot Area - Single Family | 5,000 sq. feet |
| Minimum Lot Area - Two Family | 3,000 sq. feet per dwelling unit |
| Minimum Lot Area - Three to Four Units | 2,500 sq. feet per dwelling unit |
| Minimum Lot Area - Five Plus Units | 1,500 sq. feet per dwelling unit |
| Maximum Building Coverage | 35% |
| Maximum Lot Coverage | 50% |

Other Uses

| | |
|---------------------------|----------------|
| Minimum Lot Frontage | 60 feet |
| Minimum Lot Area | 6,000 sq. feet |
| Maximum Building Coverage | 35% |
| Maximum Lot Coverage | 50% |

Yard Requirements

| | |
|-----------------------------------|---------|
| Minimum Front Yard Depth | 20 feet |
| Minimum Side Yard - Principal Use | 5 feet |
| Minimum Side Yard - Ancillary Use | 5 feet |
| Minimum Rear Yard | 20 feet |

Corner Lots

The minimum width of the lot at the building line parallel to the street considered to be the front street shall be seventy five (75) feet. Additional yard requirements, for both yards abutting streets, shall be determined as provided in this Chapter.

§ 79-5070 Buildings.

The following requirements apply to buildings constructed in the R-3 District:

Height

Residential

| | |
|---|--|
| Maximum Building Height - Single Family | 2 1/2 stories not to exceed 30 feet |
| Maximum Building Height - Two Family Dwelling | 3 stories not to exceed 35 feet |
| Maximum Building Height - Multi Family Dwelling | 5 stories or 55 feet, whichever is greater |

Other Uses

Maximum Building Height 35 feet

Floor Area

Minimum Floor Area One Story Dwelling 800 sq. feet

Minimum Floor Area One-and-one-half or two story Dwelling
720 sq. feet

Minimum Floor Area Two Family Dwelling 500 sq. feet per unit

Minimum Floor Area Other Dwellings 500 sq. feet per unit

§ 79-5080 Supplemental Regulations and Exceptions.

See Part III - Regulations Applying to all Districts for additional regulations applying to the R-3 District.

ARTICLE VI
C-1 Tourism Commercial District

§ 79-6010 Intent.

The C-1 District is designed to provide for the development of commercial areas to attract tourists and tourist related activities to the City of Dunkirk. The commercial activity allowed in the C-1 District will act as an attraction and will complement the overall development of the City. The following regulations shall apply in all C-1 Tourism Commercial Districts.

§ 79-6020 Permitted Uses and Structures.

The following are permitted uses:

- 1) all uses permitted in the R-3 District, subject to all the restrictions specified for the R-3 District.

§ 79-6030 Accessory Uses.

The following are the accessory uses, building and structures permitted in the C-1 District:

- 1) all accessory uses permitted in the R-3 District, subject to all the restrictions specified for the R-3 District.

§ 79-6040 Site Plan Review.

The following uses are permitted subject to site plan review as outlined in Article XVII - Site Plan Review:

- 1) all uses permitted subject to site plan review in the R-3 District, subject to all the restrictions specified for the R-3 District;
- 2) general business offices;
- 3) personal service establishments (i.e. barbershops, beauty parlors, shoe repair);
- 4) florists, greenhouses and nurseries;
- 5) boat or marine sales and service;
- 6) marina;
- 7) hotel, motel or motor court;
- 8) dance, art, music or photo studio;
- 9) book, video cassette rental, stationary and art supply stores;
- 10) tobacco, magazine, photo processing and camera shops;
- 11) gift, boutique, jewelry, novelty, greeting card and poster shops;
- 12) hobby and handicraft shops;
- 13) antique and second-hand shops;

- 14) nursery school;
- 15) restaurants, excluding drive-in restaurants, but including restaurants with outdoor patios;
- 16) custom shops for woodworking;
- 17) hardware store, implement and tool rental, sales, storage and service;
- 18) ice cream parlor;
- 19) taverns/bars/nightclubs;
- 20) bakery shops;
- 21) candy kitchen;
- 22) clothing, shoes or other retail sales operations;
- 23) commercial swimming pools or health clubs;
- 24) indoor recreation uses such as bowling alleys or tennis courts

§ 79-6050 Special Permitted Uses.

The following are special permitted uses subject to the conditions outlined in Article XVIII - Special Permits:

- 1) all uses permitted subject to special permits in the R-3 District, subject to all the restrictions specified for the R-3 District;
- 2) amusement enterprises not conducted within a completely enclosed building.

§ 79-6060 Lot, Area and Yard Requirements.

The following lot requirements apply to the C-1 District:

Lot Requirements

Residential

All buildings intended for residential use, in whole or in part, shall comply with the lot requirements of the Residential - 3 District (R-3).

Other Uses

| | |
|---------------------------|-------------------|
| Minimum Lot Frontage | 40 feet |
| Minimum Lot Area | 4,000 square feet |
| Maximum Building Coverage | 50% |
| Maximum Lot Coverage | 80% |

Yard Requirements

Residential

All buildings intended for residential use, in whole or in part, shall comply with the yard requirements of the Residential - 3 District (R-3).

Other Uses

| | |
|---|---|
| Minimum Front Yard | Average of the existing buildings within 200 feet or 20 feet, whichever is less |
| Minimum Side Yard - abutting non-residential district | 0 feet |
| Minimum Rear Yard - abutting non-residential district | 10 feet |
| Minimum Side Yard and Rear Yard – abutting residential district | As required in the abutting residential district |

§ 79-6070 Buildings.

The following requirements apply to buildings constructed in the C-1 District:

Height

Residential

All buildings intended for residential use, in whole or in part, shall comply with the height requirements of the Residential - 3 District (R-3).

Other Uses

Maximum Building Height - Other Structures 35 feet

Floor Area

Residential

All buildings intended for residential use, in whole or in part, shall comply with the floor area requirements of the Residential - 3 District (R-3).

Other Uses

Maximum Floor Area Ratio 3

§ 79-6080 Supplemental Regulations and Exceptions.

See Part III - Regulations Applying to all Districts for additional regulations applying to the C-1 District.

ARTICLE VII
C-2 Community Business District

§ 79-7010 Intent.

The C-2 District is designed to provide for the development of commercial areas to service general needs of residents in the City of Dunkirk. Community services allowed in the C-2 District include those uses that are essential for all residents: automotive services, retail stores, supermarkets, etc.. The C-2 District often surrounds or is adjacent to the residential districts to ensure the population in the City is serviced. These uses shall be established only in areas served by public water supply and sewer. The following regulations shall apply in all C-2 Community Business District.

§ 79-7020 Permitted Uses and Structures.

The following are permitted uses:

- 1) all uses permitted in the R-3 District, subject to all the restrictions specified for the R-3 District.

§ 79-7030 Accessory Uses.

The following are the accessory uses, building and structures permitted in the C-2 District:

- 1) all accessory uses permitted in the R-3 District, subject to all the restrictions specified for the R-3 District.

§ 79-7040 Site Plan Review.

The following uses are permitted subject to site plan review as outlined in Article XVII - Site Plan Review:

- 1) all uses permitted subject to site plan review in the R-3 District, subject to all the restrictions specified for the R-3 District;
- 2) drive-in business including restaurants and banks;
- 3) newspaper plants and printing establishments;
- 4) automatic coin laundry and/or dry cleaning;
- 5) sporting goods, bicycle and toy stores;
- 6) trophy, stamp and coin, jewelry and watch shops;
- 7) gunsmith, locksmith, engraving and taxidermy shops;
- 8) drug stores, pharmacies and optical shops;
- 9) electronic equipment stores;
- 10) medical offices;
- 11) supermarkets;
- 12) department stores;
- 13) furniture stores;
- 14) appliance stores;
- 15) hospital;
- 16) hospital, animal or veterinary clinic;
- 17) dental and medical clinics;

- 18) trade or industrial school;
- 19) theaters;
- 20) new or used car or trailer sales and accessory repair departments;
- 21) automobile wash;
- 22) self service gas stations;
- 23) motor vehicle service stations;
- 24) mortuaries or funeral homes;
- 25) liquor stores.

§ 79-7050 Special Permitted Uses.

The following are special permitted uses subject to the conditions outlined in Article XVIII- Special Permits:

- 1) all uses permitted subject to special permits in the R-3 District, subject to all the restrictions specified for the R-3 District;
- 2) sanatorium;
- 3) kennel.

§ 79-7060 Lot, Area and Yard Requirements.

The following lot requirements apply to the C-2 District:

Lot Requirements

Residential

All buildings intended for residential use, in whole or in part, shall comply with the lot requirements of the Residential - 3 District (R-3).

Other Uses

| | |
|----------------------|-------------------|
| Minimum Lot Frontage | 50 feet |
| Minimum Lot Area | 5,000 square feet |

Maximum Building Coverage 50%

Maximum Lot Coverage 80%

Yard Requirements

Residential

All buildings intended for residential use, in whole or in part, shall comply with the yard requirements of the Residential - 3 District (R-3).

Other Uses

Minimum Front Yard Average of the existing buildings within 200 feet or 20 feet, whichever is less

Minimum Side Yard - abutting non-residential district 5 feet

Minimum Rear Yard - abutting non-residential district 10 feet

Minimum Side Yard and Rear Yard - abutting residential district As required in the abutting residential district

§ 79-7070 Buildings.

The following requirements apply to buildings constructed in the C-2 District:

Height

Residential

All buildings intended for residential use, in whole or in part, shall comply with the height requirements of the Residential - 3 District (R-3).

Other Uses

Maximum Building Height - Other Structures 35 feet

Floor Area

Residential

All buildings intended for residential use, in whole or in part, shall comply with the floor area requirements of the Residential - 3 District (R-3).

Other Uses

Maximum Floor Area Ratio 3

§ 79-7080 Supplemental Regulations and Exceptions.

See Part III - Regulations Applying to all Districts for additional regulations applying to the C-2 District.

ARTICLE VIII
CBD - Central Business District

§ 79-8010 Intent.

The CBD is designed to provide for the concentration of public services (e.g. general retail, service, finance, insurance and real estate) and related uses in the City of Dunkirk. In addition to providing general services to the City of Dunkirk residents, the CBD should complement the C-1 district and include uses that attract tourists. The CBD will act as the retail, financial and administrative center of the City of Dunkirk and surrounding area. The following regulations shall apply in the Central Business District.

§ 79-8020 Permitted Uses and Structures.

The following are permitted uses:

- 1) all uses permitted in the C-1 District, subject to all the restrictions specified for the C-1 District.

§ 79-8030 Accessory Uses.

The following are the accessory uses, building and structures permitted in the CBD District:

- 1) all accessory uses permitted in the C-1 District, subject to all the restrictions specified for the C-1 District.

§ 79-8040 Site Plan Review.

The following uses are permitted subject to site plan review as outlined in Article XVII - Site Plan Review:

- 1) all uses permitted subject to site plan review in the C-1 District, subject to all the restrictions specified for the C-1 District;
- 2) drive-in business including restaurants and banks;
- 3) automatic coin laundry and/or dry cleaning;
- 4) sporting goods, bicycle and toy stores;
- 5) trophy, stamp and coin, jewelry and watch shops;
- 6) gunsmith, locksmith, engraving and taxidermy shops;

- 7) drug stores, pharmacies and optical shops;
- 8) professional offices (e.g. attorneys, engineers, researchers, business management consultants, data processing consultants, decorators, counsellors, psychologists, etc.);
- 9) administrative and executive office buildings, facilities and uses;
- 10) electronic equipment stores;
- 11) medical offices;
- 12) department stores;
- 13) furniture stores;
- 14) appliance stores.

§ 79-8050 Special Permitted Uses.

The following are special permitted uses subject to the conditions outlined in Article XVIII - Special Permits:

- 1) all uses permitted subject to special permits in the C-1 District, subject to all the restrictions specified for the C-1 District.

§ 79-8060 Lot, Area and Yard Requirements.

The following lot requirements apply to the CBD:

Lot Requirements

Residential

All buildings intended for residential use, in whole or in part, shall comply with the lot requirements of the Residential - 3 District (R-3).

Other Uses

| | |
|---------------------------|----------------|
| Minimum Lot Frontage | 40 feet |
| Minimum Lot Area | 4,000 sq. feet |
| Maximum Building Coverage | 50% |
| Maximum Lot Coverage | 80% |

Yard Requirements

Residential

All buildings intended for residential use, in whole or in part, shall comply with the yard requirements of the Residential - 3 District (R-3).

Other Uses

| | |
|--------------------|---|
| Minimum Front Yard | Average of the existing buildings within 200 feet or 10 feet, whichever is less |
|--------------------|---|

| | |
|---|--------|
| Minimum Side Yard - abutting non-residential district | 0 feet |
|---|--------|

| | |
|---|---------|
| Minimum Rear Yard - abutting non-residential district | 10 feet |
|---|---------|

| | |
|---|--|
| Minimum Side Yard and Rear Yard - abutting residential district | As required in the abutting residential district |
|---|--|

§ 79-8070 Buildings.

The following requirements apply to buildings constructed in the CBD District:

Height

Residential

All buildings intended for residential use, in whole or in part, shall comply with the height requirements of the Residential - 3 District (R-3).

Other Uses

All buildings proposed shall comply with the height requirements of the C-1 District.

Floor Area

Residential

All buildings intended for residential use, in whole or in part, shall comply with the height requirements of the Residential - 3 District (R-3).

Other Uses

All buildings proposed shall comply with the floor area ratio requirements of the C-1 District.

§ 79-8080 Supplemental Regulations and Exceptions.

See Part III - Regulations Applying to all Districts for additional regulations applying to the CBD District.

§ 79-8090 Incentive.

The Planning Board in the City of Dunkirk is authorized to provide incentives or bonuses to applicants for specified community benefits or amenities provided in the CBD. The exact incentives will be determined in conjunction with the applicant and the City Council.

- 1) incentives shall include, but not be limited to, adjustments to the permissible density, area, height, open space or lot or building coverage.
- 2) community benefits shall include the provision of open space corridors and linkages or the development of retail space on the ground level of the new development.
- 3) The procedures outlined in this zoning law for site plan approval shall be followed in granting the incentives.

ARTICLE IX
M-1 Light Industrial District

§ 79-9010 Intent.

The M-1 Light Industrial District provides for a limited range of light industrial uses and associated administrative offices. The districts are established to encourage the development of non-noxious industry that provide employment in the City of Dunkirk and expand the local tax base. Residential uses are not permitted in the M-1 District to minimize or eliminate potential conflicts that may occur. Limited commercial uses are allowed to service those people who work at the industries located in the M-1 District. The M-1 district is established to attract non-polluting industry.

§ 79-9020 Permitted Uses and Structures.

Permitted uses allowed in the M-1 Light Industrial District are subject to site plan review as specified in this Article.

§ 79-9030 Accessory Uses.

The following are the accessory uses, building and structures permitted in the M-1 District:

- 1) signs subject to the provisions of Article XXI - Sign Restrictions;
- 2) satellite television receiving antennas subject to the provisions of Article XXVI - Supplemental Regulations;
- 3) fences, walls and hedges subject to the provisions of Article XXVI - Supplemental Regulations;
- 4) Utility buildings and facilities incidental to permitted uses and uses requiring site plan review or special permits;
- 5) Other uses and structures that are customarily incidental and clearly subordinate to permitted uses or uses that require site plan review or special permits.

§ 79-9040 Site Plan Review.

The following uses are permitted subject to site plan review as outlined in Article XVII - Site Plan Review:

- 1) executive or administrative offices of industrial uses;

- 2) Uses of a light-manufacturing nature employing electricity or other unobjectionable motor power or processes free from objectionable odors, fumes, dirt, dust, vibrations or noise beyond the limits of the walls of an enclosed building;
- 3) contractors offices, show rooms and storage yards;
- 4) laboratories and related facilities for research, experimentation, testing and product development when conducted entirely within a building;
- 5) warehouses including mini-storage facilities;
- 6) bottling works for milk or soft drinks;
- 7) saw, knife and tool sharpening shops, small equipment repair (chain saws, lawn mowers, outboard motors, hedge trimmers, etc.), equipment and household supply rental shops;
- 8) wholesale establishments, packaging, distributing and parcel delivery services, including retail incidental to wholesale;
- 9) wholesale bakeries (including on and off site sale);
- 10) when developed in conjunction with industrial uses:
 - a) drive-in business including restaurants and banks;
 - b) restaurants;
 - c) convenience stores;
 - d) day care facility;
- 11) trade or industrial schools;
- 12) bulk storage facilities;
- 13) manufacturing, packaging and processing of, when conducted entirely in an enclosed building:
 - a) apparel and finished fabrics and leather goods
 - b) furniture and household fixture products
 - c) professional equipment, scientific instruments and precision consumer products

- d) general consumer products
 - e) food and kindred products
 - f) textile mill products
 - g) lumber and wood products
 - h) paper and allied products
 - i) stone, clay and glass products
 - j) metal and metal fabricating products
 - k) similar manufacturing uses
- 14) lumber yards, building materials, welding supply shops and supplies stores;
 - 15) planing or woodworking mills;
 - 16) storage, sorting or baling wastepaper or rags;
 - 17) gunsmith, locksmith, engraving and taxidermy shops.

§ 79-9050 Special Permitted Uses.

The following are special permitted uses subject to the conditions outlined in Article XVIII - Special Permits:

- 1) junkyards.

§ 79-9060 Lot, Area and Yard Requirements.

The following lot requirements apply to the M-1:

Lot Requirements

| | |
|----------------------|-----------------|
| Minimum Lot Frontage | 100 feet |
| Minimum Lot Area | 10,000 sq. feet |

| | |
|----------------------|--|
| Maximum Lot Coverage | 80% of the land area of the lot as defined in this Chapter |
|----------------------|--|

Yard Requirements

| | |
|--|---|
| Minimum Front Yard | 20 feet |
| Minimum Side Yard - abutting non-residential district | 15 feet |
| Minimum Rear Yard - abutting non-residential district | 25 feet |
| Minimum Side and Rear Yard abutting residential district | As required in the abutting abutting residential district |

§ 79-9070 Buildings.

The following requirements apply to buildings constructed in the M-1 District:

Height

| | |
|-------------------------|---------|
| Maximum Building Height | 30 feet |
|-------------------------|---------|

Floor Area

| | |
|--------------------------|---|
| Maximum Floor Area Ratio | 2 |
|--------------------------|---|

§ 79-9080 Supplemental Regulations and Exceptions.

See Part III - Regulations Applying to all Districts for additional regulations applying to the M-1 Light Industrial District.

ARTICLE X
M-2 General Industrial District

§ 79-10010 Intent.

The M-2 Heavy Industrial District provides for a wider range of industrial uses and associated administrative offices. The districts are established to encourage the development of industry that provide employment in the City of Dunkirk and expand the local tax base. Residential uses are not permitted in the M-2 District to ensure conflicts between uses are minimized or eliminated. Limited

commercial uses are permitted to service those people that are employed at industries in the district. The M-2 district is established to attract non-polluting industry to the City.

§ 79-10020 Permitted Uses and Structures.

Permitted uses allowed in the M-2 General Industrial District are subject to site plan review as specified in this Article.

§ 79-10030 Accessory Uses.

The following are the accessory uses, building and structures permitted in the M-2 District:

- 1) all accessory uses permitted in the M-1 District, subject to all the restrictions specified for the M-1 District.

§ 79-10040 Site Plan Review.

The following uses are permitted subject to site plan review as outlined in Article XVII - Site Plan Review:

- 1) all uses permitted subject to site plan review in the M-1 District, subject to all the restrictions specified for the M-1 District;
- 2) caretaker or watch person residence;
- 3) railroad freight and classification yards;
- 4) welding shops;
- 5) foundries;
- 6) motor freight terminal, including any premises where any vehicles used in long distance freight hauling or where any tractor trailer combinations or automobile conveyors are parked, loaded or unloaded;
- 7) recycling centers and recyclable material processing center;
- 8) Machine, sheet metal, electric motor repair, pump and heavy equipment repair shops, well drilling shops, storage of contractor's equipment and materials;
- 9) automobile wrecking;

- 10) boiler making;
- 11) metal plating works, electrolytic or hot dip processes;
- 12) asphalt batch, cement and concrete plants, blast furnaces, coke oven;
- 13) manufacturing, packaging and processing of chemicals and allied products.

§ 79-10050 Special Permitted Uses.

The following are special permitted uses subject to the conditions outlined in Article XVIII - Special Permits:

- 1) all uses permitted subject to special permits in the M-1 District, subject to all the restrictions specified for the M-1 District,
- 2) adult book store or adult news-rack;
- 3) adult motion picture theater;
- 4) exotic cabaret.

§ 79-10060 Lot, Area and Yard Requirements.

The following lot requirements apply to the M-2:

Lot Requirements

All buildings, including those intended for industrial use, in whole or in part, shall comply with the lot requirements of the Light Industrial District (M-1).

Yard Requirements

All buildings, including those intended for industrial use, in whole or in part, shall comply with the yard requirements of the Light Industrial District (M-1).

§ 79-10070 Buildings.

The following requirements apply to buildings constructed in the M-2 District:

Height

Maximum Building Height 40 feet

Floor Area

Maximum Floor Area Ratio 3

§ 79-10080 Supplemental Regulations and Exceptions.

See Part III - Regulations Applying to all Districts for additional regulations applying to the M-2 General Industrial Zone.

ARTICLE XI
O-S Open Space District

§ 79-11010 Intent.

The O-S Open Space District is designated to provide for park, recreation and open space uses of the City of Dunkirk's parks and open space areas. The O-S District is established to include public recreation facilities to ensure their continuation as parks and open space. A strip of land along the waterfront, approximately 15 feet, is also included in this district to promote public access to Lake Erie. City Council will have the final approval authority for projects proposed in the O-S Open Space District.

§ 79-11020 Permitted Uses and Structures.

Permitted uses allowed in the O-S - Open Space District are subject to site plan review as specified in this Article.

§ 79-11030 Accessory Uses.

The following are the accessory uses, building and structures permitted in the O-S District:

- 1) signs subject to the provisions of Article XXI - Sign Restrictions;
- 2) fences and hedges subject to the provisions of Article XXVI - Supplemental Regulations;
- 3) other uses and structures that are customarily incidental and clearly subordinate to permitted uses or uses that require site plan review or special permits.

§ 79-11040 Site Plan Review.

The following uses are permitted subject to site plan review as outlined in Article XVII - Site Plan Review:

- 1) public parks, playgrounds, play lots and tot lots;
- 2) public play fields, athletic fields and facilities including, but not limited to: baseball/softball diamonds, basketball courts, volleyball courts, tennis courts, golf courses, bicycle courses and swimming pools;
- 3) other similar recreation and park uses;
- 4) public or private boat docking facilities, boat ramps, fishing and boating pond and lake access facilities.

§ 79-11050 Special Permitted Uses.

The following are special permitted uses subject to the conditions outlined in Article XVIII - Special Permits:

- 1) none.

§ 79-11060 Lot, Area and Yard Requirements.

The following lot requirements apply to the O-S District:

Lot Requirements

| | |
|----------------------|-----|
| Minimum Lot Frontage | N/A |
| Minimum Lot Area | N/A |

Maximum Lot Coverage N/A

Yard Requirements

Minimum Front Yard Depth To be established in conjunction with Site Plan Review or Special Permit

Minimum Side Yard To be established in conjunction with Site Plan Review or Special Permit

Minimum of Both Side Yards To be established in conjunction with Site Plan Review or Special Permit

Minimum Rear Yard To be established in conjunction with Site Plan Review or Special Permit

§ 79-11070 Buildings.

The following requirements apply to buildings constructed in the R-1 District:

Height

Maximum Building Height To be established in conjunction with Site Plan Review or Special Permit

Floor Area

Maximum Floor Area Ratio N/A

§ 79-11080 Supplemental Regulations and Exceptions.

See Part III - Regulations Applying to all Districts for additional regulations applying to the O-S District.

ARTICLE XII
H-1 Central Harborfront Overlay District

§ 79-12010 Intent.

The Lake Erie shoreline located within the City of Dunkirk plays a significant role in establishing the character of the City. The development of water-based uses along the waterfront will improve the economic base of the City, offer residents an opportunity to gain access to the Lake and help attract tourists to the City of Dunkirk. In addition, the City wishes to preserve and maintain safe and healthful conditions, prevent and control water pollution, protect fish and aquatic life, birds and other wildlife habitats, control building sites, placement of structures and land uses and conserve shore cover and visual, as well as actual points of access to inland and lake areas. Regulation of the shoreline is to be in compliance with and consistent with the NYS Coastal Management policies and Local Waterfront Revitalization Plan.

§ 79-12020 Designation.

There is established a Central Harborfront District for the City which shall consist of all that area designated in the Zoning Map of the City of Dunkirk. This Overlay District shall be designated as "H-1". The H-1 Central Harborfront Overlay District shall overlay with any principal zoning district consistent with the purpose and provisions of this district. Regulations established by the H-1 Overlay district shall be in addition to the regulations of the underlying principal zoning district with which they overlay. In the event of a conflict with the regulations of the underlying principal district, the provisions of the H-1 Overlay District shall apply. The H-1

Overlay District shall be shown on the zoning map along with the zoning district with which it overlays and shall be indicated by H-1.

§ 79-12030 Definitions.

For purposes of the H-1 Overlay District, rear yards shall conform to all requirements for front yards.

§ 79-12040 Harborfront Review.

A written statement, describing how the project is consistent with the City of Dunkirk's Local Waterfront Revitalization Plan, shall be submitted.

§ 79-12050 Site Plan Review.

All improvements, except single family residents, within the H-1 Central Harborfront Overlay District shall be subject to site plan review in accordance with Article XVII - Site Plan Review of this Chapter. In addition to the uses allowed in the C-1 Tourism Commercial District, the following uses shall be permitted:

- 1) parks;
- 2) refreshment and service buildings;
- 3) boat landing ramps;
- 4) yacht clubs;
- 5) boat rentals;
- 6) boat charters.

§ 79-12060 Buildings.

The following requirements apply to buildings constructed in the H-1 Overlay District to protect visual access to the Lake for all residents in the City of Dunkirk.

Height

| | |
|-------------------------|-------------------------------------|
| Maximum Building Height | 2 1/2 stories not to exceed 30 feet |
|-------------------------|-------------------------------------|

ARTICLE XIII
H-2 Harborfront Overlay District

§ 79-13010 Intent.

Lake Erie is an important natural resource in the City of Dunkirk; development of water-based uses along the waterfront will improve the economic base of the City, offer residents an opportunity to gain access to the Lake and help attract tourists to the City of Dunkirk. The H-2 Harborfront Overlay District has been established to direct the growth of the waterfront area not included in the H-1 Overlay District. The H-2 Harborfront Overlay District is designed to complement the H-1 Central Harborfront Overlay District. The final approval authority for the H-2 Overlay District is the Planning Board. Regulation of the shoreline is to be in compliance with and consistent with the NYS Coastal Management policies and Local Waterfront Revitalization Plan.

§ 79-13020 Designation.

The H-2 Harborfront Overlay District shall overlay any principal zoning district consistent with the purpose and provisions of this district. Regulations established by the H-2 Overlay District shall be in addition to the regulations of the underlying principal zoning district with which they overlay. In the event of a conflict with the regulations of the underlying principal district, the provisions of the H-2 Overlay District shall apply. The H-2 Overlay District shall be shown on the zoning map along with the zoning district with which it overlays and shall be indicated by H-2.

§ 79-13030 Definitions.

For purposes of the H-1 Overlay District, rear yards shall conform to all requirements for front yards.

§ 79-13040 Harborfront Review.

The following shall apply to uses proposed in the H-2 Overlay District:

- 1) Uses having frontage on Lake Erie shall include an easement with public access along the entire frontage of the Lake; the easement will be not less than 15 feet wide depending on restrictions of the lot and structures. Plans for the easement shall be approved by the City Council as part of the site plan review or special permit and approval provisions and shall be available for public use under a mutually acceptable arrangement between the City and property owner. In all cases where practical, the developer shall grant to the City a conservation easement, in accordance with the Environmental Conservation Law and General Municipal Law.

- 2) A written statement, describing how the project is consistent with the City of Dunkirk's Local Waterfront Revitalization Plan, shall be submitted.

§ 79-13050 Site Plan Review.

All improvements, except single family residents, within the H-2 Harborfront Overlay District shall be subject to site plan review in accordance with Article XVII - Site Plan Review of this Chapter.

All uses permitted in the underlying district shall be permitted in the overlay district except that non-residential uses are limited to those which are specified in the H-1 Overlay District.

§ 79-13060 Buildings.

The following requirements apply to buildings constructed in the H-1 Overlay District to protect visual access to the Lake for all residents in the City of Dunkirk.

Height

| | |
|--|-------------------------------------|
| Maximum Building Height - Other Structures | 2 1/2 stories not to exceed 30 feet |
|--|-------------------------------------|

ARTICLE XIV
H-D - Historic Overlay District

§ 79-14010 Intent.

There is established an Historical Overlay District for the City which shall consist of all area designated on the Zoning Map of the City of Dunkirk. This Overlay District shall be designated "H-D". The H-D Historic Overlay District is established to designate, preserve, protect and conserve the buildings, structures, districts and neighborhoods of historic/architectural significance that influence the character, culture and aesthetic heritage of the City of Dunkirk. Their preservation is essential for the welfare of all residents in the City. The H-D Overlay District will help ensure the preservation of existing and the construction of new structures are compatible and improve the quality of life in the City of Dunkirk.

§ 79-14020 Designation.

The H-D Overlay District shall overlay with any principal zoning district consistent with the purpose and provisions of this district. Regulations established by the H-D Overlay district shall be in addition to the regulations of the underlying principal zoning district with which they overlay. In the event of a conflict with the regulations of the underlying principal district, the provisions of the H-D district shall apply. The H-D Overlay District shall be shown on the zoning map along with the zoning district with which it is over-layed and shall be indicated by H-D.

§ 79-14030 Permits.

Permits for construction or alteration of any building or structure within an historical district shall be required for any work which results in a change in the appearance of the building. No painting or ornamental work of any kind shall be done, except in accordance with the permit.

No demolition or partial demolition shall be allowed without such permit. No permit shall be issued for demolition of any building in any historical district unless such demolition is deemed necessary, in the opinion of the Historic Commission/Planning Boards, upon consultation with the Building Inspector and Director of Public Works, to protect health and safety. Deteriorating buildings shall be repaired in accordance with the standards set forth in this Article. Compliance

with these historical requirements shall be subordinate to requirements for the protection of the public and the users of the building.

All designs for any construction, repair or replacement purposes shall be in harmony with the general tone of the area. The same is true of color and materials. All such work shall correspond to the general tone of the area and harmonize with the other buildings and structures in the district.

Whenever strict enforcement of the provisions of this Chapter would result in prevention of the proposed change, because of requirements no longer possible to fulfil, the applicant shall apply for a variance from the strict terms of this Article. If such variance requested is of minor character and does not affect the general character of the area, permission to vary the provisions of this Article may be granted by the Zoning Board of Appeals.

§ 79-14040 Findings.

In approving the construction, demolition, relocation or material change in the exterior appearance of buildings and structures located on a lot in the H-D Overlay District, the Historic Commission/Planning Board must make one of the following findings in their recommendation:

- 1) The proposed work preserves, enhances or restores the exterior appearance and architectural features of a building or structure and/or district of historic/architectural significance.
- 2) The proposed work compliments or enhances the exterior appearance and architectural features of a building or structure and/or district of historic/architectural significance.
- 3) The applicant has adequately demonstrated that the loss of a building or structure of historic/architectural significance is acceptable and/or made necessary by unsafe conditions which are economically unfeasible to correct.

§ 79-14050 Architectural Review.

Uses allowed in the H-D Overlay District shall be those uses permitted, permitted with site plan review or by special permit in the underlying zoning district on which the H-D Overlay districts overlay. The review and approval of the Historic Commission/Planning Board shall be required for any new construction, demolition, relocation or material change in the exterior appearance of buildings and structures zoned H-D Overlay. In addition to the application required for the underlying district, the following information shall be submitted:

- 1) a clear statement of the proposed work;
- 2) plans and elevations describing the size, height and appearance of the proposed structures or buildings. The plans and elevations shall show the relationship between the proposed work and adjacent buildings, structures and other features for all adjacent lots zoned H-D Overlay;
- 3) a site plan that includes information outlined in Article XVII - Site Plan Review;
- 4) information justifying the demolition of a building or structure shall also be included where a demolition is proposed. An applicant shall bear the burden of providing information to justify the demolition of a building or structure. Plans for the replacement or reconstruction of buildings or structures meeting the criteria above shall also be submitted if replacement or reconstruction is proposed;
- 5) other information deemed necessary to meet the purposes of the H-D Overlay District.

No person, firm, corporation or association shall build any new building or alter any existing building within the historical district without submitting the plans and specifications for the building or alteration to the Historic Commission/Planning Board for review. No such construction or alteration shall be started until the Historic Commission/Planning Board has approved the plans as being in compliance with this Chapter.

Upon receipt of the plans, the Historic Commission/Planning Board shall determine whether the proposed construction or alteration complies with all of the terms and ordinances relating to the Historic Overlay District. In the case of new buildings, the plans must indicate a type of structure which will be compatible with the typical architecture of the Historic Overlay District. In the cases involving alterations to existing buildings, the plans will, to the extent feasible, show a design consistent with the existing building and with the architectural forms typical to the historic district.

Within 62 days, the Historic Commission/Planning Board shall approve or reject any plan, in whole or in part, in writing, with findings consistent with this Chapter.

§ 79-14060 Permitted Uses.

The uses permitted by this Chapter applicable to the area included in the historic district shall be permitted without restriction by the provisions of this Article, provided however that no advertisements, billboards or signs may be permitted in a historical district except for those identifying the property where they are installed or the use conducted on site. Such signage shall be compatible with the intent of this Article.

§ 79-14070 Repairs and Maintenance.

Neither the owner of nor the person in charge of a building or structure within a historical district shall permit such building or structure to fall in a state of disrepair which may result in the deterioration of any exterior appurtenance or architectural feature so as to produce, in the judgment of the Historic Commission/Planning Board a detrimental effect upon the character of the building or structure in question, including, but not limited to:

- 1) the deterioration of exterior walls or other vertical supports;
- 2) the deterioration of roofs or other horizontal members;
- 3) the deterioration of exterior chimneys;
- 4) the deterioration or crumbling of exterior plaster or mortar;
- 5) the ineffective waterproofing of exterior walls, roofs and foundations including broken windows or doors;
- 6) the deterioration of any feature so as to create or permit the creation of any hazardous or unsafe condition.

**ARTICLE XV
Urban Renewal District**

§ 79-15010 Intent.

Provisions for the Urban Renewal District are included to permit the establishment of areas in which diverse uses may be brought together in a unified development plan.

Notwithstanding any other provisions of this Chapter, the area designated as the City of Dunkirk Center Urban Renewal Project, No. NY R-179, shall be subject to the rules, regulations, controls and provisions of the Urban Renewal Plan for the project area and any amendments, as adopted by the Planning Board on April 29, 1968, the Urban Renewal Agency on June 3, 1968 and the Common Council on June 4, 1968.

The Urban Renewal District shall overlay any principal zoning district consistent with the purpose and provisions of this district. In the event of a conflict with the regulations of the underlying principal district, the provisions of the Urban Renewal District shall apply. The Urban Renewal Plan and accompanying map is included as Appendix - A.

Part III
Regulations Applying to all Districts

Article XVI
Non-Conforming Uses

§ 79-16010 Intent.

Within the districts established by this Chapter or any subsequent amendments, there exists lots, structures, uses of land and characteristics of use which were lawful before this Zoning Law was enacted, but which would now be prohibited, regulated or restricted under terms of this Chapter including future amendments. The regulations are established to create cohesive neighborhood characters and the eventual elimination of non-conforming uses is desired. Regulations for the continuance, change in use, repairs and alterations, restoration, enlargements and extensions, discontinuance and non-conformance due to reclassification of zoning districts are established to:

- 1) permit these non-conformities to continue, but to minimize any adverse effect on the adjoining properties and development;
- 2) regulate their maintenance and repair;
- 3) restrict their rebuilding if substantially destroyed;
- 4) require their permanent discontinuance if not operated for certain periods of time;
- 5) require conformity if they are discontinued, to bring about eventual conformity in accordance with the objectives of the City's comprehensive plan and Zoning Law.

§ 79-16020 Continuation of Existing Uses.

Any lawful use which is made a nonconforming use by this Chapter or by any subsequent amendments may be continued subject to the provisions in this Article.

§ 79-16030 Change of Use.

A nonconforming use shall not be changed to another use, except:

- 1) In any R District, a nonconforming use may be changed to a use of a more restricted classification, including a conforming use.
- 2) In any C District or M District, a nonconforming use may be changed to a use in the same use group or a use of a more restricted classification, including a conforming use. This provision shall not apply to a nonconforming residential use.
- 3) In any M District, a nonconforming residential use may be changed to a conforming use.

- 4) Once changed to a conforming use or to a more restricted use, no use there after shall revert to a less restricted use.

§ 79-16040 Repairs and Alterations.

Normal maintenance of a building or other structure containing a nonconforming use shall be permitted, including nonstructural repairs and incidental alterations not extending the nonconforming use.

No structural alterations shall be made in a building or other structure containing a nonconforming use except:

- 1) when required by law;
- 2) to restore to a safe condition any building or structure declared unsafe by the Building Inspector;
- 3) to permit enlargements as provided in this Article.

§ 79-16050 Restoration.

No nonconforming building or other structure which has been damaged or destroyed by any means where the cost of repairs exceeds fifty percent (50%) or more of its market value shall be rebuilt or repaired except in conformance with the regulations of this Chapter. In any reconstruction of a nonconforming building or structure, neither the floor area nor the cubical content shall be increased from the original.

Application for a building permit to repair, replace or reconstruct a partially destroyed or damaged use of a nonconforming structure must be made within six (6) months of the occurrence, and the repair, replacement or reconstruction must be completed within six (6) months following the issuance of the permit or the nonconforming status of the use or structure shall be terminated and nonconforming structures shall be brought into conformance.

§ 79-16060 Enlargements and Extensions.

A nonconforming use shall not be enlarged or extended, except as follows:

In any C or M District, any nonconforming use, other than dwellings, may be enlarged to an extent not exceeding twenty five percent (25%), of the gross floor area devoted to such nonconforming use. In no case shall such enlargement extend beyond the lot occupied by such nonconforming use. When the total of all enlargements equals twenty five percent (25%) of the

gross floor area existing at the time such use became a nonconforming use, no further enlargement shall be permitted.

§ 79-16070 Discontinuance.

A nonconforming use or structure discontinued or abandoned for twelve (12) consecutive months shall not then be used or occupied except in conformity with the regulations of the district in which it is located.

Discontinuance of the active and continuous operation of a nonconforming use, or a part or a portion of the operation of the nonconforming use for a period of twelve consecutive months is construed and considered to be an abandonment of such nonconforming use, regardless of any reservation of an intent not to abandon same or of an intent to resume active operations. If actual abandonment in fact is evidenced by the removal of buildings, structures, machinery, equipment and other evidences of such nonconforming use of the land and premises, then the abandonment shall be construed and considered to be completed within a period of less than twelve (12) months, and all rights to re-establish or continue such nonconforming use shall terminate.

§ 79-16080 Prior Approved Construction.

Nothing in this Article shall prevent the construction of a building for which a building permit has been issued for a building made nonconforming by this Chapter or subsequent amendments, provided that such building permit shall be void unless construction of such building shall have been diligently begun within six (6) months of the date of such permit and shall be completed within one (1) year from the date such building was made nonconforming.

§ 79-16090 Non-conformance Due to Reclassification of Zoning Districts.

The following uses may be continued for a period of three years, provided that after the expiration of such period any such nonconforming use shall become an unlawful use and shall be terminated

- 1) In any R District, a nonconforming use not in an enclosed building, including, but not limited to junkyards, auto wrecking and dismantling and the storage of motor vehicles which do not qualify for a New York State motor vehicle inspection sticker.
- 2) In any R District, a nonconforming sign or a non conforming building or other structure with an assessed value under One Thousand Five Hundred Dollars (\$1,500.00).

The foregoing provisions of this Article shall also apply to buildings, structures, land, premises or uses which become nonconforming due to any

reclassification of districts under this chapter or any subsequent change in the regulations of this chapter. Where a period of years is specified in this Article for the removal of nonconforming buildings, structures or uses, said period shall be computed from the effective date of such reclassification or change.

Article XVII Site Plan Review

§ 79-17010 Intent.

Development in the City of Dunkirk will impact the current and future residents of the community. To ensure development conforms to the comprehensive plan of the City, the following procedures for site plan approval have been established.

§ 79-17020 Required Site Plan Review.

Unless otherwise provided and as regulated by the City of Dunkirk Subdivision Law, site plan review and site plan approval shall be required for all uses, buildings and structures that require site plan review and approval as outlined in this Chapter. The authorizing agency shall act upon site plans following a public hearing. Fees outlined and adopted by the City of Dunkirk will apply to all site plan reviews.

§ 79-17030 Procedure for Review and Approval.

The content of the site plan shall be reviewed by the Building Inspector prior to filing and distribution to the appropriate authorizing agency to ensure completeness. The application and appropriate fees shall be submitted to the Building Inspector. The applicant shall submit fifteen (15) copies of all plans and supplementary information to the Building Inspector; additional copies may be requested for additional review agencies. The Building Department will distribute copies of the plans for review, report and recommendations to the following:

- 1) Department of Planning and Development;
- 2) Department of Public Works;
- 3) Fire Department;
- 4) Police Department;
- 5) Planning Board and/or City Council - one per member;
- 6) Building Department;
- 7) Other review Agencies, as Required.

Where site plan review and approval is required, the Building Inspector shall refer the application, site plan and supporting data to the authorizing agency. The authorizing agency shall review the application, site plan and supporting data and, at a regular meeting of the Board, after determining that all requirements have been met, shall:

- 1) approve; or
- 2) approve with modifications or conditions; or
- 3) disapprove;

the site plan. The authorizing agency's action shall be in the form of a written report of approval or disapproval of the site plan. In approving the site plan, conditions limiting the use and the occupancy of the land or proposed buildings consistent with the intent and purposes of this Chapter and other applicable laws may be imposed on the development. If the site plan is denied approval, the authorizing agency shall state its reasons for disapproval.

Approval of any site plan shall remain in effect for a period of not more than one (1) year unless a successful application for a building permit has been made within that period. One six (6) month extension may be granted to obtain the building permit.

§ 79-17040 Submission of Site Plan and Additional Information.

The site plan shall include the following information, prepared by a licensed engineer, architect, landscape architect or surveyor as appropriate:

- 1) application form, notes and other required written information;
- 2) title of drawings, including the name of the development, name, telephone number and address of applicant and the name of the person who prepared the drawing;
- 3) key plan, north point, professional stamp, scale (1" = 20' or other appropriate scale) and date;
- 4) zoning, land use and ownership of surrounding and adjacent properties, including all structures on adjacent and surrounding properties;
- 5) A boundary survey of the proposed development, plotted to scale and existing topographic features including contours, spot elevations, large trees, buildings, structures, streets, property lines, utility easements, rights of way and land use;

- 6) layout, number and dimensions of lots;
- 7) all lot dimensions including, but not limited to, lot frontage, lot area, building coverage, lot coverage, front yard, side yard, rear yard, building heights and floor area ratio, where applicable;
- 8) all improvement dimensions, including, but not limited to, access roads, snow removal/storage areas, parking areas, walkways, buildings, etc.;
- 9) existing and proposed streets, sidewalks and pedestrian paths immediately adjoining and within the proposed site and the names of all proposed streets;
- 10) location and dimensions of all parking, loading and stacking areas with access drive;
- 11) paving, including typical cross sections and profiles of proposed streets, pedestrian walkways and bike ways;
- 12) location, proposed use, height, building elevations, floor plans and finished floor elevations of all structures;
- 13) colors, materials, dimensions, access and roof top plans of all structures;
- 14) location and proposed development of all open spaces, including parks, playgrounds, etc.;
- 15) existing and proposed watercourses, direction of flow and the impact on the watershed;
- 16) drainage plan showing existing and finished grades, stormwater management plan and the impact on the watershed;
- 17) water supply plan, including existing and proposed location of fire hydrants;
- 18) sewage disposal method;
- 19) landscape plan, stamped by a licensed landscape architect, indicating location, type and size of existing trees and vegetation, identifying those to be preserved or removed as well as the location, type and size of trees, vegetation and amenities to be provided;

- 20) location, design and illumination field of lighting, fences and walls;
- 21) location and dimension of all signs as required in this Chapter;
- 22) garbage screening and enclosures;
- 23) methods of barrier free access;
- 24) applicable pollution control;
- 25) size and location of hazardous storage areas;
- 26) location of bus stops and shelters;
- 27) proposed easements, restrictions, covenants and provisions for home owners associations and common ownerships;
- 28) estimated construction schedule and phasing plan for buildings, earth work and landscaping;
- 29) tentative budgeting and financing sources.

§ 79-17050 Additional Information Requirements.

In addition to the required site plan and supporting data indicated in Article XVII - Site Plan Review, the authorizing agency may request, of a property owner or their agent, additional supporting data or plans deemed necessary and relevant to carry out its responsibility for site plan review and provided in this Chapter.

§ 79-17060 Criteria for Review and Recommendations.

In considering and acting upon site plan reviews and approvals, the authorizing agency shall consider the public health, safety, welfare and comfort & convenience of the public in general, the residents of the proposed development and the residents of the immediate surrounding area. The authorizing agency may prescribe such appropriate conditions and safeguards as may be required in order that the results of its action shall, to the maximum extent possible, further the following:

- 1) Compatibility - the character of proposed use is compatible with the surrounding neighborhood and in harmony with the City's comprehensive plan, Waterfront Development Strategy, Local Waterfront Revitalization Plan and Subdivision Law.
- 2) Vehicular Access - the number of proposed access points are not excessive, all access points are adequate in width, grade alignment

and visibility, access points are not located too close to intersections or places of public assembly and similar safety considerations are reviewed for all site plan approvals.

- 3) Parking - adequate off-street parking, queuing and loading spaces are provided to minimize the number of cars (associated with the development) parked or standing on public roads.
- 4) Pedestrian Circulation - the interior circulation system is adequate to provide safe accessibility to all parking areas and ensure adequate separation of pedestrian and vehicular traffic.
- 5) Landscaping and Screening - all parking, storage, loading and service areas on properties adjacent to residential areas are reasonably screened and the general landscaping of the site reflects the character of the neighborhood and surrounding area.
- 6) Natural Features - the proposed use is compatible with geologic, hydrologic and soil conditions of the site and adjacent areas and the existing natural scenic features are preserved to the greatest possible extent.
- 7) Public Facilities - the public facilities that service the proposed use, including water, sanitary sewer, drainage, roads and related facilities, parks and open space are adequate for the intended level of use.

§ 79-17070 Site Plan Review.

The site plan and supporting information shall be reviewed to ensure the plan is in conformance with this Chapter, the approved development plan, if one exists, and all other applicable laws. Within 62 of days of its receipt of the application for site plan approval, each agency shall review the plan and notify the authorizing agency, in writing, of its comments or recommendations.

Within 62 of days of its receipt of the application for site plan approval or renewal, the authorizing agency shall act on the plans and notify the Building Inspector, applicant and City Clerk of the action; this time period may be extended by mutual consent of the applicant and authorizing agency. In determining the action, the authorizing agency may seek advice from additional agencies deemed appropriate.

§ 79-17080 Performance Bond as Condition of Approval.

For all commercial and industrial uses, the authorizing agency shall require, as a condition of site plan approval, the property owner to file a performance bond in such amount and form as determined by the Department of Public Works to

ensure that the proposed development is built in compliance with the approved plans.

§ 79-17090 Site Plan Revisions.

Property owners wishing to make any changes in an approved site plan shall submit a revised site plan to the authorizing agency for review and approval.

§ 79-17100 Planning Board Procedure.

The Planning Board shall adopt rules and regulations deemed necessary to administer this article and all applications for site plan approval shall be submitted and reviewed in compliance with the submission requirements and review procedures of the City of Dunkirk Planning Board.

**ARTICLE XVIII
Special Permits**

§ 79-18010 Intent.

The special permit allows for the proper integration of uses which may be suitable only in certain locations or zoning districts. The special permit also ensures such uses are designed or arranged on the site in a suitable manner. Unless otherwise provided, the special uses outlined in the zoning districts of this law shall be deemed to be permitted uses in their respective districts, subject to the satisfaction of the requirements and standards outlined in this Chapter. All such uses possess characteristics of such unique and special forms that each specific use shall be considered as an individual case.

§ 79-18020 Application Procedure.

Uses which require special permit approval have been determined to have a special character that makes their establishment as a permitted or accessory use

without prior review impractical and undesirable. This review shall be for the purpose of determining that each proposed use is, and will continue to be, compatible with surrounding existing and planned uses. The process also allows the Zoning Board of Appeals the opportunity to include special conditions as may be necessary to ensure the harmonious integration and compatibility of uses in the neighborhood and with surrounding areas. The following applies to all special permitted uses in the City of Dunkirk:

- 1) A site master plan including, but not limited to, building footprints, parking areas, circulation patterns and landscaped areas.
- 2) A plan for the proposed development of a site for a special permitted use shall be submitted with an application for a special permitted use. The plan shall show all requirements outlined for site plan approval in Article XVII - Site Plan Review of this Chapter.
- 3) The application and appropriate fees shall be submitted to the Building Inspector. The applicant shall submit fifteen (15) of copies of all plans and supplementary information to the Building Inspector; additional copies may be requested for additional review agencies. The Building Department will distribute copies of the plans for review, report and recommendations to the following:
 - a) Department of Planning and Development;
 - b) Department of Public Works;
 - c) Fire Department;
 - d) Police Department;
 - e) Planning Board;
 - f) Zoning Board of Appeals and/or City Council - one per member;
 - g) Other review Agencies, as required.
- 4) Applications for special permits shall be acted upon by the City of Dunkirk Zoning Board of Appeals (or City Council in the H-1 Overlay District) following a public hearing.
- 5) All special permitted uses are subject to the conditions set forth in Article XVIII - Special Permits.

§ 79-18030 Findings.

In approving a special permit, the Zoning Board of Appeals must make the following findings:

- 1) The proposed use, building, structure or development is consistent with the intent of each land use zone, the comprehensive plan and additional plans completed and adopted by the City of Dunkirk.
- 2) Conditions, as deemed necessary in the public interest, have been imposed.
- 3) The proposed use or structure will not be detrimental to the public health, safety and welfare of the community.

§ 79-18040 Additional Requirements.

- 1) General Screening Requirements for special permitted uses include:
 - a) Open storage areas, exposed machinery and outdoor areas used for the storage and collection of solid waste, shall be visually screened from roads and surrounding land uses. Suitable types of screening include opaque and semi-opaque fences of a height necessary to screen the intended use. Where planted hedges are proposed, plant species, size and layout should be developed to provide an effective screen within three years of the time of installation. Native and naturalized trees and shrubs shall be planted wherever possible.
 - b) In locations where potential health or safety hazards may arise, such as solid waste storage/collection areas, a solid wooden fence, a minimum of six feet in height may be required to deter children and animals from entering the premises.
 - c) Where new fencing would create a continuous surface greater than ten feet in length, the visual expanse of bare fence shall be minimized with plant grouping consisting of trees and shrubs as outlined in Article XXV - Landscaping Requirements.
- 2) Lighting
 - a) Exterior lighting proposed for the site shall be planned, erected and maintained so the light is confined to the property and will not cast direct light or glare upon adjacent properties

or public roads. The light source shall not be higher than 20 feet and shall not be directed onto adjacent properties or public roads. High intensity lighting shall not be permitted.

3) Drainage

- a) Surface water run-off shall be minimized and detained on site as long as possible and practical to facilitate ground water recharge. When available, municipal storm water sewers may be employed to handle excess run-off.
- b) If storm water can not be channelled into municipal storm water sewers, storm water run-off shall be detained on-site. In no case shall increased run-off due to development activity be directed onto adjacent property. Techniques for delaying surface storm water run-off shall be developed to effect no additional run-off rate as a result of storms with a twenty-five or less recurrence frequency.
- c) The natural state of watercourses, swales or rights of way shall be maintained as much as possible. All drainage facilities shall be designed for a 100 year storm minimum. The Zoning Board of Appeals (or City Council in the H-1 Overlay District) may require facilities sized for more intensive storms should development conditions in the vicinity of the site warrant a greater degree of protection.

4) Erosion and Sediment Control

Where significant soil erosion or sediment deposition may occur as a result of the disturbance of the land, the Zoning Board of Appeals (or City Council in the H-1 Overlay District) may require that applications for special permits be accompanied by an erosion and sediment control plan conforming to the standards and practices contained in the USDA Soil Conservation Service Engineering Field Manual (ESM) and the New York Guidelines for Urban Erosion and Sediment Control, or other erosion and sediment control manual recognized by the Department of Public Works and the Zoning Board of Appeals (or City Council in the H-1 Overlay District).

5) Adult Entertainment Uses

All adult entertainment uses shall require review and issuance of a special permit pursuant to the regulations outlined in this Article.

§ 79-18050 Expiration.

A special permit shall be deemed to authorize only one (1) special use and shall expire if the special permitted use shall cease for more than one (1) year.

ARTICLE XIX

Planned Unit Developments

§ 79-19010 Intent.

The Planned Unit Development District is designed to provide flexibility for development of significant parcels of vacant or under utilized land. This flexibility will lead to more creative design of development than what is currently allowed in the conventional zoning districts. The PUD is further intended to promote:

- 1) the most appropriate use of the land;
- 2) a more efficient and economical arrangement of streets, utilities, buildings and open space;
- 3) the utilization of topography and other natural features to the best advantage of both aesthetic and conservation practices;
- 4) Integration of all aspects all into one cohesive and compatible unit.

§ 79-19020 Uses.

No uses, buildings or structures shall be allowed which are not in accordance with the Planned Unit Development approved scheme and the comprehensive plan of the City of Dunkirk.

§ 79-19030 Location.

The Planned Unit Development District shall be applicable to any area of the City of Dunkirk where the applicant can demonstrate that the characteristics of the development will satisfy the intent and objectives of this Article.

Where a Planned Unit Development is deemed appropriate, the rezoning of land to a Planned Unit Development District will replace all uses and dimensional specifications contained elsewhere in this Chapter. All Planned Unit Development Districts shall comply with the Harborfront and Historic Overlay provisions.

§ 79-19040 Minimum Area.

A Planned Unit Development shall include no less than 5 acres of contiguous land. Public roads shall be permitted to divide such acreage provided that a minimum of 2 acres of contiguous land area must exist in any portion.

§ 79-19050 Open Space.

A minimum of 25% of the site shall be used as open space, including walkways, plazas, landscaped areas and recreation areas. Parking areas and vehicle access facilities shall not be considered in calculating open space.

§ 79-19060 Common Areas.

Common property in a Planned Unit Development is a parcel or parcels of land together with improvements, the use of which is shared by the owners or occupants of the individual building sites. The landowner shall provide for and establish an organization for the ownership and maintenance of any common property. Such organization shall not be dissolved nor shall it dispose of any common property by sale or otherwise, with the exception that such land may be dedicated to the City of Dunkirk for public use.

§ 79-19070 Site and Structure Requirements.

The authorizing agency shall approve a Planned Unit Development District only if it finds that the planned unit development will satisfy standards of this Chapter including the following:

- 1) The Planned Unit Development is an efficient and unified treatment of the development possibilities on the project site while remaining consistent with the comprehensive plan of the City of Dunkirk. The Planned Unit Development shall make provisions for the preservation of natural features such as streams and shorelines, ponds, lakes, trees, grasses, wooded cover and rough terrain.
- 2) The Planned Unit Development must be compatible with the surrounding area. The development shall not unduly burden existing City facilities and services.
- 3) The developer shall ensure that sufficient financing and capability are available to complete the project as presented.

- 4) The developer shall provide all necessary water and sewer facilities, storm drainage, highway access, paved service streets, parking and loading facilities, off street lighting and make reasonable provisions for utility service connections with adjoining properties and other ownerships.
- 5) The right of way and pavement widths for internal roads serving all development shall be adequate and sufficient in size, location and design to accommodate the maximum traffic, parking and loading needs of the development. There shall be adequate access for fire fighting equipment, police and other emergency vehicles. Such pavement shall meet all applicable City Standards.
- 6) All electric, telephone, cable television and similar equipment shall be installed underground in accordance with the New York State Public Service Commission Standards.
- 7) The gross residential density, measured over the entire tract, but exclusive of any land to be occupied by non-residential uses or public or quasi-public institutional or recreational facilities open to the general public, shall not exceed the density set forth in the underlying district or consistent with the comprehensive plan. Bonus density may be considered for outstanding development as deemed appropriate by the Planning Board.

§ 79-19080 Application Procedure.

The developer shall submit a preliminary plan of the proposed Planned Unit Development with the rezoning application. The preliminary plan shall be to scale and shall clearly illustrate the following:

- 1) The various types of land uses required and the areas covered by each.
- 2) The outline of the interior road system and all existing and proposed public or private right of ways and easements.
- 3) Delineation of the various residential areas, if any, indicating the number and size of dwelling units by each housing type plus a calculation of the residential density.
- 4) The area, location and degree of development of common open space with a statement of how the property will be maintained.
- 5) The interior drainage system and how it is proposed to be connected to the drainage systems of adjoining areas.

- 6) If the Planned Unit Development is to be phased, a general indication of how the phasing is to proceed.
- 7) Evidence, in the applicant's own behalf, demonstrating the developers competence to carry out the plan to completion and the developers awareness of the scope of such project, both physical and financial.

§ 79-19090 Planning Board Action.

The Planning Board shall review the preliminary site plan and application package and, within 62 days of submission, shall submit it to the City Council along with its recommendations that the Planned Unit Development be approved, modified or disapproved.

If, in any such evaluation, the Planning Board finds that any submission requirements, regulations, standards or criteria prescribed by this Chapter are inapplicable because of unusual conditions of the Planned Unit Development, or the nature and quality of the proposed design, it may recommend to the City Council that adjustments in such regulations, standards or criteria be made.

A report to the City Council shall include the following findings:

- 1) The proposal conforms to the comprehensive plan of the City of Dunkirk.
- 2) The development project meets the intent and objectives of the Planned Unit Development District.
- 3) The proposal is conceptually sound in that it meets community needs in the:
 - a) layout of the proposed roadway system, land use configuration, open space and drainage systems;
 - b) scale and relationship of the elements of the plan;
 - c) the proposed uses are of such location, size and character that, in general, they will not be detrimental to the orderly development of adjacent properties in accordance with the zoning classification of such properties.
- 4) There are adequate public facilities, services and utilities available or proposed to be made available to serve the development.

Should a recommendation be made to City Council to deny the Planned Unit Development, the Planning Board shall issue a statement which contains the reasons for the unfavorable recommendation. The Planning Board may also recommend further study of the preliminary site plan and re-submission after revisions or re-design.

§ 79-19100 Rezoning.

The City Council shall follow procedures for zoning amendments in accordance with Article XXIX - Amendments of this Chapter.

The City Council shall act on the rezoning application within 62 days of the Planning Board's recommendation. Approval of the Planned Unit Development shall be noted on the Zoning Map of the City of Dunkirk.

§ 79-19110 Final Site Plan.

The final site plan shall substantially conform to the preliminary site plan that has been approved, incorporating any revisions or other features recommended by the Planning Board or City Council. The final site plan shall conform to all requirements of Article XVII - Site Plan Review. The rezoning shall not become effective until final site plan approval has been secured.

The application for final site plan approval shall be made within 12 months from the date of the City Council approval of the rezoning.

No construction or site improvement work may commence until final site plan approval has been granted.

No building permits shall be issued for construction within a Planned Unit Development District until improvements are installed or performance bonds or other security is posted with the same procedures outlined in Article XVII - Site Plan Review.

**ARTICLE XX
Clustering Provisions**

§ 79-20010 Intent.

This Article is intended to provide for more flexibility for development of unique or under utilized parcels of land. The application of this Article to future

housing development will lead to more creative design solutions to ensure the character of the community is protected.

The purpose of the cluster development is to:

- 1) permit a procedure for development which will result in improved living and working environments;
- 2) promote more flexible subdivision layout without increasing densities;
- 3) encourage a variety of types of residential dwellings;
- 4) encourage ingenuity and originality to subdivision and site design;
- 5) preserve open space to serve recreational, scenic and public service purposes;

§ 79-20020 Authority.

The Planning Board or other authorizing agency of the City of Dunkirk is authorized to modify applicable provisions of this Chapter simultaneously with the approval of any plat within the City subject to the conditions set forth in this Article.

Cluster housing of attached or detached units shall be permitted within all R-Districts and C-Districts as defined in this Chapter.

§ 79-20030 Clustering Requirements.

The minimum development are for cluster housing shall apply to a land area of not less than two (2) acres.

§ 79-20040 Density Transfer.

In each zone allowing cluster development, the lot requirements may be reduced from the lot requirements established in this Chapter as deemed acceptable to the Planning Board or authorizing agency. All such lot reductions shall be compensated for by an equivalent amount of land in cluster open space to be preserved and maintained for its scenic value, recreation or conservation purposes.

In the approval of a cluster subdivision, in no case shall the maximum density specified for the applicable zone be increased, nor shall the other applicable regulations or use limitations for the zone be changed or modified.

Nothing shall prevent the Planning Board or authorizing agency from requiring that ten (10) percent of the entire cluster housing subdivision be set aside

or otherwise permanently dedicated for park and recreation purposes and provisions for maintenance of said area shall be established to the satisfaction of the City Council. Under certain conditions, the City Council may require the payment of a recreational fee per dwelling unit rather than the dedication of park land. In either instance, the park space or fee shall be in addition to the private land assembled in common as the result of the clustering process referred to in these regulations.

§ 79-20050 Review Criteria.

Cluster development shall be allowed only if evidence is presented to the Planning Board or authorizing agency which establishes:

- 1) That the proposed development will be in harmony with the general purpose, goals, objectives and standards of the City's comprehensive plan, this Chapter and the City of Dunkirk Subdivision Regulations.
- 2) That the proposed building or use complies with all applicable regulations of this Chapter except as modified pursuant to the authority of this Article.
- 3) That the proposed building or use will not have a substantial impact upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities and other matters affecting the public health, safety and general welfare of the residents of the City of Dunkirk.
- 4) That the proposed development will be served adequately by essential public facilities and services such as highways, roads, parking spaces, pedestrian circulation, police and fire protection, drainage structures, refuse disposal, water & sewers and schools.
- 5) That the proposed development will not result in the destruction, loss or damage of any natural, scenic or historic feature of significant importance.

§ 79-20060 Open Space Requirements.

At least 25% of the total acreage is to be devoted to common, permanent open space. The open space shall be reserved and maintained as a natural area, landscaped park or recreational space. This 25% is exclusive of the 10% dedication of land for park and recreation purposes or recreational fees.

The land set aside shall be provided in such a manner that the area is usable for recreation or other activities and is accessible to all residents of the

subdivision or, where the land has been dedicated to the City, to the general public.

If cluster open space is not dedicated to the City, the land shall be protected by legal arrangements, satisfactory to the Planning Board or authorizing agency, sufficient to assure its maintenance and preservation for whatever purpose intended. Covenants or other legal arrangements shall specify:

- 1) ownership of the cluster open space;
- 2) method of maintenance;
- 3) responsibility for maintenance;
- 4) maintenance taxes and insurance;
- 5) compulsory membership and compulsory assessment provisions;
- 6) guarantees that any association formed to own and maintain cluster open space will not be dissolved without the consent of the Planning Board or authorizing agency;
- 7) Any additional specifications deemed necessary by the Planning Board or authorizing agency.

All cluster open space shall be considered taxable unless deeded to the City of Dunkirk.

§ 79-20070 Lot, Area and Yard Requirements and Building Requirements.

The lot and building requirements will be determined in conjunction with site plan review of the proposed development.

ARTICLE XXI
Sign Restrictions

§ 79-21010 Intent.

The purpose of this Article is to provide standards for the regulations of the height, size, location and appearance of signs to:

- 1) protect and enhance property values and neighborhood character;
- 3) protect public and private investment in buildings and open spaces;
- 3) preserve and improve the appearance of the City of Dunkirk as a place to live and work and as an attraction to visitors;
- 4) encourage sound signing practices to aid business and provide information to the public;
- 5) prevent excessive and confusing sign displays;
- 6) reduce hazards to motorists and pedestrians;
- 7) protect the public health, safety and general welfare.

The regulations outlined shall apply to signs in all districts in the City of Dunkirk.

§ 79-21020 Exceptions.

For the purposes of this law, the term "sign" does not include:

- 1) signs erected and maintained pursuant to any governmental function;
- 2) integral, decorative or architectural features of building, except letters or trademarks;
- 3) signs, not exceeding eight (8) square feet per face, directing and guiding traffic and parking on private property and bearing no advertising. The location shall be approved as a part of a site plan or special permit by the authorizing agency;
- 4) signs, not exceeding one (1) square foot per face advertising the cost of gasoline when attached to a gasoline pump or service island canopy.
- 5) directional signage erected by the City of Dunkirk

§ 79-21030 General Provisions.

No sign shall be erected or maintained except in accordance with the following:

- 1) Illumination - Any illuminated sign or lighting device shall employ only lights emitting a light of constant intensity and no sign, other than that part used to report time, temperature, stock market and/or news reports, shall be illuminated by or contain flashing, intermittent, rotating or moving light or lights. In no event shall any illuminated sign or lighting device be placed so as to permit the beams and illumination to be directed upon a public street, highway, sidewalk or adjacent premises so as to cause glare or reflection that may constitute a traffic hazard or nuisance. The full number of illuminating elements of a sign shall be kept in working condition or immediately repaired or replaced. Overhead wires or exposed wires on a sign or its supporting members are prohibited.
- 2) Signs on Public Property - No private sign shall be placed in any street right of way or on other public property.
- 3) Roof Signs - No signs, except such direction devices as may be required by the Federal Aeronautical Authorities, shall be placed, inscribed or supported upon or above the height part of the facade line.
- 4) Traffic Safety - No sign shall create a traffic hazard by obstructing the view at any street intersection or by design resemblance through color, shape or other characteristics common to traffic control devices.
- 5) Maintenance of Signs - Every sign shall at all times be in a safe and structurally sound condition and maintained by replacement of defective or worn parts, painting, repainting and cleaning. The Building Inspector shall require compliance with all standards of this chapter. If the sign does not comply with adequate safety standards, the sign shall be removed at the property owner's expense.

No person shall maintain, or permit to be maintained on any premise owned, occupied or controlled by them, any sign which is either not structurally sound or creates an electrical hazard. Any such sign shall be removed or repaired by the owner or user of the sign or the owner of the premises.

- 6) Abandoned Signs - Except as otherwise provided in this Chapter, any sign which is located on property which becomes vacant and unoccupied for a period of one (1) month or more, or any sign which pertains to a time, event or purpose which no longer applies, shall be

deemed to have been abandoned. An abandoned sign is prohibited and shall be removed by the owner of the sign or owner of the premises.

- 7) Unlawful Signs - No person shall erect on any premise owned or controlled by them or use any sign which does not comply with the provisions of this Chapter.
- 8) Off Site Signs - No off site signs shall be permitted in the City of Dunkirk.
- 9) Video Signs - Video signs shall be prohibited in the City of Dunkirk.
- 10) Awning Signs - The area of awning signs shall be included in calculations for allowed signage.

§ 79-21040 Zoning District Sign Restrictions.

- 1) Accessory signs in all zones - In all zones, the following signs shall be considered accessory to the principal use of the premises on which they are located. Such sign may be illuminated only by a shielded, non-flashing light:
 - a) a single sign not over two (2) square feet in area attached to a building or detached and located in the front yard for each dwelling unit described as a home occupation located on site.
 - b) a single real estate sign not over six (6) square feet in area attached to a building or detached and located in front yard relating to sale, rental or lease of premises.
 - c) plaques or markers indicating that a building or property is an historic resource.
 - d) one (1) sign indicating the name and address of the occupants of a dwelling, not exceeding two (2) square feet. An address sign shall not be permitted if a sign permitted for the office of a resident professional is in use.
 - e) one (1) sign indicating the project name and the names of the architect, engineer, contractor and participation public and private governmental agencies and officials, placed on the premises where construction, repair or renovation is in progress, not exceeding thirty two (32) square feet in face area, fifteen (15) feet in height nor located less than twenty

five (25) feet from the lot line and seventy five (75) feet from any dwelling not within the project;

- f) one sign prohibiting trespassing not exceeding two (2) square feet.
- 2) R-1, R-2 and R-3 Residential Zones - In all residential zones, the following signs shall be considered accessory to the principal use of the premises on which they are located. Such signs may be illuminated only by a shielded, non-flashing light:
- a) a single sign not over eight (8) square feet in area attached to a building or detached and located in the front yard describing an apartment house or a conforming non-residential building or use.
- 3) C-1 and CBD Zones - The following signs shall be permitted in the C-1 and CBD Commercial Zones:
- a) Attached or projecting signs identifying uses or services on the premises, totalling one and a half (1.5) square feet in area for every foot of an occupant's building frontage to a maximum of two hundred (200) square feet of each premise. Where a building fronts on more than one (1) street, the frontage shall not exceed the length of the longest side of one (1) street.
Projecting signs shall be a minimum of ten (10) feet in height. Projecting signs shall extend no more than three (3) feet beyond the building.

Such signs may be painted on or affixed to any wall of a building, or signs composed of individual letters without a background may be located on the edge of a roof or wall on a flat roof or at the line of the eaves on other types of roof, but not projecting above the edge of the facade or wall or line of the eaves. The area of signs composed on individual letters without a background shall be taken as that enclosed by a series of lines joined to form a perimeter bounding all parts of the display. Such signs shall not face an adjoining lot in a residential zone and may be illuminated only by a shielded non-flashing light. Animated or revolving signs shall be prohibited.
 - b) Detached signs shall not be permitted in the C-1 and CBD Commercial Zones unless the following provisions are met:

- i) The overall height of the detached signs, inclusive of any base or base structure, shall not exceed eight (8) feet above the ground;
 - ii) Detached signs shall be set back a minimum of five (5) feet from the street right of way;
 - iii) Detached signs in excess of four (4) feet in height above the ground shall be set back at least twenty five (25) feet from the street right of way;
 - iv) No detached signs shall be permitted to create a hazard or obstruction to vehicular or pedestrian circulation or to interfere with traffic sight lines;
 - v) Detached signs shall be limited in display surface area to a maximum of thirty (30) square feet per side of sign, with such sign area to be included within the two hundred (200) square feet overall maximum sign area permitted in the C-1 and CBD Zones;
 - vi) Detached signs shall be limited in number to one (1) sign (single or double sided) per lot;
 - vii) All detached signs shall be fixed in place and of a permanent nature. Such signs shall not be revolving nor of an animated nature, nor shall they contain flashing lights.
- (4) C-2 Zone - The following signs shall be permitted in the C-2 Zone:
- a) Attached, detached or projecting signs, single or double faced, identifying uses or goods sold or services rendered on the premises totalling one and one half (1.5) square feet of area for every foot of an occupant's building frontage to a maximum of two hundred fifty (250) square feet for each premise. Where a building fronts on more than one (1) street, the frontage shall not exceed the length of the longest side of one (1) street.

Projecting signs shall be a minimum of ten (10) feet in height. Projecting signs shall extend no more than three (3) feet beyond the building.

For shopping centers developed under a single ownership, such signs may total not more than one (1) square foot for each foot of an occupant's building frontage.

Detached signs shall not extend to an elevation greater than twenty (20) feet above ground level where erected. No attached sign or supporting structure shall extend above the level of a flat roof or the level of the eaves on other types of roofs.

Such signs may be located on any part of the premise, except that no sign shall be constructed or orientated in such a manner as to face an adjoining lot in a residential zone and no sign shall be constructed in the rear yard or side yard of any premise, the rear property line or side property line of which abuts a lot in a residential zone.

- (5) M-1 and M-2 Zones - The following signs shall be permitted in the M-1 and M-2 zones. Special requirements for signage related to adult entertainment shall follow the provision set forth:

- a) Attached, detached or projecting signs identifying uses or articles produced or services rendered on the premises. Attached signs identifying uses or services on the premises, totalling one (1.0) square feet in area for every foot of an occupants building frontage to a maximum of two hundred (200) square feet of each premise shall be allowed. Where a building fronts on more than one (1) street, the frontage shall not exceed the length of the longest side of one (1) street.

A maximum of two (2) signs on each lot identifying the name of the company and product or services rendered shall be allowed. These signs shall not exceed a surface area of one hundred (100) square feet in each sign and shall be located only on the face of the building or free-standing, within fifteen (15) feet of the ground level at the location of the sign. Illuminated signs shall be erected so as not to create a nuisance to abutting properties or safety hazards on adjacent public streets.

Such signs may be located on any part of the premises, except that no sign shall be constructed or orientated in such a manner as to face an adjoining lot in a residential district and no sign shall be constructed in the rear yard or side yard of which abuts a lot in a residential zone. Such sign may be illuminated but no flashing or intermittent signs shall be permitted.

6) H-1 and H-2 Harborfront Overlay Districts - The following shall be permitted in the H-1 and H-2 Overlay Districts:

- a) Attached signs identifying uses or services on the premises, totalling one (1) square foot in area for every foot of an occupants building frontage to a maximum of one hundred (100) square feet of each premise. Where a building fronts on more than one (1) street, the frontage shall not exceed the length of the longest side of one (1) street.

Such signs may be painted on or affixed to any wall of a building. Such signs shall not face an adjoining lot in a residential zone and may be illuminated only by a shielded, non-flashing light. Animated, neon or revolving signs shall be prohibited.

- b) Detached signs shall not be permitted in the H-1 and H-2 Overlay Districts.

7) H-D - Historic Overlay District - The following are permitted in the H-D Overlay District:

- a) Attached signs identifying uses or services on the premises, shall not exceed a maximum of fifty (50) square feet on each premise.

Such signs may be affixed to any wall of a building. Such signs shall not face an adjoining lot in a residential zone and may be illuminated only by a shielded, non-flashing light. Animated or revolving signs shall be prohibited.

- (b) Detached signs identifying uses or services on the premises, totalling one (1) square foot in area for every foot of an occupants building frontage to a maximum of fifty (50) square feet of each premise. Where a building fronts on more than one (1) street, the frontage shall not exceed the length of the longest side of one (1) street. The following shall apply:

- i) The overall height of the detached signs, inclusive of any base or base structure, shall not exceed eight (8) feet above the ground.

- ii) Detached signs shall be set back a minimum of ten (10) feet from the street right of way.

- iii) Detached signs in excess of four (4) feet in height above the ground shall be set back at least twenty five (25) feet from the street right of way.
- iv) Detached signs shall be limited in number to one (1) sign (single sided only) per lot.
- v) Detached signs shall be limited in display surface area to a maximum of twenty five (25) square feet per side of sign, with such sign area to be included within the two hundred (50) square feet overall maximum sign area permitted in HD Overlay District.
- vi) All detached signs shall be fixed in place and of a permanent nature. Such signs shall not be revolving nor of an animated nature, nor shall they contain flashing lights.

§ 79-21050 Temporary or Portable Signs.

- 1) A portable sign is defined as any movable sign not permanently attached to the ground, a building or other permanent fixture on a parcel of land. A sign on a registered motor vehicle is not defined as a sign within the meaning of this section. Temporary or portable signs shall be used for the following purposes only:
 - a) new business enterprises;
 - b) celebration of the anniversary date of a new business enterprise;
 - c) business enterprises which have lost the use of an existing sign by reason of fire or other catastrophe;
 - (d) limited activities in connection with the principal use or activity on the premises.
- 2) Temporary and portable signs shall be permitted only in the R-3, C-1, C-2, CBD, M-1 and M-2 zones. In no instance will they be permitted to be so located that they will interfere with the sight distance of traffic passing through a heavily travelled intersection, as determined by the Director of Public Works and Building Inspector.
- 3) The Building Inspector shall issue permits for temporary or portable signs of not more than fourteen (14) days in duration. Successive permits not to exceed three (3) in number may be obtained. In no

case shall a temporary or portable sign remain on the premises for more than forty two (42) days during the calendar year.

- 4) No more than one (1) temporary or portable sign may be maintained on any parcel or upon any number of contiguous parcels of land under common ownership. A permit from the Building Inspector must be obtained prior to the display of such sign.
- 5) No temporary or portable sign shall be more than five (5) feet by eight (8) feet in size.
- 6) Portable signs shall conform to the front yard setback requirement inasmuch as the signs shall not be allowed to encroach on the public sidewalk or the City street right of way. Signs shall in no instance be placed within the public right of way so as to interfere with the sight distance at a heavily travelled intersection or with the free passage of pedestrians on the public sidewalk.
- 7) No permanent, temporary or portable sign shall be illuminated by flashing lights of any kind or color.

§ 79-21060 Window Signs.

No signs erected or maintained on the window of a building shall occupy more than thirty percent (30%) of the area of said window.

§ 79-21070 Political Signs.

Temporary signs in support of a political party or candidate are permitted in all zones in the City of Dunkirk. Signs may be erected up to three (3) weeks prior to the election and must be removed within seven (7) days following the election. No political signs shall be permitted in the public right of way.

ARTICLE XXII
Adult Entertainment Facilities

§ 79-22010 Intent.

The operation of adult entertainment facilities may have serious operational characteristics and damaging effects upon their surroundings as a result of their siting and concentration within the facilities. Special regulations pertaining to these uses are necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These regulations will help ensure that adverse effects on the public health, safety, morals, comfort, convenience and general welfare are mitigated.

The development and proliferation of Adult Entertainment Facilities without regulation as to siting and concentration may result in the deterioration of residential and business neighborhoods. If placed near schools and other youth related facilities, Adult Entertainment Facilities may adversely effect upon the welfare and morals of minors residing within the City.

§ 79-22020 Location of Adult Entertainment Facilities.

The following provisions shall apply to the location of adult entertainment facilities:

- 1) adult entertainment facilities shall be permitted in the M-1 and M-2 Industrial Zones upon approval of a special permit;
- 2) no adult entertainment facilities shall be permitted within five hundred feet of any area zoned for residential use;
- 3) no adult entertainment facility shall be permitted within one thousand feet of any of the following:
 - a) a school;
 - b) a religious institution;
 - c) a public park or public recreation facility.

§ 79-22030 Additional Sign Requirements.

The following provisions shall apply to signs erected or maintained in connection with an "adult book store" or an "adult motion picture theater":

- 1) No off site signs shall be permitted.

§ 79-22040 Public Display of Certain Matter Prohibited.

Materials offered for sale from "adult news-racks" shall not be displayed or exhibited in a manner which exposes to the public view any pictures or illustrations depicting any "specified sexual activity" or any "specified anatomical area". Materials offered for sale or viewing at any Adult Entertainment Facility shall not be displayed or exhibited in a manner which exposes any depiction of any "specified sexual activity" or any "specified anatomical area" to the view of persons outside the building or off the premises on which such store or theater is located.

§ 79-22050 Restrictions Cumulative.

The restrictions set forth in this Chapter are in addition to any other applicable provision of this Chapter. In the event of any conflict between any such provisions, the more restrictive shall apply.

Flood Damage Prevention Regulations

§ 79-23010 Intent.

It is the purpose of the floodplain damage prevention regulations to establish regulations and standards to protect persons and property from the hazards of development of the floodplain of Lake Erie, Crooked Brook and its tributaries, Goose Creek and Hyde Creek. These regulations and standards are necessary to:

- 1) protect the public health, safety and welfare of individuals potentially affected by flood hazards;
- 2) reduce the costs incurred by the community at large from inappropriate and unsuitable development located in the floodplain;
- 3) minimize the need for rescue and relief efforts associated with flooding;
- 4) minimize prolonged business interruptions;
- 5) minimize damage to public facilities and utilities.

The flood damage prevention regulations also implement the regulations of the National Flood Insurance Program and Related Regulations that are administered by the Federal Emergency Management Agency (FEMA). The floodplain management regulations are established to implement the policies of the safety element of the comprehensive plan regarding flood hazards associated with Lake Erie, Crooked Brook and its tributaries.

The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations; in no circumstances is development allowed in the floodway as defined by the Federal Emergency Management Agency. Larger floods will occur on rare occasions. Flood heights may be increased by person made or natural causes. These regulations do not imply that land outside the areas of special flood hazards, or uses permitted within such areas will be free from flooding or flood damages. These regulations shall not create liability on the part of the City, any officer or employee, or the Federal Insurance Administration, for any flood damages that result from reliance on these regulations or any administrative decision lawfully made.

§ 79-23020 General Provisions.

The flood damage prevention regulations shall apply to all areas and lots within the 100 year flood boundary ("Zone A") designation on the map entitled Flood Insurance Rate Map - City of Dunkirk, New York - Chautauqua County dated February 1981 as they exist now or may be amended, on file in the Building Department. These regulations are not intended to supersede the regulations of FEMA and as the FEMA regulations are changed or amended, these regulations will continue to conform with their restrictions.

These regulations shall be in addition to other regulations established by this title. In the event of a conflict in regulations, the flood damage prevention regulations shall apply.

§ 79-23030 Floodplain Administration.

The Housing, Building and Zoning Officer of the City of Dunkirk is appointed to administer and implement these regulations. The duties and responsibilities of the floodplain administrator shall include, but not be limited to:

- 1) review of all applications for development within floodplain to ensure compliance with the floodplain management regulations of this title so that proposed building sites are reasonably safe from flooding;
- 2) obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other sources, when base flood elevation has not been provided;
- 3) notify adjacent communities, the New York State Department of Environmental Conservation and the Federal Insurance Administration prior to the alteration or relocation of a watercourse. The flood carrying capacity of the altered or relocated portion of a watercourse shall be maintained;
- 4) make interpretations, when needed, as to the exact location of the boundaries of the areas included in the 100 year flood area;
- 5) maintain, for public inspection, the certificates of elevation and construction and other information and records required pursuant to the National Flood Insurance Program and the City's flood damage prevention regulations.

§ 79-23040 Permit Review Required.

The following provisions shall apply to the review and approval for projects on lands to which this Article is applicable:

- 1) The review and approval by the floodplain administrator shall be required prior to the issuance or approval of the special permit by the Zoning Board of Appeals or site plan approval by the Planning Board. Information necessary to determine compliance with the Flood Damage Prevention Regulations together with any information, plans, diagrams, etc. for the requested permit shall be submitted to the floodplain administrator for review and approval.
- 2) The following activities shall require the review and approval of the floodplain administrator when located in the floodplain:
 - a) construction, enlargement, alteration, repair, improvement or moving any building or structure;
 - b) Any person made change to an improved or unimproved real estate, including, but not limited to: constructing buildings or other structures, mining, dredging, filling grading, paving, excavation or drilling;
 - c) placement of manufactured home on improved or unimproved real estate;
 - d) Subdivision of any property;
 - e) Establishment of a manufactured home development or mobile home park.
- 3) A licensed civil engineer shall develop and/or review structural design, specifications and plans for the construction and shall certify that the design and methods of construction are in accordance with the accepted standards of practice. A licensed civil engineer or licensed land surveyor shall certify the specific elevation, in relation to mean sea level.

§ 79-23050 Application to Historic Structures.

The floodplain administrator may waive requirements for minimum floor elevations, flood proofing or other provisions of this Article for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or designated as landmarks by the State of New York or City of Dunkirk.

§ 79-23060 General Development Standards and Requirements.

The restrictions set forth in this Article are in addition to any other applicable provision of this code. In the event of any conflict between any such provisions, the more restrictive shall apply. The following development standards shall be observed on all lots in the floodplain:

- 1) All new construction and substantial improvements, including new and replacement of manufactured homes, shall be secured to a permanent foundation system to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- 2) All new construction and substantial improvements, including new and replacement of manufactured housing, shall be constructed and designed:
 - a) with materials and utility equipment resistant to flood damage;
 - b) using methods and practices that minimize flood damage;
 - c) with electrical, heating, ventilation, plumbing and air condition equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
 - d) with adequate drainage paths around structures on slopes to guide floodwater around and away from structures;
- 3) All new construction and substantial improvements, including new and replacement of manufactured housing, shall have the lowest floor, including basement, elevated to one foot or more above the base flood elevation and be designed so they are fully enclosed areas below the lowest floor automatically equalizes hydrostatic flood forces on exterior walls by allowing for entry and exit of floodwater. In the case of non-residential structures, the structures will be flood proofed so that below the base flood elevation, the structure is water tight with walls substantially impermeable to the passage of water

and have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. The minimum criteria for equalizing hydrostatic flood forces shall include a flood proofing standard approved by the Federal Insurance Administration.

Certification by a licensed civil engineer that the structure complies with this subsection shall be required prior to any occupancy of such structure. Final elevations of the lowest floor and/or basement shall be included in this certification.

- 4) New and replacement water, gas, electrical and sanitary sewage systems shall be designed to:
 - a) minimize or eliminate infiltration of floodwater in the system and discharge from the system into floodwater;
 - b) avoid impairment or contamination during flooding in the case of on site waste disposal systems.
- 5) All tentative subdivision maps, regardless of the number of lots proposed, shall:
 - a) identify the special flood hazard area and elevation of the base flood on the tentative map;
 - b) show how any existing or future buildings, structures or utilities will comply with the development standards of this Article;
 - c) identify the elevation of any existing structures, buildings or proposed building pads including any building sites with fill above the base flood elevation on the final map.

Certification by a civil engineer that the subdivision complies with this subsection shall be required for the final map. Final elevations of all proposed or existing building sites shall be included in this certification.

- 6) Flood capacity in the floodplain shall be maintained by use of storage or detention areas.
- 7) Impervious surfaces shall be minimized in the floodplain.
- 8) Filling of wetlands and the floodplain is prohibited.

ARTICLE XXIV
Parking, Stacking and Loading Requirements

§ 79-24010 Intent.

Off street parking, stacking and loading requirements, must meet the standards set forth in this Article. As permitted uses in certain zones, they shall be considered an accessory use when required or provided to serve conforming uses in any zone. The following off street parking, loading and stacking requirements are established to:

- 1) relieve congestion and facilitate the movement of vehicular traffic;
- 2) promote the safety and convenience of pedestrians by locating parking and areas so as to reduce the impact of vehicles;
- 3) protect adjoining residential uses from negative impacts of on-street parking;
- 4) promote the general convenience, welfare and prosperity of commercial, service, research, production and industrial development;
- 5) ensure parking facilities are designed and consider orderly arrangement, topography, landscaping and ingress/egress as part of the overall site design;
- 6) provide regulations and standards for development of off street parking to protect the character of the City of Dunkirk.

§ 79-24020 General Provisions.

- 1) Employee Parking - Whenever parking requirements are based on the number of employees, it shall mean the maximum number of employees on duty in the premises at one time or any two (2) successive shifts.
- 2) Net Floor Area - The net floor area is defined as the total floor area less permanent concourses, stair halls, lobbies, elevator shafts, areas permanently devoted to warehousing and rooms housing equipment servicing the entire building.
- 3) Fractional Requirements - When units of measurements used in computing the number of required off street parking, loading and stacking spaces result in the requirement of the fractional space, the nearest whole number of off-street parking spaces shall be required.
- 4) Seating Capacity - The number of seating units installed or indicated on the plans which shall be less than one (1) unit per fifteen (15) square feet of floor area. Where units are not indicated on the plan, it shall be assumed that seating units will be provided at a ratio of one (1) for each ten (10) square feet of floor area.

§ 79-24030 Residential Districts.

- 1) Location - If the required off street parking space cannot reasonably be provided on the same lot as the principal building, such parking space may be provided on other property located not more than three hundred (300) feet as measured along the nearest pedestrian route.
- 2) Front Yard Parking - Front yard parking for residential uses, with the exception of access drives, shall be in conformance with the required minimum front yard setback.

§ 79-24040 Commercial and Industrial Districts.

- 1) Location - In all non-residential districts, off street parking, loading and stacking facilities shall be provided on the same lot as the principal use or on another non-residential lot located not more than three hundred (300) feet as measured along the nearest pedestrian route.
- 2) Off street parking, stacking and loading improvements:
 - a) will not increase the congestion on adjoining residential streets in such a way as to promote a traffic hazard or a nuisance to adjoining resident;
 - b) will be properly screened, lighted and designed so as to prevent nuisance to adjoining residents;
 - c) will be landscaped as required by this Chapter;
 - d) will be used for the purpose of passenger automobiles or commercial vehicles only (off street parking, only);
 - e) no commercial repairs, sales or services shall be conducted;
 - f) shall be located not less than ten (10) feet from any adjacent residential lot line.

§ 79-24050 Special Parking Restrictions.

- 1) Civic Uses and Places of Assembly - Parking areas serving churches, clubs, community centers and other public facilities within or adjacent to a residential district shall be located within the side and rear yards. Driveways may be located within the front yard. Driveways and parking areas shall be located not less than ten (10) feet from any adjacent residential lot lines.

- 2) Motor Vehicle Service Station - Unenclosed parking of motor vehicles at gasoline service stations shall be limited to four (4) vehicles, and no vehicle shall remain so parked in excess of twenty four (24) hours. Unenclosed overnight parking of motor vehicles at automobile washing establishments is prohibited.
- 3) No more than one (1) commercial vehicle shall be permitted in any residential zone.

§ 79-24060 Payment in Lieu of Providing Off Street Parking.

Municipal off street parking facilities shall continue to be developed and maintained by the City on City owned or leased land and may, upon payment of the fee adopted by the City Council, be used in lieu of off-street parking required to be provided by existing and future buildings, structures and uses.

Parking may be waived by the Planning Board providing the proposed use is within 500 feet of a municipally operated off street parking facility. The Planning Board shall, at the time of approval of the site plan, certify on such plan that the municipally operated off street parking facility has adequate capacity to accommodate the need generated by the use.

- 1) Changes or Alterations: When in the C-1, C-2 or CBD, additional off street parking is required to be provided for an existing building because of:
 - a) change of use of all or any portion of a building or structure;
 - b) an interior increase of floor area for which off street parking must be provided, and such required off street parking cannot be provided because of the non-availability of space in the zoning lot upon which the building is located

The authorizing agency, upon written application, may permit the payment of a fee by the applicant to allow the City to provide such additional required off street parking in lieu of the applicant providing such required off street parking.

- 2) New Construction: When, in the C-1, C-2 or CBD, a new building or structure is erected or a structural addition is added to an existing building or structure for which off street parking is required by the provisions of this Chapter, upon written application, the authorizing agency may authorize the payment of a fee by the applicant to allow the City to provide such required off street parking in lieu of the applicant providing such off street parking of such required off street parking.

- 3) Collected Fees: All fees collected and all interest earned under the provisions of this Chapter shall be placed in the Parking Facilities Fund established by the City Council and shall be used only for the acquisition of land, improvement or maintenance of municipally owned or leased off street parking facilities for the benefit of those buildings, structures and uses in the C-1, C-2 or CBD and the general community.

§ 79-24070 Exceptions.

The requirements of this article may be reduced to the extent that the applicant can demonstrate that less parking is required for one of the following reasons:

- 1) unique use times - uses operate at times other than "normal" business hours and, thus, could make arrangements with surrounding land owners to utilize their parking facilities through a formal agreement;
- 2) overlap coverage - adjacent uses may operate at different times and could, thus, develop a shared parking facility;
- 3) the regulation is excessive for proposed development, as applied to individual land owner;
- 4) the new development is in close proximity to a public parking facility.

§ 79-24080 Off Street Parking Requirements.

In all zones, the following minimum off street parking requirements shall be provided and maintained in the case of new construction, alterations which increase the number of units and changes in use:

Auditoriums, theaters, gymnasiums and other places of public assembly:
One (1) parking space for each five (5) seats.

Automobile Repair Shops: Two (2) parking spaces per bay with a minimum of six (6) parking spaces.

Automobile (new and used) facilities: Two (2) parking spaces for each employee.

Bowling Alleys - Two (2) parking spaces per alley.

Church - One parking space for each five (5) fixed seats. If no fixed seats, one (1) parking space for each twenty five (25) square feet of net floor area.

Convenience Store - One space for every one hundred (100) sq. ft. of gross floor area.

Dancing Studios: One (1) parking space per seventy five (75) feet of net floor area devoted to the activity.

Dwelling (single family): Two (2) spaces per dwelling unit.

Dwelling (multiple family): One and one half (1.5) spaces per dwelling unit.

Dwelling (senior): One (1) parking space per dwelling unit.

Fraternity or Sorority: One (1) parking space per two (2) occupants.

Funeral Homes: One (1) parking space for each five (5) seats.

Health Spas and Swimming Pools: One (1) parking space per fifty (50) square feet of net floor area and pool area devoted to activity.

Hospitals: One (1) parking space for each patient bed.

Hotels: One (1) parking space for each guest room plus one (1) space per six (6) seats for the restaurant/bar area.

Industrial plants, wholesale distribution, laboratories, etc.: One (1) parking space per employee.

Medical and Dental Offices/Clinics: One (1) parking space per one hundred fifty (150) square feet of net floor area.

Miniature Golf: One (1) parking space for each hole.

Offices (General): One (1) parking space for each four hundred (400) square feet of net floor area.

Private Clubs: One space per three (3) seats and one (1) parking space per one hundred fifty (150) square feet for customer area or takeout services.

Public and Semi-Public Buildings: One (1) parking space per two hundred (200) square feet of net floor area. If devoted to uses other than office, one (1) parking space per five (5) seats.

Restaurant Bar and Banquet Hall: One space per three (3) seats and one (1) space per one hundred fifty (150) square feet for customer area or takeout services.

Retail Stores (under 6,000 square feet): One (1) parking space for each two hundred fifty (250) square feet of net floor area.

Retail Stores (over 6,000 square feet): One (1) parking space for each one hundred (100) square feet of net floor area.

Nursing Homes: One (1) parking space for each five (5) beds plus one (1) parking space for each employee.

Schools (nursery and primary): One (1) space for each teacher, employee and administrator.

Schools (secondary): One (1) parking space for each ten (10) seats used for purposes of instruction. If no fixed seats, one (1) parking space for each one hundred (100) square feet used for purposes of instruction.

Shelters: One (1) parking space for every two (2) employees.

Shopping Centers: Six (6) parking spaces for each one thousand (1000) square feet of net floor area.

Tennis Clubs: Three (3) parking spaces per court.

Tourist Home, motel: One (1) parking space for each sleeping room.

§ 79-24090 Stacking Requirements.

In addition to minimum parking requirements established in this Chapter, the following stacking areas are required. The size of a stacking space shall be twenty (20) feet in length by nine (9) feet in width.

Car Wash (Coin Operated): Two (2) spaces per stall

Car Wash (Rapid): Ten (10) spaces per stall

Drive in Bank: Five (5) spaces per lane

Drive in Photographic Facility: Two (2) spaces per service window

Drive in Oil Change and Quick Lube Facility: Three (3) spaces per bay

Drive in Facilities (General): Five (5) spaces per booth, customer facility or service window

§ 79-24100 Loading Requirements.

Off street loading shall be provided and maintained as long as such building is occupied or unless equivalent facilities are provided in conformance with the regulations of this Article. Space required and allocated for any off street loading facility shall not be used to satisfy the space requirements for off street parking or stacking. An off street loading space shall not be used for repairing or servicing of motor vehicles.

- 1) Location of Facility - All required loading facilities shall be related to the building and provide for loading and off-loading of delivery and other service vehicles and shall be so arranged that they may be used without blocking or otherwise interfering with the use of access ways, parking or stacking facilities, public streets or sidewalks. A required loading space shall not face or be visible from the frontage street and shall not be located in a rear yard or a required side or rear yard if adjoining a residential district.
- 2) Access Driveway - Each required off street loading space shall be designed for vehicular access by means of a driveway, or driveways, to a public street in a manner which will least interfere with adjacent traffic movements and interior circulation.
- 3) Minimum Size Criteria - Off street loading space shall be at least twenty feet in length by twelve (12) feet wide. The area shall be exclusive of the maneuvering space and each loading facility shall have a vertical clearance of at least fourteen (14) feet.
- 4) Required Loading Facilities - The following off street loading facilities shall be provided as required:

| | <u>Use</u> | <u>Square Feet</u> | <u>Required Number</u> |
|----|-------------------------------------|--------------------|------------------------|
| a) | Retail Stores and Services | under 5,000 | 1 bay |
| | | 5,000–40,000 | 2 bays |
| | | 40,001-50,000 | 3 bays |
| | | 50,000+ | 4 bays |
| b) | Wholesale and Industrial Operations | under 40,000 | 1 bay |
| | | 40,001-100,000 | 2 bays |
| | | 100,001+ | 3 bays |

- c) Office Building, Hotels 100,000+ 1 bay
- d) Hospitals and Nursing Homes 2 bays 1 of which is for emergency vehicles

§ 79-24110 Design Guidelines.

- 1) Each space shall be provided access to a public street through a drive or aisle of not less than ten (10) feet wide.
- 2) Dimensions - Parking shall be designed in dimensions according with the following:

| Angle | Stall Length | Aisle Width | Stall Width | Total Width |
|-------|--------------|-------------|-------------|-------------|
| 90 | 19'00" | 24'00" | 9'00" | 62'00" |
| 60 | 21'00" | 18'00" | 10'05" | 60'00" |
| 45 | 19'10" | 13'00" | 12'09" | 52'08" |

Parking for the physically challenged shall be a minimum of:

| <u>Angle</u> | <u>Stall Width</u> |
|--------------|--------------------|
| 90 degree | 12.0' |
| 60 degree | 13.9' |
| 45 degree | 16.9' |

and shall be provided in accordance with all applicable regulations.

- 3) Grading and Paving - Parking, stacking and loading areas and access shall be graded and drained so that surface water shall not be allowed to flow onto adjacent properties.

- 4) Maintenance - Parking, stacking and loading areas shall be arranged, marked and maintained as shown on the final approved site plan in order to provide for orderly and safe parking, storing and loading of vehicles. The authorizing agency may also require structural or landscape features including, but not limited to, bumper guards, curbs, walls or fencing, landscaping or berming, to ensure protection of property and persons and privacy screening for adjacent land uses with visual, noise and air standards.
- 5) Illumination - Parking, stacking and loading areas shall be illuminated only to the extent necessary to ensure public safety. Illumination shall not be used for the purpose of advertising or attracting attention to the principal use. Lighting fixtures shall be designed, sized and located so as not to cast direct rays of excessive brightness upon adjoining premises or cause glare hazardous to pedestrians or person using adjacent public streets.
- 6) Pedestrian Walkways - Walkways will be provided to link parking areas and buildings on the site to ensure pedestrian safety. Special consideration will be given when drive thrus are incorporated in the design to ensure safety for pedestrians as vehicles are moving.
- 7) Driveways to Parking Areas - Entrance and exit driveways serving parking facilities, drive in businesses and other parking areas shall be provided in location, size and number so as to minimize interference with uses on adjacent properties and the flow of traffic on adjacent streets.

ARTICLE XXV
Landscaping Requirements

§ 79-25010 Intent.

Landscaping requirements in the City of Dunkirk are established to:

- 1) promote the public health, safety and welfare of all residents in the City of Dunkirk by requiring all non-residential developments to landscape their lands, including parking areas;
- 2) establish minimum landscaping standards and criteria for all non-residential developments;
- 3) minimize the unnecessary clearing and disturbing of land to ensure protection of natural, existing flora and replace native flora that has been removed;
- 4) reduce the effects of wind and air turbulence, heat, noise and the glare of automobile lights;
- 5) provide unpaved areas of a development and regulate the amount of impervious surface to ensure absorption of storm water;
- 6) prevent soil erosion;
- 7) provide shaded areas in developments;
- 8) protect property values and character of neighborhoods in the City of Dunkirk;
- e) Ensure the development of new parking areas have minimal visual effects on the neighborhood.

§ 79-25020 Applicability.

All non-residential uses and residential uses requiring site plan approval or a special permit are subject to the provisions of this Article. All planting strips, yards, setbacks and other required open space area shall be landscaped in accordance with a landscaping plan, prepared by a landscape architect, architect or engineer, approved by the authorizing agency.

§ 79-25030 Maintenance.

All required planting shall be permanently maintained in good condition, and, when necessary, replaced with new plant material to ensure continued compliance with these Standards. For the purpose of enforcement, the property owner shall be responsible for maintenance. Maintenance shall include watering,

weeding and pruning. All required fences and walls shall be maintained and, when necessary, repaired or replaced.

§ 79-25040 Guidelines.

Prior to the issuance of zoning permits, site plan approval, special permits, etc., fifteen (15) copies of the Landscaping Plan shall be submitted to the City of Dunkirk as part of the application package. The following guidelines shall be used in developing the landscaping plan:

- 1) Plants selected shall be suited to the climate and region as well as the geologic and topographic conditions of the site. Protection and preservation of native plant materials and natural areas is encouraged by the City of Dunkirk.
- 2) Water intensive ornamental plant materials shall not exceed 10% of the total landscaped area.
- 3) Decorative water features should use re-circulating water, when possible;
- 4) Landscaping shall provide privacy and screening for adjacent land uses, with visual, noise and air quality factors considered.

§ 79-25050 Landscaping Plans and Additional Information.

Landscaping plans shall be drawn to scale, including dimensions and distances, and shall clearly delineate:

- 1) plant materials, including trees, shrubs, ground cover, turf and other vegetation, shall be shown clearly on the plan. In addition, plants shall be labelled by botanical name, common name, calliper or container size, spacing and quantities in each group;
- 2) property lines and street names;
- 3) streets, driveways, walkways and other paved area;
- 4) pools, ponds, water features, lighting fixtures, fences and retaining walls;
- 5) existing and proposed buildings and structures, including elevation, if applicable;
- 6) natural features, including, but not limited to, rock outcroppings, existing plant materials that will be preserved;

- 7) tree staking, plant installation, soil preparation details and all other applicable planting and installation details;
- 8) calculation of the total landscaped area;
- 9) designation of recreation areas, if applicable.

§ 79-25060 Landscaping Plan Standards - General.

For purposes of this section, the landscaped area shall include the area required or permitted, under this section, to be devoted to landscaping and environmental improvement, which may include existing and new vegetation, berms, lighting, street furnishings and ornamental features which are integrated with the vegetation. The following standards shall be observed for all projects subject to this Article:

- 1) a minimum ground area of not less than twelve (12) percent of the total lot area shall be landscaped;

- 2) a landscaped area shall have a minimum width of five (5) feet excluding curbs, retaining walls or similar enclosing structures;
- 3) landscaping materials shall be contained so as not to spill or intrude into the public right of way;
- 4) all trees shall be staked and all planting areas mulched;
- 5) the use of synthetic vegetation (turf, plastic plants, etc.) shall not be allowed for any required landscaping;
- 6) the minimum size for a shrub shall be 30" in height and the minimum size for a tree shall be a 2" calliper.

§ 79-25070 Landscaping Plan Standards - Residential.

The following standards shall be observed in residential projects that are subject to this Article:

- 1) nursery grown trees of at least 2" calliper size shall be selectively sited throughout all common open areas to naturalize the site. The number shall be determined by requiring one (1) tree for every forty (40) feet of perimeter of the lot.

§ 79-25080 Landscaping Plan Standards - Parking Lots and Parking Areas.

The following standards shall apply to all parking lots and parking areas subject to the provisions of this Article:

- 1) A minimum on one (1) landscaped area with a minimum size of one hundred seventy one (171) sq. ft (approximately 9' by 19') shall be provided for every nine (9) parking spaces.
- 2) The following standards shall apply to the screening of parking lots, parking areas and other open storage areas subject to this Article:
 - a) Parking lots and parking areas shall be screened from public streets, alleys, paths and private streets by dense landscaping having a minimum height of three (3) feet. An earth berm may be credited toward the height required. At all intersections and driveways, screening shall be restricted to a maximum height of two (2) feet and trees shall be maintained to a clearance of seven (7) feet above ground to ensure sight lines remain unobstructed.

- b) Parking lots and parking areas shall be screened from abutting lots with a minimum height of five (5) feet. An earth berm may be credited toward the required height. At all intersections and driveways, screening shall be restricted to a maximum height of two (2) feet and trees shall be maintained to a clearance of seven (7) feet above ground to ensure sight lines remain unobstructed.

- c) Equipment and open storage areas shall be screened from public streets, alley, paths, private streets and abutting lots to a minimum height of six (6) feet.

ARTICLE XXVI
Supplemental Regulations

§ 79-26010 Intent.

The supplemental regulations contained in this article address uses that are allowed, allowed following site plan review or as a special permitted use in various zoning districts. These regulations consider the unique characteristics of each use and the potential impacts they may have on the community and its residents.

§ 79-26020 Accessory Buildings.

Unless otherwise specified, all accessory buildings shall observe the same yard requirements as principal buildings except for the following:

- 1) In all Residential Districts, accessory buildings lying wholly within a rear yard may extend not closer than five (5) feet to the side and rear lot line.

- 2) In Commercial and Industrial Districts, accessory buildings lying wholly within a rear yard shall be a minimum of five (5) feet from side or rear lot lines, except that accessory buildings used for business or individual purposes shall be a minimum of twenty five (25) feet from any Residential District boundary.
- 3) In any district, the distance between the main building and the accessory building shall be a minimum of ten (10) feet.

§ 79-26030 Storage.

To provide visual protection from the storage of equipment and materials, all such storage in any District shall be within completely enclosed buildings or, if left open to the sky, shall be effectively screened from public view. Screening shall be of sufficient height and density to completely hide the storage from public view. In certain cases, fencing may be necessary to supplement landscaping. All screening shall be maintained in such manner as to present a neat and orderly appearance at all times.

§ 79-26040 Corner Visibility.

Within the triangle formed by two (2) intersecting street lines and a line joining points on such street lines thirty (30) feet from the intersection, no fence, wall, hedge or dense foliage shall be erected, planted or maintained between the heights of two (2) feet and seven (7) feet. Open type fences less than ten percent (10%) solid may be three and one half (3 1/2) feet in height.

§ 79-26050 Fencing and Walls.

The authorizing agency may require fences, vegetation or other appropriate material in non-residential districts where they abut residential districts to assure privacy for adjacent land uses with visual, noise or air quality factors considered. The following shall apply to all fences and walls in the City of Dunkirk:

- 1) No fence or wall in a residential district shall exceed six (6) feet in height.
- 2) A fence of twelve (12) feet shall be allowed to enclose a tennis court.
- 3) In no event shall fences or walls in non-residential districts abutting residential districts exceed six (6) feet in height.
- 4) Within a non-industrial district, no fence or wall, other than a necessary retaining wall, over three (3) feet in height shall extend into the front yard of any lot.

- 5) The height of all fences or walls shall be measured from the average finished grade of the lot.

§ 79-26060 Automotive Use Areas.

Any portion of a lot, with the exception of one and two family homes, used for open off-street parking or reservoir space for open sales, service or storage areas for motor vehicles, contractor's equipment or boats, shall be deemed to be an automotive use area. No building, pump, motor vehicle or any other equipment or storage shall be closer than twenty five (25) feet of a Residential District, nor twenty (20) feet of a street line. New automotive use areas or alterations of existing automotive use areas shall be subject to the following requirements:

- 1) Surfacing - Every automotive use area and access driveway shall be surfaced with a durable and dustless material and shall be so graded and drained as to dispose of surface water accumulations.
- 2) Lighting - Any fixture used to illuminate any automotive use are shall be arranged so as to direct the light away from the street and from adjoining lots in any Residential District.
- 3) Screening - Every automotive use area, except off street parking areas for less than five (5) vehicles, shall be screened from any adjoining lot in any Residential District by a landscaped buffer of no less than five (5) feet in width. Such buffer shall be landscaped and maintained by the owner
- 4) Access - No entrance or exit to an automotive use area shall be permitted within thirty (30) feet of any intersecting street lines and, except for permitted residential off-street parking areas in the Residential Districts, no entrance or exit shall be permitted within ten (10) feet of a lot in any Residential District.
- 5) Restriction - No automotive use area shall be used for auto wrecking or for storage of wrecked, partially dismantled or junked vehicles or equipment, or motor vehicles which do not qualify for New York State motor vehicle registration.

§ 79-26070 Cesspools and Septic Tanks.

- 1) No cesspool, septic tank or drilled sink shall be permitted within the City of Dunkirk except as provided in this Article. In the industrial districts, where a public sanitary sewer main is not reasonably accessible in the opinion of the authorizing agency, alternative provisions, approved by the Director of Public Works, may be made for the disposal of sanitary waste if the following are met:

- a) No on-site disposal shall be permitted in low, swampy areas with a high water table (permanent, fluctuating or seasonal), areas with ledge rock or areas that are subject to flooding;
- b) All installations shall otherwise conform to the requirements of the Chautauqua County Health Department.

§ 79-26080 Dwelling Units.

Slope of Yards - No building containing dwelling units shall henceforth be constructed, nor shall any existing building be altered so as to contain dwelling units, unless the surface grade of the front yard at the front wall of such building is more than one (1) foot above the established grade of the sidewalk. Where a sidewalk grade has not been established, the surface grade of the front of the front wall of the dwelling shall not be less than one (1) foot above the center line of the street measured at the midpoint between the side lot lines of the lot. Where there is unusual difficulty in meeting this provision, the Housing, Building and Zoning Officer may accept a substitute gradient, providing that no minus gradient its established within fifteen (15) feet of the front wall or within six (6) feet of either side of the rear wall of the dwelling.

§ 79-26090 Mobile Homes.

The following shall apply in addition to all other regulations of the City:

- 1) Temporary Storage - No mobile home shall be parked and occupied in any district outside an approved mobile home court for more than forty eight (48) hours except upon a special permit issued by the Zoning Board of Appeals. Such permit shall be issued for a period not to exceed thirty (30) days and shall not be renewable within the same calendar year.
- 2) As an exception, a permit may be issued for parking and occupying a mobile home on land owned by the occupant or occupants during the construction of a house, for a period not exceeding one hundred eighty (180) days and shall be renewable for an additional period not exceeding one hundred eighty (180) days.

§ 79-26100 Mobile Home Parks.

The following shall apply in addition to all other regulations of the City regarding mobile home parks:

- 1) Permit - It is unlawful within the City of Dunkirk for any person or persons to construct or operate a mobile home park without first

securing a written permit from the City of Dunkirk and complying with the regulations of this chapter.

- 2) Application - Any applicant for a mobile home park license shall state that as agent or owner, shall be responsible for the proper maintenance and upkeep of the proposed park and shall furnish the following information:
 - a) boundaries of plot area;
 - b) entrances, exits and walkways;
 - c) trailer sites or lots;
 - d) method and plan of sewage disposal;
 - e) method and plan of garbage disposal;
 - f) water supply;
 - g) electric lighting;
 - h) owners and operators name and address.
- 3) Park Plan - The park plan shall include the following:
 - a) in the R-3 zone, a mobile home park shall have an area of not less than ten (10) acres
 - b) in the R-3 zone, no mobile home lot or office or service building shall be closer to a street, road or other property line than one hundred (100) feet;
 - c) in all other zones where mobile home parks are allowed, no mobile home or trailer lot, office or service building shall be closer to any street or road line than one hundred (100) feet or closer to any other property line than fifty (50) feet.
- 4) Additional Requirements - Wherever located, a mobile home park shall conform to the following additional requirements:
 - a) the park shall be located on a well drained site suitable for the purpose, with an adequate entrance road at least twenty (20) feet wide;

- b) individual mobile home lots shall have an area of not less than three thousand (3000) square feet with a minimum width of forty (40) feet and a minimum depth of seventy five (75) feet;
 - c) the total number of mobile home lots shall not exceed twelve (12) per gross acre;
 - d) margins alongside of the rear property line shall be densely planted to trees and shrubs for a depth of not less than twenty five (25) feet
 - e) each mobile home shall have an entrance platform to conform with the overall plan;
 - f) Each mobile home park shall provide sanitary services and conveniences including water supply, sewage disposal, lighting, garbage disposal and incinerator, according to the regulations in this Article.
- 5) Water Supply - A sufficient supply of water obtained from the City of Dunkirk water system shall be provided to each mobile home.
- 6) Sewage and Refuse Disposal - Waste from showers, toilets and laundries shall be connected to the City of Dunkirk waste water system in a manner approved by the Director of Public Works. All kitchen sinks, washbasins, lavatories, bath and showers in the mobile home located in any mobile home park shall empty into the City of Dunkirk sewer system.

§ 79-26110 Quarries, Gravel Pits, Topsoil Removal, Major Excavations, Grading and Filling.

- 1) Prohibition - The extraction or mining of any natural materials from the earth, including soil, sand, gravel, stone, rock, shale and minerals is not a permissible land use in any zoning district in the City of Dunkirk.
- 2) Non-conforming Uses - All existing extraction and mining operations, wherever located in the City of Dunkirk, will become non-conforming uses upon the effective date of this law and will be governed by Article XVI - Non-conforming Uses.
- 3) Stripping of Top Soil - No person, firm or corporation shall strip, excavate or otherwise remove top soil for sale or for use other than on the premises from which the same shall be taken except in

connection with the construction or alteration of a building on such premises and excavation or incidental grading.

§ 79-26120 Shopping Centers.

The authorizing agency may authorize the issuance of a permit or permits for the construction of a shopping center in applicable zones provided the center conforms to the following requirements:

- 1) Plan - The proposed development shall be in accordance with a site plan submitted to the City of Dunkirk and approved by the authorizing agency. It shall not be required that the entire development be in a single ownership, built or financed by a single party if satisfactory evidence is shown that all parties financially or otherwise concerned in the development are legally bound to conform to the submitted site plan.
- 2) Vehicular Access - All vehicular entrances and exits upon public roads shall be approved by the proper highway authority and the Director of Public Works.
- 3) Setbacks - No building shall be placed closer to any street or road line than fifty (50) feet or closer to any other property line than two hundred (200) feet. No parking space shall extend nearer to any street or road line than the established building line or closer to any other property line than fifty (50) feet and the boundaries along all side and rear property lines abutting upon a residential district shall be appropriately landscaped and maintained for a depth of not less than fifty (50) feet. Where the shopping center area is directly adjoined by land in a business or industrial district or by a railroad right of way, building may extend to within fifty (50) feet of the property line and automobile parking space may extend to within twenty five (25) feet of the property line.

§ 79-26130 Satellite Television Receiving Antennas.

Satellite television receiving antennas are allowed in any zoning district as an accessory use to any permitted use provided:

- 1) No more than one satellite television receiving antenna is allowed per residential lot;
- 2) In all zoning districts, except residential districts, the roof-mounted satellite television receiving antenna can be no more than ten (10) feet in diameter and must be accompanied by drawings stamped by

- a licensed engineer indicating wind load imposed, roof structure design or re-design of roof structure to carry added wind/weight load;
- 3) In residential districts, ground mounted satellite antennas are allowed only in rear yards and shall not be greater than 12 feet in height. Its perimeter shall adhere to all setback requirements set forth in this Chapter;
 - 4) In residential districts, roof top mounted satellite antennas shall be prohibited;
 - 5) In commercial and industrial districts, satellite antennas shall not be more than twenty five (25) feet above grade. Ground mounted systems in commercial districts shall be screened with appropriate fencing or landscaping indicated in Article XXV - Landscaping Requirements.

§ 79-26140 Solar Efficiency.

To promote and protect the use of solar efficiency in the City of Dunkirk, the following shall apply:

- 1) The placement of structures or modification of existing structures containing solar structures shall be by Special Use Permit. If no protection from adjacent development is sought for a system, then no permit shall be required for the installation unless the floor space is increased. Consideration will be given to locating the structures the furthest distance from adjoining properties, on the southern exposure, which is reasonably possible. This distance shall be a minimum of 100 feet and may be required to more if the slope so dictates.
- 2) The placement of structures, trees, towers, etc. which have the potential of blocking the sun from adjacent solar collectors established by Special Use Permit shall only be allowed by Special Use Permit. The placement of said potential obstruction shall be such that it least interferes with the adjacent solar collectors while still allowing reasonable use of the land.
- 3) If protection is sought, owners of all properties within 200 feet of the property on which the solar collector is to be placed will be notified, in writing, of the intent to place a system in the neighborhood and the possible effects this could have on future development. The date, time and location of the public hearing shall be included in the notification.

§ 79-26150 Swimming Pools.

A private swimming pool installed or maintained as an accessory use in a residential district, shall meet the following requirements:

- 1) The pool shall be used only as an accessory use to a dwelling or to a special permit use in a residence district for the private use of the owner or occupant of such dwelling or building and their family, guests or employees.
- 2) All pools shall be completely enclosed by a security fence not less than four (4) feet in height, with all gates or doors opening through such enclosure equipped with self closing and self latching devices designed to keep, and capable of keeping, such gates or doors securely closed at all times when not in actual use of a type approved by the Housing Building and Zoning Officer.
- 3) Such fence will not be required if:
 - a) buildings more than four (4) feet in height;
 - b) walls or a fence approved by the Zoning Official not less than four (4) feet in height with a self locking gate; or
 - c) any combination of the same;stand as a continuous barrier between the pool and any approach by land to the pool.
- 4) All swimming pools wherein the water level and/or sidewalls are four (4) feet or more above ground level shall not require the installation of a fence. However, if any such pool has a side deck with stairs, solitary stairs, a ladder attached to a slide or other recreational device, a solitary ladder any other means of access to the water, such stairs, ladder or other means of access shall be installed so as to allow their removal when the pool is not in use, thereby preventing access to the pool. All such stairs, ladders or other means of access, after removal from the pool, shall be stored in a place to prevent unauthorized use of the pool.
- 5) All provisions for fences as outlined in Article XXVI - Supplemental Regulations are applicable.
- 6) Such pool shall be maintained in a manner sufficient to meet the bacterial standards established by the provision of the New York State Sanitary Code relating to public swimming pools.

- 7) Pools equipped with an integral filtration system and filter pumps or other mechanical devices which shall be so located and constructed so as not to interfere with the peace, comfort and repose of the occupant of any adjoining property.

§ 79-26160 REGULATION OF TELECOMMUNICATION FACILITIES [Added 7-7-1998 as L.L. No. 1-1998]

§ 79-26160.01 LEGISLATIVE INTENT.

- 1) The City of Dunkirk recognizes the increased demand for wireless communication transmitting facilities and the need for the services they provide. Often these facilities require the construction of a communication Tower and/or similar facilities. The intent of this local law is to regulate the location, construction, and
 - a) Modification of these facilities in accordance with sound land use planning by minimizing adverse visual effects of Towers and/or similar facilities through careful design, siting, and vegetative screening and/or buffering.
 - b) Avoiding potential damage to adjacent properties from Tower failure or falling debris through engineering and careful siting of Tower structures.
 - c) Maximizing use of any new and/or existing Tower or existing building and/or structure to reduce the number of Towers and/or similar facilities needed in the City.
 - d) Providing for the general health, safety and welfare of the City in and by the regulation of these facilities as such regulation is permitted under applicable Federal and/or State law.
 - e) Accommodating and allowing wireless service providers to meet their service objectives consistent with these regulations and/or other applicable Federal or State law.

§ 79-26160.02 DEFINITIONS.

ACCESSORY STRUCTURE - A non-habitable accessory facility or structure serving or being used in conjunction with communications Tower and/or similar facility or antenna, and located on the same lot as the communications Tower or antenna. Examples of such structures include utility or transmission equipment, regeneration buildings, (underground transmission lines) storage sheds or cabinets.

ANTENNA - A system of electrical conductors that transmit or receive radio frequency signals. Such signals shall include but not be limited to radio, television, cellular, paging, personal communication services (PSC), and microwave communications.

CO-LOCATED ANTENNAS - Telecommunications facilities that utilize existing Towers, buildings, or other structures for placement of antennas and do not require construction of a new Tower.

FALL DOWN ZONE - The radius around a Tower within which all portions of the Tower and Antennas would fall in the event of a structural failure of the Tower.

TELECOMMUNICATION FACILITIES - Towers and/or Antennas and accessory structures, including accessory structures related to underground communication services, together used in connection with the provision of cellular telephone service, personal communication services (PCS), paging services, radio and/or television broadcast services, microwave transmission and/or similar or like broadcast services.

TOWER - A structure designed to support Antennas. It includes without limitation free-standing Towers, guyed Towers, monopoles, and similar structures, which do, or do not, employ camouflage technology.

§ 79-26160.03 TELECOMMUNICATION FACILITY PERMIT REQUIRED.

1. No Telecommunication Facility shall be sited, located, constructed, erected, or modified without the issuance of a permit as prescribed in this Local Law.
2. The Zoning Board of Appeals may waive any provision of this Local Law for Telecommunication Facilities whose total height above ground does not exceed thirty (30) feet.

§ 79-26160.04 ZONING DISTRICTS AND BULK REQUIREMENTS.

1. City or Government owned property, General Industrial and Light Industrial Zoned areas: Site plan application per City of Dunkirk Zoning Ordinance Requirements and §79-26160.05 of this Local Law. If the tower is to be set back in any of these districts less than the height of the proposed tower to any residential district then the application will require a Tower Special Permit per §79-26160.05 and site plan approval. All Towers shall be set back a minimum of 500 feet from any residential dwelling, school or historic structure.

2. Residential, all other districts and Highway Commercial Zoning Districts Site plan review and a Tower Special Permit as forth in Section 5.
3. Towers are prohibited in the open space and Harborfront (H1) Districts.
4. The tower must be set back a minimum of the height of the tower from any residentially zoned property or any front yard line and be a minimum of 500 feet from any residential dwelling, school or historic structure.
5. Towers exceeding 175 feet in height shall be treated as Type I Actions under the State Environmental Quality Review Act (SEQRA).
6. Towers shall not be allowed on any other districts except as specifically set forth herein.

§ 79-26160.05 GENERAL STANDARDS.

1. No permit or renewal thereof or modification of the conditions of a current permit relating to a Telecommunication Facility shall be authorized by the Zoning Board of Appeals unless it finds that such Telecommunication Facility:
 - a) Is necessary to meet current or expected demands for the services supported by the Telecommunications Facility;
 - b) Conforms with all applicable regulations promulgated by the Federal Communications Commission and/or any other applicable State or Federal regulatory agency;
 - b) Is designed and constructed in a manner which minimizes its visual impact. Lighting of area must be kept to a minimum;
 - d) Complies with all other requirements of the Zoning Law of the City;
 - e) Is the most appropriate site within the immediate area for the location of a Telecommunication Facility? It is preferred that Telecommunication Facilities be located on industrial, business, or municipal property and/or co-located;
2. All applicants are required to provide a report which establishes to the satisfaction of Zoning Board of Appeals that the applicant is required to provide service to locations which it is not able to serve

through existing facilities which are located either within or outside the City showing the specific locations and/or areas the applicant is seeking to serve.

3. The report shall set forth an inventory of existing facilities and/or structures within or outside of the City which might be utilized or modified in order to provide coverage to the locations applicant is seeking to serve and include a report on the possibilities and opportunities for a co-location as an alternative to a new site.
4. The applicant must demonstrate that the proposed facility cannot be accommodated on any such existing facility or structure either within or outside of the City, due to one or more of the following reasons:
 - a) The proposed equipment would exceed the existing and reasonable potential structural capacity of existing facilities or structures within or outside of the City considering existing and planned use for those facilities or structures.
 - b) The existing or proposed equipment would cause interference with other existing or proposed equipment, which could not reasonably be mitigated or prevented.
 - c) Said existing facilities or structures do not have space on which the proper equipment can be placed so it can function effectively and reasonably and/or the applicant has not been able, following good faith efforts, to reach an agreement with the owner or owners of such facilities or structures.
 - e) Other reasons which make it impracticable to locate or place the proposed equipment on said facilities or structures.

§ 79-26160.06**CO-LOCATED ANTENNAS PREFERRED.**

1. The shared use of existing Telecommunication Facilities or other structures shall be preferred to the construction of new such facilities. Any application for a Telecommunication Facility Permit or renewal thereof or modification of the conditions of a current Telecommunication Facility Permit shall include proof that reasonable efforts have been made to co-locate with an existing Telecommunication Facility or upon an existing structure. The application shall include an adequate inventory report specifying existing Telecommunication Facility sites and structures of height exceeding 75% of the height of the proposed Tower within a one mile radius from the proposed site if the application is for cellular telephone or personal communication use, or a five mile radius for

other services and for cellular telephone or personal communication use and outlining opportunities for shared use as an alternative to the proposed location. The application must demonstrate that the proposed Telecommunication Facility cannot be accommodated on all sites in the inventory due to one or more of the reasons set forth in the above Section 79-26160.05.

§ 79-26160.07 SPECIAL PERMIT OR TELECOMMUNICATION FACILITIES TOWERS/ANTENNAS.

1. All applicants for Special Use Permit for Telecommunication Facilities Towers and/or Antennas shall make a written application to the Zoning Board of Appeals of the City. This application shall include:
 - a) Tower Special Permit application form, supplied by the City;
 - b) Long form Environmental Assessment form (EAF), including but not limited to a Visual EAF Addendum;
 - c) Applicable Fees;
 - e) Site plan in form and content acceptable to the City, prepared to scale and in sufficient detail and accuracy, showing on a minimum:
 - i) The exact location of the proposed Tower, together with guy wires, guy acres, if applicable;
 - ii) The maximum height of the proposed Tower;
 - iii) A detail of Tower type (monopole, guyed, free-standing, or other);
 - iv) The color or colors of the Tower;
 - v) The location, type, and intensity of any lighting on the Tower;
 - vi) The property boundaries (a copy of a property survey must also be provided);
 - vii) Proof of the landowner's consent if the applicant will not own the property (a copy of a lease agreement must also be provided if the applicant will not own the property);

- viii) The location of all structures on the property and all structures on any adjacent property within fifty (50) feet of the property lines, together with the distance of these structures to the Tower;
 - ix) Names and addresses of adjacent land owners;
 - x) The location, nature and extent of any proposed fencing, landscaping or screening;
 - xi) The location and nature of proposed utility easements and/or access roads, if applicable;
 - xii) Building elevations of accessory structures or immediately adjacent buildings.
- e) Before and after propagation studies prepared by a qualified radio frequency engineer demonstrating existing signal coverage contrasted with the proposed signal coverage resulting from the proposed Telecommunication Facility.
 - f) A search ring prepared by a qualified radio frequency engineer and overlaid on an appropriate background map demonstrating the area within which the Telecommunications Facility needs to be located in order to provide proper signal strength and coverage to the target area or cell. The applicant must be prepared to explain to the Board why it selected the proposed site, discuss the availability or lack of availability of a suitable site within the search ring, which would have allowed co-located antennas and to what the extent the applicant explored locating the Tower in a more intensive use district. Correspondence with other Telecommunication companies concerning co-location is part of this requirement.
 - g) The applicant must submit a copy of its policy regarding co-location of the proposed Tower with other potential applications. Such policy should allow co-location if new antennas and/or equipment do not or will not exceed structural loading requirements, interfere with Tower space use, or pose any technical or radio frequency interference with existing equipment.
 - h) A report prepared by a New York State licensed professional engineer, which in the case of a Tower describes its height

and design, including a cross section of the structure, demonstrates the Tower's compliance with applicable structural standards and describes the Tower's capacity, including the number and type of antennas it can accommodate. In the case of an antenna or antennas mounted on an existing structure, the report shall indicate the existing structures suitability to accept the Antenna and proposed method of affixing the Antenna to the structure. Complete details of all fixtures and couplings and the precise point of attachment shall be indicated.

- i) An agreement by the applicant in writing to remove the Telecommunication Facility if such Facility becomes technically obsolete or ceases to be used for its originally intended purpose for twelve (12) consecutive months.
2. Upon receipt of the application materials as set forth in §79-26160.07 above, the Zoning Board of Appeals shall refer the application to the Planning Board. The Planning Board shall review the site plan and recommend changes, if any, to the Zoning Board of Appeals. The Zoning Board of Appeals shall consider the application and approve or deny same in accordance with the procedures and standards set forth in this Local Law and in the Zoning Law.
3. The Zoning Board of Appeals shall determine the application for a Telecommunications Tower Special Use Permit in accordance with their requirements established for determining a Special Use Permit under the City's Zoning Law and under this Local Law. Any and all grants of a Special Use Permit for a Telecommunications Facility under this Local Law shall be non-assignable and non-transferable and shall not run with the land, notwithstanding anything in the General Zoning Laws of the City to the contrary.
4. The applicant, at the time of obtaining a Special Use Permit, must provide a financial security bond with the City as assignee in an amount fixed by the Zoning Board of Appeals, but not less than \$1,000,000. (See §79-26160.09 (1)(a)).
5. The City reserves the right upon review of the application to request reasonable, additional, visual, and aesthetic information it deems appropriate on a case by case basis and as it may pertain to a residential zone, historic district, agricultural use or other special situation.

The following criteria will be considered by the City prior to the approval/denial of a request for a Special Use Permit for a Telecommunications Facility. The criteria list that may be used as a basis to impose reasonable conditions upon the applicant.

1. **SITING PREFERENCES:** The City may express a preference that the proposed Telecommunications Facility be located in a higher intensity use district or on higher intensity use property. As a general guideline, the City's preference from most favorable to least favorable districts shall be as follows:
 - a) Property with existing structure suitable for co-location;
 - b) Municipal or government owned property;
 - c) General Industrial and Light Industrial;
 - d) Commercial; and
 - e) Residential.

2. **AESTHETICS:** Telecommunication Facilities shall be located and buffered to the maximum extent practicable and technologically feasible to help insure capability with surrounding land uses. In order to minimize any adverse aesthetic impact on neighboring residents to the extent possible, the Zoning Board of Appeals may impose conditions on the applicant, including the following:
 - a) Tower height, location and design are matters of primary public concern. The City may require a monopole or guyed Tower instead of a free-standing Tower.
 - b) The City may require reasonable landscaping consisting of trees or shrubs to screen the base of the Tower, and/or to screen the Tower to the extent possible from the adjacent property. Existing on site trees and vegetation shall be preserved to the maximum extent possible.
 - c) All Telecommunications Facilities shall be separated from residential dwellings, schools, houses of worship, places of public assembly, and designated historical sites and/or districts by the greater of 500 feet or five (5) times the height of the Facility. The Zoning Board of Appeals may modify this condition if the Facility is attached to an existing structure or for other satisfactory reasons supported by expert testimony.

- d) Towers shall be designed and sited so as to avoid whenever possible application of FAA lighting and painting requirements. The Towers shall not be artificially lighted except as required by the Federal Aviation Administration or the City. The Towers shall be of a non-reflective finish, color subject to City approval unless otherwise required by the FAA. Any lighting, which may be required by the FAA, shall not consist of strobe lights unless specifically mandated by FAA.
- e) All Permits shall include a fall zone surrounding any support, which fall zone must have a radius of at least equal to the height of such support Tower and any Antenna attached thereto. The entire fall zone may not include public roads, must be on private property, either owned or leased by the applicant, or for which the applicant has obtained an easement. It may not contain any structure other than those associated with the Telecommunication Facilities and may not be located within any set back area established by this Local Law. If the Facility is attached to an existing structure fall-zone requirements may be modified by the Zoning Board of Appeals.
- f) No Tower or device or Facility shall contain any signs or advertising. The City may, however, require appropriate signage indicating ownership of the facility and telephone number to call in case of emergency.
- g) Towers and auxiliary structures shall be surrounded by a fence or wall at least eight (8) feet in height of a design approved by the Board so as to make intrusion difficult. Barbed wire is not to be used in a residential area or on public property unless specifically permitted by the Board. There shall be no permanent climbing pegs within fifteen (15) feet of the ground on any Tower or facility.
- h) All other uses ancillary to the Telecommunications Facility and associated equipment are prohibited unless otherwise permitted in zone.
- i) The City may impose as a condition on the applicant that the Antennas be operated only at FCC designated frequencies on power levels and/or EPA technical exposure limits and that the applicant provide competent documentation to support the

maximum allowable frequencies, power levels, and exposure limits will not be exceeded.

§ 79-26160.09 TELECOMMUNICATIONS FACILITIES MAINTENANCE

1. All Telecommunications Facilities, both predating and otherwise, this Local Law shall fulfill the requirements of this section. The City Code Enforcement Officer and/or Building Inspector is empowered to enforce these regulations.
 - a) The sufficiency of the bond for removal shall be confirmed at least every five (5) years by an analysis of the cost of removal and property restoration performed by a licensed New York State professional engineer with the results to be communicated to the City. If the bond amount in force is insufficient to cover the cost of removal, it shall be immediately increased to cover such amount.
 - b) The Facility shall be inspected at least every two (2) years for structural integrity by a New York State licensed professional engineer, and a copy of the inspection report submitted to the City.
 - c) All Telecommunications Facilities shall be maintained in good order and repair and all such work shall comply with all applicable code requirements of any governmental body issuing such rules and/or regulations.
 - d) Any additional Antennas, reception or transmission devices or other similar or transmitting devices proposed for attachment to an existing facility shall require review in accordance with this Local Law. The intent of this requirement is to insure the structural integrity, visual aesthetic and land use compatibility of communication towers upon which additional Antennas, reception or transmission devices are to be installed.
 - e) No outside storage of vehicles, materials or waste shall be allowed except for limited periods when the facility is undergoing construction, repair, or maintenance.

§ 79-26160.10 EXEMPTIONS.

1. Towers and Antennas may be repaired and maintained without restriction.

- 2. Antennas used solely for residential household television and radio reception are exempt from the provisions of this section, provided they do not exceed thirty (30) feet in height.
- 3. Other Antennas or devices exempt under FCC rule or regulation.

§ 79-26160.11 VIOLATIONS/PENALTIES.

- 1. This Local Law is adopted pursuant to the zoning and planning powers granted to the City of the State of New York and other applicable law, rule, and regulation. In the event of any violation of this Local Law or any permit issued hereunder, the City may seek enforcement under any available applicable authority, or as provided in §79-28050.
- 2. Any applicant, upon receipt of a Special Use Permit for Telecommunication Facilities that does not substantially meet any of the requirements and/or conditions of that permit, shall have its permit revoked and the Telecommunications Facilities removed within ninety (90) days notification by the City of such violation.

§ 79-26160.12 MISCELLANEOUS.

- 1. In the event of any conflicts or inconsistencies between this Local Law and any other Local Law, Zoning Ordinance, Rule or Regulation, this Local Law is meant to regulate Telecommunication Facilities and is not generally applicable unless otherwise specifically referenced in this Local Law.
- 2. The term Special Use Permit as used in this Local Law shall be deemed to be a Telecommunication Facilities Special Use Permit.

**Part IV
Administration and Enforcement**

**ARTICLE XXVII
Exceptions and Modifications**

§ 79-27010 Intent.

Because each property is unique and possesses different characteristics, modifications will sometimes be allowed. These exceptions and modifications are granted on an individual basis if the landowner or use meets the requirements set forth in this article.

§ 79-27020 Exceptions to Yard Requirements.

- 1) Front Yard Exceptions - Except as otherwise provided, to protect front yards where special circumstances may arise, the maximum front yard for dwellings in any District shall not exceed the accepted minimum by more than fifteen (15) feet.
- 2) Rear Yard Exceptions for Through Lots - On a through lot where the rear lot line coincides with a street line, a front yard equivalent shall be provided. The rear yard depth requirements in the district regulations shall not apply on that portion of a through lot where the front yard equivalent is required.
- 3) Side Yard Exceptions for Corner Lots - On a corner lot where the rear lot line coincides with a side lot line of an adjoining lot, the required width of the exterior side yard shall be a minimum of twenty five (25) feet; the required width of the interior side yard shall be a minimum of five (5) feet.

§ 79-27030 Exceptions to Area Requirements.

The following are exceptions to area requirements in the City of Dunkirk

- 1) Any lot separately owned and recorded on the Tax Map of the City of Dunkirk at the time of enactment of this law which has a frontage of less than the prescribed number of feet permitted in an applicable district may be used as a building lot if it has sufficient area to permit the required setbacks within such district.

§ 79-27040 Exceptions to Height Limitations.

The following are exceptions to height restrictions in the City of Dunkirk:

- 1) Chimneys, flues, spires and belfries;
- 2) Flagpoles, radio or television antennas, masts or aerials - located on a building and extending not more than twenty (20) feet above the roof of such building;

- 3) Elevator or stair bulkheads - provided that such structures do not occupy more than ten percent (10%) of the roof area;
- 4) Solar energy systems not more than 1/2 story above the roof of such building.

ARTICLE XXVIII Administration

§ 79-28010 Intent.

The administrative procedures outlined in this Article are designed to assist the City in evaluating specific land uses and their applicability in the City of Dunkirk.

§ 79-28020 Administrative Procedure.

The site plan review and harborfront overlay review are designed to allow the authorizing agency to evaluate specific projects. The review includes

consideration for natural site conditions, compatibility with surrounding land uses and the proposed development's conformance with the overall comprehensive plan for the City. The review is intended to minimize potential adverse effects on the health, safety and welfare of local residents.

1) **Site Plan Review**

The City Planning Board, or other authorizing agency, is authorized to review and approve, approve with conditions or disapprove site plans prepared in accordance with such standards outlined in this Chapter.

- a) **Application** - Application for Site Plan Review shall be made to the Planning Board on a form provided by the City Building Department and shall be accompanied by a fee as set by the City Council.
- b) **Sketch Plan** - A sketch plan conference shall be held between staff and the applicant prior to the preparation and submission of a formal site plan to the authorizing agency. Preparing a sketch plan offers an opportunity for the applicant to determine the issues and satisfy staff that the site plan is in conformance with the comprehensive plan and Zoning Law. The conference also enables staff to review the basic site design concept, advise the applicant as to potential problems and concerns and to generally determine the specific information to be required on the site plan. The project's status under the State Environmental Quality Review Act will be determined at this time.

The applicant shall submit a preliminary sketch of the proposed development and an area map showing the location of the site and the general area. Applicants are encouraged to proceed through the sketch plan conference to avoid possible future delays. The preliminary sketch plan should include, but not be limited to, abutting land uses, circulation systems, all existing and proposed public or private right of ways and easements, residential areas and general phasing plans.

- c) **Preliminary Site Plan** - As required in this Chapter, an application for site plan approval shall be made, in writing, to the Chairperson of the Planning Board, or other authorizing agency, and shall be accompanied by a preliminary site plan as outlined in Article XVII - Site Plan Review. The plan shall

be reviewed by the authorizing agency that shall approve, approve with conditions or disapprove the preliminary site plan.

- d) **Public Hearing** - After reviewing the preliminary site plan and recommendations from other involved City or County agencies, the authorizing agency shall hold a public hearing. Notices of the public hearing shall be mailed to adjacent property owners within one hundred (100) feet from the property line. The public hearing shall be advertised at least once in the official paper or in a newspaper of general circulation at least five (5) days before the hearing.

- e) **Final Site Plan** - A final site plan shall substantially conform to the preliminary site plan that has been approved, incorporating any revisions or other features recommended by the staff or the authorizing agency. The final site plan shall conform to all requirements of Article XVII - Site Plan Review. The application for final site plan approval shall be made within six (6) months from the date of the preliminary approval. An extension may be granted if agreed to by both the applicant and Planning Board.

- f) **Planning Board Action** - Within sixty-two (62) days of receipt of the complete application for final site plan approval, the Planning Board, or other authorizing agency, shall render a decision of approval, conditional approval or disapproval. This time period may be extended by mutual consent of the applicant and the authorizing agency.
- i) **Approval** - Upon approval, the authorizing agency shall endorse its approval on a copy of the site plan and shall immediately file it with a written statement of approval with the City Clerk. A copy of the written statement of approval shall be mailed to the applicant.
- ii) **Conditional Approval** - The authorizing agency may conditionally approve the site plan. Upon adequate demonstration by the applicant that all conditions have been met, the authorizing agency shall endorse its approval on a copy of the site plan and shall immediately file it and a written statement of approval with the City Clerk. A copy of the written statement of approval shall be mailed to the applicant.
- iii) **Disapproval** - Upon disapproval of the site plan, the decision of the authorizing agency shall immediately be filed with the City Clerk and a copy mailed to the applicant
- g) **Reimbursable Costs** - Costs incurred by the authorizing agency for consultation fees or other extraordinary expense in connection with the review of a proposed site plan shall be charged to the applicant.

2) **H-1 Central Harborfront Overlay Review**

The City Council is authorized to review and approve, approve with conditions or disapprove site plans prepared in accordance with such standards outlined in this Chapter for projects proposed in the H-1 Overlay District.

The City Council shall follow the procedure outlined in Article XVII - Site Plan Review in reviewing projects proposed in the H-1 Central Harborfront Overlay District.

As part of the approval process, within forty-five (45) days of receipt of the complete application for preliminary site plan approval, staff shall refer the project to the Harbor Commission and Planning Board for review. The Harbor Commission shall make recommendations to the Planning Board, which shall make recommendations to the City Council within forty-five (45) days. This time period may be extended by mutual consent of the applicant, City Council, the Planning Board and the Harbor Commission. The Planning Board and Harbor Commission may recommend:

- a) **Approval**
- b) **Conditional Approval**
- c) **Disapproval**

To override the recommendation of the Planning Board, Council must obtain a majority vote of the entire Council.

3) **H-2 Harborfront Overlay Review**

The City Planning Board is authorized to review and approve, approve with conditions or disapprove site plans prepared in accordance with such standards outlined in this Chapter for projects proposed in the H-2 Overlay District.

The Planning Board shall follow the procedure outlined in Article XVII - Site Plan Review for site plan review in the H-2 Harborfront Overlay District.

As part of the approval process, within forty-five (45) days of receipt of the complete application for preliminary site plan approval, staff shall refer the project to the Harbor Commission for review. The Harbor Commission shall review the site plan and make recommendations on the project to the Planning Board within forty-five (45) days. This time period may be extended by mutual consent of the applicant, the Planning Board and the Harbor Commission. The Harbor Commission may recommend:

- a) **Approval**
 - b) **Conditional Approval**
 - c) **Disapproval**
- 4) **Use and Area Variance Review**

The City Zoning Board of Appeals is authorized to review and approve, approve with conditions or disapprove area and use variances prepared in accordance with the standards outlined in this Chapter.

- a) **Application** - Application for variances shall be made to the Zoning Board of Appeals on a form provided by the City Building Department and shall be accompanied by a fee as set by the City Council.

- b) **Staff Review** - A staff review shall be held between staff and the applicant prior to the preparation and submission of a formal application to the authorizing agency. Preliminary consultation offers an opportunity for the applicant to determine the issues and satisfy staff that the application is complete and in conformance with the comprehensive plan and Zoning Law. The conference also enables staff to review the basic variance requested, advise the applicant as to potential problems and concerns and to generally determine the specific information to be required for the application. The project's status under the State Environmental Quality Review Act will be determined at this time.

The applicant shall submit a preliminary application of the proposed development and an area map showing the location of the site and the general area. Applicants are encouraged to proceed through the preliminary review to avoid possible future delays. The preliminary application should include, but not be limited to, abutting land uses, circulation systems, all existing and proposed public or private right of ways and easements, residential areas and general phasing plans. A description of the variance sought shall also be outlined in the application.

- c) **Preliminary Review** - As required in this Chapter, an application for variance approval shall be made, in writing, to the Chairperson of the Zoning Board of Appeals through the Building Department and shall be accompanied by a preliminary application.
- d) **Public Hearing** - After reviewing the preliminary application and recommendations from other involved City or County agencies, the Zoning Board of Appeals shall hold a public

hearing. Notices of the public hearing shall be mailed to adjacent property owners within one hundred (100) feet from the property line. The public hearing shall be advertised at least once in the official paper or in a newspaper of general circulation at least five (5) days before the hearing.

- e) **Final Review** - A final review shall incorporate any revisions or other features recommended by the staff or the Zoning Board of Appeals. The application for final approval shall be made within six (6) months from the date of the preliminary review.
- f) **Zoning Board of Appeals Action** - Within sixty two (62) days of receipt of the complete application for final approval of the variance, the Zoning Board of Appeals, shall render a decision of approval, conditional approval or disapproval. This time period may be extended by mutual consent of the applicant and the authorizing agency.
- i) **Approval** - Upon approval, the Zoning Board of Appeals shall endorse its approval on a copy of the variance application and shall immediately file it with a written statement of approval with the City Clerk. A copy of the written statement of approval shall be mailed to the applicant.

- ii) **Conditional Approval** - The Zoning Board of Appeals may conditionally approve the variance. Upon adequate demonstration by the applicant that all conditions have been or shall be met, the Zoning Board of Appeals shall endorse its approval on a copy of the application and shall immediately file it and a written statement of approval with the City Clerk. A copy of the written statement of approval shall be mailed to the applicant.
- iii) **Disapproval** - Upon disapproval of the variance, the decision of the Zoning Board of Appeals shall immediately be filed with the City Clerk and a copy mailed to the applicant
- g) **Reimbursable Costs** - Costs incurred by the Zoning Board of Appeals for consultation fees or other extraordinary expense in connection with the review of a proposed variance shall be charged to the applicant.
- h) **Appeals** - Procedures relative to appeal for administrative review, variance or application for a variance shall include:
 - i) Any person or persons jointly or severely aggrieved by any decision of the Zoning Board of Appeals or any officer, department, board or bureau of the City may apply to the Supreme Court for relief by a proceeding under Article 78 of the CPLR. The process must be instituted within thirty (30) days after filing of a decision in the office of the City Clerk.
 - ii) Costs shall not be allowed against the Zoning Board of Appeals unless it shall appear to the Court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.
- 5) **Special Permit Review**

The City Zoning Board of Appeals is authorized to review and approve, approve with conditions or disapprove special permit

applications prepared in accordance with such standards outlined in this Chapter.

- a) Application - Application for Special Permits shall be made to the Zoning Board of Appeals on a form provided by the City Building Department and shall be accompanied by a fee as set by the City Council.
- b) Sketch Plan - A sketch plan conference shall be held between staff and the applicant prior to the preparation and submission of a formal special permit application to the authorizing agency. Preparing a sketch plan offers an opportunity for the applicant to determine the issues and satisfy staff that the special permit is in conformance with the comprehensive plan and Zoning Law. The conference also enables staff to review the basic site design concept, advise the applicant as to potential problems and concerns and to generally determine the specific information to be required on the site plan. The project's status under the State Environmental Quality Review Act will be determined at this time.

The applicant shall submit a preliminary sketch of the proposed development and an area map showing the location

of the site and the general area. Applicants are encouraged to proceed through the sketch plan conference to avoid possible future delays. The preliminary sketch plan should include, but not be limited to, abutting land uses, circulation systems, all existing and proposed public or private right of ways and easements, residential areas and general phasing plans.

- c) Preliminary Special Permit and Site Plan - As required in this Chapter, an application for special permits shall be made, in writing, to the Chairperson of the Zoning Board of Appeals and shall be accompanied by a preliminary site plan as outlined in Article XVIII - Special Permits. The permit application and plan shall be reviewed by the Zoning Board of Appeals who shall approve, approve with conditions or disapprove the preliminary special permit application.

As part of the approval process, within forty-five (45) days of receipt of the complete application for preliminary site plan approval, staff shall refer the project to the Planning Board for review. The Planning Board shall make recommendations to the Zoning Board of Appeals within forty-five (45) days. This time period may be extended by mutual consent of the applicant, the Planning Board and the Zoning Board of Appeals.

- d) Public Hearing - After reviewing the preliminary special permit application, site plan and recommendations from other involved City or County agencies, the Zoning Board of Appeals shall hold a public hearing. Notices of the public hearing shall be mailed to adjacent property owners within one hundred (100) feet from the property line. The public hearing shall be advertised at least once in the official paper or in a newspaper of general circulation at least five (5) days before the hearing.
- e) Final Special Permit and Site Plan - A final site plan for the special permit application shall substantially conform to the preliminary site plan that has been approved, incorporating any revisions or other features recommended by the staff or the Zoning Board of Appeals. The final site plan shall conform to all requirements of Article XVII - Site Plan Review. The application for final special permit approval shall be made within six (6) months from the date of the preliminary approval.

- f) Zoning Board of Appeals Action - Within sixty-two (62) days of receipt of the complete application for final special permit approval, the Zoning Board of Appeals shall render a decision of approval, conditional approval or disapproval. This time period may be extended by mutual consent of the applicant and the authorizing agency.
 - i) Approval - Upon approval, the Zoning Board of Appeals shall endorse its approval on a copy of the site plan and shall immediately file it with a written statement of approval with the City Clerk. A copy of the written statement of approval shall be mailed to the applicant.
 - ii) Conditional Approval - The Zoning Board of Appeals may conditionally approve the special permit. Upon adequate demonstration by the applicant that all conditions have been met, the Zoning Board of Appeals shall endorse its approval on a copy of the site plan and shall immediately file it and a written statement of approval with the City Clerk. A copy of the written statement of approval shall be mailed to the applicant.
 - iii) Disapproval - Upon disapproval of the special permit, the decision of the Zoning Board of Appeals shall immediately be filed with the City Clerk and a copy mailed to the applicant
- g) Reimbursable Costs - Costs incurred by the Zoning Board of Appeals for consultation fees or other extraordinary expense in connection with the review of a proposed site plan shall be charged to the applicant.

§ 79-28030 Planning Board.

- 1) Establishment - The City of Dunkirk, pursuant to its City Charter, has established the City of Dunkirk Planning Board. Efforts will be made to ensure qualified members of the Planning Board represent a variety of ethnic, professional and civic groups in the City of Dunkirk.

The City Council in the City of Dunkirk may adopt attendance and training requirements for members of the Planning Board. These requirements shall be adhered to by all members of the City of Dunkirk Planning Board.

- 2) Membership
 - a) The Planning Board shall consist of five members, no more than two of which shall hold any other public office or position in the City of Dunkirk, and none of which may be members of the City of Dunkirk Common Council.
 - b) The members of the Planning Board shall be appointed by the Mayor. Terms of membership shall be three (3) years.
 - c) Members of the Planning Board, appointed in accordance with the provisions of this Chapter as then in effect and in office when this Chapter takes effect shall continue to serve for the balance of the terms for which they were originally appointed and until their successors have been appointed and qualified.
- 3) Powers and Duties
 - a) The Planning Board shall have full power and authority to make such investigations, maps and reports and recommendations relating to the planning and development of the City or other matters as referred to said Board by either the Mayor or Common Council or governing body having the authority.
 - b) Matters referred to the Board by the City Council shall be placed on the agenda for consideration and action at the first meeting of the Board after such reference.
 - c) The Planning Board shall, upon approval by City Council, have the power and authority to employ experts and a staff and to pay for their services and such other expenses as may be necessary and proper, not exceeding in all, the appropriation, if any, that may be made for such Board.
 - d) The Planning Board shall have the power to act on any matter on which the Planning Board is required or authorized to act by the provisions of the City of Dunkirk City Charter, any ordinance of the City, by general law or any actions of the City Council.
- 4) Quorum - A majority of the members of the Board shall constitute a quorum for the transaction of business.

- 5) Meeting Schedule - Regular meetings of the Planning Board shall be held on the first Monday of the month or as scheduled by the Planning Board for its convenience. Meetings will be convened in the second floor conference room at City Hall.
- 6) Annual Meetings - The Planning Board shall hold its annual organization meeting at the regular meeting following the appointment of new Planning Board member by the City Council. At the organization meeting, a chairperson and a vice-chairperson shall be elected by a majority of the members present. A recording secretary shall also be appointed at this meeting.
- 7) Notice - Notices of the meetings and agendas shall be mailed to all members and postmarked at least 48 hours (excluding Saturdays, Sundays and holidays) prior to the meeting.
- 8) Duties of the Chairperson
 - a) At all special meetings, only such business as shall have been specified in the call for such special meetings shall be considered. No official business shall be conducted at special meetings in the absence of a quorum.
 - b) The chairperson shall preside at all meetings of the Board and shall have a vote upon all questions brought before the Board.
 - c) The chairperson shall sign all documents and correspondence of the Board.
 - d) No member may serve more than two (2) consecutive terms as chairperson.
- 9) Duties of the Vice chairperson
 - a) In the event of the absence or illness of the chairperson, the vice-chairperson shall preside and shall exercise all the authority vested in the chairperson. In the event of the absence of both chairperson and vice chairperson at the regular or special meeting, the secretary of the Board shall call the meeting to order, and the Board shall elect a chairperson of the Board pro tem.

- b) The vice-chairperson shall succeed the chairperson if the office is vacated before the term is completed. The vice-chairperson shall serve the un-expired term of the vacated office. A new vice chairperson shall be elected at the next regular meeting.
- 10) Duties of the Recording Secretary
- a) The secretary shall be responsible for keeping minutes of all proceedings of the Board and shall see to the proper and correct filing of all books, papers and recommendations placed in their care. The secretary shall relay to the City Council, and all actions of the Planning Board, as required by the Zoning Law, along with the reasons for such action as expressed by the members of the Planning Board.
 - b) The secretary shall be responsible for calling special meetings of the Board upon receiving a request from the chairperson or a written request by a majority of the Board to call a special meeting. Special meetings shall be called by giving a written notice of said meeting to each Board Member; the purpose of the meeting shall be outlined in the written notice. Said notice shall be mailed to the members of the Board and be postmarked at least 48 hours, excluding Saturdays, Sundays and holidays, prior to the time of the meeting. Special meeting of the Board, as ordered by the City Council, shall be the only exception to this ruling.
- 11) Duties of the Director of Development
- a) The Director of Development shall handle funds allocated to the Board in accordance with its directions, the law and the City regulations.
 - b) The Director of Development shall advise and guide the Board in its operation and shall act as its agent in performing the planning function.
- 12) Rules of Order
- a) Roberts Rules of Order shall be the parliamentary guide for all meetings of the Board. Said rules of order shall consist of roll

call, public participation (discretion of the chairperson at the onset of the meeting), approval of minutes, communications, old business, new business, report of Director of Development, report of committees or assigned delegates and miscellaneous matters.

- b) Any member of the Board shall be allowed to call an aye or nay vote. Any member of the Planning Board who believes they have a conflict of interest on any matter on the Planning Board agenda shall voluntarily excuse themselves from discussion and voting on the matter.
 - c) All resolutions brought before the Board shall be submitted to the secretary, in writing, and all communications to the Board or its officers shall be filed with the secretary.
 - d) No committees or designated representatives of the Board shall exercise any authority except under the specific direction of the Board.
- 13) Miscellaneous
- a) No rule of the Board shall be suspended except by a majority of the members present.
 - b) Any member of the City of Dunkirk Planning Board may, at any reasonable time, examine the records of the secretary of the Board.
 - c) Amendments to these rules or laws may be made at any regular meeting by the unanimous consent of the entire Board or by a majority vote of the members present and voting at a regular meeting.

§ 79-28040 Zoning Board of Appeals.

- 1) Establishment - The City of Dunkirk Zoning Board of Appeals is established
- 2) Membership
 - a) The Zoning Board of Appeals shall consist of five (5) members. The Mayor shall appoint the members of the Zoning Board of Appeals.

- b) No person who is a member of the Common Council in the City of Dunkirk and no member of the Planning Board of the City of Dunkirk shall be eligible for appointment to the Zoning Board of Appeals.
 - c) Members of the Zoning Board of Appeals, who have been appointed in accordance with the provisions of this Chapter as then in effect and in office when this Chapter takes effect shall continue to serve for the balance of the terms for which they were originally appointed and until their successors have been appointed and qualified.
 - d) Vacancies shall be filled by the Mayor. If vacancies shall occur other than by the expiration of a term, they shall be filled by appointment for the unexpired term.
- 3) Powers and Duties
- a) Interpretation - Upon appeal from a decision by an administrative official, the Zoning Board of Appeals shall decide any question involving interpretation of any provisions of this local law. Such appeal shall be initiated within sixty (60) days of the adverse decision.
 - b) Special Permits - The Zoning Board of Appeals shall hear and decide all applications for Special Permits in the City of Dunkirk. The special permit process shall conform to the Site Plan review process outlined in Article XVII -Site Plan Review.
 - c) Variances - On an appeal from an order, requirement, decision or determination of any administrative official charged with the enforcement of this local law, where it is alleged by the appellant that there are practical difficulties or unnecessary hardships in the way of carrying out the strict application of any provision of this local law, the Zoning Board of Appeals may grant a variance in the strict application of such provision, in accordance with the following:
 - i) Use Variance - Before the Zoning Board of Appeals may grant a use variance, unnecessary hardship must be established based upon all of the following criteria:
 - The applicant can not realize a reasonable return, provided that lack of return is substantial

as demonstrated by competent financial evidence;

- The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- The requested use variance, if granted, will not alter the essential character of the neighborhood and;
- The alleged hardship has not been self-created.

ii) Area Variance - Area variances may be considered where setback, frontage, lot size, density or yard requirements of this local law cannot be reasonably met. The Zoning Board of Appeals may grant an area variance on the ground of practical difficulty, such practical difficulty to be determined by consideration of the following:

- Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
- Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
- Whether the requested area variance is substantial;
- Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district and;
- Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision to the City of Dunkirk Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.

- iii) Conditions - No variance under the above provisions shall be authorized by the Zoning Board of Appeals unless it finds that such variance:
- Will be in harmony with the general purposes and intent of this law, taking into account the location and size of use, the nature and intensity of the operations involved in or conducted in connection with it and the size of the site in respect to streets giving access;
 - Will not tend to depreciate the value of adjacent property, taking into account the possibility of screening or other protective measures to protect adjacent properties;
 - Will not create a hazard to health, safety or general welfare;
 - Will not alter the essential character of or be detrimental to the neighborhood;
 - Is the minimum necessary to afford relief.
- 4) Quorum - A majority of the members of the Zoning Board of Appeals shall constitute a quorum.
- 5) Meeting Schedule - The Zoning Board of Appeals shall meet on the fourth Tuesday of each month. All meetings of the Zoning Board of Appeals shall be held at the call of the chairperson and at such other times as the Zoning Board of Appeals may determine. All meetings of the Zoning Board of Appeals shall be open to the public.
- 6) Chairperson - The Mayor shall choose the Chairperson of the Zoning Board of Appeals.
- 7) Minutes
- a) The Zoning Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question or, if absent or failing to vote, indicating such fact.
 - b) The Zoning Board of Appeals shall also keep records of the examination and other official actions. Every rule, regulation, every amendment or repeal and every order, requirement,

decision or determination of the Zoning Board of Appeals shall immediately be filed in the office of the Housing, Building and Zoning Officer and shall become public record.

- 8) Interpretation of Permitted Uses - When a use is not specifically listed as a "Permitted Use", "Permitted Use with Site Plan Review" or "Permitted Use with Special Permit" within any zoning district, it shall be assumed to be a prohibited use unless it is determined, in a written decision by the Zoning Board of Appeals, that said use is similar to permitted uses, meets the intent specified in the zoning ordinance and is not inherently a nuisance, menace or danger to the health, safety or welfare of the residents of the municipality.

§ 79-28050 Penalties for Violation.

- 1) Complaints of Violations - Whenever a violation of this local law occurs, any person may file a complaint, in writing. All such complaints must be filed with the Building Inspector who shall properly record such complaint and immediately investigate and report to the City Council.
- 2) Penalties for Violation - Any person who violates any provision of this local law, or any regulation adopted, is guilty of an offence punishable by a fine not exceeding one hundred (\$100) dollars for each violation. Each daily continued violation shall constitute a separate violation.

ARTICLE XXIX Amendments

§ 79-29010 Intent.

The regulations, restrictions and boundaries established by this Chapter may, from time to time, be amended, supplemented, changed or repealed to meet the growing and changing needs of the City of Dunkirk. This article outlines the procedure to make these amendments.

§ 79-29020 Authorization.

The City Council may, subject to the provisions and restrictions contained in this Article, from time to time on its own motion, on petition or on recommendation of the Planning Board, by amendment, supplement, repeal or change the regulations and provisions of this law. All such changes to this law shall be made in accordance with applicable law. Any proposed change shall be submitted to the Planning Board for report and recommendation prior to any action by the City Council. If the Planning Board recommends against the enactment of any proposed change, it shall become effective only by a majority vote of the City Council.

§ 79-29030 Submissions.

In the case of a proposed amendment, the Planning Board or City Council shall require the petitioner to submit a development plan showing the extent, location and character of proposed structures and uses. The Planning Board or City Council may require that the development plan be modified to meet municipal or public concerns. No building permit or zoning permit shall be issued for any property within the area described by said amendment, except in accordance with the approved development plan including any conditions and limitations imposed by the Planning Board or City Council.

§ 79-29040 Procedure.

- 1) Filing of petition - A petition to amend, change or supplement the text of this local law or any zoning district, as designated on the zoning map shall be filed with the Clerk on forms obtained from the Building Department and transmitted to City Council. The project's status under the State Environmental Quality Review Act shall be determined at this time.
- 2) Referral to Planning Board - Each proposed amendment, except those initiated by the City Planning Board, shall be referred to the City Planning Board for an advisory report prior to the public hearing held by the City Council.
- 3) Public Hearing - The City Council shall hold a public hearing for the proposed amendment. Notices of the public hearing shall be mailed to adjacent property owners within one hundred (100) feet of the property line. The hearing shall be advertised at least once in the official paper or in a newspaper of general circulation at least five (5) days before the hearing.
- 4) The City Council shall act on the rezoning application within 62 days of the Planning Board's recommendation. Approval of the rezoning shall be noted on the Zoning Map of the City of Dunkirk.

ARTICLE XXX
Definitions

§ 79-30010 Usage.

Except where specifically defined, all words used in this Chapter shall carry their customary meanings. The following rules shall apply to the text of this Chapter:

- 1) words in the present tense include the future;
- 2) words in the singular include the plural and the plural the singular;
- 3) the word "shall" is intended to be mandatory;
- 4) the word "lot" shall include the word "plot" or "parcel";
- 5) the word "person" shall include an individual, firm or corporation;
- 6) the words "used" or "occupied", as applied to any land or building, shall be construed to include the words "intended, arranged or designed to be used or occupied";
- 7) a building or structure includes any part;
- 8) the word "and" indicates that all connected items, conditions, provisions or events shall apply;
- 9) the word "or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination;
- 10) The words "either/or" indicates that the connected items, conditions, provisions or events may apply singly but not in any combination.

Any question as to the precise meaning of any word used in this law may be appealed to the Zoning Board of Appeals and clarified under their powers of interpretation.

§ 79-30020 Definitions.

For the purpose of this Chapter, certain terms or words used shall be interpreted or defined as follows:

Accessory Use - A use customarily incidental and subordinate to the main use or building and located on the same lot. In no case shall such accessory use dominate, in area, extent or purpose, the principal lawful use or building.

Accessory Apartment - An apartment in a single family dwelling that is clearly subordinate to the primary use of the dwelling as a residence for a single family.

Accessory Building - A subordinate building located on the same lot with the main building, occupied by or devoted to an accessory use. Where an accessory building is attached to the main building in a substantial manner, as by a wall or roof, such accessory building shall be considered part of the main building.

Accessory Structure - A non-habitable accessory facility or structure serving or being used in conjunction with communications Tower and/or similar facility or antenna, and located on the same lot as the communications Tower or antenna. Examples of such structures include utility or transmission equipment, regeneration buildings, (underground transmission lines) storage sheds or cabinets. **[Added 7-7-1998 as L.L. No. 1-1998]**

Adult Book/Video/Media Store - An establishment having as its stock-in-trade, books, magazines, videos and other periodicals which are distinguished or relating to specified sexual activities or specified anatomical areas, as defined below, or an establishment with a segment or section devoted to the sale or display of such material.

Adult Entertainment Facilities - Means and refers to "adult news-racks", "adult book stores" and "adult motion picture theaters".

Adult Motion Picture/Video Theater - An enclosed building used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined below, for observation by persons within the use.

Specified Sexual Activities -

- (1) Human genitals in a state of sexual stimulation or arousal;
- (2) Acts of human masturbation, sexual intercourse or sodomy;

- (3) Fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts.

Specified Anatomical Areas -

- (1) Less than completely and opaquely covered human genitals, pubic region, buttocks and female breast below a point immediately above the areola;
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Adult Newsrack - Any coin operated machine or device which dispenses material which is distinguished or characterized by emphasis depicting, describing or relating to the "specified sexual activities" or "specified anatomical areas" defined in this Article.

Alley - A public way having a right-of-way width of twenty (20) feet or less.

Ancillary Use - Uses clearly subordinate to the primary or principal use on a lot.

Antenna - A system of electrical conductors that transmit or receive radio frequency signals. Such signals shall include but not be limited to radio, television, cellular, paging, personal communication services (PSC), and microwave communications. **[Added 7-1-1998 as L.L. No. 1-1998]**

Co-Located Antennas - Telecommunications facilities which utilize existing Towers, buildings, or other structures for placement of antennas and do not require construction of a new Tower. **[Added 7-1-1998 as L.L. No. 1-1998]**

Area, Land - When referring to the required area per dwelling unit, net land area, the area exclusive of street and other public open space.

Area, Total Floor - The area of all floors of a building, including finished attics, finished basements and covered porches.

Autobody Repair Station - A business premises designed and used for the repair or refinishing of motor vehicles including painting and body work.

Automatic Coin Laundry and/or Dry Cleaner - A business premises equipped with individual clothes washing and/or cleaning machines for the repair, brake work, muffler replacement, tire repair or similar activities.

Automobile or Trailer Sales Area - An open area, other than a street or public place, used for the display, barter, purchase, sale or rental of new or used motor vehicles or trailers and where no repair work is done, except minor incidental repair of vehicles to be displayed, sold or rented on the premises.

Automobile Service Station - See Automobile Repair Station.

Automobile Wash - An establishment for the washing of motor vehicles as a principal use.

Automobile Wrecking - The dismantling or wrecking of used automobiles or the storage, sale or dumping of dismantled, partially dismantled or wrecked vehicles or their parts.

Base Flood - The flood having a one percent chance of being equalled or exceeded in any given area (also called the 100 year flood). (Applicable to Flood Damage Prevention Regulations Only)

Basement - That space of a building that is partly below grade which has more than half of its height, measured from floor to ceiling, above the average established curb level or finished grade of the ground adjoining the building.

Bed and Breakfast - A house, or portion, where short-term lodging rooms and breakfast are provided. The operator of the bed and breakfast shall live on the premises or in adjacent premises.

Billboard or Signboard - Any structure, or portion, situated on private premises, on which lettered, figured or pictorial matter is displayed for advertising purposes other than the name and occupation of the user of such premises or the nature of the business conducted on the such premises or the products primarily sold or manufactured, or any such structure or portion, the area of which, devoted to advertising purposes, exceeds one hundred (100) square feet.

Boarding or Rooming House - A dwelling, other than a hotel or lodging house, where meals or housing accommodations for five (5) or more persons are provided. This definition shall not be construed to affect local and state licensing provisions.

Building - Any structure having a roof supported by columns or walls. When such a structure is divided into separate parts by one (1) or more un-pierced walls extending from the ground up, each such part shall be deemed to be a separate building, except as regards requirements for side

yards as before provided. Garages attached with an un-pierced wall shall not be deemed as a separate building.

Building, Alteration Of - Any change in supporting members of a building, except such changes as may be required for its safety, any addition to a building, any change in use from one district classification to another, or removal of a building from one location to another.

Building, Floor Area - The sum of the gross horizontal area of the several floors, including the basement of a building and its accessory buildings on the same lot and including the area of roofed porches and roofed terraces. All dimensions shall be measured between exterior faces of walls.

Building, Height Of - The vertical distance measured from the mean of the highest and lowest exposed part of the foundation to the highest point of the roof.

Building, Principal - A building including covered porches, in which is conducted the principal use of the lot on which it is situated. In any residence district, any dwelling shall be deemed the principal building on the lot on which the same is situated.

Bulk Storage - The storage of chemicals, petroleum products and other materials in containers for subsequent resale to distributors or retail dealers or outlets.

Camp Trailer - A vehicle designed to be towed by an automobile that includes, but is not limited to, sleeping and eating facilities.

Cellar - That space of a building that is partly or entirely below grade, which has more than half of its height, measured from floor to ceiling, below the average established curb level or finished grade of the ground adjoining the building.

Cemetery - Land used or intended to be used for the disposition and memorialization of dead human beings and dedicated for cemetery purposes, including columbarium, crematories, mausoleums and mortuaries when operated with, and within, the boundary of such cemetery.

Center Line of Street or Road - A line midway between and parallel to two (2) street or property lines or as otherwise defined by the Planning Board.

Church - See Religious Institution.

Clinic, Dental - A structure designed for the practice of dentistry, in which nonresident patients are treated.

Clinic, Medical - A structure designed for the practice of medicine, in which nonresident patients are treated.

Club, Private - A social organization whose premises are restricted to its members and their guests.

Clubhouse - A building to house a club or social organization not conducted for profit and which is not adjunct to, or operated by, or in connection with, the public tavern, cafe or other public place.

Cluster Development - A form of development for residential development that permits a reduction in lot area requirements, provided there is no increase in the number of lots permitted under a conventional development and the resultant land area is devoted to open space.

Commercial Use - Activity carried out for monetary gain.

Convenience Store - A small shop or store (less than 5,000 square feet) offering for sale pre-packaged food products, household items and other goods commonly associated with the same; such use shall not include gas islands or service.

Court - An unoccupied open space, other than a yard. An outer "court" is one that extends to the street or to the front or rear yard. An inner "court" is any other "court".

Development - Any person made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, minimizing, dredging, filling, grading, paving, excavation or drilling operations. (Applicable to Flood Damage Prevention Regulations Only)

Drive-In Business - Includes drive-in outdoor theaters, refreshment stands, banks and the like where patrons enter the premises and are served or entertained in automobiles. Deposit and pick-up services shall not be considered drive-in businesses as defined.

Dwelling - A building, or portion, designed or used exclusively as the residence or sleeping place of one (1) or more persons. The word dwelling shall not include boarding houses or rooming houses, tourist homes, motels, hotels or other structures designed for transient residence.

Dwelling Unit - One (1) or more rooms designed for occupancy for cooking, living and sleeping purposes.

Dwelling, Single Family - A building containing one (1) dwelling unit and designed or used exclusively for occupancy by one (1) family.

Dwelling, Two Family - A building containing two (2) dwelling units and designed or used exclusively for occupancy by two (2) families living independently of each other or two (2) one family dwellings having a party wall in common.

Dwelling, Multi Family - A building, or portion, containing three (3) or more dwelling units and designed or used for occupancy by three (3) or more families living independently of each other.

Dwelling, Single Family Attached - A building containing dwelling units, each of which has primary ground floor access to the outside and which are attached to each other by party walls without openings. The term is intended primarily for such dwelling types as townhouse, row or group homes.

Dwelling, Single Family Detached - A dwelling having no party wall in common with another building.

Dwelling, Semi-Detached - A detached building containing two (2) dwelling units separated by a party wall, each having one (1) side yard.

Educational Institution - An accredited college or university giving general academic instruction. Included within this term are areas or structures used for administration, housing of students and faculty, dining halls, social or athletic activities, when located on the institution's land that is not detached from land where classroom facilities are maintained.

Essential Facilities - The operation or maintenance by municipal agencies or public utilities of telephone dial equipment centers, electrical or gas substations, water treatment, storage and transmission facilities, pumping stations or similar facilities.

Exotic Cabaret - An establishment which features topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators or similar entertainers and where the sale of beer or intoxicating liquor for consumption on the premises is permitted.

Factory - A building or group of buildings, usually with equipment, where goods are manufactured.

Fall Down Zone - The radius around a Tower within which all portions of the Tower and antennas would fall in the event of a structural failure of the Tower. [Added 7-1-1998 as L.L. No. 1-1998]

Family - One (1) or more persons living together in one (1) dwelling unit and maintaining a common household, including domestic servants and gratuitous guests, together with boarders, roomers or lodgers not in excess of four (4) unrelated persons occupying a dwelling unit and living together as a single housekeeping unit.

Farm - Any parcel of land containing at least five (5) acres which is used in the raising of agricultural products, livestock, poultry and dairy products. It includes necessary farm structures within the prescribed limits and the storage of equipment used. It excludes fur farms, commercial stables and dog kennels.

Flood or Flooding - A general and temporary condition of partial or complete inundation of normally dry land areas from:

- 1) the overflow of floodwater;
- 2) the unusual and rapid accumulation or runoff of surface waters from any source;
- 3) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which result in flooding as defined in this definition. (Applicable to Flood Damage Prevention Regulations Only).

Flood Insurance Rate Map - The official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated the areas of special flood hazards, the floodway and the risk premium zones applicable to the community. (Applicable to Flood Damage Prevention Regulations Only)

Floodplain or Flood - Prone Area - Any land area susceptible to being inundated by water from any source. (Applicable to Flood Damage Prevention Regulations Only)

Floor Area - See Area, Total Floor.

Floor Area Ratio - The floor area of a building divided by the area of the lot which it occupies.

Fraternity or Sorority House - A dwelling maintained exclusively for members of the fraternity or sorority enrolled in, or employed by, an academic college or university.

Garage, Private - A detached accessory building or portion of a main building, used by the occupants of the premises, used exclusively for the parking or temporary storage of motor vehicles.

Garage, Public - A structure, or portion, other than a private garage, used for the parking or temporary storage of vehicles or trailers.

Gas Station - Any premises where gasoline and other petroleum products are sold. This use will also include premises where light maintenance activities such as engine tune ups, lubrication, minor repairs or carburettor cleaning are conducted.

Grade, Established - The elevation of the center line of the streets as officially established by the Director of Public Works.

Grade, Finished - The completed surfaces of lawns, walks and roads brought to grades as shown on official plans or designs.

Gross Leasable Area - The total floor area for which the tenant pays rent and which is designed for the tenant's occupancy and exclusive use.

Home Occupation - An occupation for gain or support conducted only by members of a family residing in the premises and conducted entirely within the dwelling provided that no article is sold or offered for sale, except as such may be produced by members of the immediate family on the premises. Customary home occupation shall not be construed to include those which require the presence of the customer on the premises for the performance of the occupation, or those which require the presence in the home of noxious machinery or equipment normally associated with commercial or industrial activities. Home occupations may include, but not be limited to, the office of a resident member of a learned profession, real estate, insurance sales, offices of brokers, musicians, dressmakers, hair dressers and tailors.

Hospital - An establishment for temporary occupation by the sick or injured for the purpose of medical diagnosis and treatment, including sanatorium and shall be limited to the treatment or other care of humans.

Hospital, Animal or Veterinary Clinic - An establishment for temporary occupation by sick or injured animals for the purpose of medical diagnosis and treatment and shall exclude the treatment or other care of humans.

Hotel - A dwelling containing twelve (12) or more sleeping rooms in which lodging is provided and offered to the public for compensation. This definition shall not be construed to affect local or state licensing provisions.

Industry - Includes the entire range of economic activity, and, as applied to specifics, i.e., manufacturing, wholesale, retail, services, etc., shall have the meaning set forth in the Standard Industrial Classification Manual, published by the Executive Office of the President, Bureau of Management and Budget - 1988.

Junkyard - The outdoor storage or deposit of any of the following:

- 1) Two or more junk vehicles;
- 2) Two or more abandoned mobile homes or recreational camping vehicles;
- 3) Two or more abandoned all-terrain vehicles or snowmobiles (as defined in the New York State Vehicle and Traffic Law);
- 4) Five or more inoperable appliances including, but not limited to, lawn and garden machines, washers, dryers, dishwashers, stoves, refrigerators, freezers and televisions,
- 5) Five and more inoperable pieces of equipment;
- 6) Collection and storage of any second-hand or used material which, taken together, equal in bulk volume of 2000 cubic feet or more;
- 7) Any combination of the above that totals five items.

This definition shall not be construed to include the on-premise storage and maintenance of motor vehicles, machinery and equipment used in the business of farming, logging or contracting. This definition shall not be construed to include the indoor parking and storage of motor vehicles in connection with a New York State licensed new and/or used car business or a bona fide motor vehicle repair business and the parking of no more than ten vehicles in the process of waiting for repairs.

Junk Storage Area - The area of any parcel of land intended to be used for the placement or storage of junk.

Junk Vehicle - Any motor vehicle, whether automobile, bus, trailer, truck, tractor, motor home, motorcycle, mini-bike or snowmobile, or any other device originally intended for travel on the public highways, which meets any of the following conditions:

- 1) Its registration has expired and;
- 2) It is either abandoned, wrecked, stored, discarded, dismantled or partly dismantled or;
- 3) It is not in any condition for legal use upon the public highway.

With respect to any motor vehicle not required to be licensed or motor vehicle not usually used on public highways, the fact that such motor vehicle has remained unused for more than six months and is not in condition to be removed under its own power shall be presumptive evidence that such motor vehicle is a junk vehicle.

Kenel - Any place in or at which four (4) or more dogs are kept for the purpose of sale, or in connection with boarding care or breeding, for which any fee is charged.

Lodging House - A dwelling, other than a hotel, where housing accommodations for five (5) or more persons are provided for hire for less than a week at one (1) time. This definition shall not be construed to affect local or state licensing provisions.

Lowest Floor - The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistance enclosure, useable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Article. (Applicable to Flood Damage Prevention Regulations Only)

Lot - A designated parcel or tract of land established by plat, subdivision or as otherwise permitted by law, to be used, developed or built upon as a unit.

Corner Lot - A parcel of land at the junction of and fronting on two or more intersecting streets.

Interior Lot - A lot other than a corner lot.

Through Lot - An interior lot having frontage on two parallel or approximately parallel streets.

Lot Depth - The mean horizontal distance between the front and rear lot lines.

Lot Frontage - The length of the front lot line measured at the road line.

Lot Frontage On Circular Roads - The length of the line measured by a line 15 feet back from and parallel to the chord of the lot frontage; the chord of the lot frontage is the straight line joining the two (2) points where the side lot lines intersect the front lot line.

Lot Line - A line of record bounding a lot which divides one lot from another lot or from a public or private road or any other public space.

Lot Of Record - A lot for which a valid conveyance has been recorded in the Office of the County Clerk prior to the effective date of the City of Dunkirk Subdivision Law of the City of Dunkirk City Code, or is either part of a subdivision plat approved by the Planning Board and filed in the County Clerk's office, or was exempt from the City of Dunkirk Subdivision Regulations at the time of recording with the County Clerk.

Lot Area - The total area within the lot lines of a lot, excluding any road rights of way.

Manufactured Home - A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For the purpose of the City's Flood Damage Prevention Regulations, the term "manufactured home" also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than one hundred eighty (180) consecutive days. (Applicable to Flood Damage Prevention Regulations Only)

Marina - A commercial facility for the storing, servicing, fuelling, berthing and/or securing of pleasure vessels.

Maximum Building Coverage - The maximum percentage of a lot to be covered by buildings.

Maximum Lot Coverage - The maximum percentage of a lot to be covered by buildings, structures, accessory uses and impervious materials.

Mean Sea Level - For the purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) to which base flood

elevations on the flood insurance rate are referenced. (Applicable to Flood Damage Prevention Regulations Only)

Medical Offices - Offices and related spaces of a single business establishment for use as professional services as provided by medical practitioners.

Metes and Bounds - A method of describing the boundaries of land by directions and distances from a known point of reference.

Mobile Home - A structure, transportable in one or more sections, which is at least 8 feet in width and 32 feet in length, which is built on a permanent chassis and designed to be used as a dwelling unit, with or without a permanent foundation when connected to the required utilities. A mobile home shall be construed to remain a mobile home, subject to all regulations applying, whether or not wheels, axles, hitch or other appurtenances of mobility are removed and regardless of the nature of the foundation provided. This definition shall not be construed to include factory manufactured homes known as "modular homes" bearing an insignia issued by the State Fire Prevention and Building Code Council as required in 9 NYCRR 1212.

Mobile Home Park - Land on which are located, or which is maintained or used by two or more mobile homes.

Mobile Home Site - An area of land in a mobile home park intended for the exclusive occupancy of a single mobile home.

Motel or Motor Court - Shall mean a public inn containing not less than eight (8) rental units with provisions for, but not limited to:

- Automobile parking space to accommodate not less than one (1) car per unit and;
- Separate toilet facilities and hot and cold running water for each rental unit

Motor Freight Terminal - Any premises used by a motor freight company regulated by the Public Utility Commission of New York and/or the Interstate Commerce Commission as a carrier of goods, which is the origin and/or destination point of goods being transported for the purpose of storing, transferring, loading and unloading such goods.

Motor Vehicle Service Station - Any area of land, including structures, that is used for the sale of gasoline or any other motor vehicle fuel and oil and other lubricating substances, including any sale of motor vehicle

accessories and which may or may not include facilities for lubricating, washing or other wise servicing motor vehicles, but not including the painting, body and fender work, or the dismantling or replacing of engines.

Nonconforming - A lot of record, structure or use of land which lawfully existed prior to the enactment of this Chapter or conformed to the regulations of the district in which it was located prior to the amendment of this Chapter or which does not conform to the regulations of the district in which it is located following the enactment or amendment of this Chapter.

Nursery School - A school designed to provide daytime care or instruction for three (3) or more children from two (2) to five (5) years of age inclusive and operative on regular basis.

Nursing or Convalescent Home - An establishment which provides full time convalescent or chronic care or both for three or more individuals who are not related by blood or marriage to the operator and who, by reason of chronic illness or infirmity, are unable to care for themselves. No care for the acutely ill, or surgical or obstetrical services, shall be provided in such a home. A hospital or sanatorium shall not be construed to be included in this definition.

Occupancy - The utilization of a building, structure or land.

Occupancy, Seasonal - Occupancy for a period not exceeding four (4) months.

Office, Accessory - Offices and related spaces of a single business establishment as an accessory use of a dwelling or mobile home for use as professional services as provided by medical practitioners, attorneys, architects, engineers and similar professions.

One Hundred Year Flood or 100-Year Flood - A flood which has one percent annual probability of being equalled or exceeded. The 100 year flood is identical to the "base flood" which will be the term used throughout this Chapter.

Open Space - An unoccupied space open to the sky, required by the terms of this law.

Parking Area, Private - An unroofed, off-street area used as a private garage.

Parking Area, Public - An unroofed, off-street area used for the temporary storage of self-propelled vehicles and available for public use, whether free, for compensation or as an accommodation for clients or customers.

Paved - Use of blacktop, asphalt, concrete or other similar substance to create a smooth surface, including bituminous penetration, but not the use of dirt, slag or crushed stone.

Personal Service Establishments - Establishments engaged in providing services involving the care of the person or their apparel, such as laundries, dry cleaning establishments, photographic studios, beauty and barber shops, but not including commercial or industrial laundries.

Plat - A map of a subdivided tract of land showing the boundaries and location of individual properties and roads.

Planned Unit Development - A development of land that is under unified control and is planned and developed as a whole in a single development operation or programmed series of development stages. The development may include streets, circulation ways, utilities, buildings, open spaces and other site features and improvements.

Private Club - See Club, Private.

Public and Semi-Public Facility - Any one or more of the following uses including grounds and accessory buildings necessary for their use: playgrounds and recreational areas, public cemeteries, schools, public libraries, fire, civic buildings, public meeting halls and community centers.

Quarry, Sand Pit, Gravel Pit, Topsoil Stripping - A lot or land, or part, used for the purpose of extracting stone, sand, gravel or topsoil for sale as an industrial operation, and exclusive of the process of grading preparatory to the construction of a building or highway construction.

Religious Institution - A church, synagogue or temple and minor accessory uses, but not including parish houses.

Road - See Street.

Rooming House - See Boarding or Rooming House.

Sanatorium - A private hospital, whether or not such a facility is operated for profit.

Satellite Television Receiving Station - An accessory structure capable of receiving or sending, for the sole benefit of the principal user, radio or television signals from a transmitter/receiver, or transmitter relay located in planetary orbit.

School - Any place of instruction in any branch of knowledge.

School, Elementary - Any school having regular sessions with regularly employed instructors who teach those subjects that are fundamental and essential in general education, under the supervision of the State of New York or a lawfully constituted ecclesiastical governing body, or a private corporation meeting the requirements of the state.

School, Secondary - Same as elementary school, except education provided.

School, Vocational - Any schools having regular sessions with regularly employed instructors who, as a principal activity, provide training in a trade or vocation and teach those subjects that are fundamental and essential in elementary or secondary education, under the supervision of the State of New York or a lawfully constituted ecclesiastical governing body, or a corporation meeting the requirements of the state.

Setback - The distance between a lot line, road line or the mean high water line of a body of water and a particular development feature of a lot such as a building, structure, on site sewage system component or parking area.

Shelter - A facility which, in addition to providing food and shelter to a defined population, provides guidance or counselling services. Such services are a primary function of the facility.

Shopping Center - A grouping of retail business and service uses on a single site with common parking facilities.

Sign - Any material, structure or device, or part, composed of lettered or pictorial matter which is located out of doors, or on the exterior of any building, or indoors as a window sign, displaying an advertisement, announcement, notice or name, and shall include any declaration, demonstration, display, representation, illustration or insignia used to advertise or promote the interests of any person or business or cause when such is placed in view of the general public. Signs will include, but not be limited to, business signs, real estate signs, home occupation signs, political signs, pennants, etc.

Site - Any area of land to be used, developed or built upon as a unit.

Special Use Permit - A permit for special uses which requires review and approval of the Planning Board prior to the issuance of a special permit by

the Planning Board or a zoning permit by the Housing, Building and Zoning Officer.

Start of Construction - Includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair reconstruction, placement or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on the site, such as the pouring of slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include:

- 1) the installation of streets and/or walkways
- 2) the excavation for a basement, footings, piers or foundations
- 3) the erection of temporary forms
- 4) the installation on the property of accessory buildings such as garages or sheds, not occupied as dwelling units or not part of the main structure (Applicable to Flood Damage Prevention Regulations Only)

Story - That portion of a building, including a basement, between the surface of any floor and the surface of the floor next above; also, any portion of a building used for human occupancy between the topmost floor and the roof.

Half Story - That part of a building between a pitched roof and the uppermost full story, having a ceiling height of seven (7) feet or more for not exceeding one half (1/2) the floor area of such full story. For purposes of side yard determination, a basement shall be counted as a half story.

Street - A public way established by or maintained under public authority, a private way open for public use and a private way plotted or laid out for ultimate public use, whether or not constructed.

Structure - Anything constructed or erected which requires permanent location on the ground or attachment to something having such location.

Structure, Principal - A structure through which the principal use of the lot on which it is located is conducted.

Structure, Accessory - See Building, Accessory.

Substantial Improvement - Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty (50%) percent of the market value of the structure either:

- 1) before the improvement or repair is started or
- 2) if the structure has been damaged, and is being restored, before the damage occurred

For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not include:

- 1) any project for improvement of a structure to comply with existing state/local health, sanitary/safety code specifications solely necessary to assure safe living conditions
- 2) any alteration of a structure listed on the National Register of Historic Places (Applicable to Flood Damage Prevention Regulations Only)

Telecommunication Facilities - Towers and/or Antennas and accessory structures, including accessory structures related to underground communication services, together used in connection with the provision of cellular telephone service, personal communication services (PCS), paging services, radio and/or television broadcast services, microwave transmission and/or similar or like broadcast services. **[Added 7-7-1998 as L.L. No. 1-1998]**

Tourist Home - A private residence in which overnight accommodations are provided for not more than nine (9) transient paying guests.

Tower - A structure designed to support Antennas. It includes without limitation free-standing Towers, guyed Towers, monopoles, and similar structures which do, or do not, employ camouflage technology. **[Added 7-7-1998 as L.L. No. 1-1998]**

Transient Guest - A guest of a tourist home whose stay is temporary and does not exceed thirty (30) days.

Trade, Vocational or Industrial School - School conducted as a commercial enterprise for teaching barbering or hairdressing or for teaching industrial skills in which machinery is employed as a means of instruction.

Use, Principal - The primary or predominant use of any lot.

Yard - An open space on the same lot with a building or structure.

Yard, Front - An open space extending the full width of the lot between a main building and the front lot line, unoccupied and unobstructed by buildings or structures from the ground upward, the depth of which shall be the least distance between the front lot line and the front of the main building.

Yard, Rear – An open space extending the full width of the lot between the rearmost main building and the rear lot line, unoccupied and unobstructed by buildings or structures from the ground upward, except as before specified, the depth of which shall be the least distance between the rear lot line and the rear of such main building.

Yard, Side – An open space extending from the front yard to the rear yard between a main building and the side lot line, unoccupied and unobstructed by buildings or structures from the ground upward. The required width of a side yard shall be measured horizontally from the nearest part of the main building. An interior side yard is any side yard not on the street side of a corner lot.

Zoning Officer – The Housing, Building and Zoning Enforcement Officer of the City of Dunkirk.

Zoning Permit – A permit issued that indicates a lot, structure or use of land has been developed in conformity with this law and/or complies with the provisions of this chapter.