



AGENDA
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
October 29, 2007
6:00 P.M.
Meeting Room
Town Administrative Offices
91 Ashfield Road
Atherton, California
Special Meeting

6:00 P.M. ROLL CALL Janz, J. Carlson, Marsala, A. Carlson, McKeithen

6:02 P.M. PUBLIC COMMENTS

6:05 P.M. CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL – Existing Litigation pursuant to Subsection (a) of Government Code Section 54956.9

**Town of Atherton vs. Sequoia Union High School District, et al.
Superior Court of California, San Mateo County, CIV 458899**

Agendas and staff reports may be accessed on the Town website at: www.ci.atherton.ca.us

☛ Please contact the City Clerk's Office at 650.752.0500 with any questions.

Pursuant to the Americans with Disabilities Act, if you need special assistance in this meeting, please contact the City Clerk at (650) 752-0500. Notification of 48 hours prior to the meeting will enable the Town to make reasonable arrangements to ensure accessibility to this meeting. (29 CRF 35.104 ADA Title II)



AGENDA
Town of Atherton
CITY COUNCIL/ATHERTON CHANNEL
DRAINAGE DISTRICT
OCTOBER 29, 2007

7:00 p.m.
TOWN COUNCIL CHAMBERS
94 Ashfield Road
Atherton, California

SPECIAL MEETING

7:00 P.M. 1. PLEDGE OF ALLEGIANCE

7:03 P.M. 2. ROLL CALL Janz, J. Carlson, Marsala, A. Carlson, McKeithen

7:05 P.M. REGULAR AGENDA (Items 3)

**3. INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 8.14
OF THE ATHERTON MUNICIPAL CODE REGARDING
HISTORICAL ARTIFACTS**

Recommendation: Staff recommends that the City Council conduct the hearing and Introduce the Amendment to the Historic Artifact Ordinance based on the findings listed in the Ordinance.

STUDY SESSION (Item 4)

7:50 P.M. 4. DRAFT ZONING CODE UPDATE

Recommendation: Staff recommends that the City Council review the draft Zoning Code, provide direction to the consultant and refer the item to the General Plan Committee for review.

9:00 P.M. 5. ADJOURNMENT

Agendas and staff reports may be accessed on the Town website at: www.ci.atherton.ca.us

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Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
WENDÉ C. PROTZMAN, INTERIM CITY MANAGER**

**FROM: MARC HYNES, CITY ATTORNEY
LISA COSTA SANDERS, DEPUTY TOWN PLANNER**

DATE: FOR THE SPECIAL CITY COUNCIL MEETING OF OCTOBER 29, 2007

SUBJECT: AMENDMENT TO THE HISTORICAL ARTIFACT ORDINANCE

RECOMMENDATION:

Staff recommends that the City Council conduct the hearing and Introduce the Amendment to the Historic Artifact Ordinance based on the findings listed in the Ordinance.

INTRODUCTION:

On August 9, 2007, the San Mateo Superior Court issued a peremptory writ of mandate in the matter of Randall and Lisa Carey Lamb v. Town of Atherton, et al. The writ directed the Town to rescind its denial of an application for a major alteration permit sought by the Lambs pursuant to the Town's Historical Artifacts Ordinance (contained at Chapter 8.14 of the Municipal Code) and reconsider its action in light of the Court's Statement of Decision. In the Court's Statement of Decision, the Court recommended that the Town first clarify aspects of the Historical Artifacts Ordinance. In particular, the Court suggested that the Town define the meaning of the "Lindenwood Historic District" as used in the Ordinance, as well as clarify the effect of an owner's objection to being included on the inventory of historical artifacts.

ANALYSIS:

In response to the Court, the staff has drafted proposed changes to Chapter 8.14 to address these issues as well as make other clarifying and conforming changes. The proposed changes are summarized below.

Section 8.14.030 Definitions.

The definition of “artifacts” is changed to the singular and the term “property” is clarified to mean “artifact property,” i.e. the parcel of real property upon which an artifact is situated. The meaning of “inventory of historical artifacts” is clarified to mean the publicly published list of designated historical artifacts. The definition also clarifies that where an owner objects to inclusion on the inventory, the designated artifact remains subject to the terms of Chapter 8.14. “Lindenwood Historic District” is a newly defined term. The term is used at Section 8.14.090 of the current version but without a geographic boundary. The new definition reflects the information formerly contained section 8.14.090 regarding the composition of the locally-significant district and establishes geographic boundaries. The Town’s historic consultant has prepared a separate memorandum (attached) regarding the Lindenwood Historic District, its contents and boundaries. Other changes to definitions are conforming changes.

Section 8.14.040 Review authority.

Minor changes are proposed to clarify that the Planning Commission may “grant, approve, or approve with conditions” major alteration or demolition permits. The section also clarifies that the Planning Commission is the body that designates historical artifacts for inclusion on the inventory with appeal to the city council.

Section 8.14.050 Inventory of historical artifacts.

This section has been deleted since it was merely duplicative of the definition set forth in Section 8.14.030.

Section 8.14.060 Criteria.

Duplicative language is proposed to be deleted in favor of use of defined terms.

Section 8.14.070 Procedures for designation.

Changes to this section clarify that the Planning Commission considers and determines whether artifacts meet the designation criteria and should be added to the inventory. The section clarifies that designation decisions may be appealed to the City Council. Other conforming changes are included. The section also moves certain text pertaining to owner consent and clarifies that the effect of an owner’s objection to designation is to keep the designated historical artifact off of the published inventory but that such artifact remains subject to the terms of Chapter 8.14. Other conforming and minor clarifying changes are proposed.

Section 8.14.090 Activities requiring an alteration permit.

Duplicative text is proposed to be deleted from section 8.14.090A relating to minor alterations. Changes conforming to Section 8.14.040 are included relating to the ability of the planning commission, or city council on appeal, to approve a permit with conditions as well approve or deny a permit. Other conforming changes are proposed, including where a permit shall be filed when an owner has objected to inclusion on the inventory of historical artifacts.

Section 8.14.130 Cases of economic hardship.

This section has been revised to clarify that the Planning Commission, or City Council on appeal, may approve a permit if a sufficient showing of economic hardship is made and clarifies the required demonstration needed to support such a showing. Other conforming changes are suggested.

Section 8.14.135 Unsafe or dangerous conditions.

This is a new section designed to allow action to be taken in situations involving unsafe or dangerous conditions involving an historical artifact as determined by the Building Official or Fire Chief.

Minor conforming changes are also proposed for Sections 8.14.100 (Demolition permits) and 8.14.140 (Accidental damage).

Lindenwood as a Historic District

Laura Jones, Town's Historical Consultant, has prepared a memo as attached to the packet indicating that the boundaries of Lindenwood, commonly defined as being bound by Middlefield Road, Bay Road, Ringwood Avenue and Marsh Road, qualify as a historic district. She states the Lindenwood Historic District represents a significant concentration of artifacts united historically and aesthetically by plan and development, which are culturally distinct and related, and are contained within a unified geographic entity. Ms. Jones notes that there are over forty known artifacts within these boundaries that were from the former Flood Estate.

ALTERNATIVES:

The Council could direct the staff to make further revisions, or introduce as proposed.

FISCAL IMPACT:

The costs associated with the preparation of the ordinance revisions and the implementation of the ordinance are borne by the Town.

ENVIRONMENTAL IMPACT:

The proposal has been determined to be exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Sections 15305, Class 5 which permits minor alterations in land use limitations which do not result in any changes in land use or density.

Prepared by:

Approved by:

/s/ Lisa Costa Sanders
Lisa Costa Sanders
Deputy Town Planner

Wendé C. Protzman
Interim City Manager

Attachments:

1. Draft Ordinance
2. draft Ordinance with edits shown
3. Memo from Laura Jones, dated October 25, 2007
4. Letter from Phil Lively, Lindenwood Homes Association, dated September 21, 2007

ORDINANCE NO. _____
AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
AMENDING CHAPTER 8.14 REQUIRING PRESERVATION OF HISTORICAL
ARTIFACTS WITHIN THE TOWN OF ATHERTON

SECTION 1: The City Council of the Town of Atherton hereby finds as follows

Whereas the Council adopted Ordinance 567 on October 18, 2006, adopting a Historical Artifacts Ordinance (codified at Chapter 8.14 of the Atherton Municipal Code), and

Whereas on August 9, 2007, the Superior Court of San Mateo issued a peremptory writ of mandate in the matter of *Randall and Lisa Carey Lamb v. Town of Atherton, et al.* in which the Court directed the Town to rescind its denial of an application for a major alteration permit sought by the Lambs and reconsider its action in light of the Court's Statement of Decision;

Whereas, the Court's Statement of Decision recommends that the Town clarify aspects of the Historical Artifacts Ordinance and suggests that the Town define the meaning of the "Lindenwood Historic District" as used in the Ordinance, and clarify the effect of an owner's objection to the inclusion of an artifact on the Town's inventory of historical artifacts among other issues; and

Whereas, the Town intends to clarify and amend Chapter 8.14.

Now, therefore, the City Council hereby finds as follows:

The Town, when it adopted Ordinance 567, intended to, and did, establish the Lindenwood Historic District, as a locally significant historic district composed of structures and objects associated with the James C. Flood Estate (also known as Linden Towers) and located in the present day Lindenwood subdivision;

This collection of more than forty artifacts, collected by a single family and concentrated in a single neighborhood, qualifies as a locally-significant historic district. The artifacts contained within the Lindenwood Historic District represent a significant concentration of artifacts united historically and aesthetically by plan and development which are culturally distinct and related, and are contained within a unified geographic area, i.e. the Lindenwood neighborhood.

The association of the Lindenwood Historic District's artifacts with the development of the Flood Estate, and the Town, are a unique cultural resource of the Town and therefore qualify for preservation under Chapter 8.14 and the General Plan.

The geographic boundaries of the Lindenwood Historic District are Middlefield Road, Bay Road, Marsh Road and Ringwood Avenue as these roads encompass the original Lindenwood subdivision and all the Flood Estate artifacts included in the inventory of historical artifacts, or identified in the appendixes thereto, are located within these limits. The neighborhood within

these boundaries is a distinguishable entity with a strong association to the Flood Estate serving as the historic setting for the Flood Estate artifacts and the Lindenwood Historic District.

The Town's Historical Artifact Inventory report, prepared by the Town's historical consultants, explains the significance of James Flood and the Flood Estate in the Town's history and development and describes the association of artifacts presently in the inventory of historical artifacts, and other identified artifacts within the boundaries of the Lindenwood Historic District.

These findings are supported by the professional opinion of the Town's historical consultant, the Town's Historical Artifact Inventory report, the inventory of historical artifacts and appendixes thereto, the research done by the Town's staff and consultants, documents on file in the Town's Heritage Room relating to Lindenwood and the Flood Estate, and written and documentary evidence presented along with public testimony.

The amendments to Chapter 8.14 adopted by this Ordinance, including, but not limited to, the establishment of the Lindenwood Historic District, are consistent with and in furtherance of the purposes of the Historical Artifacts Ordinance as well as the goals and objectives of the Town's General Plan.

SECTION 2: Based upon the findings set out in Section 1 and incorporated by this reference, the City Council of the Town of Atherton does hereby ordain as follows; Amendment of Code: Chapter 8.14 of the Atherton Municipal Code is hereby amended to read as follows:

Chapter 8.14 HISTORICAL ARTIFACTS

Sections:

- 8.14.010 Purpose.**
- 8.14.020 Enabling authority.**
- 8.14.030 Definitions.**
- 8.14.040 Review authority.**

Article I. Procedures and Criteria for Designation of Historical Artifacts

- 8.14.050 Inventory of historical artifacts.**
- 8.14.060 Criteria.**
- 8.14.070 Procedures for designation.**

Article II. Procedures and Criteria for Reviewable Actions

- 8.14.080 Preventive maintenance activities exempt from review.**
- 8.14.090 Activities requiring an alteration permit.**
- 8.14.100 Demolition permits.**
- 8.14.110 Protection during construction.**
- 8.14.120 Consistency with CEQA and other statutes.**
- 8.14.130 Cases of economic hardship.**

Article III. Enforcement and Fees

8.14.140 Accidental damage.

8.14.150 Alterations/demolitions without a permit—Violation—Penalty.

8.14.160 Fee schedule.

8.14.010 Purpose.

The purpose of this chapter is to promote the general welfare by providing for the identification, protection, enhancement, perpetuation and use of artifacts that reflect special aspects of the town’s historical, architectural, cultural or aesthetic heritage for the following reasons:

- A. To encourage public knowledge, understanding, appreciation and use of the town of Atherton’s past;
- B. To foster civic pride in the beauty and character of the town and the accomplishments of its past;
- C. To preserve the visual character of the town by preserving artifacts that reflect its history;
- D. To protect property values within the town;
- E. To balance the concerns of property owners with the community’s interests in preserving artifacts of the town’s past. (Ord. 567 § 1 (part), 2007)

8.14.020 Enabling authority.

California Government Code Section 37361(b). (Ord. 567 § 1 (part), 2007)

8.14.030 Definitions.

A. “Accidental damage” means unintentional damage by an individual or an act of nature. This does not include accidental damage during the course of construction on the property where the artifact was not adequately protected.

B. “Alteration” means any work changing the exterior appearance and visual quality of character-defining features of a historical artifact.

C. “Alteration permit” means a permit approving an alteration to a historic artifact, or a property determined eligible for historic artifact designation pursuant to the provisions of this chapter.

D. “Artifact” for the purposes of this chapter is a structure (as defined in subsection T of this section) or object located on the property of single-family homes, landscaped areas of public, commercial, and multifamily housing properties, and adjacent to public roads and streets. “Artifact property” means the legal parcel of real property where an artifact is located. Buildings designed for human occupation and objects housed in the interiors of buildings are not subject to the terms of this chapter. An artifact is sometimes referred to as a “resource” in this chapter.

E. “Character-defining features” means the elements embodying style, design, general arrangement and components of all of the exterior surfaces of any structure or object, including, but not limited to, the type of building materials and type and style of elements related to such structure or object.

F. “Demolition” means the act or process that destroys, completely or partially, any structure or object.

G. "Historical artifact" means a structure or object that meets the criteria for listing on the national, state or local level as described in Section 8.14.060.

H. "Historic integrity" means the authenticity of a resource's physical identity, evidenced by the survival of characteristics that existed during the resource's period of significance. Integrity is evaluated with regard to the retention of location, design, setting, materials, workmanship, feeling and association. It must also be judged with regard to the particular criteria under which a resource is proposed for eligibility.

I. "Inventory of historical artifacts" is the published list of historical artifacts and artifact properties designated pursuant to the terms of this chapter. In order to be listed on the inventory, the artifact must be found to be an appropriate property type and meet the criteria for listing on the national, state or local level as described in Section 8.14.060. An artifact shall not be included in the inventory if the owner opposes its listing, however as described in Section 8.14.070, the artifact remains subject to the terms of this chapter.

J. "Lindenwood Historic District" means the area bounded by Middlefield Road, Marsh Road, Bay Road and Ringwood Avenue (presently known as "Lindenwood") and consists of the artifacts associated with the Flood Estate (Linden Towers) prior to 1937 and which meet the designation criteria of Section 8.14.060.

K. "Major alteration" means permanent changes to the visual character of a historical artifact or its setting, including, but not limited to, changes in size, surface treatment or location of historical artifacts as described in Section 8.14.090.

L. "Minor alteration" means changes to the color or minor details of a historical artifact, such as for example the replacement of missing or damaged elements. The relocation of a moveable object on the artifact property is a minor alteration, and temporary removal of an artifact from the artifact property during restoration or for its protection during construction shall be treated as a minor alteration under this chapter.

M. "National register of historic places" means the official inventory of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology and culture which is maintained by the Secretary of the Interior under the authority of the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq., 36 C.F.R. Sections 60 and 63).

N. "Object" (as applied in the context of this chapter) means a construction, such as a statue, monument or milepost that may be by nature or design moveable, yet related to a specific setting or environment.

O. "Owner" means the person(s) whose name appears as the owner of an artifact property on the last tax assessment roll of San Mateo County.

P. "Preventative maintenance" means any work to prevent deterioration or damage to the structural integrity or any exterior character-defining feature of a historic resource that does not involve a change in design, material or exterior appearance. Such work includes, but is not limited to, painting, grouting or repainting, foundation work or landscaping in the vicinity of a historic artifact.

Q. "Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings" means the illustrated version of the Standards and Guidelines for Rehabilitation developed by the Technical Preservation Services Branch, Preservation Assistance Division of the National Park Service, as it may be amended.

R. "Secretary of the Interior's Standards for the Treatment of Historic Properties" means principles developed by the National Park Service (36 C.F.R. Section 68.3, as it may be amended

from time to time) to help protect historic properties by promoting consistent preservation practices and providing guidance to historic building owners and building managers, preservation consultants, architects, contractors, and project reviewers on how to approach the treatment of historic properties. The Secretary of the Interior's Standards for the Treatment of Historic Properties may also be referred to in this chapter as "Secretary of the Interior's standards."

S. "State Historical Building Code" means California Code of Regulations, Part 8 of Title 24 (California Building Standards Code), as it may be amended.

T. "Structure" (as applied in the context of this chapter) means a functional, manmade construction, such as a fence, gate, bridge or tunnel, typically made for purposes other than creating shelter, fixed to the property on which it is located. (Ord. 567 § 1 (part), 2007)

8.14.040 Review authority.

In addition to the responsibilities described elsewhere in the municipal code, the planning commission shall:

A. Approve, approve with conditions, or deny applications that pertain to demolition or major alteration of artifacts included in the inventory of historical artifacts or determined to meet the criteria for inclusion in the inventory;

B. Consider and approve, approve with conditions or deny the designation of historical artifacts, and additions to (or removals from) the inventory of historical artifacts;

C. Negotiate with property owners to promote preservation of historical artifacts while respecting the use and enjoyment of the owners;

D. Promote public awareness of the historical value of artifacts by steps it deems desirable, including, but not limited to, the issuance of certificates of recognition and the authorization of plaques;

E. Place special emphasis on the need to inspect, repair, and restore artifacts in the public right-of-way or public parks;

F. Consider methods other than those described above to enhance and preserve the quality and understanding of the town's historical artifacts;

G. Make appropriate recommendations on the general subject of preservation to the city council, other public and private agencies and bodies, and the general public. (Ord. 567 § 1 (part), 2007)

Article I. Procedures and Criteria for Designation of Historical Artifacts

8.14.050 Reserved

8.14.060 Criteria.

A. To be designated as an historical artifact and included on the inventory of historical artifacts, an artifact shall meet one of the following criteria:

1. National Register of Historic Places. The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

- a. That are associated with events that have made a significant contribution to the broad patterns of the town of Atherton’s history; or
- b. That are associated with the lives of significant persons in the town of Atherton’s past; or
- c. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- d. That have yielded or may be likely to yield information important in history or prehistory.

In order to meet the criteria for listing on the National Register, a property must maintain integrity, defined as “the ability of a property to convey its significance” (NRHP Bulletin 15). The National Register further specifies seven aspects of integrity: location, design, setting, materials, workmanship, feeling, and association. To retain integrity, a property should possess several of these aspects and preferably the majority of them.

Structures and objects located within the town of Atherton that are listed on the National Register of Historic Places, or determined by a qualified professional to be eligible for listing on the National Register, shall be placed on the inventory of historical artifacts following the procedures described below and subject to the terms of this chapter.

2. California State Historical Landmarks, Points of Interest, and the California Register of Historical Resources:

- a. Associated with events that have made a significant contribution to the broad patterns of local or regional history or the cultural heritage of California or the United States.
- b. Associated with the lives of persons important to local, California or national history.
- c. Embodies the distinctive characteristics of a type, period, region or method of construction or represents the work of a master or possesses high artistic values.
- d. Has yielded, or has the potential to yield, information important to the prehistory or history of the local area, California or the nation.

The California Register of Historic Places requires that resources “retain enough of their historic character or appearance to be recognizable as historic resources and to convey the reasons for their significance,” and allows for resources with a lower level of integrity than the National Register criteria.

Structures and objects located within the town of Atherton that are listed as California State Historical Landmarks, Points of Interest, or on the California Register of Historical Resources, or determined by a qualified professional to be eligible for listing on the California Register shall be placed on the inventory of historical artifacts following the procedures described below and subject to the terms of this chapter.

3. Local Significance. To be deemed locally significant, an artifact must meet subsections (A)(3)(a) or (b), and (A)(3)(c) of this section:

- a. Association with the early development of the town of Atherton, events occurring before 1930 or structures and objects constructed before that date.
- b. Association with the Lindenwood Historic District, or otherwise associated with the Flood Estate (Linden Towers) prior to 1937.
- c. Retaining sufficient integrity of design, materials, and association to be recognizable as artifacts of the historical period of their significance. (Ord. 567 § 1 (part), 2007)

8.14.070 Procedures for designation.

The planning commission shall determine whether artifacts meet the criteria described in Section 8.14.060, and should be designated as historical artifacts and included on the inventory of historical artifacts, or removed from listing. Artifacts that the planning commission accepts for designation as historical artifacts remain subject to the terms of this chapter, even in those cases where the artifact property owner objects to inclusion in the inventory of historical artifacts pursuant to subsection F.

Only those artifacts officially published in the inventory of historical artifacts shall be eligible for grants of public funds, plaques purchased with public funds, or other incentives or benefits that may arise in support of preservation of the artifacts.

A. Initiation of Listings on the Inventory of Historical Artifacts. Designation may be initiated by the planning commission, by any resident of the town, or by the owner of an artifact. Applications for designation must be accompanied by such historical and architectural documentation as may be required to evaluate the artifact's significance under the criteria described in Section 8.14.060. If the application is filed by an artifact property owner or resident of the town, the application shall be accompanied by a nonrefundable fee as described in Article III of this chapter.

B. Public Hearing. Upon receipt of a completed application, the secretary of the planning commission shall set a date for the public hearing which shall be held within forty days of the acceptance of the completed application.

C. Notice. Written notice by first class mail shall be sent to the artifact property owner and property owners within five hundred feet of the property containing the artifact and shall be posted on the official town bulletin boards within ten days of the public hearing.

D. Planning Commission Action. The designation of historical artifacts and addition to the inventory of historical artifacts shall be made by resolution of the planning commission and shall be communicated to the building official, the director of public works, and the Atherton Heritage Association. If no written objection is filed by the artifact property owner, within thirty days after the public hearing, the town shall forward a copy of the resolution to the recorder of the county of San Mateo and to the artifact property owner.

E. Appeal. The planning commission's designation determinations are appealable to the city council. Appeals must be filed within ten days of the planning commission's decision in accordance with Chapter 17.64.

F. Owner Consent. Artifacts shall not be listed in the published inventory of historical artifacts over the artifact property owners' written objection, received by the town within thirty days of the designation resolution by planning commission, or by the city council on appeal. However, artifacts that the planning commission or city council accept for designation as historical artifacts are subject to the terms of this chapter, even in those cases where the artifact property owner opposes designation or objects to inclusion in the inventory. When an owner makes a written objection, an inventory sheet shall be stored in the address file in the building division offices of properties accepted for designation but not published in the inventory of historical artifacts.

G. Stop Work Order. While the application for designation as a historical artifact is pending, prior to the public hearing considering the application, the building official may declare a stop work order. During the term of the stop work order, work that would require an alteration permit if the artifact were already designated as a historical artifact shall not be carried out. The stop work order will be lifted upon the earlier of the planning commission or the council's decision on the proposed designation, the stop work order termination date as adopted by the building

official, or one hundred eighty calendar days from the date of the commencement of the stop work order. (Ord. 567 § 1 (part), 2007)

Article II. Procedures and Criteria for Reviewable Actions

8.14.080 Preventive maintenance activities exempt from review.

Preventive maintenance activities that maintain or restore the historical appearance of historical artifacts are exempt from review. These activities should be carried out in a fashion consistent with good preservation practice. Preventive maintenance activities include cleaning, repainting of stone and masonry, and repainting of previously painted surfaces in the same or similar color. (Ord. 567 § 1 (part), 2007)

8.14.090 Activities requiring an alteration permit.

Prior to consideration of an alteration or demolition permit, an artifact shall first be considered for designation pursuant to Section 8.14.070 of this chapter.

A. Minor Alterations. The permit application for a minor alteration may be approved, approved with conditions, or denied by the building official, with appeal to the planning commission. A decision on a permit for a minor alteration shall be made within ten days of a completed application. The building official may require such documentation as deemed necessary to make a decision. Temporary removal of an artifact from the property during restoration or for its protection during construction shall be treated as a minor alteration; however, the temporary location of the artifact and a fixed date for the return of the artifact to its site must be provided. Copies of the permit application and supporting materials shall be filed with the historical artifact inventory as a permanent record of the alteration, or, if the owner of the artifact has objected to inclusion on the inventory, with the inventory sheet stored in the address file in the building division offices.

B. Major Alterations. Major alterations include permanent changes to the visual character of an historical artifact or its setting. Examples of major alteration include:

1. Changes to the height or width of a structure such as a gate or wall;
2. Painting or otherwise covering of previously unpainted surfaces, such as brick or stone;
3. Addition of new elements attached to historical artifacts (including but not limited to lighting fixtures, replacement of bases of sculptures or other objects);
4. Relocation of a structure on the artifact property;
5. Relocation of an object or structure to another property within the town.

Application for a major alteration permit may be approved, approved with conditions, or denied by the planning commission, with appeal to the city council. In considering applications for major alteration permits, the planning commission shall determine whether the proposed alteration is consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties and the California Historical Building Code. The decision of the planning commission shall be supported by written findings.

The building official may require documentary materials, including an evaluation of the proposed alterations by a qualified historical preservation professional, to assist the planning commission in its determination. Once an application for a major alteration permit is deemed complete by the building official, the planning commission shall conduct a public hearing on the

application within sixty days. Appeals to the planning commission's decision must be filed within ten days pursuant to Chapter 17.64 to the city council.

Copies of the permit application and supporting materials shall be filed with the historical artifact inventory as a permanent record of the alteration, or, if the owner of the artifact has objected to inclusion on the inventory, with the inventory sheet stored in the address file in the building division offices. (Ord. 567 § 1 (part), 2007)

8.14.100 Demolition permits.

For the purposes of this chapter, demolition includes the removal of all or part of a historical artifact either for disposal or otherwise its relocation from within the town boundaries.

Application for a demolition permit for a historical artifact may be approved, approved with conditions, or denied by the planning commission, with appeal to the city council. To approve an application for a demolition permit, the planning commission shall make findings that an emergency exists that threatens the public health, welfare or safety; and that no feasible alternative can be found to ensure the preservation of the historical artifact within the town. Where no threat to public health, welfare or safety can be identified, the planning commission shall consider whether the preservation of the historical artifact leaves the artifact property with significantly diminished property value. A finding based on significantly diminished property value shall require documentation by independent experts and a finding that no feasible alternative can be found to ensure the preservation of the historical artifact within the town.

Once an application for a demolition permit is deemed complete by the building official, the planning commission shall conduct a public hearing on the application within sixty days. Appeals to the planning commission's decision must be filed within ten days in accordance with Chapter 17.64 to the city council. Copies of the permit application and supporting materials shall be filed with the historical artifact inventory as a permanent record of the alteration. (Ord. 567 § 1 (part), 2007)

8.14.110 Protection during construction.

Prior to issuance of a grading, demolition or building permit for a property that contains a historical artifact, the applicant shall present an artifact protection plan if any activity associated with the permit has the potential to impact a historical artifact. The artifact protection plan shall include barriers to prevent accidental damage to artifacts, protection against dirt and debris and, if necessary, temporary removal and storage of the historical artifact during the construction project. (Ord. 567 § 1 (part), 2007)

8.14.120 Consistency with CEQA and other statutes.

If any action under this chapter is subject to the provisions of the California Environmental Quality Act (CEQA), or other applicable local, state or federal regulations, the time in which such action is taken shall be extended in order to allow time to comply with the provisions of the applicable regulations; provided, however, that such action is taken within the time limits imposed by the Permit Streamlining Act. (Ord. 567 § 1 (part), 2007)

8.14.130 Cases of economic hardship.

In those cases where the artifact property owner clearly demonstrates that the preservation of the historical artifact, including the denial of a minor alteration, major alteration or demolition permit, will cause economic hardship by leaving an artifact property with no economically viable use, the planning commission, or city council on appeal, may approve or conditionally approve such permit application even though it does not meet the standards set forth in sections 8.14.090 and 8.14.100. The owner shall bear the burden of proving the hardship and shall provide substantiation of the claim. The planning commission, or city council on appeal, is authorized to request that the applicant furnish additional information, documentation and expert testimony, the cost of which shall be paid by the applicant, to be considered by the planning commission, or city council on appeal, in its decision. In determining whether economic hardship exists, the planning commission, or city council on appeal, shall consider evidence that demonstrates:

A. Denial of the application will diminish the value of the artifact property so as to leave substantially no value;

B. Sale or rental of the artifact property is impractical, when compared to the cost of holding such property for permitted uses;

C. Utilization of the artifact property for lawful purposes is prohibited or impractical.

The town, in its discretion, may waive any or all fees for alteration permits in cases where in its judgment the fee is an undue financial burden to the applicant. (Ord. 567 § 1 (part), 2007)

8.14.135 Unsafe or dangerous conditions.

The provisions of this chapter shall not be interpreted to prevent any measures, including construction, alteration, or demolition, necessary to correct the unsafe or dangerous conditions of any artifact, or part thereof, where such condition has been declared unsafe or dangerous by the building official or the fire chief, and where the proposed measures have been declared necessary by such official, to correct such condition; provided, however, that only such work as is necessary to correct the unsafe or dangerous condition and as is done with utmost regard for preservation of the appearance of the artifact involved may be performed pursuant to this section. In the event any artifact shall be damaged by fire, earthquake or other natural disaster, to such an extent that in the opinion of the aforesaid officials it cannot be reasonably repaired and restored, it may be removed in conformity with normal permit procedures and applicable laws. If the condition of an unsafe or dangerous historical artifact so permits, the official in charge of correcting such a condition shall consult with the planning commission before carrying out corrective measures.

Article III. Enforcement and Fees

8.14.140 Accidental damage.

In the event of accidental damage to a historical artifact, no fines or penalties shall be imposed. Repairs shall be subject to review as described in Article II of this chapter. In the event the damage to the artifact creates an unsafe situation, the property owner may mitigate the hazard and bring the artifact to a safe situation without the issuance of a permit. Such work must be reported to the town within seventy-two hours. In the event the artifact is damaged by an act of nature, the property owner shall not be required to fully restore the artifact beyond bringing the artifact to a safe condition. Failure to adequately protect the artifact from accidental damage does

not relieve the artifact property owner from the duty to restore the artifact. (Ord. 567 § 1 (part), 2007)

8.14.150 Alterations/demolitions without a permit—Violation—Penalty.

A. Any person causing the alteration of a historical artifact in a manner which exceeds “preventive maintenance” as defined in Section 8.14.0200 without an alteration permit shall submit a penalty in the amount of five thousand dollars to be deposited into a fund reserved for projects that preserve, restore or enhance historical artifacts on the official inventory of historical artifacts as a civil penalty in addition to the penalties as outlined in Chapter 1.20.

B. Any person causing a historical artifact to be removed or demolished without a demolition permit shall submit a penalty in the amount of ten thousand dollars to be deposited into a fund reserved for projects that preserve, restore or enhance historical artifacts on the official inventory of historical artifacts as a civil penalty in addition to the penalties as outlined in Chapter 1.20.

C. In the event the historical artifact can be restored to its appearance at the time of its designation or at the time of the most recent alteration permit or demolition permit, no civil penalty shall be imposed. Otherwise, as part of a civil action brought by the town, a court may assess against any person who commits, allows, or maintains a violation of any provision of this chapter, the civil penalties as described in subsections A and B of this section.

D. A civil action may be commenced to abate, enjoin, or otherwise compel the cessation of violation of any provision of this chapter. In a civil action brought pursuant to this chapter in which the town prevails, the court may award to the town all costs of investigation and preparation for trial, the costs of trial, reasonable expenses including overhead and administrative costs incurred in prosecuting the action and reasonable attorneys’ fees.

E. Upon any guilty plea of judgment or conviction, in any criminal proceeding brought for the violation of this chapter, where the defendant is entitled by law to probation, then the court may require the payment to the town of the costs and expenses as described above as one of the conditions of such probation. (Ord. 567 § 1 (part), 2007)

8.14.160 Fee schedule.

The following fees shall not apply to action taken by a property owner on his/her property:

Application for designation of a historical artifact	\$750.00
Appeal of designation of a historical artifact	\$750.00
Minor alteration permit	no charge
Appeal of minor alteration permit	\$750.00
Major alteration permit	\$750.00 plus the cost of historical evaluation if not already completed
Appeal of major alteration permit	\$750.00
Demolition or removal permit	\$750.00
Appeal of demolition of removal permit	\$750.00

SECTION 3: That the City Council hereby declares that it would have passed this Ordinance sentence by sentence, paragraph by paragraph, and section by section, and does hereby declare that any provisions in this Ordinance are severable and, if for any reason any sentence, paragraph or section of this Ordinance shall be held invalid, such decision shall not affect the validity of the remaining parts of this Ordinance.

SECTION 4: CEQA Exemption. This ordinance is exempt from the provisions of Chapter 3 (commencing with Section 21100) of Division 13 of the Public Resources Code (California environmental Quality Act (CEQA)) pursuant to the State CEQA Guidelines Section 15308 as an action that assures the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment.

SECTION 4: This Ordinance shall be posted in at least three public places according to law and shall take effect and be in force from and after 30 days after its passage and adoption.

* * * * *
Introduced this ____ day of _____, 2007

Passed and adopted as an Ordinance of the Town of Atherton at a regular meeting thereof held on the ____ day of _____, 2007, by the following vote

AYES: Council Members:
NOES: Council Members:
ABSTAIN: Council Members:
ABSENT: Council Members:

/s/_____
Alan Carlson
MAYOR, Town of Atherton

ATTEST:
/s/_____
Kathi Hamilton
Acting City Clerk

APPROVED AS TO FORM:
/s/_____
Marc G. Hynes
City Attorney

Ordinance with edits shown

(new text in bold, deleted text in strikeout, relocated text in italics):

**Chapter 8.14
HISTORICAL ARTIFACTS**

Sections:

- 8.14.010 Purpose.**
- 8.14.020 Enabling authority.**
- 8.14.030 Definitions.**
- 8.14.040 Review authority.**

Article I. Procedures and Criteria for Designation of Historical Artifacts

- 8.14.050 Inventory of historical artifacts.**
- 8.14.060 Criteria.**
- 8.14.070 Procedures for designation.**

Article II. Procedures and Criteria for Reviewable Actions

- 8.14.080 Preventive maintenance activities exempt from review.**
- 8.14.090 Activities requiring an alteration permit.**
- 8.14.100 Demolition permits.**
- 8.14.110 Protection during construction.**
- 8.14.120 Consistency with CEQA and other statutes.**
- 8.14.130 Cases of economic hardship.**

Article III. Enforcement and Fees

- 8.14.140 Accidental damage.**
- 8.14.150 Alterations/demolitions without a permit—Violation—Penalty.**
- 8.14.160 Fee schedule.**

8.14.010 Purpose.

The purpose of this chapter is to promote the general welfare by providing for the identification, protection, enhancement, perpetuation and use of artifacts that reflect special aspects of the town's historical, architectural, cultural or aesthetic heritage for the following reasons:

- A. To encourage public knowledge, understanding, appreciation and use of the town of Atherton's past;
- B. To foster civic pride in the beauty and character of the town and the accomplishments of its past;
- C. To preserve the visual character of the town by preserving artifacts that reflect its history;
- D. To protect property values within the town;
- E. To balance the concerns of property owners with the community's interests in preserving artifacts of the town's past. (Ord. 567 § 1 (part), 2007)

8.14.020 Enabling authority.

California Government Code Section 37361(b). (Ord. 567 § 1 (part), 2007)

8.14.030 Definitions.

A. “Accidental damage” means unintentional damage by an individual or an act of nature. This does not include accidental damage during the course of construction on the property where the artifact was not adequately protected.

B. “Alteration” means any work changing the exterior appearance and visual quality of character-defining features of a historical artifact.

C. “Alteration permit” means a permit approving an alteration to a historic artifact, or a property determined eligible for historic artifact designation pursuant to the provisions of this chapter.

D. “Artifacts” for the purposes of this chapter ~~is are~~ **a** structures (as defined in subsection ~~ST~~ of this section) ~~or and~~ objects located on the ~~grounds~~ **property** of single-family homes, landscaped areas of public, commercial, and multifamily housing properties, and adjacent to public roads and streets. **“Artifact property” means the legal parcel of real property where an artifact is located.** Buildings designed for human occupation and objects housed in the interiors of buildings are not subject to the terms of this chapter. **An artifact is sometimes referred to as a “resource” in this chapter.**

E. “Character-defining features” means the elements embodying style, design, general arrangement and components of all of the exterior surfaces of any structure or object, including, but not limited to, the type of building materials and type and style of elements related to such structure or object.

F. “Demolition” means the act or process that destroys, completely or partially, any structure or object.

G. “Historical artifact” means a structure or object that meets the criteria for listing on the national, state or local level as described in Section 8.14.060.

H. “Historic integrity” means the authenticity of a resource’s physical identity, evidenced by the survival of characteristics that existed during the resource’s period of significance. Integrity is evaluated with regard to the retention of location, design, setting, materials, workmanship, feeling and association. It must also be judged with regard to the particular criteria under which a resource is proposed for eligibility.

I. “Inventory of historical artifacts” is the ~~official~~ **published** list of **historical artifacts and artifact** properties **designated pursuant** ~~subject to~~ the terms of this chapter. In order to be listed on the inventory, the artifact must be found to be an appropriate property type and meet the criteria for listing on the national, state or local level as described in Section 8.14.060. An artifact shall not be included in the inventory if the owner opposes its listing, **however as described in Section 8.14.070, the artifact remains subject to the terms of this chapter.**

J. **“Lindenwood Historic District” means the area bounded by Middlefield Road, Marsh Road, Bay Road and Ringwood Avenue (presently known as “Lindenwood”) and consists of the artifacts associated with the Flood Estate (Linden Towers) prior to 1937 and which meet the designation criteria of Section 8.14.060.**

K. ~~J.~~ “Major alteration” means permanent changes to the visual character of a historical artifact or its setting, including, but not limited to, changes in size, surface treatment or location of historical artifacts as described in Section 8.14.090.

L. ~~K.~~ “Minor alteration” means changes to the color or minor details of a historical artifact, such as for example the replacement of missing or damaged elements. The relocation of a moveable object on the **artifact** property is a minor alteration, and temporary removal of an artifact from the **artifact** property during restoration or for its protection during construction shall be treated as a minor alteration under this chapter.

M. ~~L.~~ “National register of historic places” means the official inventory of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology and culture which is maintained by the Secretary of the Interior under the authority of the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq., 36 C.F.R. Sections 60 and 63).

N. ~~M.~~ “Object” (as applied in the context of this chapter) means a construction, such as a statue, monument or milepost that may be by nature or design moveable, yet related to a specific setting or environment.

O. ~~N.~~ “Owner” means the person(s) whose name appears as the owner of an **artifact** property on the last tax assessment roll of San Mateo County.

P. ~~O.~~ “Preventative maintenance” means any work to prevent deterioration or damage to the structural integrity or any exterior character-defining feature of a historic resource that does not involve a change in design, material or exterior appearance. Such work includes, but is not limited to, painting, grouting or repainting, foundation work or landscaping in the vicinity of a historic artifact.

Q. ~~P.~~ “Secretary of the Interior’s Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings” means the illustrated version of the Standards and Guidelines for Rehabilitation developed by the Technical Preservation Services Branch, Preservation Assistance Division of the National Park Service, as it may be amended.

R. ~~Q.~~ “Secretary of the Interior’s Standards for the Treatment of Historic Properties” means principles developed by the National Park Service (36 C.F.R. Section 68.3, as it may be amended from time to time) to help protect historic properties by promoting consistent preservation practices and providing guidance to historic building owners and building managers, preservation consultants, architects, contractors, and project reviewers on how to approach the treatment of historic properties. The Secretary of the Interior’s Standards for the Treatment of Historic Properties may also be referred to in this chapter as “Secretary of the Interior’s standards.”

S. ~~R.~~ “State Historical Building Code” means California Code of Regulations, Part 8 of Title 24 (California Building Standards Code), as it may be amended.

T. ~~S.~~ “Structure” (as applied in the context of this chapter) means a functional, manmade construction, such as a fence, gate, bridge or tunnel, typically made for purposes other than creating shelter, fixed to the property on which it is located. (Ord. 567 § 1 (part), 2007)

8.14.040 Review authority.

In addition to the responsibilities described elsewhere in the municipal code, the planning commission shall:

A. ~~Grant~~ **Approve, approve with conditions**, or deny applications that pertain to demolition or major alteration of artifacts included in the inventory of historical artifacts or determined to meet the criteria for inclusion in the inventory;

B. Consider and **approve, approve with conditions or deny** ~~recommend to the city council~~ **the designation of historical artifacts, and** additions to (or removals from) the inventory of historical artifacts;

C. Negotiate with property owners to promote preservation of historical artifacts while respecting the use and enjoyment of the owners;

D. Promote public awareness of the historical value of artifacts by steps it deems desirable, including, but not limited to, the issuance of certificates of recognition and the authorization of plaques;

E. Place special emphasis on the need to inspect, repair, and restore artifacts in the public right-of-way or public parks;

F. Consider methods other than those described above to enhance and preserve the quality and understanding of the town's historical artifacts;

G. Make appropriate recommendations on the general subject of preservation to the city council, other public and private agencies and bodies, and the general public. (Ord. 567 § 1 (part), 2007)

Article I. Procedures and Criteria for Designation of Historical Artifacts

8.14.050 Inventory of historical artifacts. ~~Reserved~~

~~The inventory of historical artifacts is the official list of properties subject to the terms of this chapter. In order to be listed on the inventory, the artifact must be found to be an appropriate property type and meet the criteria for listing on the national, state or local level as described below. (Ord. 567 § 1 (part), 2007)~~

8.14.060 Criteria.

~~A. Property Types. For the purposes of this chapter, artifacts are structures and objects located on the grounds of single family homes, landscaped areas of public spaces and schools, and adjacent to public and private roads and streets. Buildings designed for human occupation and objects housed in the interiors of buildings are not subject to the terms of this chapter.~~ **To be designated as an historical artifact and included on the inventory of historical artifacts, an artifact** shall meet one of the following criteria:

1. National Register of Historic Places. The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

a. That are associated with events that have made a significant contribution to the broad patterns of the town of Atherton's history; or

b. That are associated with the lives of significant persons in the town of Atherton's past; or

c. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

d. That have yielded or may be likely to yield information important in history or prehistory.

In order to meet the criteria for listing on the National Register, a property must maintain integrity, defined as “the ability of a property to convey its significance” (NRHP Bulletin 15). The National Register further specifies seven aspects of integrity: location, design, setting, materials, workmanship, feeling, and association. To retain integrity, a property should possess several of these aspects and preferably the majority of them.

Structures and objects located within the town of Atherton that are listed on the National Register of Historic Places, or determined by a qualified professional to be eligible for listing on the National Register, shall be placed on the inventory of historical artifacts following the procedures described below and subject to the terms of this chapter.

2. California State Historical Landmarks, Points of Interest, and the California Register of Historical Resources:

a. Associated with events that have made a significant contribution to the broad patterns of local or regional history or the cultural heritage of California or the United States.

b. Associated with the lives of persons important to local, California or national history.

c. Embodies the distinctive characteristics of a type, period, region or method of construction or represents the work of a master or possesses high artistic values.

d. Has yielded, or has the potential to yield, information important to the prehistory or history of the local area, California or the nation.

The California Register of Historic Places requires that resources “retain enough of their historic character or appearance to be recognizable as historic resources and to convey the reasons for their significance,” and allows for resources with a lower level of integrity than the National Register criteria.

Structures and objects located within the town of Atherton that are listed as California State Historical Landmarks, Points of Interest, or on the California Register of Historical Resources, or determined by a qualified professional to be eligible for listing on the California Register shall be placed on the inventory of historical artifacts following the procedures described below and subject to the terms of this chapter.

3. Local Significance. To be deemed locally significant, an artifact must meet subsections (A)(3)(a) or (b), and (A)(3)(c) of this section:

a. Association with the early development of the town of Atherton, events occurring before 1930 or structures and objects constructed before that date.

b. Association with the Lindenwood ~~H~~historic ~~D~~district, ~~which is composed of structures and objects constructed as part of~~ **or otherwise associated with** the Flood Estate (Linden Towers) prior to 1937.

c. Retaining sufficient integrity of design, materials, and association to be recognizable as artifacts of the historical period of their significance. (Ord. 567 § 1 (part), 2007)

8.14.070 Procedures for designation.

The planning commission shall determine whether artifacts meet the criteria described in Section 8.14.060, and should be designated as historical artifacts and included ~~Official listing on the inventory of historical artifacts, or removed~~ ~~shall be approved by the planning commission.~~ **Artifacts that the planning commission or city council accepts for designation as historical artifacts remain** ~~are~~ **subject to the terms of this chapter, even in those cases where the artifact property owner objects to inclusion in the official inventory of historical artifacts pursuant to subsection F.** ~~An inventory sheet shall be stored in the address~~

~~file in the building division offices of properties accepted for designation but not published in the official inventory of historical artifacts.~~

Only those artifacts officially ~~included~~ **published** in the inventory of historical artifacts shall be eligible for grants of public funds, plaques purchased with public funds, or other incentives or benefits that may arise in support of preservation of the artifacts.

A. Initiation of Listings on the Inventory of Historical Artifacts. Designation may be initiated by the planning commission, by any resident of the town, or by the owner of an artifact. Applications for designation must be accompanied by such historical and architectural documentation as may be required to evaluate the artifact's significance under the criteria described in Section 8.14.060. If the application is filed by an **artifact** property owner or resident of the town, the application shall be accompanied by a nonrefundable fee as described in Article III of this chapter.

~~B. Notice of the Public Hearing.~~ Upon receipt of a completed application, the secretary of the planning commission shall set a date for the public hearing which shall be held within forty days of the acceptance of the completed application.

C. **Notice.** Written notice by first class mail shall be sent to **the artifact property owner and** property owners within five hundred feet of the property containing the artifact and shall be posted on the official town bulletin boards within ten days of the public hearing.

~~DC.~~ Planning Commission Action. The designation of historical artifacts **and addition to the inventory of historical artifacts** shall be made by resolution of the planning commission and shall be communicated to the building official, the director of public works, and the Atherton Heritage Association. ~~After thirty days from the public hearing, if~~ no written objection is filed by the **artifact** property owner, **within thirty days after the public hearing**, the town shall forward a copy of the resolution to the recorder of the county of San Mateo and to the **artifact** property owner.

E. **Appeal.** **The planning commission's designation determinations are appealable to the city council. Appeals must be filed within ten days of the planning commission's decision in accordance with Chapter 17.64.**

~~FD.~~ Owner Consent. Artifacts shall not be listed in the ~~published official~~ inventory of historical artifacts over the **artifact** property owners' written objection, received by the town within thirty days of the ~~official~~ **designation resolution by planning commission, or by the city council on appeal. However, artifacts that the planning commission or city council accept for designation as historical artifacts are subject to the terms of this chapter, even in those cases where the artifact property owner opposes designation or objects to inclusion in the inventory. When an owner makes a written objection, an inventory sheet shall be stored in the address file in the building division offices of properties accepted for designation but not published in the inventory of historical artifacts.**

~~GE.~~ Stop Work Order. While the application for a ~~designation as a historical artifact is pending, prior to the public hearing~~ **considering where the planning commission or city council approves or denies** the application, the building official may declare a stop work order. During the term of the stop work order, work that would require an alteration permit if the artifact were already designated as a historical artifact shall not be carried out. The stop work order will be lifted upon the earlier of the planning commission or the council's decision on the proposed designation, the stop work order termination date as adopted by the building official, or one hundred eighty calendar days from the date of the commencement of the stop work order. (Ord. 567 § 1 (part), 2007)

Article II. Procedures and Criteria for Reviewable Actions

8.14.080 Preventive maintenance activities exempt from review.

Preventive maintenance activities that maintain or restore the historical appearance of historical artifacts are exempt from review. These activities should be carried out in a fashion consistent with good preservation practice. Preventive maintenance activities include cleaning, repainting of stone and masonry, and repainting of previously painted surfaces in the same or similar color. (Ord. 567 § 1 (part), 2007)

8.14.090 Activities requiring an alteration permit.

Prior to consideration of an alteration or demolition permit, an artifact shall first be considered for designation pursuant to Section 8.14.070 of this chapter.

A. Minor Alterations. ~~Minor alterations are changes to the color or minor details of a historical artifact, such as for example the replacement of missing or damaged elements. Minor alterations to historical artifacts that are moveable objects include the relocation of the object on the property. Temporary removal of an artifact from the property during restoration or for its protection during construction shall also be treated as a minor alteration; however, the temporary location of the artifact and a fixed date for the return of the artifact to its site must be provided.~~ **The alteration permit application for a minor alteration is ~~approvable~~ may be approved, approved with conditions, or denied** by the building official, with appeal to the planning commission. A **decision on an alteration** permit for a minor alteration shall be ~~granted~~ **made** within ten days of a completed application. The building official may require such documentation as deemed necessary to make a decision. *Temporary removal of an artifact from the property during restoration or for its protection during construction shall be treated as a minor alteration; however, the temporary location of the artifact and a fixed date for the return of the artifact to its site must be provided.* Copies of the permit application and supporting materials shall be filed with the historical artifact inventory as a permanent record of the alteration, **or, if the owner of the artifact has objected to inclusion on the inventory, with the inventory sheet stored in the address file in the building division offices.**

B. Major Alterations. Major alterations include permanent changes to the visual character of an **historical** artifact or its setting. Examples of major alteration include:

1. Changes to the height or width of a structure such as a gate or wall;
2. Painting or otherwise covering of previously unpainted surfaces, such as brick or stone;
3. Addition of new elements attached to historical artifacts (including but not limited to lighting fixtures, replacement of bases of sculptures or other objects);
4. Relocation of a structure on the **artifact** property;
5. Relocation of an object or structure to another property within the town.

Application for a major alteration permit is ~~approvable~~ **may be approved, approved with conditions, or denied** by the planning commission, with appeal to the city council. In ~~hearing~~ **considering** applications for major alteration permits, the planning commission shall ~~review~~ **determine whether** the proposed alterations ~~is for~~ **is** consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties and the California Historical Building Code. **The decision of the planning commission shall be supported by written findings.**

The building official may require documentary materials, including an evaluation of the proposed alterations by a qualified historical preservation professional, to assist the planning

commission in its determination. Once an application for a major alteration permit is deemed complete by the building official, the planning commission shall conduct a public hearing on the application within sixty days. Appeals to the planning commission's decision must be filed within ten days pursuant to Chapter 17.64 to the city council.

Copies of the permit application and supporting materials shall be filed with the historical artifact inventory as a permanent record of the alteration, **or, if the owner of the artifact has objected to inclusion on the inventory, with the inventory sheet stored in the address file in the building division offices.** (Ord. 567 § 1 (part), 2007)

8.14.100 Demolition permits.

For the purposes of this chapter, demolition includes the removal of all or part of a historical artifact either for disposal or otherwise its relocation from within the town boundaries.

Application for a demolition permit for a historical artifact ~~is approvable~~ **may be approved, approved with conditions, or denied** by the planning commission, with appeal to the city council. ~~In To approving an~~ applications for a demolition permits, the planning commission shall make findings that an emergency exists that threatens the public health, welfare or safety; and that no feasible alternative can be found to ensure the preservation of the historical artifact within the town. Where no threat to public health, welfare or safety can be identified, the planning commission shall consider whether the preservation of the historical artifact leaves the **artifact** property with significantly diminished property value. A finding based on significantly diminished property value shall require documentation by independent experts and a finding that no feasible alternative can be found to ensure the preservation of the historical artifact within the town.

Once an application for a demolition permit is deemed complete by the building official, the planning commission shall conduct a public hearing on the application within sixty days. Appeals to the planning commission's decision must be filed within ten days in accordance with Chapter 17.64 to the city council. Copies of the permit application and supporting materials shall be filed with the historical artifact inventory as a permanent record of the alteration. (Ord. 567 § 1 (part), 2007)

8.14.110 Protection during construction.

Prior to issuance of a grading, demolition or building permit for a property that contains a historical artifact, the applicant shall present an artifact protection plan if any activity associated with the permit has the potential to impact a historical artifact. The artifact protection plan shall include barriers to prevent accidental damage to artifacts, protection against dirt and debris and, if necessary, temporary removal and storage of the historical artifact during the construction project. (Ord. 567 § 1 (part), 2007)

8.14.120 Consistency with CEQA and other statutes.

If any action under this chapter is subject to the provisions of the California Environmental Quality Act (CEQA), or other applicable local, state or federal regulations, the time in which such action is taken shall be extended in order to allow time to comply with the provisions of the applicable regulations; provided, however, that such action is taken within the time limits imposed by the Permit Streamlining Act. (Ord. 567 § 1 (part), 2007)

8.14.130 Cases of economic hardship.

In those cases where the **artifact** property owner believes clearly demonstrates that the preservation of the historical artifact, **including the denial of a minor alteration, major alteration or demolition permit, will cause economic hardship by leaving an artifact property with no economically viable use**~~reasonable financial value, the planning commission, or city council on appeal, may approve or conditionally approve such permit application even though it does not meet the standards set forth in sections 8.14.090 and 8.14.100. ~~the owner may apply for a permit to remove the artifact.~~~~ The owner shall bear the burden of proving the hardship and shall provide substantiation of the claim. The planning commission, or city council on appeal, is authorized to request that the applicant furnish additional information, documentation and expert testimony, the cost of which shall be paid by the applicant, to be considered by the planning commission, or city council on appeal, in its decision. ~~Independent evidence of significantly diminished property value shall be required to make a finding of economic hardship.~~ **In determining whether economic hardship exists, the planning commission, or city council on appeal, shall consider evidence that demonstrates:**

A. Denial of the application will diminish the value of the artifact property so as to leave substantially no value;

B. Sale or rental of the artifact property is impractical, when compared to the cost of holding such property for permitted uses;

C. Utilization of the artifact property for lawful purposes is prohibited or impractical.

The town, in its discretion, may ~~in its judgment~~ waive any or all fees for alteration permits in cases where in its judgment the fee is an undue financial burden to the applicant. (Ord. 567 § 1 (part), 2007)

8.14.135 Unsafe or dangerous conditions.

The provisions of this chapter shall not be interpreted to prevent any measures, including construction, alteration, or demolition, necessary to correct the unsafe or dangerous conditions of any artifact, or part thereof, where such condition has been declared unsafe or dangerous by the building official or the fire chief, and where the proposed measures have been declared necessary by such official, to correct such condition; provided, however, that only such work as is necessary to correct the unsafe or dangerous condition and as is done with utmost regard for preservation of the appearance of the artifact involved may be performed pursuant to this section. In the event any artifact shall be damaged by fire, earthquake or other natural disaster, to such an extent that in the opinion of the aforesaid officials it cannot be reasonably repaired and restored, it may be removed in conformity with normal permit procedures and applicable laws. If the condition of an unsafe or dangerous historical artifact so permits, the official in charge of correcting such a condition shall consult with the planning commission before carrying out corrective measures.

Article III. Enforcement and Fees

8.14.140 Accidental damage.

In the event of accidental damage to a historical artifact, no fines or penalties shall be imposed. Repairs shall be subject to review as described in Article II of this chapter. In the event the damage to the artifact creates an unsafe situation, the property owner may mitigate the hazard and bring the artifact to a safe situation without the issuance of a permit. Such work must be reported to the town within seventy-two hours. In the event the artifact is damaged by an act of nature, the property owner shall not be required to fully restore the artifact beyond bringing the artifact to a safe condition. Failure to adequately protect the artifact from accidental damage does not relieve the **artifact** property owner from the duty to restore the artifact. (Ord. 567 § 1 (part), 2007)

8.14.150 Alterations/demolitions without a permit—Violation—Penalty.

A. Any person causing the alteration of a historical artifact in a manner which exceeds “preventive maintenance” as defined in Section 8.14.0200 without an alteration permit shall submit a penalty in the amount of five thousand dollars to be deposited into a fund reserved for projects that preserve, restore or enhance historical artifacts on the official inventory of historical artifacts as a civil penalty in addition to the penalties as outlined in Chapter 1.20.

B. Any person causing a historical artifact to be removed or demolished without a demolition permit shall submit a penalty in the amount of ten thousand dollars to be deposited into a fund reserved for projects that preserve, restore or enhance historical artifacts on the official inventory of historical artifacts as a civil penalty in addition to the penalties as outlined in Chapter 1.20.

C. In the event the historical artifact can be restored to its appearance at the time of its designation or at the time of the most recent alteration permit or demolition permit, no civil penalty shall be imposed. Otherwise, as part of a civil action brought by the town, a court may assess against any person who commits, allows, or maintains a violation of any provision of this chapter, the civil penalties as described in subsections A and B of this section.

D. A civil action may be commenced to abate, enjoin, or otherwise compel the cessation of violation of any provision of this chapter. In a civil action brought pursuant to this chapter in which the town prevails, the court may award to the town all costs of investigation and preparation for trial, the costs of trial, reasonable expenses including overhead and administrative costs incurred in prosecuting the action and reasonable attorneys’ fees.

E. Upon any guilty plea of judgment or conviction, in any criminal proceeding brought for the violation of this chapter, where the defendant is entitled by law to probation, then the court may require the payment to the town of the costs and expenses as described above as one of the conditions of such probation. (Ord. 567 § 1 (part), 2007)

8.14.160 Fee schedule.

The following fees shall not apply to action taken by a property owner on his/her property:

Application for designation of a historical artifact	\$750.00
Appeal of designation of a historical artifact	\$750.00
Minor alteration permit	no charge
Appeal of minor alteration permit	\$750.00
Major alteration permit	\$750.00 plus the cost of historical evaluation if not

Draft Ordinance with edits

	already completed
Appeal of major alteration permit	\$750.00
Demolition or removal permit	\$750.00
Appeal of demolition of removal permit	\$750.00

October 25, 2007

Lisa Costa Sanders
Deputy Town Planner
Town of Atherton
91 Ashfield Road
Atherton, CA 94027

Subject: Lindenwood Historic District

The Historical Artifact Inventory report identifies the Lindenwood Historic District as being composed of “structures and objects constructed as part of the Flood Estate (Linden Towers) prior to 1937.” More than two dozen structures and objects are recorded and identified in the inventory of historical artifacts as being located in the Lindenwood area and associated with the Flood Estate, and more than a dozen additional artifacts associated with the Flood Estate have been identified but not yet formally inventoried (see Appendix B of the Historical Artifact Inventory report).

The Historical Artifacts Ordinance (Ordinance No. 567) adopted in October 2006, and appearing at Chapter 8.14 of the Atherton Code, identifies the locally significant “Lindenwood Historic District.” This collection of more than forty artifacts, collected by a single family and concentrated in a single neighborhood, qualifies as a locally-significant historic district. As noted in the Historical Artifact Inventory report, “[t]he large collection of artifacts associated with the Flood Estate, Linden Towers, may be considered a district. Since the subdivision of the estate in 1937, many of the estate buildings, including the main house, have been demolished and new homes constructed on the former grounds of the estate. Nonetheless, the artifacts associated with the Flood Estate are sufficiently impressive and numerous to create a unique historical character that is widely recognized by area residents. Surviving heritage trees, planted for the Flood estate gardens, also contribute to the quality of the setting. The history of the site is remarkably well-documented.”

The Lindenwood Historic District represents a significant concentration of artifacts united historically and aesthetically by plan and development which are culturally distinct and related, and are contained within a unified geographic entity (the Lindenwood neighborhood). The district meets the definition of an historic district as described by the National Register of Historic Places, which defines a district as possessing “a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development.” Similarly, the district meets the definition set out in regulations governing the California Register (describing historic districts as “unified geographic entities which contain a concentration of historic buildings, structures, objects, or sites united historically, culturally, or architecturally”). The Lindenwood Historic District is a recognizable entity worthy of protection under the Town’s Ordinance No. 567.

The Lindenwood Historic District is comprised of artifacts associated with the Flood Estate. The boundaries of the Flood family property in 1937 included several parcels which were developed over time into the neighborhood now known as Lindenwood, as well as lands that became Flood Park and James Flood School. The Lindenwood neighborhood is commonly defined as being bound by Middlefield Road, Bay Road, Ringwood Avenue and Marsh Road. These roads are an appropriate geographic boundary for the Lindenwood Historic District. All the Flood Estate artifacts included in the Inventory, or identified in the Appendix thereto, are located within these limits as is the 1937 subdivision. The neighborhood within these boundaries is a distinguishable entity with a strong association to the Flood Estate serving as the historic setting for the Flood Estate artifacts and Lindenwood Historic District.

I believe that Ordinance No. 567 protects the Flood Estate artifacts that are located in the Lindenwood Historic District. I recommend that the Council consider the proposed amendments to Chapter 8.14 with the goal of clarifying its intentions with regard to the historical setting of the Flood Estate artifacts.



Laura Jones, Ph.D.
Heritage Resources Consultant
976 Elsinore Ct.
Palo Alto CA 94303

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660 WEST DANA STREET

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MOUNTAIN VIEW, CALIFORNIA 94042

TELEPHONE (650) 967-6941

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REPLY TO:

MARC G. HYNES

J.M. ATKINSON (1892-1982)

L.M. FARASYN (1915-1979)

September 27, 2007

Todd A. Williams
Morgan, Miller, Blair
1331 north California Blvd., Suite 200
Walnut Creek, CA 94596-4544

RE: Atherton Historic Ordinance
Lindenwood District

Dear Todd:

I am forwarding a letter to you which I received from Philip D. Lively regarding a bit of the Lindenwood history. There are also observations made regarding the authority provisions of the ordinance.

Sincerely,

Marc G. Hynes / LB
Dictated by Mr. Hynes;

Signed and sent in his absence to avoid delay

MARC G. HYNES

MGH:cwb

Enclosure

Lindenwood Homes Association
P.O. Box 742, Menlo Park, CA 94026

RECEIVED
TOWN OF ATHERTON

September 21, 2007

2007 SEP 21 A 9:39

Mark Hynes
City Attorney
Town of Atherton
91 Ashfield Road
Atherton, CA 94027

Subject: Clarifications in the Language of Ordinance #567 Requiring the Preservation of Historical Artifacts within the Town of Atherton

Dear Mr. Hynes,

Even though the intent of Ordinance #567 is clear, the various hearings related to the application by the Lambs for a permit to remove two historically significant urns from Lindenwood, especially Case No. CIV 461630 before the Superior Court of California, have pointed up the need to clarify its language in several important areas:

- the definition of the Lindenwood Historic District;
- the ability of the building official and the Planning Commission to approve or deny alteration permits;
- the application of the Ordinance and its permit provisions to artifacts even when the homeowner objects to having them included in the "Inventory of Historical Artifacts".

Here are my recommendations to address these issues:

The Lindenwood Historic District

The Fair Oaks map of 1894 identifies the current outline of the area now known as Lindenwood. This was and is the overall acreage of which James C. Flood owned 63% and where he built his home, Linden Towers. This 1894 map has boundaries of Middlefield, Marsh, Bay and Ringwood Roads. A survey map of 1928 shows the same boundary roads with a Flood ownership of 365 acres or approximately 70% of the total.

Today, the same boundary roads exist in the same place they were in 1894, although the original country roads have been replaced by paved two lane thoroughfares. The boundary wall along Middlefield Road and the large entrance gates on Middlefield Road at Linden and James were erected in 1908 by James L. Flood, the son of James C. Flood. These historical artifacts have been designated by the State of California as points of historic interest, SMA-034, by the California Office of Historic Preservation. Behind these gates and wall and

within the boundary of these roads are 485 home sites developed since 1938 as Lindenwood.

Because Lindenwood no longer contains the original home, Linden Towers, it is arguable whether Lindenwood qualifies as a historic district according to the strict national and state standards of the "Secretary of the Interior's Standards for the Treatment of Historic Properties" or the "California Historical Building Code." However, both of these sets of interpretive guidelines provide for local designation of locally significant historic districts. Lindenwood includes many of the historic garden artifacts - - gates, urns, lamp posts, fountains, etc. - - from the Flood Estate; additionally many of the streets in Lindenwood follow the streets and paths in the former estate. Consequently, the Lindenwood area is prized by current and prospective homeowners for its preservation of the rural and historic Flood Estate character.

Recommendation: In Ordinance No. 567, Section 8.14.030 - "Definitions", add new definition J (with appropriate re-designation of subsequent definitions): "Lindenwood Historic District" is that area bounded by Middlefield, Marsh, Bay and Ringwood Roads, historically known as the Flood Estate, now known as the Lindenwood area."

Recommendation: In Section 8.14.060 - "Criteria", Section C - "Local Significance", part ii, end the wording after district, so the section reads: "Association with the Lindenwood Historic District."

Authority of the Building Official and the Planning Commission to Approve or Deny Permit Applications

In Section 8.14.090, A, "Minor alterations" and B, "Major Alterations", the word "approvable" is confusing as to the building official's responsibility in the case of minor alterations or the Planning Commission's responsibility in the case of major alterations to deny permit requests if they have not satisfied the required conditions. In addition, the language for major alteration permits was not clear on the Planning Commission's role in the determination of permit consistency with applicable standards.

Recommendation: In Section 8.14.090, A, "Minor alterations", replace the words "is approvable" in the first line of the second paragraph with the words "may be approved or denied", so the sentence reads: "The alteration permit application for a minor alteration may be approved or denied by the Building Official, with appeal to the Planning Commission."

Recommendation: In Section 8.14.090, B, "Major Alterations", replace the words "is approvable" in the first line of the second paragraph with the words "may be approved or denied", so the sentence reads: "Application for a major alteration permit may be approved or denied by the Planning Commission, with appeal to the City Council".

Recommendation: In Section 8.14.090, B, "Major Alterations", replace the entire second sentence of the second paragraph with the following: "In hearing applications for major alteration permits, the Planning Commission shall determine whether or not the proposed alterations are consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties, the California Historical Building Code, or the Lindenwood Historic District."

Jurisdiction of the Ordinance when the Artifact Owner Objects to Inclusion in the Official Inventory

As pointed out in the "Statement of Decision on the Petition for Writ of Administrative Mandate" in Case No. CIV 461630, page 16, the language of the Ordinance is not precise on the requirement that Historical Artifacts are subject to the terms of the Ordinance, even in those cases where the property owner objects to inclusion in the Inventory of Historical Artifacts.

Recommendation: In Section 8.14.090, "Activities Requiring an Alteration Permit", add the preamble: "In order to receive consideration for an alteration permit, the owner of an artifact shall first have complied with Section 18.14.070, Sections A, B, and C of this Ordinance."

These recommendations clarify the language of the Ordinance for the purposes of administration. They also satisfy the "Further Administrative Proceedings Warranted" section in the Statement of Decision in Case No. CIV 461630.

Regards,



Philip D. Lively
Individually and as President, on behalf of the Board of Directors, of the
Lindenwood Homes Association

Cc: Mayor Alan Carlson



Town of Atherton

CITY COUNCIL STAFF REPORT

**TO: HONORABLE MAYOR AND CITY COUNCIL
WENDÉ C. PROTZMAN, INTERIM CITY MANAGER**

FROM: LISA COSTA SANDERS, DEPUTY TOWN PLANNER

DATE: FOR THE SPECIAL CITY COUNCIL MEETING OF OCTOBER 29, 2007

SUBJECT: DRAFT ZONING CODE UPDATE

RECOMMENDATION:

Staff recommends that the City Council review the draft Zoning Code, provide direction to the consultant and refer the item to the General Plan Committee for review.

INTRODUCTION:

The City Council authorized Pacific Municipal Consulting (PMC) to prepare an update to the Zoning Code (Title 17 of the Atherton Municipal Code). Staff held a kick-off meeting with PMC and staff and provided them with some code sections that needed revision (measurement of height, calculation of floor area, etc.). In addition to those sections, PMC has taken a comprehensive review of the zoning code and prepared an Administrative Draft Zoning Code for review by the City Council. The draft document reorganizes the code to be more user friendly, easier to understand and resolves some inconsistencies between sections. Tables and illustrations have also been utilized to provide better clarity of the code requirements. The draft document was reviewed by Neal Martin, Lisa Costa Sanders, Mike Wasmann, Kevin Cittadini and Marc Hynes. Staff's comments on the draft document have been incorporated in the revised administrative draft.

ANALYSIS:

Reference is made to the memo provided by Pam Johns, PMC, for the recommended changes to the zoning code. As there was much discussion on the building height measurement section, PMC has also included another option for Council's consideration in their memo (page 4).

If the Council refers the item so the General Plan Committee for review, staff would provide expanded public notice of that meeting (notice in the *Almanac* and *Athertonian*, outreach to Architects, post at building department, etc).

ALTERNATIVES:

The Council could direct the consultant to make further revisions, or could recommend the General Plan Committee review the draft document, with recommendation to the Planning Commission and City Council.

FISCAL IMPACT:

The City Council authorized the consultant's cost to prepare the code revisions.

ENVIRONMENTAL IMPACT:

Staff will prepare the appropriate environmental review prior to the Planning Commission hearing.

Prepared by:

Approved by:

/s/ Lisa Costa Sanders
Lisa Costa Sanders
Deputy Town Planner

Wendé C. Protzman
Interim City Manager

Attachments:

1. Memo from Pam Jones, PMC dated October 22, 2007
2. Administrative Draft Zoning Code, dated October 15, 2007



MEMO

To: Lisa Costa Sanders, Town Planner
Mike Wasmann, Building Official
Kevin Cittadini, Building Inspector/Plan Checker
TOWN OF ATHERTON

From: Pam Johns
Lisa Burke
Christopher Jordan

Cc:

Date: October 22, 2007

Re: Draft Zoning Code

Attached is the Revised Administrative Draft Zoning Code for the Town of Atherton, dated October 22, 2007. This cover memo summarizes our recommended changes (reorganization, modification, deletions, additions) to the Town's existing Zoning Code. Modifications respond to comments received from staff and our professional experience with zoning regulations. These changes are organized by article and section under the new code. Previous code sections are sited throughout for reference.

In developing the Administrative Draft, we have utilized "track changes" to highlight substantive changes. Text that has been reorganized is not shown in track changes; but rather shown with a reference to the previous section number. The intent is to assist staff in focusing on proposed changes to the document by only highlighting changes.

Document Organization

We have recommended reorganizing the Zoning Code to be more user friendly and easier to understand. Similar elements, such as allowed use provisions and development standards, use regulations, and administrative procedures are grouped together in one location with a common format. Overall, the document is broken down as follows.

- Article I – Administration and Permit Procedures
- Article II – Districts and Development Standards
- Article III – General Development Regulations
- Article IV - Definitions

Article I: Administration and Permit Procedures

This article includes provisions for the overall administration of the Zoning Code, as well as the purpose and process for all of the Town's planning permits and entitlements. It also covers the Town's policy for nonconforming uses and structures. Significant changes proposed are as follow:

- The administrative provisions chapter (previously chapter 17.12) has been expanded to identify the process for reviewing applications and the designated approving authority for each permit type. Relevant provisions for effective date of approval, revocation, suspension, and transferability of permit, and application review have been moved from the permit chapters (e.g. conditional use permit, variance, etc.) to this chapter, developing a hierarchy to the code.
- A new chapter (17.10) addressing Zoning Code Interpretations has been developed for consideration. The objective of this chapter is to provide rules for interpretation of the code and establish a process for the Town Planner to formally interpret the provisions of the code in the instance of ambiguity. An example of when this would be useful to the Town would be a new type of accessory structure that could become prevalent in the community but is not specifically captured in the definition of an accessory structure. The Town Planner could issue an Interpretation that recognizes this new structure as an accessory structure subject to the standards and rules of the same. This process would eliminate the immediate need to complete a Zoning Code Amendment and codify new provisions in order to clarify an ambiguity.
- Each of the chapters for permits (e.g. conditional use permit, exceptions, variances, etc) have been reorganized and simplified. Repetitive provisions (e.g. appeals) have been moved to a single location in the administrative provisions chapter (17.06)
- The existing chapter on amendments and reclassifications (previously chapter 17.60) has been split into two independent chapters (17.18 and 17.20). Findings for adoption of Zoning Code Amendments (text and map) and been added, as well as a formal purpose statement and the ability to apply conditions to the approval. For reclassification, the purpose has been clarified and relevant like concepts (e.g. application contents) have been moved to the administrative provision chapter.
- A new purpose/intent statement has been added to the nonconforming uses, buildings, and structures chapter (17.26). Relevant changes adopted by Ordinance 570 have been incorporated. We are recommending merging the sections "Discontinuance of Nonconforming Use" and "Cessation of Lawful Nonconforming Use" into a common "Termination by Discontinuance" section (new 17.26.030) that uses a six-month grace period for discontinuance. Other regulations have been simplified into a single section on regulations for nonconforming uses and a separate section for nonconforming structures.
- Application submittal materials listed in each of the permits have been removed. Rather, a generic reference to a Town's current application form and corresponding submittal requirements has been added to Chapter 17.06.

Article II: Districts and Development Standards

This article identifies the zoning districts within the Town, the allowed uses in each district, and the development standards for those uses. Significant modifications include:

- The Use Districts Designated chapter (previously chapter 17.16) has been expanded to include a discussion of how allowed uses are identified in each district. Portions of chapter 17.36 related to

similar use determinations and prohibition of certain commercial uses have been moved to this chapter. The section addressing interpretation of district boundaries has been modified to identify the Town Planner as the responsible party for interpretation of district boundaries. A discussion of nonconforming lots has also been added.

- The chapters for the R-1A and R-1B residential districts (chapters 17.32 and 17.33) have been updated to include a clear purpose statement, along with character descriptions for the districts. Allowed use provisions have been consolidated into tables with relevant footnotes. Text relative to Exemption Review has been moved into the chapter addressing Exemption Review in Article I (17.12). New standards for dormers have been added to both chapters.
- A characteristics discussion has been added to the POS district. Allowed use and permit requirements have been converted from straight text to tables with relevant footnotes.
- A new purpose statement and characteristics discussion has been added to the PFS district. Allowed use provisions and development standards have been placed in tables, along with relevant footnotes. Per staff direction, a new use listing “Residential Associated with Primary Non-Residential Use” has been added to address dorms and teacher housing on a school site, convents with religious institutions, etc. A conditional use permit would be required for any such uses.
- No substantive changes have been made to the Lot Requirements chapter.

Article III: General Development Regulations

This article provides regulations and development standards for certain development features (e.g. accessory structures, basements, fences, landscaping, etc.) and use types (second dwelling units). This article also includes two new chapters that discuss practices for building height and measurement and yard measurement, which apply to all other chapters of the code. Significant modifications include:

- Existing chapter 17.36, Use Regulations Generally has been broken up into four new chapters:
 - Accessory Buildings and Structures
 - Basements
 - Fences and Walls
 - Second Dwelling Units
- The new Accessory Buildings and Structures chapter (17.40) includes definitions for accessory buildings and structures (and describes the different classifications of accessory structures), identifies permit requirements for these buildings and structures, and consolidates the development standards. New standards and permit requirements for other structure types (e.g. solar panels) can easily be added. Accessory structures regulated by this chapter include:
 - Enclosed and/or solid roof structures (e.g. detached garages)
 - Air conditioners and emergency power generators (both above and below ground)
 - Antennas and satellite dishes
 - Arbors and trellises
 - Artwork and fountains/water features
 - Athletic courts
 - Inflatable covers
 - Pools and spas

A table has been added to describe the general setback requirements and figures have been added as appropriate. Finally, other provisions that apply to individual types of accessory structures have been consolidated into a single special provisions section.

- The new Building Height and Measurement chapter (17.42) explains how building heights are determined and provides specific exemptions to the height limits for chimneys for residential development to a maximum of six feet and roof-mounted solar panels. It also includes a discussion of how to calculate height of the structure when there is a basement.

Alternative Consideration for Height Measurement

The Town's current practice for measuring height involves measuring from any point of the average natural grade as defined by up to 12 points to the topmost portion of the roof. Alternatively, the Town could measure height as the vertical distance, anywhere along the building or structure, from the natural or finish grade (whichever is lower) to the top of the building or structure directly above. This method would likely not change the determination for flat sites, but could change on sloped sites and would allow for a stepping or terracing of structures along hillsides.

- The basements chapter (17.44) carries over the Town's draft basement ordinance. The definition of basement has been simplified and a new definition for "under floor area" has been included to address concerns that the crawl space under the first floor could be identified as a basement. New provisions addressing lightwells, stairwells, and other excavated features have been added (Section 17.44.050).
- The Fences and Walls chapter (17.46) reorganizes the relevant development standards into a table and provides additional regulations in text regarding height measurement, permit requirements, design standards, and other special requirements (e.g. temporary fences for construction exempted). Additional setbacks for entry gates have also been added, as well as standards for posts and columns.
- The existing home occupation chapter has been carried over (17.48). A new purpose statement has been added. The designated approving authority has been changed to the Town Planner.
- The Landscape Screening chapter (17.50) includes some limited amendments to the applicability and general requirements section to clarify the scope of the chapter. The ability to impose a fine for failure to maintain landscaping has been added to section 17.50.050.
- The existing development standards for second dwelling units have been carried over from the existing code; however a new purpose statement has been added. We have also recommended some clarification to a few of the regulations, including an amendment to the parking requirement. (Chapter 17.52)
- The new yard measurements chapter (17.54) provides new information on yard area determination and includes several figures to explain the concepts. The existing projection for roof eaves has been incorporated into this chapter.
- The existing special events chapter (previously 17.38, now 17.56) has been carried over in its entirety.

Article IV: Definitions

This article provides definitions for unique terms used in the Zoning Code. The previous chapter 17.08 has been moved in their entirety to this article. Rather than having each definition as an identified section, we recommend simply listing the terms in alphabetic order. This will allow for new definitions to be added without the need to renumber the chapter. Significant modifications to the definitions include:

- Amended the definition of accessory building to be consistent with the accessory structure section of the code and add in the definition of accessory structure. Related definitions for antennas, satellite dish, etc. have been moved to this definition.
- Revised the definitions for average natural grade, basement, building, fence, grade, story, building height, structure, front and rear line of main building, floor area, and side wall.
- Added a definition for finish grade, butlers pantry, dormer, natural grade, prezoning, first story, retaining wall, natural grade, clear visibility area, and under floor area.
- Added a figure for floor area for second floor/attic spaces and for clear visibility area.

Town of Atherton

Title 17



Zoning Code

Draft Dated
October 22, 2007

**Town of Atherton
Zoning Code**

**Title 17 of the Atherton Municipal Code
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Draft Dated October 22, 2007

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Title 17 - Zoning

Article I

Administration and Permit Procedures

Chapter 17.04	Purpose and Applicability
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Chapter 17.26	Nonconforming Uses, Buildings, and Structures (<i>Previously 17.44</i>)

Revisions:

The following revisions have been made to article I of title 17:

Date of Adoption	Ordinance Number	Subject	Section	Page Number

Chapter 17.04 Purpose and Applicability

Sections:

- 17.04.010 Purpose
- 17.04.020 Compliance Required
- 17.04.030 Applicability

17.04.010 Purpose

The purpose of this title is to establish a zoning plan and regulations implementing the general plan and regulating land use within the Town and certain unincorporated areas that may be rezoned pursuant to the California Government Code. This title divides the Town into zoning districts consistent with general plan land use designations. It further provides regulations for uses, height, bulk, setbacks, open spaces, size of buildings and structures, and population densities. These regulations are necessary for the orderly use of land, for the provision of adequate light and air, to prevent overconcentration of population, to provide adequate community facilities and utilities, and to promote the public health, safety, and general welfare. (Ord. 407 § 1-1 (part), 1985)

17.04.020 Compliance Required

No building or structure shall be erected, reconstructed, or structurally altered in any manner, nor shall any building or land be used for any purpose other than as permitted by and in conformance with this title and all other ordinances, laws, and maps referred to in this title. (Ord. 407 § 1-1 (part), 1985)

17.04.030 Applicability

The provisions of this title shall apply to all persons, the Town of Atherton, and all other governmental agencies. (Ord. 407 § 1-1 (part), 1985)

Chapter 17.06 Zoning Code Administration and Permit Provisions (Previously 17.12 and 17.64)

Sections:

- 17.06.010 Zoning Code Administration (*New section*)
- 17.06.020 Planning Permits and Entitlements (*New section*)
- 17.06.030 Application Submittal (*Previously 17.52.020*)
- 17.06.040 Fees (*Previously 17.12.030*)
- 17.06.050 Complete Application (*New section*)
- 17.06.060 Application Review (*New section*)
- 17.06.070 Approval Authority (*New section*)
- 17.06.080 Notice Requirements for Public Hearings (*Previously 17.12.030*)
- 17.06.090 Public Hearings (*Previously 17.52.030 and 17.52.040*)
- 17.06.100 Appeals (*Previously 17.64*)
- 17.06.110 Effective Date (*New section*)
- 17.06.120 Revocation, Suspension, and Transferability (*Previously 17.52.080*)

17.06.010 Zoning Code Administration (*New section*)

The purpose of this chapter is to establish the administration of this title and to set forth the basic responsibilities of the officials and bodies charged with its administration.

A. Composition of the Atherton Planning Agency. California Government Code Section 65100 requires each jurisdiction to establish a planning agency to carry out the land use and planning functions of the jurisdiction. The functions of the planning agency, as designated by this title, may be any one of the following, as further defined in this chapter and title. In the absence of an assignment, the City Council shall have the planning agency responsibility and authority.

1. City Council
2. Planning Commission
3. Town Planner

Responsible agencies shall have such duties as assigned by this title.

B. Responsibilities of the City Council. The City Council shall have the following land use responsibilities:

1. Appoint members of the Planning Commission.
2. Hear and decide applications for zoning and general plan amendments. In the event that applications for other land use permits are requested in conjunction with these entitlements, the City Council shall also be the final decision-making body for the other land use permits.
3. Hear and decide appeals of the decisions of the Planning Commission and Town Planner.
4. Direct planning-related policy amendments and special studies as necessary or desired.
5. Exercise such other powers and duties as are prescribed by state law or local ordinance.

C. Responsibilities of the Planning Commission. The Planning Commission shall have the following land use responsibilities:

1. Hear and decide applications for conditional use permits, variances, and exception review.
2. Hear and make recommendations to the City Council on applications or proposals for amendments to this title.
3. Initiate studies of amendments to this title and make recommendations to the City Council for amendments to this title.
4. Hear and make recommendations to the City Council on applications or proposals for general plan amendments.
5. Exercise such other powers and duties as are prescribed by state law, local ordinance, or as directed by the City Council.

D. Responsibilities of the Town Planner. The Town Planner shall have the responsibility and authority to administer and enforce this title as follows:

1. Maintain the sections of this title, the zoning map, and all records of zoning actions and interpretations.
2. Advise the City Council, City Manager, Planning Commission, and general plan advisory committee on planning matters.
3. Decide administrative permits, including zoning clearance.
4. Staff meetings and provide administrative services for the Planning Commission.
5. Interpret the Zoning Code and maintain a record of Zoning Code interpretations.
6. Direct planning-related policy amendments and special studies as necessary or desired. Conduct administrative functions authorized by this title, including distribution and receipt of permit applications and corresponding fees, application review and public noticing, determination and issuance of administrative permits and approvals, and preparation of staff reports with recommendations, proposed findings, and proposed conditions for quasi-judicial and legislative actions by designated planning agencies. For a comprehensive list of permits, see section 17.06.020 (Planning Permits and Entitlements).
7. Provide information to the public and facilitate public participation on planning matters.
8. Exercise such other powers and duties as are prescribed by state law or local ordinance or as directed by the City Manager.

17.06.020 Planning Permits and Entitlements (New section)

The following are all planning and zoning-related permits and actions required and regulated by the Town. Each permit is described in subsequent chapters of this article, as listed below. General application submittal, review, noticing/hearing, and appeal provisions are listed in this chapter and in the related permit chapters listed below.

A. Zoning Clearance (Chapter 17.08)

- B. Zoning Code Interpretation (Chapter 17.10)
- C. Conditional Use Permits (Chapter 17.12)
- D. Exception Review (Chapter 17.14)
- E. Variances (Chapter 17.16)
- F. Zoning Code Amendments (Chapter 17.18)
- G. Front/Rear Lot Line Reclassifications (Chapter 17.20)
- H. Annexed Territory and Rezoning (Chapter 17.22)

17.06.030 Application Submittal (Previously 17.52.020)

~~A conditional use permit~~ An application for permit may be applied for by the record owner of the property for which the permit is sought or by the owner's agent as authorized in writing. The application shall be filed with the ~~secretary of the planning commission~~ Town Planner on a prescribed form, together with all fees, plans, maps, and any other information required by the ~~planning department~~ the Office of the Town Planner. Necessary submittal materials are listed on the form for each permit type.

If an application has been denied by the final Approval Authority, the application may not be presented in substantially the same form for a period of at least one year.

17.06.040 Fees (Previously 17.12.030)

Nonrefundable fees shall be required for all conditional use permits, variances, appeals, ~~and~~ amendments, and other applications in an amount as shall be fixed from time to time by resolution of the City Council. (Ord. 407 §14-1, 1985)

17.06.050 Complete Application (New section)

- A. Application Completeness. Within thirty (30) days of application submittal, the Town Planner shall determine whether or not the application is complete. The applicant shall be notified in writing of the determination either that:
 1. All the submittal requirements have been satisfied and the application has been accepted as complete; or
 2. Specific information is still necessary to complete the application. The letter may also identify preliminary information regarding the areas in which the submitted plans are not in compliance with Town standards and requirements. The applicant may appeal the determination in accordance with Section 17.06.100 (Appeals) and the Permit Streamlining Act (California Government Code Section 65943).

In order to expedite the determination of completeness for administrative permits and actions issued by the Town Planner (zoning clearance), administrative permit applications shall be deemed complete within ten (10) working days unless the applicant is otherwise notified in writing within that time period of additional information necessary to complete the application.

- B. Incomplete Application. If additional information or submittals are required and the application is not made complete within six (6) months of the completeness determination letter, the application shall be deemed by the Town to have been

withdrawn, and no action will be taken on the application. Unexpended fees, as determined by the Town Planner, will be returned to the applicant. If the applicant subsequently wishes to pursue the project, a new application, including fees, plans, exhibits, and other materials, must then be filed in compliance with this article.

17.06.060 Application Review (New section)

After acceptance of a complete application, the project shall be reviewed in accordance with the environmental review procedures of the California Environmental Quality Act (CEQA). The Town Planner will consult with other departments as appropriate to ensure compliance with all provisions of the Municipal Code and other adopted policies and plans. The Town Planner will prepare a report to the designated Approval Authority (Planning Commission and/or City Council) describing the project, along with a recommendation to approve, conditionally approve, or deny the application.

17.06.070 Approval Authority (New section)

The Approval Authority, as designated in Table 17.06.070-1 (Approval Authority), shall approve, conditionally approve, or deny the proposed planning permit in accordance with the requirements of this title. Table 17.06.070-1 (Approval Authority) identifies both recommending (R) and final (F) authorities for each permit. When a proposed project requires more than one permit with more than one Approval Authority, all project permits shall be processed concurrently and final action shall be taken by the highest-level designated Approval Authority for all such requested permits. In acting on a permit, the Approval Authority shall make the applicable findings as established by this title and as may be required by other laws and regulations. An action of the Approval Authority may be appealed pursuant to procedures set forth in Section 17.06.100 (Appeals).

**Table 17.06.070-1
Approval Authority**

<u>Type of Permit or Decision</u>	<u>Designated Approval Authority</u> "R" symbolizes the "Recommending Body" "F" symbolizes the "Final Decision Making Body"		
	<u>Town Planner</u>	<u>Planning Commission</u>	<u>City Council</u>
<u>Zoning Clearance</u>	E		
<u>Zoning Code Interpretation</u>	E		
<u>Conditional Use Permit</u>	R	E	
<u>Exception Review</u>	R	E	
<u>Variance</u>	R	E	
<u>Front/Rear Lot Line Reclassification</u>	R	E	
<u>Zoning Code Amendments</u>	R	R	E
<u>Annexed Territory and Prezoning</u>	R	R	E

17.06.080 Notice Requirements for Public Hearings (Previously 17.12.030)

Whenever a public hearing is required by provisions of this title or state statute, noticing shall be provided in the following manner in addition to any different requirements of state statute:

- A. The ~~secretary of the planning commission~~ Town Planner shall be responsible for executing all noticing requirements at least ten (10) calendar days prior to the public hearing date.
- B. The notice shall contain the date, time, and place of the public hearing and include a general explanation of the matter to be considered and a general description of the area to be affected.
- C. Notice shall be posted on the official Town bulletin boards.
- D. Notice shall be mailed to each property owner of record, shown on the latest county equalized assessment roll, any part of whose property lies within five hundred (500) feet of any boundary of real property which is the subject of the application.
- E. Where more than one thousand (1,000) lots or parcels are involved in an application, notice may be provided as specified in Government Code Section 65854.5. (Ord. 407 § 14-2, 1982)

17.06.090 Public Hearings (Previously 17.52.030 and 17.52.040)

- A. A public hearing shall be held ~~by the planning commission~~ on all conditional use permit, exception review, variance, front/rear lot line reclassification, Zoning Code amendment, and annexed territory and rezoning applications for permits. Upon receipt of a complete application for a permit, the ~~secretary of the planning commission~~ Town Planner shall set a date for the public hearing which shall be held within forty (40) days of the acceptance of the complete application. (~~Ord. 407 § 14-3(B), 1985~~)
- B. The ~~planning commission~~ designated Approval Authority shall hold a public hearing on all conditional use permit, exception review, variance, front/rear lot line reclassification, Zoning Code amendment, and annexed territory and rezoning applications at the time and place set for said hearings. The ~~commission~~ Approval Authority may continue any hearing from time to time and, at the conclusion of the original or continued public hearing, make findings and render its decision. The ~~commission~~ Approval Authority may approve, conditionally approve, or deny the permit. Said decision shall be rendered within sixty (60) days subsequent to the closing of the public hearing. (~~Ord. 407 § 14-3(C), 1985~~)

17.06.100 Appeals (Previously 17.64)

- A. An appeal from any Zoning Code related decision, action, ruling, judgement or order of the Planning Commission, any city official or advisory committee may be made to the City Council by any person aggrieved or affected by such decision or any Atherton citizen, pursuant to the provisions of this chapter. Any appeal shall be in writing and state the facts upon which an error, omission, or abuse of discretion was made by the decision-maker. (Ord. 407 § 14-5(A), 1985)
- B. All appeals shall be made within ten (10) calendar days from the date of such decision, shall be in writing, and shall be filed with the City Clerk. (Ord. 407 § 14-5(B), 1985)

- C. An appeal stays all further proceedings on the matter until an action is taken by the City Council, the appeal is withdrawn, or a release of stay is executed. A release of stay may only be issued by the City Council, City Manager, or a court of record when he/she/they certify that by reason of the certified facts, imminent peril to life and property would be caused. (Ord. 407 § 14-5(C), 1985)
- D. Prior to the next regular City Council meeting following receipt of an appeal, the ~~secretary of the planning commission~~Town Planner, ~~or~~ city official, ~~or secretary of the advisory committee~~, shall transmit to the City Council all data filed in connection with the case, any minutes of public hearings, any findings, and the decision. (Ord. 407 § 14-5(D), 1985)
- E. A public hearing shall be held by the City Council on all appeals. Following the receipt of a complete application for an appeal, the City Clerk shall set a date for the public hearing which shall be held within forty (40) days. (Ord. 407 § 14-5(E), 1985)
- F. The City Council shall act on the appeal within sixty (60) days after closing the public hearing. The council may affirm, reverse, or modify the original decision, provided that appropriate findings are made to support the decision. (Ord. 407 § 14-5(F), 1985)
- G. A permit or decision which has been the subject of an appeal or review by the council shall become effective three (3) days following the date on which the permit is granted or decision is affirmed by the council. The decision of the council upon an appeal or review shall be final and conclusive. (Ord. 407 § 14-5(G), 1985)

17.06.110 Effective Date (*New section*)

All permits shall take effect ten (10) days following the date of the decision unless an appeal is filed as provided pursuant to Section 17.06.100 (Appeals) of this title. No building permit may be issued until the expiration of said period or determination of all appeals, whichever occurs last.

17.06.120 Revocation, Suspension, and Transferability (*Previously 17.52.080*)

- A. In any case where the conditions of a permit have not been or are not being complied with, or the terms of any law or ordinance are violated in connection therewith, the City Manager shall give notice to the permittee of the intention to suspend or revoke the permit and, at least ten (10) days following the mailing of such notice, the Planning Commission shall conduct a hearing thereon. Following the hearing, the Planning Commission shall submit its recommendation to the City Council. The council shall act thereon within sixty (60) days after receipt of the recommendation.
- B. A permit which has not been used within one (1) year following the effective date thereof shall become null and void.
- C. Unless specifically provided otherwise as a condition of the permit, a valid permit granted pursuant to this title shall be transferable to successive owners of the site for which the use permit is granted.

Chapter 17.08 Zoning Clearance (*New chapter*)***Sections:***

- 17.08.010 Purpose (*New section*)
- 17.08.020 Approval Authority (*New section*)
- 17.08.030 Process (*New section*)

17.08.010 Purpose (*New section*)

The purpose of the zoning clearance is to ensure that all new and modified uses and structures comply with applicable provisions of this title, using simple administrative plan check procedures. Zoning clearance is required for all structures that require a building permit and may also be required for some buildings or structures that do not require a building permit.

17.08.020 Approval Authority (*New section*)

The designated Approval Authority for zoning clearance is the Town Planner. The Town Planner approves, conditionally approves, or denies the zoning clearance in accordance with the requirements of this title.

17.08.030 Process (*New section*)

No application form is necessary for zoning clearance. This process will be conducted by the Town Planner as part of the building permit application review. Zoning clearance shall be granted only when the Town Planner finds the proposal to be in conformance with all applicable provisions of this title. The Town Planner may modify plans in whole or in part, apply conditions of approval, or require guarantees to ensure compliance with applicable provisions of this title. Building permits shall not be issued without approval of zoning clearance.

Chapter 17.10 Zoning Code Interpretations *(New chapter)*

Sections:

- 17.10.010 Purpose *(New section)*
- 17.10.020 Applicability and Authority for Interpretations *(New section)*
- 17.10.030 Rules of Interpretation *(New section)*
- 17.10.040 Record of Interpretation *(New section)*
- 17.10.050 Appeals *(New section)*

17.10.010 Purpose *(New section)*

The purpose of this chapter is to specify the authority and procedures for clarification of ambiguity in the regulations of this title in order to ensure their consistent interpretation and application.

17.10.020 Applicability and Authority for Interpretations *(New section)*

If ambiguity arises concerning the meaning or applicability of the provisions of this title, it shall be the responsibility of the Town Planner to review pertinent facts, determine the intent of the provision, and issue an administrative interpretation of said provision(s) as specified in this chapter.

17.10.030 Rules of Interpretation *(New section)*

- A. Terminology. When used in this title, the following rules apply to all provisions of this title.
 - 1. Language. The words "shall," "must," "will," "is to," and "are to" are always mandatory. "Should" is not mandatory but is strongly recommended, and "may" is permissive.
 - 2. Tense and number. The present tense includes the past and future tense, and the future tense includes the present. The singular number includes the plural number, and the plural the singular, unless the natural construction of the words indicates otherwise.
 - 3. Conjunctions. "And" indicates that all connected items or provisions shall apply. "Or" indicates that the connected items or provisions may apply singly or in any combination. "Either...or" indicates that the connected items and provisions shall apply singly but not in combination. "Includes" and "including" shall mean "including but not limited to..."
- B. Zoning Regulations. Any list of any items, including zones or uses, is exclusive. If a use or other item is not listed, it is not permitted.
- C. Number of Days. Whenever the number of days is specified in this title, or in any permit, condition of approval, or notice issued or given as provided in this title, the number of days shall be construed as calendar days. When the last of the specified number of days falls on a weekend or Town holiday, time limits shall extend to the end of the next working day.
- D. Minimum Requirements. When interpreting and applying the regulations of this title, all provisions shall be considered to be minimum requirements, unless specifically stated otherwise.

17.10.040 Record of Interpretation *(New section)*

Whenever the Town Planner determines that an ambiguity in a zoning regulation exists, the Town Planner shall issue an official interpretation. Official interpretations shall be in writing and shall cite the provisions being interpreted, together with an explanation of the meaning or applicability of the provision(s) in the particular or general circumstances that caused the need for interpretation.

Any provision determined by the Town Planner to be ambiguous pursuant to this chapter shall be clarified by amendment as soon as is practical. The Town Planner shall maintain a complete record of all official interpretations available for public review, indexed by the chapter number of this title that is the subject of the interpretation, including all interpretations made by the Planning Commission and City Council. The applicant or property owner initiating the request for such interpretation shall receive a notice of action, including the record of interpretation and information regarding the Town's appeal procedures. All recorded interpretations shall also be provided to the Planning Commission, City Manager, City Attorney, and City Council in writing within ten (10) days of the Town Planner's determination.

17.10.050 Appeals *(New section)*

Interpretations by the Town Planner may be appealed to the designated Appeal Authority pursuant to Chapter 17.06 (Zoning Code Administration and Permit Provisions). The Planning Commission may decide to appeal the Town Planner's interpretation at their next regularly scheduled Planning Commission meeting. If the commission decides to appeal the determination, the appeal will be scheduled for hearing in accordance with standard appeal procedures outlined in Section 17.06.100 (Appeals).

Chapter 17.12 Conditional Use Permits *(Previously 17.52)*

Sections:

- 17.12.010 Purpose and Applicability *(Previously 17.52.010)*
- 17.12.020 Approval Authority *(New section)*
- 17.12.030 Findings *(Previously 17.52.050)*
- 17.12.040 Conditions and Restrictions *(Previously 17.52.060)*

17.12.010 Purpose and Applicability *(Previously 17.52.010)*

The purpose of the conditional use permit is for the individual review of uses, typically having unusual site development features or operating characteristics, to ensure compatibility with surrounding areas and uses. A conditional use permit is required for all uses specifically identified as requiring a conditional use permit in article II of this title and as otherwise specified. Conditional use permits may be applied for and granted by the Planning Commission pursuant to the provisions of this chapter. ~~(Ord. 407 § 14-3 (part), 1985)~~

~~17.52.020 Application Contents~~ *(Moved to 17.06.020)*

17.12.020 Approval Authority *(New section)*

The designated Approval Authority for a conditional use permit is the Planning Commission. The Town Planner provides a recommendation and the Planning Commission approves, conditionally approves, or denies the conditional use permit in accordance with the requirements of this title.

~~17.52.030 Public Hearing Date~~ *(Moved to 17.06.040)*

~~17.52.040 Public Hearing Planning Commission Decisions~~ *(Moved to 17.06.040)*

17.12.030 ~~Approval Conditions~~ Findings *(Previously 17.52.050)*

The Planning Commission may grant a conditional use permit pursuant to this section if, from the application of the facts presented at the public hearing, it finds:

- A. The proposed use at the proposed location will not be detrimental or injurious to persons, property, or improvements in the vicinity, and will not be detrimental to the public health, peace, safety, comfort, general welfare, or convenience;
- B. The proposed use will be located and conducted in a manner in accord with the general plan and the purposes of that plan and this title. (Ord. 407 § 14-3(D) (part), 1985)

17.12.040 Conditions and Restrictions *(Previously 17.52.060)*

The Planning Commission may impose such reasonable conditions or restrictions, including, but not limited to, time limits, review of performance, and performance standards, as it deems necessary to secure the purpose of this ordinance and to assure operation of the use or the construction of improvements in a manner compatible with existing and potential uses of adjoining properties and in the general vicinity, and may require guarantees and evidence that such conditions are being or will be complied with. (Ord. 407 § 14-3(D) (part), 1985)

~~17.10.050 — Effective Date (Moved to 17.06)~~

~~17.52.080 — Revocation, Suspension, and Transferability (Moved to 17.06.08)~~

Chapter 17.14 Exception Review (Previously 17.54)

Sections:

- 17.14.010 Purpose (Previously 17.54.010)
- 17.14.020 Applicability and Permit Requirements (Previously 17.54.040)
- 17.14.030 Exemptions (Previously 17.20.040.H and 17.25.040.H)
- 17.14.040 Approval Authority (New Section)
- 17.14.050 Criteria for Exception Review (17.54.030)
- 17.14.060 Conditions and Restrictions (New section)

17.14.010 ~~Exception Review~~Purpose (Previously 17.54.010)

~~There is established an exception review procedure to be implemented by the Atherton planning commission. The purpose of the exception review is to promote the orderly and harmonious growth of the Town, particularly where unique yet complementary circumstances apply; to encourage development in keeping with the desired character of the Town; and to ensure physical, visual, and functional compatibility between uses. Exception review provides an opportunity to examine proposed new development and remodeling of existing development with unique circumstances to ensure that main buildings on single family lots are compatible with, yet unique in character and design from, neighboring property. Prior to the issuance of a building permit for any new building or structure, or any addition or exterior remodeling of any building or structure for which an exception is required, the design, site plan and surrounding landscaping of the proposed new building or structure, addition or exterior remodeling shall be reviewed and approved or conditionally approved by the planning commission. In deciding whether to approve, conditionally approve, or deny any exception application, the planning commission shall consider the guidelines contained in this chapter. In granting such exception, the planning commission may impose such reasonable conditions or restrictions as it deems appropriate or necessary to protect the public health, safety, general welfare or convenience, and to secure the purposes of this title and may require guarantees and evidence that such conditions are being, or will be, complied with. (Ord. 456 § 6 (part), 1990)~~

~~17.54.020 Application Required (Merged with 17.14.030)~~

17.14.020 ~~Exception Review~~Applicability and Permit Requirements (Previously 17.54.040)

~~Exception review shall be required under the provisions of Chapter 17.54 of this code for each main building proposed that meets any of the following qualifications:~~

- ~~A. _____ to be built on any lot is located on a lot one-half (1/2) acre or less ~~smaller~~ and~~
- ~~B. _____ is located on a _____, ~~which~~ lot ~~which~~ was previously used in conjunction with any adjoining lot or lots as the site for a single primary residence; ~~or~~~~
- ~~C. _____ is located on a lot which has, at any time, been assessed with any other lot or lots as a single parcel (e.g., one parcel that was split into two or more parcels).~~

~~Prior to the issuance of a building permit for any new building or structure, or any addition or exterior remodeling of any building or structure for which an exception is required, the design, site plan, and surrounding landscaping of the proposed new building or structure, addition, or exterior remodeling shall be reviewed and approved or conditionally approved by the Planning~~

Commission. See chapter 17.26 (Nonconforming Uses, Buildings, and Structures) and section 17.33.040(E) (Additions to Main Buildings Which Are Nonconforming Due to Side Yard Setbacks But Are Otherwise Legally Built).

17.14.030 Exemptions (Previously 17.20.040.H and 17.24.040.H)

~~There shall be e~~The following buildings and structures are exempt~~cepted~~ from exception review: the requirements of this subsection any proposed main building which is

- A. sSingle story buildings and structures less than eighteen (18) feet in height ; ~~and~~
~~any proposed main building which in the judgment of the building official~~Town Planner substantially differs from the main building on the lot previously used in conjunction with the subject lot in three of four items in Category A and at least three of the six items in Category B listed below:

Category A	Category B
Roof Profile	Color
Front or Side Setbacks	Exterior Wall Materials
	Front Door Location
Second Floor Configuration	Window Style
	Garage Door Location
Window Placement	Roof Material

17.14.040 Approval Authority (New section)

The designated Approval Authority for exceptions is the Planning Commission. The Town Planner shall provide a recommendation to the Planning Commission and the Planning Commission may approve, conditionally approve, or deny the exception in accordance with the requirements of this title.

17.14.050 Exception Review GuidelinesCriteria for Exception Review (Previously 17.54.030)

In reviewing any application for exception review, the ~~planning commission~~Planning Commission shall consider the following guidelines in its decision to approve, conditionally approve, or deny an application: The intent is to provide for two (2) neighboring structures that are distinct and different architecturally from one another and thus positively contribute to the character of the neighborhood and Town.

- A. The exception requested is compatible with the surrounding neighborhood visual character.
- B. The landscaping and exception sought will not substantially decrease the privacy of neighbors.
- C. The application shall not increase the degree of nonconformity as defined in Section Chapter 17.44~~26-050~~ (Nonconforming Uses and Structures).
- D. The exception requested is consistent with the general plan, the purposes of that plan, and this title. ~~(Ord. 456 § 6 (part), 1990)~~

17.14.060 Conditions and Restrictions *(New section)*

In granting any exception, the Planning Commission may impose such reasonable conditions or restrictions as it deems appropriate or necessary to protect the public health, safety, general welfare, or convenience, and to secure the purposes of this title and may require guarantees and evidence that such conditions are being, or will be, complied with.

Chapter 17.16 Variances (*Previously 17.56*)

Sections:

- 17.16.010 Purpose and Applicability (*New section*)
- 17.16.020 Approval Authority (*Previously 17.56.010*)
- 17.16.030 Findings (*Previously 17.56.050*)
- 17.16.040 Conditions and Restrictions (*Previously 17.56.060*)

17.16.010 Purpose and Applicability (*New section*)

In accordance with California Government Code Section 65906, a variance request allows the Town to grant exceptions to the development standards and provisions of this title in cases where, because of special circumstances applicable to the property, the strict application of this title deprives such property of privileges enjoyed by other property in the vicinity and under identical land use zoning districts. A variance approval is required to grant exception from any of the development standards and provisions of this title. Variance applications may not be granted for uses or activities not otherwise permitted by zoning district regulations.

17.16.020 Approval Authority (*Previously 17.56.010*)

Variances may be applied for and granted by the Planning Commission pursuant to the provisions of this chapter. The Town Planner provides a recommendation and the Planning Commission approves, conditionally approves, or denies the variance in accordance with the requirements of this title. (~~Ord. 407 § 14.4 (part), 1985~~)

~~17.56.020 Application Contents~~ (*Moved to 17.06.020*)

~~17.56.030 Public Hearing Date~~ (*Moved to 17.06.040*)

~~17.56.040 Public Hearing Planning Commission Decision~~ (*Moved to 17.06.040*)

17.16.030 Findings (*Previously 17.56.050*)

~~The planning commission may grant a~~ variance may be granted from the site development, height, bulk, setback, or other special requirements of this title applicable within any district, other than land use regulations, ~~if~~ only if, from the application or the facts presented at the public hearing, ~~the designated Approval Authority~~ makes the following findings:

- A. Variances from the terms of the zoning title shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of the zoning title deprives such property of privileges enjoyed by other property in the vicinity and under identical classification.
- B. Any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated.

- C. A variance shall not be granted for a parcel of property which authorizes a use or activity which is not otherwise expressly authorized by the zone regulation governing the parcel of property. (Ord. 504 § 1, 1999; Ord. 407 § 14-4(D) (part), 1985)

17.16.040 Conditions and Restrictions *(Previously 17.56.060)*

In granting such variance, the Planning Commission may impose such reasonable conditions or restrictions as it deems appropriate or necessary to protect the public health, safety, general welfare, or convenience, and to secure the purposes of this title and may require guarantees and evidence that such conditions are being, or will be, complied with. (Ord. 407 § 14-4(D) (part), 1985)

~~17.14.070 Effective Date *(Moved to 17.06.110)*~~

~~17.56.080 Revocation, Suspension, and Transferability *(Moved to 17.06.080)*~~

Chapter 17.18 Zoning Code Amendments (*Previously 17.60*)

Sections:

- 17.18.010 Purpose (*New section*)
- 17.18.020 Initiation of Amendment (*Previously 17.60.010*)
- 17.18.030 Approval Authority (*New section*)
- 17.18.040 Public Hearing (*Previously 17.60.020*)
- 17.18.050 Planning Commission Action (*Previously 17.60.030*)
- 17.18.060 City Council Action (*Previously 17.60.040*)

17.18.010 Purpose (*New section*)

The purpose of a zoning amendment is to allow modifications to any provisions of this title (including the adoption of new regulations or deletion of existing regulations) or to change the zoning designation on any parcel(s). This section is consistent with California Government Code Section 65853.

17.18.020 Initiation of Amendment (*Previously 17.60.010*)

~~Amendments to this title and reclassifications of property may be made by the city council through adoption of subsequent amending ordinances pursuant to the procedure established by this article. Amendments may be initiated by:~~

- A. A petition to the City Council by an owner or owners of real property in the Town that would be affected by the proposed amendment;
- B. Resolution of intention by the Planning Commission;
- C. Resolution of intention by the City Council directing the Planning Commission to consider a proposed amendment. (Ord. 407 § 14-6(A), 1985)

17.18.030 Approval Authority (*New section*)

The designated Approval Authority for zoning amendments is the City Council. The Town Planner and Planning Commission provide recommendations and the City Council approves, conditionally approves, or denies the zoning amendment in accordance with the requirements of this title.

17.18.040 Public Hearing (*Previously 17.60.020*)

A public hearing shall be held by the Planning Commission on all proposed amendments to this title. Upon receipt of a petition for amendment or City Council resolution of intention, the ~~secretary of the planning commission~~ Town Planner shall set a date for the public hearing which shall be held within forty (40) days of acceptance of the completed petition. Subsequent to a Planning Commission decision on a proposal, the ~~commission secretary~~ Town Planner shall transmit the recommendation to the City Council. A public hearing shall be held by the City Council on all proposed amendments to this article; provided, however, that if the matter under consideration is an amendment to change property from one zoning district to another, and the Planning Commission has recommended against the adoption of such amendment, the City Council shall not be required to take any further action unless an interested party shall request such a hearing by filing a written notice with the City Clerk within ~~five~~ ten (10) days after the Planning Commission files its recommendation with the City Council. At its next regular meeting following receipt of a Planning Commission recommendation to approve an amendment, the

City Council shall set a date upon which the hearing is set. Any public hearing pursuant to this section may be continued from time to time. (Ord. 407 § 14-6(B), 1985)

17.18.050 Planning Commission Action *(Previously 17.60.030)*

Within sixty ~~(60)~~ days following the public hearing, the commission shall make a specific finding as to whether the proposed amendment is required to achieve the objectives of the general plan and the ordinance codified in this title. The commission may approve, ~~modify~~ **conditionally approve**, or deny the proposed amendment based on the information supplied as part of the application, testimony, and evidence presented at the public hearing and consistency with the general plan. The commission shall transmit a written report to the City Council, including its decision and findings of fact. (Ord. 407 § 14-6(C), 1985)

17.18.060 City Council Action *(Previously 17.60.040)*

Within sixty ~~(60)~~ days following a public hearing on the proposed amendment, the City Council shall make a specific finding as to whether the amendment is required to achieve the objectives of the general plan and the ordinance codified in this title. If the council finds that the change is appropriate, it shall enact an ordinance amending the appropriate sections of this title. If the council finds that the change is not appropriate, it shall deny the application or reject the proposal. Any change in district boundaries enacted as part of the amendment shall be indicated on the zoning map following adoption of an ordinance amending the map. (Ord. 407 § 14-6(D), 1985)

~~17.60.050 — Generally *(Moved to Chapter 17.18)*~~

~~17.60.060 — Application *(Moved to Chapter 17.18)*~~

~~17.60.070 — Planning Commission Decision *(Moved to Chapter 17.18)*~~

~~17.60.080 — Findings and Conditions *(Moved to Chapter 17.18)*~~

~~17.60.090 — Recordation *(Moved to Chapter 17.18)*~~

Chapter 17.20 Front/Rear Lot Line Reclassifications—Redesignation (Previously 17.60)

Sections:

- 17.20.010 Purpose (Previously 17.60.050)
- 17.20.020 Approval Authority (New section)
- 17.20.030 Findings and Conditions (Previously 17.60.080)
- 17.20.040 Recordation (Previously 17.60.090)

17.20.010 Generally Purpose (Previously 17.60.050)

The purpose of the front/rear lot line reclassification is to provide a process for the property owner to declare a different line as the front or rear lot line. In general, the front lot line is the narrowest portion of the lot fronting a street or access as in the case of a flag lot. However, if the property owner desires that a different line be designated the front lot line, he/she may apply to the Planning Commission for a front/rear lot line ~~redefinition~~ redesignation. ~~—(Ord. 407 § 14-7 (part), 1985).~~ Definitions of terms used in this chapter may be found in Chapter 17.60 (Definitions).

~~17.60.060~~ ~~Application~~ (Moved to 17.06.020)

~~17.60.070~~ ~~Planning Commission Decision~~ (Moved to 17.06.050)

17.20.020 Approval Authority (New section)

The designated Approval Authority for front/rear lot line redesignation is the Planning Commission. The Town Planner provides a recommendation and the Planning Commission approves, conditionally approves, or denies the reclassification in accordance with the requirements of this title.

17.20.030 Findings and Conditions (Previously 17.60.080)

- A. The Planning Commission may grant a front/rear lot line redesignation pursuant to this article if, from the application or the facts presented at the time of consideration, it finds:
 - 1. The proposed redesignation will not be detrimental or injurious to persons, property or improvements in the vicinity and will not be detrimental to the public health, peace, safety, comfort, general welfare, or convenience;
 - 2. The proposed redesignation will be in accord with the general plan and the purposes of that plan and of this title;
- B. The Planning Commission may impose such reasonable conditions or restrictions as it deems necessary to secure the purpose of this title. (Ord. 407 § 14-7(C), 1985)

17.20.040 Recordation (Previously 17.60.090)

Subsequent to any front/rear lot line redesignation approved by the Planning Commission, the City Clerk shall record the location of a newly designated front lot line in the offices of the county recorder. Costs for such recordation shall be borne by the applicant, and the effective date of the redesignation shall be the date of recordation. (Ord. 407 § 14-7(D), 1985)

Chapter 17.22 Annexed Territory and Prezoning (*Previously 17.06.010*)***Sections:***

- 17.22.010 Purpose (*New section*)
- 17.22.020 Process (*Previously 17.06.010*)

17.22.010 Purpose (*New section*)

The purpose of prezoning is to establish the designation of land use by zoning district for unincorporated property adjoining the Town, within the sphere of influence. This section is consistent with California Government Code Section 65859.

17.22.020 Process (*Previously 17.06.010*)

~~The town may prezone unincorporated territory adjoining the town for the purpose of determining the zoning district applicable to the property in the event of subsequent annexation. The method of accomplishing such prezoning shall be~~ the same as for Zoning Code (map) amendments as provided in Chapter 17.6018 (Zoning Code Amendments) of this title. Such zoning shall become effective at the time annexation becomes effective. Any land hereinafter annexed to the Town shall, unless prezoned, be in the residential A district. (Ord. 407 § 1-5, 1985)

Chapter 17.24 Enforcement (*Previously 17.68*)***Sections:***

- 17.24.010 Enforcement Authority (*Previously 17.68.010*)
- 17.24.020 Violation – Deemed Nuisance (*Previously 17.68.020*)

17.24.010 Enforcement Authority (*Previously 17.68.010*)

All departments, officials, and public employees of the Town vested with the duty or authority to issue permits or licenses shall conform to the provisions of this title and shall issue no permit or license for uses, buildings, or purposes in conflict with the provisions of this title. Any such permits or licenses issued in conflict with the provisions of this title shall be null and void. It shall be the duty of the ~~chief building official of the town~~ City Manager to enforce the provisions of this title pertaining to erection, construction, reconstruction, moving, conversion, alteration, or addition to any building or structure. (Ord. 407 § 15-1, 1985)

17.24.020 Violation – Deemed Nuisance (*Previously 17.68.020*)

Each violation of this title shall constitute a public nuisance and be subject to abatement proceedings and costs pursuant to Chapter 8.20 (Nuisance Abatement). (Ord. 490 § 49, 1996; Ord. 407 § 15-2, 1985)

Chapter 17.26 Nonconforming Uses, Buildings, and Structures (Previously 17.44)

Sections:

- 17.26.010 Purpose and Intent (*New section*)
- 17.26.020 Definitions (*Previously 17.08.240 and 17.08.250*)
- 17.26.030 Termination by Discontinuance (*Previously 17.44.010 and 17.44.040*)
- 17.26.040 Nonconforming Land Use Regulation (*Previously 17.44.020 and 17.44.030*)
- 17.26.050 Nonconforming Structures and Buildings Regulations (*Previously 17.44.050*)

17.26.010 Purpose and Intent (*New section*)

This chapter provides regulations for nonconforming land uses, buildings, and structures that were lawful before the adoption or amendment of this Zoning Code, but which would be prohibited, regulated, or restricted differently under the current terms of this Zoning Code or future amendments.

It is the intent of this Zoning Code to discourage the long-term continuance of nonconformities, providing for their eventual elimination, while allowing them to exist under the limited conditions outlined in this chapter. Such uses may be reconstructed in the event of a natural disaster under the provisions outlined herein.

17.26.020 Definitions (*Previously 17.08.240 and 17.08.250*)

For purposes of this title, the following terms shall be defined as follows:

"Nonconforming building" means a building that does not conform to the regulations of the district in which it is located.

"Nonconforming structure" means a structure that does not conform to the regulations of the district in which it is located. (Ord. 407 § 16-23, 1985)

"Nonconforming use" means a use that does not conform to the regulations for the district in which it is situated. (Ord. 407 § 16-24, 1985)

17.26.030 Termination by Discontinuance (*Previously 17.44.010 and 17.44.040*)

~~The use of any land, structure or building which does not conform to the regulation specified for the district in which such use, structure or building is located shall be discontinued within six months of the adoption of the ordinance codified in this title, except as provided in this chapter.~~

~~If any lawful nonconforming use ceases for any reason for a period of more than thirty days, any subsequent use of such land shall conform with the regulations of this title. (Ord. 407 § 11-1(D), 1985)~~

If a nonconforming use of land or a nonconforming use of a conforming structure or building is discontinued for a continuous period of six (6) months or more, rights to legal nonconforming status shall terminate.

17.26.040 Nonconforming Land Use Regulation (Previously 17.44.020 and 17.44.030)

A. Continuation of Legal Nonconforming Use. The lawful use of land, structures, or buildings existing at the time of adoption of the ordinance codified in this title may be continued, although such use becomes nonconforming by adoption of the ordinance codified in this title.

B. Restrictions on Nonconforming Uses. Lawful nonconforming uses shall not be:

1. Enlarged or increased;
2. Changed to any other nonconforming use;
3. Extended to occupy greater land area;
4. Moved to another portion of the lot.

17.26.050 Nonconforming Structures and Buildings Regulations (Previously 17.44.050)

A. Continuation of Legal Nonconforming Structure and Buildings. The lawful use of structures or buildings existing at the time of adoption of the ordinance codified in this title may be continued, although such structure and building becomes nonconforming by adoption of the ordinance codified in this title.

B. Restrictions on Nonconforming Buildings and Structures. ~~No nonconforming structure~~ Lawful nonconforming buildings and structures shall not be moved, altered, enlarged, reconstructed, or voluntarily removed, except in conformity with all current zoning and building regulations unless specifically permitted by this section. Exceptions are as follows:

1. Any nonconforming main building or buildings or structure, which was conforming at the time of its construction and which is damaged or destroyed by fire, explosion, earthquake, or other accidental occurrence, may be restored within the building envelope which existed immediately prior to the accidental occurrence; provided that all such reconstruction must meet current building codes. The burden of proving the extent of the building envelope existing immediately prior to the accidental occurrence shall be upon the party seeking to reconstruct the structure.
2. No nonconforming accessory structure which is damaged or destroyed by fire, explosion, earthquake, or other accidental occurrence, or which is voluntarily removed, may be reconstructed except in conformity with all current zoning and building regulations.
3. Alterations or additions to nonconforming main buildings may be permitted so long as the addition or alteration is limited to no more than fifty (50) percent of the floor area and no more than fifty (50) percent of nonconforming exterior walls are rebuilt, either as a single project or cumulatively over time, which means a series of projects beginning with the first alteration within a period of five (5) years. Alterations or additions of more than fifty (50) percent are required to entirely meet current zoning and building code requirements.
4. Alterations or additions to non-conforming accessory buildings may be permitted so long as the alteration or addition is made to the conforming portion of the accessory building or is made to the nonconforming portion so as to bring that portion into conformity.

- C. Special Provisions for Nonconforming Buildings and Structures in Residential R-1B District. Additions to main buildings in the R1-B zoning district shall not be deemed as increasing the degree of nonconformity if meeting all of the following: Also see provisions of section 17.33.040(E) (Additions to Main Buildings Which Are Nonconforming Due to Side Yard Setbacks But Are Otherwise Legally Built).
1. Shall not increase the degree of nonconformity of the existing side yard setback and any proposed new construction shall not be less than ten (10) feet from the property line in the R1-B zone;
 2. Shall not encroach into current front and rear setbacks in the R1-B zone;
 3. Shall be limited to a single story with vertical sidewalls not exceeding twelve (12) feet in the R1-B zone;
 4. Shall have a roof height not exceeding eighteen (18) feet in the R1-B zone; ~~-(Ord. 456 § 7, 1990; Ord. 420 § 1, 1986).~~
- D. Special Provisions for Nonconforming Buildings and Structures in Residential R-1A District. Additions to main buildings in the R1-A zoning district shall not be deemed as increasing the degree of nonconformity if meeting all of the following:
1. Shall not increase the degree of nonconformity of the setback and any proposed new construction shall not encroach more than twenty (20) percent into the required setback in the R1-A zone;
 2. The new construction shall be no taller than the height of the existing nonconforming structure in the R1-A zone and not exceed the maximum building height.
- ~~D.E.~~ Maintenance and Repair. The following rules shall apply to all nonconforming structures:
1. Ordinary maintenance and minor repairs are permitted;
 - ~~2. Alterations, structural or not, which will increase the degree of nonconformity are prohibited;~~
 - 3.2. Major repairs and alterations which will not increase the degree of nonconformity are permitted.

Title 17 - Zoning

Article II Districts and Development Standards

Chapter 17.30	Use Districts Designated <i>(Previously 17.16)</i>
Chapter 17.32	Residential District A (R-1A) <i>(Previously 17.20)</i>
Chapter 17.33	Residential District B (R-1B) <i>(Previously 17.24)</i>
Chapter 17.34	Park and Open Space District (POS) <i>(Previously 17.28)</i>
Chapter 17.36	Public Facilities and Schools District (PFS) <i>(Previously 17.32)</i>
Chapter 17.38	Side Yard Requirements <i>(Previously 17.40)</i>

Revisions:

The following revisions have been made to article II of title 17:

Date of Adoption	Ordinance Number	Subject	Section	Page Number

Chapter 17.30 Use Districts Designated (*Previously 17.16*)

Sections:

- 17.30.010 Designation of Districts (*Previously 17.16.010*)
- 17.30.020 Zoning Plan (*Previously 17.16.020*)
- 17.30.030 Allowed Uses Generally (*New section*)
- 17.30.040 Similar Use Determination (*Previously 17.36.010*)
- 17.30.050 Certain Commercial Uses Prohibited (*17.36.015*)
- 17.30.060 Interpretation of District Boundaries (*Previously 17.16.030*)
- 17.30.070 Nonconforming Lots (*New section*)

17.30.010 Designation of Districts (*Previously 17.16.010*)

For the purposes of this title, the Town is divided into the following classes of districts as show on the maps hereinafter included by reference:

- A. Residential District A (R-1A District).
- B. Residential District B (R-1B District).
- C. Parks and Open Space District (POS District).
- D. Public Facilities and School District (PFS District). (Ord. 407 § 1-2, 1985)

17.30.020 Zoning Plan (*Previously 17.16.020*)

The designations, locations, and boundaries of the districts established are delineated on the map entitled "Atherton Zoning Plan," dated as amended from time to time. Said map and all notations and information thereon are made a part of this chapter by reference. (Ord 407 § 1-3, 1985)

17.30.030 Allowed Uses Generally (*New section*)

Land use provisions are established in this title by the zoning district applied to a site. The uses of land allowed in each zoning district are listed in tables by zoning district category in subsequent chapters of this article. Permitted or conditional uses listed in the various district regulations are specific and no other uses shall be allowed.

Additional use regulations (e.g., accessory structures, fences, basements) are included in the general development regulations of article III.

17.30.040 Similar Use Determination (*Previously 17.36.010*)

~~Permitted or conditional uses listed in the various district regulatons are specific and no other uses shall be allowed; however,~~ When a use is not specifically listed in this title, the Planning Commission may determine that ~~a~~ the use is similar to a listed use by following the conditional use procedure specified in Chapter 17.5212 (Conditional Use Permits). Such similar use shall be categorized as a conditional use. ~~(Ord. 407 §1-7, 1985).~~ In making such a determination, the Planning Commission shall make all of the following findings:

- A. The characteristics of and activities associated with the proposed use are equivalent to one or more of the listed uses and will not have a higher level of activity or population density than the uses listed in the district.

- B. The proposed use will be consistent with the purposes of the applicable zoning district.
- C. The proposed use will be consistent with the general plan.

17.30.050 Certain Commercial Uses Prohibited (*Previously 17.36.015*)

Notwithstanding any other provision of this title or this code, certain commercial uses, including, without limitation, hotels, motels, boardinghouses, and transient guest quarters, whether so denominated or by any other euphemism such as "bed and breakfast" or "host home," are prohibited in all zoning districts within the Town and such may not be conducted within the Town as home occupations or otherwise. (Ord. 446 § 1, 1989)

17.30.060 Interpretation of District Boundaries (*Previously 17.16.030*)

Whenever any uncertainty exists as to the boundary of any district shown on the zoning plan, it shall be the responsibility of the Town Planner to interpret the boundaries of the district. In making such a determination, the following rules shall apply:

- A. When a boundary line is indicated as following a street or similar right-of-way, it shall be interpreted as following the centerline of that right-of-way.
- B. Where a boundary line is indicated as approximately following a lot line, the boundary line shall be interpreted to follow that lot line.
- C. Where a boundary line divides a lot or crosses unsubdivided property, the location of such boundary shall be interpreted as being the closest lot line. (Ord. 407 § 1-4, 1985)

17.30.070 Nonconforming Lots (*New section*)

Any existing lot, legally created, may be used for uses allowed in the district even if it does not meet the building site Area or dimension standards cited in the development standards for that district. All new lots shall be consistent with the development standards for that district. No subdivision shall be approved that would increase the nonconformity of an existing parcel or any nonconforming use on the parcel.

Chapter 17.32 Residential District A (R-1A) (Previously 17.20)

Sections:

- 17.32.010 Purpose (Previously 17.20.010)
- 17.32.020 Characteristics of the District (New section)
- 17.32.030 Allowed Uses and Permit Requirements (Previously 17.20.020 and 030)
- 17.32.040 Development Standards (Previously 17.20.040)

17.32.010 Purpose (Previously 17.20.010)

This chapter identifies the allowed use and permit requirements and development standards for the Residential District A (R-1A). The intent of this district is to implement the residential land use categories of the Town's general plan. It is designed to designate land for the development of residential uses consistent with the development regulations set forth in this title. The regulations set forth in this chapter shall apply to all R-1A districts and shall be subject to the provisions of this chapter. (Ord. 407 § 2-1 (part), 1985)

17.32.020 Characteristics of the District (New section)

Residential District A (R-1A) provides for the development of single family residential uses at a density of one (1) dwelling unit per lot. Specifically, it allows for development with a minimum lot size of one (1) acre. Second dwelling units are permitted, consistent with the development standards of this title. Other uses, including churches and public utilities and facilities, may be allowed upon issuance of a conditional use permit, provided they complement and are compatible with the residential character of the district. Home occupations are also appropriate for this district, consistent with the development standards of this title.

17.32.030 Allowed Uses and Permit Requirements (Previously 17.20.020 and .030)

Table 17.32.030-1 (Allowed Uses and Permit Requirements for R-1A District) identifies the allowed uses in the residential zoning districts subject to the development standards of this chapter and all other provisions of this title. Allowed use provisions are symbolized in the table as follows:

- P = Land use permitted by right
- CUP = Land use permitted with approval of a conditional use permit

Note: Table consolidates permit requirements from existing sections 17.20.020 and 17.20.03.)

**Table 17.32.030-1
Allowed Uses and Permit Requirements for R-1A District**

Land Use	Zoning District
	R-1A
One-<u>s</u> Single-family dwelling per lot or building site¹	P
Second dwelling unit ²	P
Home <u>o</u> ccupations	P
Churches and places of worship	CUP
Public utilities or facilities	CUP

Notes:

1. Includes associated accessory uses, accessory buildings, and accessory structures (Note: Garage is an accessory building).

2. Subject to compliance with Section 17.32.040 (Development Standards).

17.32.040 Development Standards (Previously 17.20.040)

The following minimum and maximum requirements shall apply in ~~all~~the R-1A districts. These standards are intended to assist property owners and project designers in understanding the Town's minimum requirements and expectations for residential development. The designated Approval Authority will review development applications against these standards to determine compliance with applicable zoning regulations.:

- A. Height. The maximum building heights permitted are:
1. The standard maximum height for main buildings shall be thirty (30) feet; provided that vertical sidewalls and columns may not exceed twenty-two (22) feet, and provided further that these standard maximum heights may be increased, but in no event to exceed thirty-four (34) feet for main buildings nor to exceed twenty-eight (28) feet for vertical sidewalls and columns, under any of the following circumstances:
 - a. The main building, vertical sidewalls, and columns height may be increased in any case where the front, rear, and side yards are increased above the standard setbacks by a ratio of at least five (5) feet for each one (1) foot increase of height.
 - b. Increased height for a main building (but not to exceed thirty-four (34) feet) or for vertical sidewalls or columns (but not to exceed twenty-eight (28) feet) shall be permitted in any case in which the Planning Commission grants an excessive height permit based upon findings that such increased height would be appropriate under the general plan of the Town. In making such determination, the Planning Commission shall consider unique conditions on the particular property, trees, shrubs, screening, the effect of the proposed construction on neighboring properties both as to privacy and view, and the impact, if any, of the proposed construction on the rural character of the neighborhood. The procedure for application, hearing, decision, conditions of approval, other procedures, and appeals shall be that specified in this code for conditional use permits.
 - c. Dormers shall not be included in the calculation of sidewall height provided they are setback from the sidewall by a minimum distance of two (2) feet. The total width of the combined dormer area shall not exceed twenty-five (25) percent of the total width of roof at the same corresponding elevation. See Figure 17.32.040-1.

Figure 17.32.040-1
Dormer Setback



2. Accessory structures: fifteen feet; provided compliance is maintained with other requirements as specified in Sections 17.36.050 and 17.36.055; [see chapter 17.40](#);
3. Stables: thirty four feet;
- 4.3. Detached Garages: fifteen feet; provided compliance is maintained with other requirements as specified in Section 17.36.060; [see chapter 17.40](#).

B. Site Area, Width, and Depth. Minimum site requirements are:

1. Building site area: forty three thousand five hundred sixty square feet;
2. Width: one hundred seventy five feet;
3. Depth: two hundred feet;
4. Flag lots:
 - a. Width of access area, twenty feet,
 - b. Site area exclusive of access area, forty thousand square feet;
- 5.4. Existing legal structures, nonconforming due to height, may remain nonconforming as to height when they would be required to be made conforming only upon receipt of an excessive height permit as outlined in subsection A of this section.

~~C~~.B. Maximum Floor Area Ratio. The maximum floor area ratio shall be eighteen (18) percent of the lot size except for those lots smaller than forty-three thousand five hundred sixty (43,560) square feet (one acre) which shall be determined by the following equation:

Floor area in square feet = (lot size in square feet × 0.163) + 726 square feet, with a minimum allowable floor area of 2,250 square feet.

The floor area above the first floor of the main building for all lots shall not exceed seven and one-half (7.5) percent of the lot size.

The following conditions shall not be included in floor area calculations:

1. The first five hundred (500) square feet of roofed area, completely open on two or more sides;
2. Structures, open on all sides, with substantially open roofs.

~~D~~.C. Front and Rear Yards. Minimum front and rear yard requirements are:

1. Main building, interior and corner lots: sixty (60) feet minimum; provided, however, on lots of record prior to adoption of Ordinance No. 146 (April 16, 1946) with a depth of less than two hundred (200) feet, the front and rear yards shall each be thirty (30) percent of the lot depth with a minimum of thirty (30) feet; provided further, where main building heights are between thirty (30) feet and thirty-four (34) feet, the front and rear yards shall be increased by a ratio of ~~two~~ five (5) feet for each one (1) - foot increase in height (Ord. 146, §, April 16, 1946);
2. Accessory structures: as provided in Chapter 17.3640;
3. The property owned by the city and county of San Francisco, known as the Hetch Hetchy property, over which the owner of adjacent property with contiguous frontage has reserved surface rights, may be utilized by said owner for setback calculation purposes. The adjacent property owner may calculate setbacks to the original property line prior to the acquisition by the city and county of San Francisco, or in the case of properties subdivided after that date, to the centerline of the Hetch Hetchy property.

~~E~~.D. Side Yards. Minimum side yard requirements are as provided in Chapter 17.4038; provided, however, where main building heights are between thirty (30) feet and thirty-four (34) feet, the side yards shall be increased by a ratio of ~~one and a half~~ five (5) feet for each one (1) - foot increase in height.

1. The property owned by the ~~e~~City and ~~C~~ounty of San Francisco, known as the Hetch Hetchy property, over which the owner of adjacent property with contiguous frontage has reserved surface rights, may be utilized by said owner for setback calculation purposes. The adjacent property owner may calculate setbacks to the original property line prior to the acquisition by the city and county of San Francisco, or in the case of properties subdivided after that date, to the centerline of the Hetch Hetchy property.

~~F.E.~~ F.E. Accessory Structure Area. Maximum area permitted for all accessory structures, exclusive of pools, tennis courts, garages, car-ports, drives, and other paved surfaces, on a building site shall not exceed the ratio of one thousand two hundred square (1,200) feet of accessory structure for each forty-three thousand five hundred sixty (43,560) square feet of lot area.

F. Eaves. Roof eaves may encroach into any yard not to exceed a maximum of four (4) feet on the main building and not to exceed one (1) foot on an accessory building.

~~G.Exception Review. Exception review shall be required under the provisions of Chapter 17.54 of this code for each main building proposed to be built on any lot one-half acre or less in area, which lot was previously used in conjunction with any adjoining lot or lots as the site for a single primary residence, or has at any time been assessed with any other lot or lots as a single parcel. There shall be excepted from the requirements of this subsection any proposed main building which is single story and less than eighteen feet in height, and any proposed main building which in the judgment of the building official substantially differs from the main building on the lot previously used in conjunction with the subject lot in three of four items in Category A and at least three of the six items in Category B listed below:~~

~~Category A~~ Category B

~~Roof profile~~ Color

~~Front or side setbacks~~ Exterior wall materials

~~Second floor~~ Front door location

~~H.Retaining Walls. Retaining walls shall be located no closer than five feet from any property line. (Ord. 556 § 1, 2005; Ord. 512 § 1, 2000; Ord. 497 §§ 6, 7, 1998; Ord. 478 § 1(C), 1994; Ord. 471 § 1, 1992; Ord. 476 § 1(B), 1993; Ord. 466 § 1, 1991; Ord. 449 §§ 4, 5, 1989; Ord. 434 §§ 6—10, 1988; Ord. 407 § 2-1(C), 1985)~~

I.G. Kitchens.

1. One kitchen may be within an approved main dwelling. One butler's pantry may also be allowed, provided it does not include appliances specifically intended for the cooking of food.
2. One kitchen may be within an approved second dwelling unit which is located within the main dwelling building setback lines.

H. Exception Review. See section 17.14.020 for conditions that require exception review.

Provisions of 17.22.040.H and 17.24.040.H moved to 17.12.030

Chapter 17.33 Residential District B (R-1B) (Previously 17.24)

Sections:

- 17.33.010 Purpose (Previously 17.24.010)
- 17.33.020 Characteristics of the District (New section)
- 17.33.030 Allowed Uses and Permit Requirements (Previously 17.24.020 and 030)
- 17.33.040 Development Standards (Previously 17.24.040)

17.33.010 Purpose (Previously 17.24.010)

This chapter identifies the allowed use and permit requirements and development standards for the Residential District B (R-1B). The intent of this district is to implement the residential land use categories of the Town's general plan. It is designed to designate land for the development of residential uses consistent with the development regulations set forth in this title. The regulations set forth in this chapter shall apply in all R-1B districts and shall be subject to the provisions of this title. (Ord. 407 § 2-2 (part), 1985)

17.33.020 Characteristics of the District (New section)

The Residential District B (R-1B) provides for the development of single family residential uses at a density of one (1) dwelling unit per lot. Specifically, it allows for development with a minimum lot size of one-third (1/3) acre. Second dwelling units are permitted, consistent with the development standards of this title. Other uses, including churches and public utilities and facilities, may be allowed upon issuance of a conditional use permit, provided they complement and are compatible with the residential character of the districts. Home occupations are also appropriate for this district, consistent with the development standards of this title.

17.33.030 Allowed Uses and Permit Requirements (Previously 17.24.020 and 030)

Table 17.33.030-1 (Allowed Uses and Permit Requirements for R-1B District) identifies the allowed uses in the Residential B zoning district subject to the development standards of this chapter and all other provisions of this title. Allowed use provisions are symbolized in the table as follows:

P = Land use permitted by right

CUP = Land use permitted with approval of a conditional use permit

**Table 17.33.030-1
Allowed Uses and Permit Requirements for R-1B District**

Land Use	Zoning District
	R-1B
One s Single-family dwelling per lot or building site ¹	P
Second dwelling unit ²	P
Home <u>o</u> ccupations	P
Churches and places of worship	CUP
Public utilities or facilities	CUP

Notes:

1. Includes associated accessory uses, accessory buildings, and accessory structures (Note: Garages are accessory structures).

2. Subject to compliance with Section 17.33.040 (Development Standards).

17.33.040 Development Standards (Previously 17.24.040)

The following minimum and maximum requirements shall apply in all R-1B districts as regulated in this chapter:

A. Height. Maximum heights are:

1. Main buildings: twenty-eight (28) feet, provided that vertical side walls or columns do not exceed eighteen (18) feet. End walls shall be perpendicular to the lot depth;
2. Accessory structures: ~~fifteen feet; provided compliance is maintained with other requirements as specified in Sections 17.36.050 and 17.36.055~~see chapter 17.40.
3. Dormers shall not be included in the calculation of sidewall height provided they are setback from the sidewall by a minimum distance of two (2) feet. The total width of the combined dormer area shall not exceed twenty-five (25) percent of the total width of roof at the same corresponding elevation. See Figure 17.32.040-1.

~~B. Site Area, Width and Depth. Minimum site requirements are:~~

- ~~1. Building site area: thirteen thousand five hundred square feet;~~
- ~~2. Width: ninety feet;~~
- ~~3. Depth: one hundred sixty feet;~~
- ~~4. Flag lots:

 - ~~a. Width of access area, twenty feet,~~
 - ~~b. Site area exclusive of access area, thirteen thousand five hundred square feet.~~~~

~~C. B.~~ Maximum Floor Area Ratio. The maximum floor area ratio shall be eighteen (18) percent of the lot size except for those lots smaller than forty three thousand five hundred sixty (43,560) square feet (one acre) which shall be determined by the following equation:

$$\text{Floor area in square feet} = (\text{lot size in square feet} \times 0.165) + 1,500 \text{ square feet.}$$

The following conditions shall not be included in floor area calculations:

1. The first five hundred (500) square feet of roofed area, completely open on two or more sides;
2. Structures, open on all sides, with substantially open roofs.

~~D. C.~~ Front and Rear Yards. Minimum and maximum front and rear yard requirements are:

1. Main buildings, interior and corner lots: thirty (30) feet minimum; provided, however, on lots of record prior to adoption of Ordinance No. 277 (October 30, 1967), with a depth less than one hundred sixty (160) feet, the front and rear yards shall each be eighteen (18) percent of the lot depth with a minimum of twenty (20) feet;
2. Accessory structures, as provided in Chapter 17.3640.

~~E. D.~~ Side Yard. Minimum side yard requirements as shown in Table 17.4038.010.

~~F.E.~~ F.E. Additions to Main Buildings Which Are Nonconforming Due to Side Yard Setbacks But Are Otherwise Legally Built.

1. Additions may be made to main buildings, which are nonconforming due to side yard setbacks but are otherwise legally built, in the conforming or nonconforming areas provided that:
 - a. An exception is first approved by the Planning Commission in accordance with Chapter 17.54~~14~~, Exceptions, of this code; and
 - b. When required, the applicant shall supply a duly executed and acknowledged covenant running with the land, with the Town named as beneficiary, and in a form satisfactory to the City Attorney. Provided that if the applicant has elected to construct an addition in either of the following manners, said covenant shall be required detailing the applicable restrictions:
 - i. If expansion is made in the nonconforming area no future expansion shall be allowed above the first story; or
 - ii. If expansion is made above the first story no future expansion shall be allowed in the nonconforming area.
2. Additions in the nonconforming area must conform with ~~Section 17.44.050E~~chapter 17.26 of this title.
3. Additions in the conforming area must meet all other provisions of this title.

~~G.F.~~ G.F. Eaves. Roof eaves may encroach into any yard not to exceed a maximum of four (4) feet on the main building and not to exceed one (1) foot on an accessory building.

~~H.Exception Review.~~ Exception review shall be required under the provisions of Chapter 17.54 of this code for each main building proposed to be built on any lot one-half acre or less in area, which lot was previously used in conjunction with any adjoining lot or lots as the site for a single primary residence, or has at any time been assessed with any other lot or lots as a single parcel. There shall be excepted from the requirements of this subsection any proposed main building which is single story and less than eighteen feet in height, and any proposed main building which in the judgment of the building official substantially differs from the main building on the lot previously used in conjunction with the subject lot in three of four items in Category A and at least three of the six items in Category B listed below:

Category A ~~Category B~~
 Roof profile ~~Color~~
 Front or side ~~Exterior wall~~
 setbacks ~~materials~~
 Second floor ~~Front door location~~
 configuration ~~Window style~~
 Window placement ~~Garage door location~~
 Roof material

~~I.G.~~ I.G. Retaining Walls. Retaining walls shall be located no closer than five feet from any property line. Kitchens.

1. One kitchen may be within an approved main dwelling. One butler's pantry may also be allowed, provided it does not include appliances specifically intended for the cooking of food.
2. One kitchen may be within an approved second dwelling unit which is located within the main dwelling building setback lines.

H. Exception Review. See section 17.14.020 for conditions that require exception review.

(Ord. 497 §§ 8, 9, 1998; Ord. 480 § 1(D), 1994; Ord. 476 § 1(A), (C), 1993; Ord. 456 § 5, 1990; Ord. 443 §§ 1, 2, 1989; Ord. 434 § 11, 1988; Ord. 407 § 2-2(C), 1985)

Provisions of 17.22.040.I and 17.24.040.I moved to 17.46.040

Chapter 17.34 Park and Open Space District (POS) (Previously 17.28)

Sections:

- 17.34.010 Purpose (Previously 17.28.010)
- 17.34.020 Characteristics of the District (New section)
- 17.34.030 Permitted Uses (Previously 17.34.020 and 17.28.030)
- 17.34.040 Development Standards (Previously 17.28.040)

17.34.010 Purpose (Previously 17.28.010)

The purpose of the POS district is to implement the open space element of the Atherton general plan and provisions of the California Government Code related to open space zoning. The district is designed to designate open space for the preservation of natural resources, uses for the managed production of resources, for outdoor recreation, and for public health and safety. Compliance with the California Government Code requirements for an open space Zoning Code is achieved through use of this district.

The regulations set forth in this chapter shall apply in all POS districts and shall be subject to the provisions of this title. (Ord. 407 § 2-3 (part), 1985)

17.34.020 Characteristics of the District (New section)

The park and open space district (POS) provides for the establishment of parks, recreation, and open space uses. Other recreational and natural preservation uses, such as country clubs, watershed protection lands, and similar uses, may be permitted.

17.34.030 Permitted Uses (Previously 17.34.020 and 17.28.030)

Table 17.34.030-1 (Allowed Uses and Permit Requirements for POS District) identifies the allowed uses in the park and open space zoning district subject to the development standards of this chapter and all other provisions of this title. Allowed use provisions are symbolized in the table as follows:

P = Land use permitted by right

CUP = Land use permitted with approval of a conditional use permit

Note: Provisions of 17.34.020 and 17.28.030 consolidated into table

**Table 17.34.030-1
Allowed Uses and Permit Requirements for POS District**

Land Use	Zoning District
	POS
Agriculture	P
Country clubs	CUP
Ecologic study	P
Home occupation	CUP
Public park, recreation, or open space uses	P
Public utilities and facilities uses and structures	CUP
Caretaker housing	CUP
Uses of historic and cultural value	P
Watershed land and groundwater recharged land	P

17.34.040 Development Standards (Previously 17.28.040)

The following minimum and maximum requirements shall apply in all [Table 17.34.040-1 \(Development Standards for POS District\)](#) identifies the development standards for the POS districts as regulated herein. All building and structures located in the POS district shall be considered as main buildings and not as accessory structures.

Note: Provisions of 17.28.040 consolidated into table.

Table 17.34.040-1
Development Standards for POS District

Development Standard	Zoning District
	POS
Height	34 ft
Lot coverage, aggregate	20% gross lot area
Front and rear yard, minimum	60 ft
Side yard	See Chapter 17.40

Chapter 17.36 Public Facilities and Schools District (PFS) *(Previously 17.32)*

Sections:

- 17.36.010 Purpose *(Previously 17.32.010)*
- 17.36.020 Characteristics of the District *(New section)*
- 17.36.030 Allowed Uses and Permit Requirements *(Previously 17.32.020 and 030)*
- 17.36.040 Building and Lot Requirements *(Previously 17.32.040)*
- 17.36.050 Guidelines for School Master Plans *(Previously 17.32.050)*

17.36.010 Generally Purpose *(Previously 17.32.010)*

This chapter establishes the allowed use provisions and development standards for uses located in the public facilities and schools district. It is the intent of this chapter to implement the land use categories outlined in the general plan by providing appropriate locations for public facilities and school uses.

~~The regulations set forth in this chapter shall apply in all PFS districts and shall be subject to the provisions of this title. (Ord. 407 § 2-4 (part), 1985)~~

17.36.020 Characteristics of the District *(New section)*

The public facilities and schools district provides for the development of public uses (e.g., Town Hall, Town corporation yard, public utilities, etc.) and schools (both public and private), consistent with the Town's general plan. Other appropriate uses may include churches, country clubs, and other assembly and civic uses upon issuance of a conditional use permit. It does not provide for the development of residential uses except for convent housing, teacher housing, student housing, and other residential uses when associated with primary non-residential use of the same property with a conditional use permit.

17.36.030 Allowed Uses and Permit Requirements *(Previously 17.32.020 and 17.32.030)*

Table 17.36.030-1 (Allowed Uses and Permit Requirements for PFS District) identifies the allowed uses in the public facilities and schools zoning district subject to the development standards of this chapter and all other provisions of this title. Allowed use provisions are symbolized in the table as follows:

P = Land use permitted by right

CUP = Land use permitted with approval of a conditional use permit

Note: Provisions of 17.32.030 and 17.32.040 consolidated into table.

Table 17.36.030-1
Allowed Uses and Permit Requirements for PFS District

Land Use	Zoning District
	PFS
Churches and places of worship	CUP
Convents	CUP
Country clubs	CUP
<u>Residential associated with primary non-residential use of property on same site¹</u>	<u>CUP</u>
Private schools	CUP ^{2, 3}
Public library	P
Public school	P
Public utilities and facilities, uses, and structures	CUP
Town corporation yard	P
Town hall and associated community uses	P
Transportation terminal facilities	CUP

Notes:

1. Examples include: dorms or teacher housing associated with school site, convent when associated with religious institutions, etc.
2. Where a master plan for a private school has been prepared and filed with the Town for public record, any application for a conditional use permit shall be compared to the master plan for consistency with that document. All building and/or facility changes, improvements, or new construction shall require a conditional use permit. To that end, all conditional use permit applications shall include the following:
 - a. Maps and diagrams showing the proposal in relation to the master plan layout,
 - b. History of student and faculty growth and projections of future growth, including an analysis of that growth's consistency with the master plan projections,
 - c. A traffic and parking analysis of the proposal and comparison to the master plan projections,
 - d. A circulation plan showing how the traffic and pedestrian circulation will function upon implementation of the proposals,
 - e. Other information which might be required for specific proposals, such as noise analyses, lighting plans, landscape screening plans, heritage tree locations, and other similar information.
3. In addition to other conditions of approval, the Planning Commission shall include the following items where relevant:
 - a. Specific identification of the approved uses and approved hours of operation,
 - b. Require clustering of high intensity or noise intense structures and uses (such as gymnasiums, theaters, athletic facilities) away from neighboring residential uses, where possible.

17.36.040 Building and Lot Requirements (*Previously 17.32.040*)

The following minimum and maximum requirements shall apply in all Table 17.36.030 (Development Standards for PFS District) identifies the development standards for the PFS districts as regulated in this chapter, except the buildings, structures, or land used for governmental purposes by the United States of America or by the State of California or by the Town of Atherton. All buildings and structures located in the PFS district shall be considered as main buildings and not as accessory structures.

Note: Provisions of 17.32.040 consolidated into table.

Table 17.36.030
Development Standards for PFS District

Development Standard	Zoning District
	PFS
Height	34 ft
Lot coverage, aggregate	40% gross lot area
Front yard, minimum	60 ft
Side yard, minimum, adjacent to residential	50 ft when building sidewall height ≤22 ft 75 ft when building sidewall height >22 ft
Side yard, minimum, all others	See Chapter 17.38
Rear yard, minimum, adjacent to residential	60 ft when building sidewall height ≤22 ft 75 ft when building sidewall height >22 ft
Rear yard, minimum, all others	60 ft

Notes:

1. The setbacks for the PFS district properties in the vicinity of Ashfield Road and Station Way containing the town administration building, town hall, library, and other uses shall be as provided in Section 17.24.040 (Development Standards) of the R1-B residential district.

17.36.050 Guidelines for School Master Plans (Previously 17.32.050)

It is the City Council's policy to request the preparation of master plans for all private schools located in the PFS district. Where such master plans are prepared, they should be general enough to allow flexibility and adjustment of the facilities' locations but should have specific projections such as enrollment or floor space proposed. It is further requested that the schools involve interested neighbors, residents, town representatives, and others in the preparation process of such master plans. Suggested content of master plans include:

- A. Land uses, their location, and extent;
- B. Circulation patterns;
- C. Locations for parking and parking standards;
- D. Current enrollment projections and maximum enrollment anticipated;
- E. A list of possible facilities to be developed;
- F. A schedule or priority of development;
- G. Identification of historic or other unique facilities, heritage trees, and their disposition;
- H. Identification of uses and their days and hours of operation, including evenings;
- I. Identification of other institutions or uses at the facility.

Where master plans have been prepared and adopted by schools, it is requested that they be filed with the ~~Town building department~~ Office of the Town Planner for public record. In January each year, the ~~Town Building Official~~ Planner shall report to the Planning Commission at a regular meeting on the status of school master plans, their availability, and contents. Each private school in Atherton shall be notified of and invited to the Planning Commission meeting to provide input on the status of master plan preparation and implementation. In addition, the annual meeting shall be noticed to all property owners within five hundred (500) feet of the boundaries of the schools. (Ord. 518 § 1, 2000)

Chapter 17.38 Side Yard Requirements (Previously 17.40)

Sections:

17.38.010 Minimum Side Yards (Previously 17.40.010)

17.38.010 Minimum Side Yards (Previously 17.40.010)

Minimum side yards shall be required on each side of a lot as specified in Table 17.38.010-1 ([Minimum Side Yard Requirements](#)).

**Table 17.38.010-1
Minimum Side Yard Requirements**

Lot Width		Minimum Side Yard
From	To, But Not Including	
200' or over		50:0'
197' 0"	200' 0"	49' 6"
194' 0"	197' 0"	49' 0"
191' 6"	194' 0"	48' 6"
189' 0"	191' 6"	48' 0"
186' 6"	189' 0"	47' 6"
184' 0"	186' 6"	47' 0"
181' 6"	184' 0"	46' 6"
179' 0"	181' 6"	46' 0"
176' 6"	179' 0"	45' 6"
174' 0"	176' 6"	45' 0"
171' 6"	174' 0"	44' 6"
169' 0"	171' 6"	44' 0"
166' 6"	169' 0"	43' 6"
164' 0"	166' 6"	43' 0"
161' 6"	164' 0"	42' 6"
159' 0"	161' 6"	42' 0"
156' 6"	159' 0"	41' 6"
154' 0"	156' 6"	41' 0"
151' 6"	154' 0"	40' 6"
149' 0"	151' 6"	40' 0"
146' 6"	149' 0"	39' 6"
144' 0"	146' 6"	39' 0"
141' 6"	144' 0"	38' 6"
139' 0"	141' 6"	38' 0"
136' 6"	139' 0"	37' 6"
134' 0"	136' 6"	37' 0"
131' 6"	134' 0"	36' 6"
129' 0"	131' 6"	36' 0"
126' 6"	129' 0"	35' 6"
124' 0"	126' 6"	35' 0"
121' 6"	124' 0"	34' 6"
119' 0"	121' 6"	34' 0"
116' 6"	119' 0"	33' 6"
114' 0"	116' 6"	33' 0"

Lot Width		Minimum Side Yard
From	To, But Not Including	
111' 6"	114' 0"	32' 6"
109' 0"	111' 6"	32' 0"
106' 6"	109' 0"	31' 6"
104' 0"	106' 6"	31' 0"
101' 6"	104' 0"	30' 6"
99' 6"	101' 6"	30' 0"
96' 6"	99' 6"	29' 0"
94' 0"	96' 6"	28' 0"
91' 6"	94' 0"	27' 0"
89' 0"	91' 6"	26' 0"
86' 6"	89' 0"	25' 0"
84' 0"	86' 6"	24' 0"
81' 6"	84' 0"	23' 0"
79' 0"	81' 6"	22' 0"
76' 6"	79' 0"	21' 0"
74' 0"	76' 6"	20' 0"
71' 6"	74' 0"	19' 0"
69' 0"	71' 6"	18' 0"
66' 6"	69' 0"	17' 0"
64' 0"	66' 6"	16' 0"
61' 6"	64' 0"	15' 0"
59' 0"	61' 6"	14' 0"
56' 6"	59' 0"	13' 0"
54' 0"	56' 6"	12' 0"
51' 6"	54' 0"	11' 0"
20' or under	51' 6"	10' 0"

Title 17 - Zoning

Article III General Use Regulations

Chapter 17.40	Accessory Buildings and Structures <i>(Previously 17.36)</i>
Chapter 17.42	Building Height and Measurement <i>(New chapter)</i>
Chapter 17.44	Basements <i>(Previously 17.36)</i>
Chapter 17.46	Fences and Walls <i>(Previously 17.36)</i>
Chapter 17.48	Home Occupations <i>(Previously 17.48)</i>
Chapter 17.50	Landscape Screening <i>(Previously 17.50)</i>
Chapter 17.52	Second Dwelling Units <i>(Previously 17.36)</i>
Chapter 17.54	Yard Measurement and Projections <i>(New chapter)</i>
Chapter 17.56	Special Events <i>(Previously 17.38)</i>

Revisions:

The following revisions have been made to article III of title 17:

Date of Adoption	Ordinance Number	Subject	Section	Page Number

Chapter 17.40 Accessory Buildings and Structures (Previously 17.36)

Sections:

- 17.40.010 Purpose (New section)
- 17.40.020 Definitions (Previously 17.080.20, 042, 050, and 272)
- 17.40.030 Permit Requirements and Exceptions (Previously 17.36.025, 040 through 140, and 165)
- 17.40.040 General Development Standards (Previously 17.36.025, 040 through 140, and 165)
- 17.40.050 Development Standards for Specific Types of Accessory Structure (Previously 17.36.025, 040 through 140, and 165)

17.40.010 Purpose (New section)

The purpose of this chapter is to permit the proposed construction or exterior alterations of accessory buildings and structures subject to regulations necessary to prevent unreasonable interference with views, light, and air, an unreasonable invasion of privacy, or adverse impacts upon the aesthetic character of neighboring residential structures. This chapter establishes a set of criteria, objectives, and procedures to be followed with respect to the review of any proposed accessory structure, or addition or alteration thereto, and to ensure that the new development occurs in a manner which is consistent with the objectives of this chapter.

17.40.020 Definitions (Previously 17.08.020, 042, 050, and 272)

This section establishes definitions for accessory buildings and accessory structures. Additionally, there are several types of accessory structures defined and regulated in this chapter. Types of accessory buildings and accessory structures are defined below.

"Accessory building" shall mean a detached building where fifty (50) percent or more of the footprint of the enclosed space is covered with a solid roof. Accessory buildings are subordinate to, and their use is customarily incidental to, that of the main building, structure, or use on the same or attached/adjacent lot as regulated in this chapter. This classification includes garages; greenhouses; poolhouses; sunrooms; workshops; storage sheds; barns, stables, and other agricultural outbuildings with solid roof construction; carports; patio covers; and gazebos.

"Accessory structure" shall mean a detached structure that is not enclosed by walls and a solid or partially enclosed roof. Accessory structures are subordinate to, and their use is customarily incidental to, that of the main building, structure, or use on the same or attached/adjacent lot as regulated in this chapter. Types of accessory structures regulated by the Town include the following:

- Antennas and satellite dishes. Antennas ~~means~~ ~~are~~ a system of wires, poles, rods, reflecting disks, or similar devices used for the transmission or reception of electromagnetic waves, which system is either free standing or attached to the exterior of any structure. A satellite dish is any antenna (as defined in this chapter) (typically parabolic in design) which is designed, usable, or used primarily for ~~used to collect signals from or transmit signals to~~ ~~transmission or reception of signals to or from earth satellites~~ orbiting the earth.
- Air conditioners and emergency power generators. Air conditioners are mechanical equipment used to cool the interior of a structure. Emergency

power generators are mechanical equipment, usually powered by natural gas, used to generate electrical power in the event of a power failure.

- Arbors/Trellises. A structure which is open on all sides and has a roof that is substantially open to the passage of light and air. For purposes of this definition "substantially open" shall mean a minimum of fifty (50) percent of the covered area is open to light and air. Typically, these structures are constructed with a lattice-like roof structure.
- Artwork and fountains/water features. Artwork shall mean sculptures and other decorative features of an artistic nature that are placed outside of any structure. Fountains/water features shall mean a structure where water is forced into the air under pressure, creating a jet. The pressure may be gravitational or may be produced by a motor-driven pump.
- Athletic courts. ~~means a~~Any hard-surface area-constructed primarily for athletic activity use which ~~is~~ may be equipped with nets, standards, backboards, or other projections, ~~above grade~~ or which may be is equipped with sleeves suitable for the installation of nets, standards, backboards or other projections ~~said features,~~ above grade. Includes basketball courts, baseball, soccer, and other fields, and other sports facilities.
- Inflatable covers. Devices that cover pools, spas, hot tubs, and other similar structures. Such covers are inflated with air to maintain their structure and are designed to preclude the pooling of water and leaves on their surface.
- Pool/Spa. As defined in the Uniform Building Code, any structure intended for swimming or recreational bathing that contains water over eighteen (18) inches deep. This includes in-ground, above-ground, and on-ground swimming pools, hot tubs, and spas. Also includes incidental equipment and housing (e.g., pumps, heating equipment, etc).

17.40.030 Permit Requirements and Exceptions (Previously 17.36.025, 040 through 140, and 165)

A. Zoning Clearance Required. The following accessory buildings and structures require zoning clearance at the time of building permit review or prior to development/installation to ensure compliance with applicable regulations.

1. Accessory buildings, except as otherwise exempt; and
2. Accessory structures, except as otherwise exempt.

B. Conditional Use Permit Required. The following specific structures shall require the issuance of a conditional use permit from the Planning Commission prior development/installation:

1. Athletic courts located outside the required setback area. However, in no event shall an athletic court be closer to any side or rear property line than specified in Table 17.40.040-1 (General Setback Standards for Accessory Buildings and Structures) or closer to the front property line than the minimum front yard setback line of the main dwelling. ~~Athletic courts may also be located on other portions of the lot, where accessory structures are normally prohibited, only upon issuance of a use permit,~~

~~however, in no event shall an athletic court be closer to any side or rear property line than specified in Section 17.36.050 or closer to the front property line than the minimum front yard setback line of the main dwelling.~~

2. All Inflatable covers. However, existing inflatable covers in use at the time of adoption of this ordinance shall be existing nonconforming structures and continue to be used, provided that they are maintained in the same location and under the same ownership (Ord. 340, §, DATE); and
3. Roof-mounted antenna taller than the height limit of the structure to which it is attached. The antenna must be capable of being retracted to a height less than that allowed for the type of building on which it is mounted when it is not in use. ~~That it not exceed the height limit applicable to the structure to which it is attached, with the exception that if a conditional use permit is granted so providing, an antenna with the capability of being retracted to a height less than that allowed for the type of building on which it is mounted may exceed the height limit during the actual use for transmitting and receiving.~~
4. Satellite dishes larger than twenty four (24) inches in any dimension, either ground- or building-mounted. The Planning Commission shall not have the discretion to deny such permit, but shall review each application for conformity to the requirements of this chapter.
5. Arbors and trellises larger than specified.
6. A pool or spa, exclusive of equipment, may be constructed in areas where structures are not normally permitted only upon issuance of a conditional use permit; located outside of required setbacks in Section 17.40.040 (General Development Standards). ~~However, in no event shall a pool or spa be closer than specified in Table 17.40.040-1 (General Setback Standards for Accessory Buildings and Structures) to any side or rear yard property line, nor closer to the front property line than the minimum front yard setback line of the main building.~~

C. Exempt Accessory Buildings and Structures. The following accessory structures are specifically exempt from zoning clearance or conditional use permit requirements; however, a building permit may still be required.

1. Accessory buildings with a floor area that is less than one hundred twenty (120) square feet in size with no portion of the structure equal to or greater than eight (8) feet in height with the following conditions.
 - a. Structures shall not be located in a required front yard except as otherwise provided.
 - b. In order to maintain necessary fire breaks, accessory buildings shall be set back a minimum of ten (10) feet from side and rear property lines with a minimum eight (8) foot separation from the main building.
2. Bridges and walkways over private ponds, creeks, and other features, when located on private property.
3. Mailboxes, flagpoles, outside lighting not on poles not over three (3) feet height tall, and benches to be used for seating. (Previously 17.08.320.B)

4. Driveways, walkways, patios, and other flat wood, concrete, or asphalt work or other similar materials not over six (6) inches above grade. (Previously 17.08.320.C)
5. A well, located less than six (6) inches above grade, exclusive of tanks, controls, separator discharge plumbing, or other equipment located outside of the well casing, may be constructed in required side or front yards. In no event shall a well be closer than ten (10) feet to any property line. (Previously 17.08.320.D)
6. Seat walls not over twenty (20) inches in height.
7. Antenna maintained by the Town in connection with public safety activities.
8. Satellite dishes measuring less than or equal to Dish type antenna support structures not larger than twenty four (24) inches in any dimension when placed on a building. Dish type antennas and support structures not larger than twenty four (24) inches in any dimension when placed attached to a building or placed on the ground and located within the buildable area for a main building or accessory building or structure.
9. Arbors and trellises, consistent with the standards of Section 17.40.050.B (Arbors and Trellises).
10. Driveways which also function as basketball courts.
11. Bird baths or pedestal with a shallow basin filled with water for birds to bathe in and drink from.
12. Air conditioners and emergency generators located within the buildable area of the lot and enclosed or otherwise screened to mitigate noise and comply with the Town Noise Ordinance. The location of the equipment shall not impact existing trees. Equipment may be located next to existing buildings consistent with Building Code requirements. May be located underground when the size is limited to the minimum area needed for the equipment and access and working space, but may not exceed six (6) inches above grade. Allowed in the front yard with ten (10) foot minimum setback.
13. Fountains and art work not over six (6) feet in height.

17.40.040 General Development Standards (Previously 17.36.025, 040 through 140, and 165)

The following development standards/provisions apply to all accessory buildings and structures.

- A. Location and Required Setbacks. Accessory buildings and structures may be located within required yard areas in compliance with the development standards in Table 17.40.040-1 (General Setback Standards for Accessory Buildings and Structures). Figure 17.40.040-1 (General Setback Standards for Accessory Buildings and Structures) illustrates where accessory buildings and structures are generally allowed.

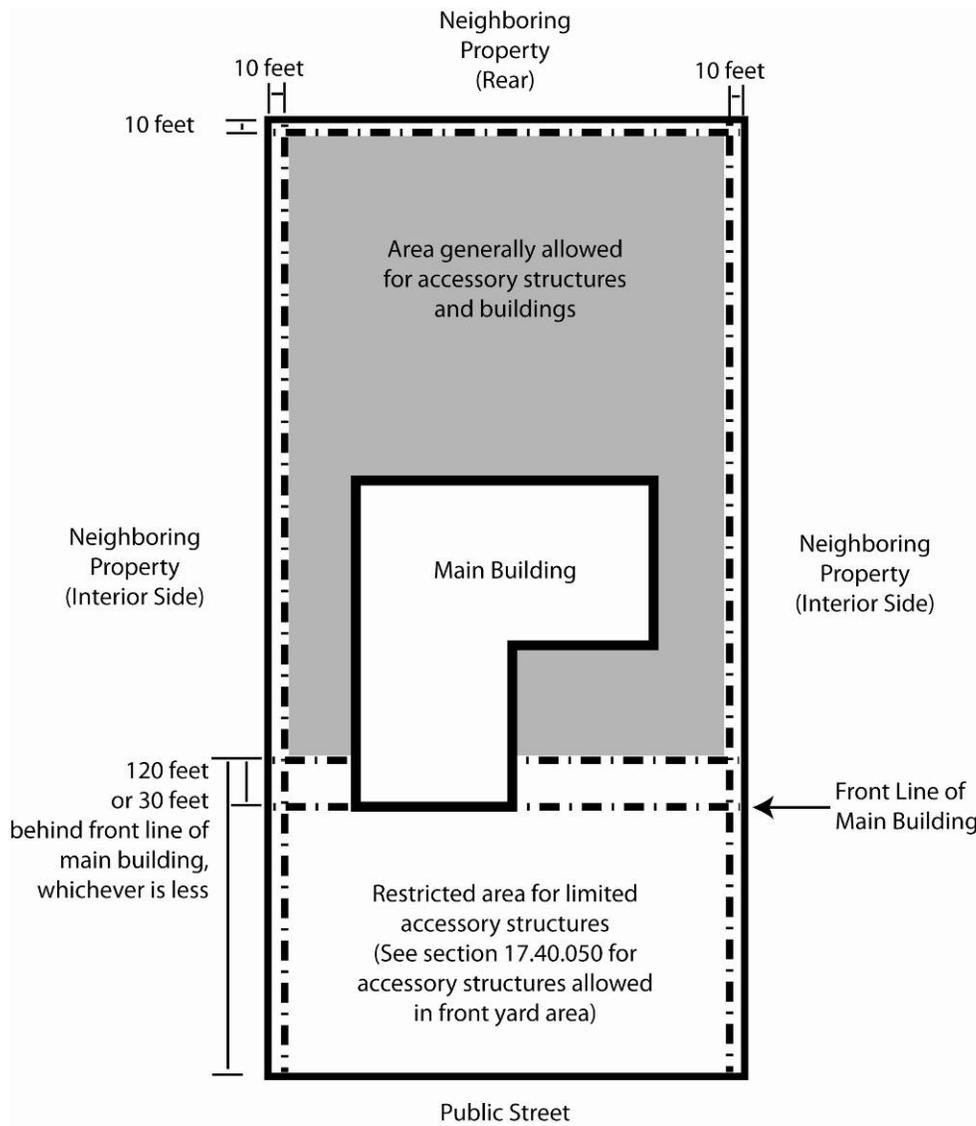
Table 17.40-040-1
General Setback Standards for Accessory Buildings and Structures

<u>Location</u>	<u>Setback</u>
<u>Front</u>	<u>120 ft, or 30 ft behind front line of main structure, whichever is less^{1, 2}</u>
<u>Side, interior</u>	<u>10 ft</u>
<u>Side, street side</u>	<u>See Table 17.38.010</u>
<u>Rear</u>	<u>10 ft</u>
<u>Rear, abutting street</u>	<u>30 ft³</u>
<u>Between structures and buildings</u>	<u>8 ft⁴</u>

Notes:

1. See special front yard location and setback standards for Athletic Courts (Section 17.40.050.A), Arbors and Trellises (Section 17.40.050.B), and Artwork and Fountains (Section 17.40.050.G)
2. On flag lots, the front setback for accessory buildings and structures shall be consistent with ~~to~~ the front yard setback of the main residence upon issuance of a conditional use permit.
3. When the rear property line abuts the Town boundary, the minimum setback shall be ten (10) feet.
4. Stables shall not be located within forty (40) feet of any building intended or used for human habitation on the same lot, shall not be located within forty (40) feet of any property line, and shall not be located within eighty (80) feet of any building intended or used for human habitation on an adjoining lot.

Figure 17.40-040-1
General Setback Standards for Accessory Buildings and Structures



B. Height. Unless otherwise specified, the maximum height for all accessory buildings and structures is fifteen (15) feet or one story. Vertical sidewalls or columns shall not exceed eleven (11) feet. ~~Stables in the R-1A zone may have a maximum height of thirty four (34) feet. No other use of structure shall be located above the first story (i.e., no roof decks, spas, etc.)~~

C. 17.36.040-Lot Requirements. Unless otherwise identified for specific types of structures or buildings, all accessory buildings and structures shall be constructed only in conjunction with or subsequent to the construction of a main building. An accessory structure or building may be located on a lot without a main building only if all of the following conditions exist:

1. The lot containing the accessory buildings or structure is located adjacent to a lot containing a main building;

2. Both such lots are owned by the same property owner; and
 3. An agreement between the Town and the property owner has been executed and recorded which provides that in the event common ownership of the two lots ceases then the accessory building or structure will be removed or made to conform to all other ordinances of the Town.
- D. 17.36.025—Kitchens. The maximum number of kitchens allowed on each lot is determined as follows: One kitchen may be within an approved accessory building or structure.
- ~~One kitchen may be within an approved main dwelling. One kitchen may be within an approved second dwelling unit which is located within the main dwelling building setback lines; and~~
- ~~One kitchen may be within an approved accessory structure.~~
- E. Connecting Accessory Buildings and Structures. Accessory buildings and structures shall be detached from the main building and other accessory buildings and structures, except that:
1. An accessory building or structure may be connected to another accessory structure/building or a main building by way of a breezeway or covered walkway when the walkway is open on all sides except where connected to the structures. Examples include, but are not limited to, covered walkways connecting the primary dwelling to a detached garage or secondary dwelling. Structures must be located a minimum of eight (8) feet from the main building. The covered walkway may have a maximum width of eight (8) feet and the length of the walk must be a minimum of two (2) feet longer than the width.
 2. Garages shall be considered a part of the main building when it is attached and made an integral part of the dwelling and it shall have at least one common wall with a room whose minimum dimension is seven (7) feet.
- F. Floor Area Ratio Calculation. Accessory buildings and structures shall count towards the allowed floor area ratio of the underlying zoning district as identified in Table 17.32.040 (Development Standards for R-1A and R-1B Districts), except that floor area ratio shall exclude the following:
1. The first five hundred (500) square feet of roofed area that is completely open on two or more sides (e.g., awning, patio cover, covered walk); and
 2. Structures, open on all sides, with substantially open roofs (e.g., trellis).
- G. Windows. Accessory buildings and structures may include windows and/or skylights, except that no window openings that face the side or rear property line shall be located over nine (9) feet above the ground level.
- H. Lighting. All lighting on accessory buildings and structures that are located outside of the main building area shall be shielded or down-lit and shall not shine onto adjoining properties.
- I. Temporary Habitation. Temporary habitation of an accessory building or structure is permitted for a period of ~~not to exceed~~ no more than thirty ~~(30)~~ days in any calendar year (consecutive or intermittent). Temporary habitation of an accessory building ~~may be permitted in excess of~~ for more than thirty ~~(30)~~ days may be permitted upon issuance of, ~~provided a conditional use permit is first secured in accordance with~~

~~Chapter 17.52 hereof~~, when the main building is vacant for remodeling or other similar purposes.

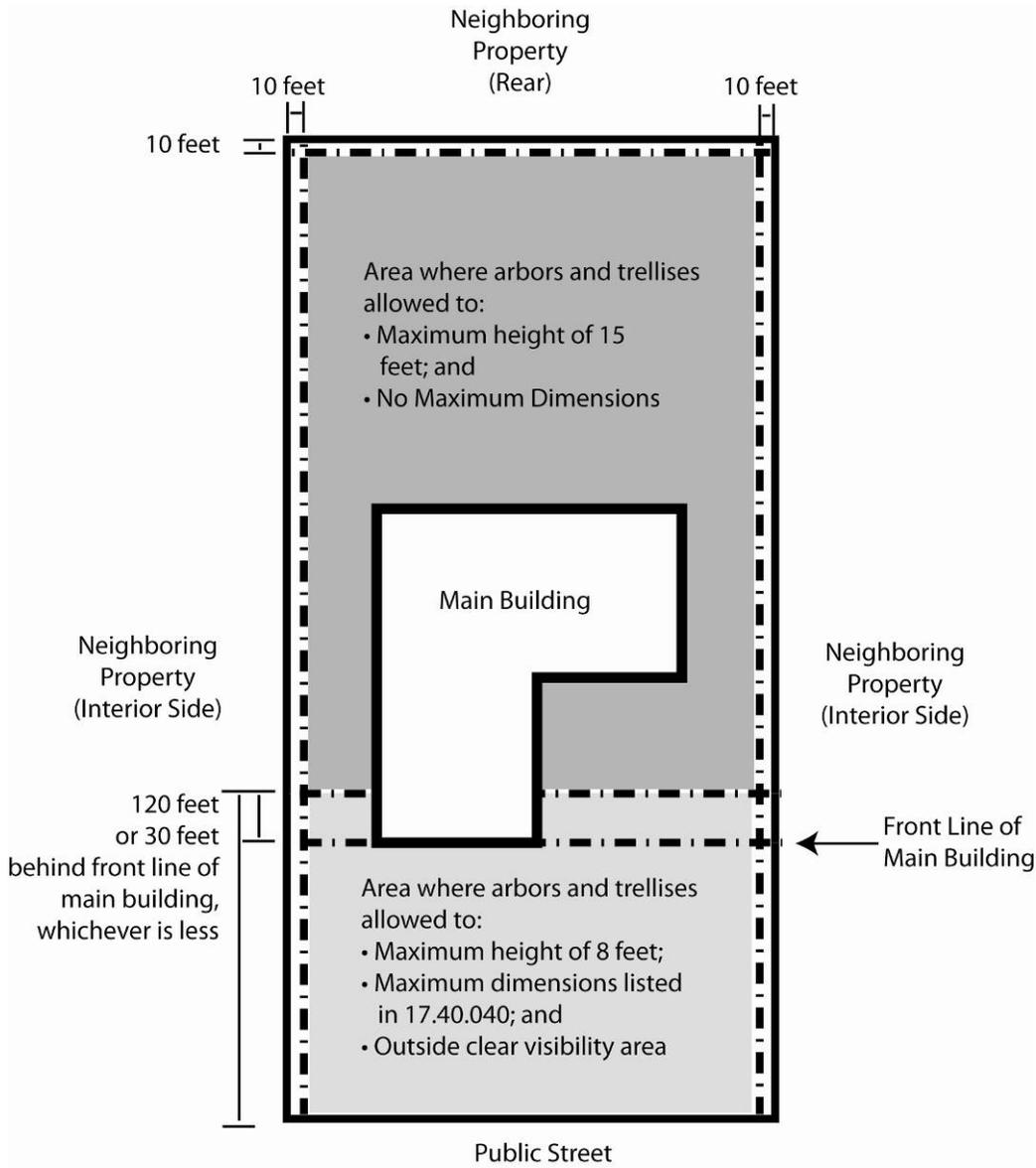
17.40.050 Development Standards for Specific Types of Accessory Buildings and Structures *(Previously 17.36.070 through 140, and 165)*

In addition to the development standards of Section 17.40.040 (General Development Standards), the following accessory buildings and structures have special standards and regulations:

- 1.A. Athletic Courts. Any athletic court shall be considered an accessory structure and may be located in areas permissible for accessory buildings and structures. Athletic courts may also be located on other portions of the lot, where accessory buildings and structures are normally prohibited, only upon issuance of a use permit; however, in no event shall an athletic court be closer to any side or rear property line than specified in ~~Section 17.36.050~~ Table 17.40.040-1 or closer to the front property line than the minimum front yard setback line of the main dwelling. Any athletic court shall be constructed or erected in accordance with the following standards:
- a.1. No enclosure or partial enclosure for an athletic court shall be permitted within ten (10) feet of any side or rear property line or closer to the front property line than the front setback line.
 - b.2. No enclosure or partial enclosure of an athletic court shall be permitted to exceed nine (9) feet in height from finished grade with the exception of a basketball backboard which is a part of the enclosure.
 - c.3. Nets (with the exception of basketball goal nets) which exceed nine (9) feet in height from finished grade shall be removed or lowered to less than nine (9) feet in height when not in use.
 - d.4. ~~No A~~ structure which is used as a practice board or court wall shall be ~~permitted unless it is~~ constructed of a minimum six-inch-thick masonry material ~~or is~~ unless located a minimum sixty (60) feet from any property line.
 - e.5. No artificial lighting shall be constructed to illuminate any athletic court.
 - f.6. No lighting system or light shall be used to illuminate an athletic court between the hours of seven (7) p.m. and sunrise. (Ord. 442 § 9, 1989; Ord 434 § 16, 1988; Ord. 407 § 10-1, 1985)
- B. Arbors and Trellises. Arbors, trellises, and pergolas are subject to the same development standards as other accessory structures as listed in section 17.40.040 (General Development Standards). This includes adhering to the minimum setback standards and the maximum structure height of fifteen (15) feet and maximum sidewall height of eleven (11) feet (e.g., columns and posts are allowed to a maximum of eleven (11) feet and pitched roofs are allowed to a maximum of fifteen (15) feet). However, arbors, trellises, pergolas, and other such structures may be constructed without regard to the setback requirements if conforming to all of the following:
- 1. One or more such structures may be built in front ~~of the rear line of the dwelling~~ of the required accessory structure front setback, provided that such structures shall not exceed eight (8) feet in height, four (4) feet in width, nor a total for all such structures of eight (8) feet in length (see Figure 17.40.050-1 - Setback Standards for Arbors and Trellises);

- 2. _____ Is not located closer than ten (10) feet to any property line other than a public right-of-way (see Figure 17.40.050-1 - Setback Standards for Arbors and Trellises);
- 3. _____ Is substantially open to the passage of light and air in all aspects;
- 4. _____ Is located outside of the clear visibility area; and
- 5. _____ Is expressly for the purpose of and used for supporting vines, roses, or other vegetation (except trees and/or tree limbs).

Figure 17.40.050-1
Setback Standards for Arbors and Trellises



C. Roof-mounted Antennas. Roof-mounted antennas are only permitted when the boom, and any active elements of the antenna array, are fifteen (15) feet or less in length, and provided further, that they meet the following conditions:

- a.1. That the antenna be attached to a structure which conforms to the ~~zoning ordinance~~ Zoning Code, or to a conforming portion of a nonconforming structure;
- b.2. That it be located so it is shielded in so far as practicable by the structure or landscaping from the view of adjacent property and any public street, park, facility, or right-of-way;
3. That it not exceed the height limit applicable to the structure to which it is attached, with the exception that if a conditional use permit is granted so providing, an antenna with the capability of being retracted to a height less than that allowed for the type of building on which it is mounted may exceed the height limit during the actual use for transmitting and receiving.
4. Each antenna shall be constructed of low-visibility materials and shall be finished with a low-visibility, nonglare paint or other finish, consistent with its location and surroundings.

D. Ground-mounted Antennas. A ground-mounted antenna is only permitted when the following conditions are met:

1. That the antenna be located in the rear yard.
2. That its meets all requirements of this chapter for accessory buildings and structures.
3. That it be screened by fences, buildings, or landscaping from the view of adjacent property and any public street, park, facility, or right-of-way.
4. That it have an antenna height of not more than seventeen (17) feet.
5. Each antenna shall be constructed of low-visibility materials and shall be finished with a low-visibility, nonglare paint or other finish, consistent with its location and surroundings.

E. Pool Equipment Operation. No pumping, filter or similar equipment shall be operated between the hours of eight (8) p.m. and eight (8) a.m., and all permits for the erection of pumping, filter, or other similar equipment shall ~~be conditioned upon~~ include the installation of an automatic timing device adjusted to ensure such hours of operation. (Ord. 407 § 7-3, 1985)

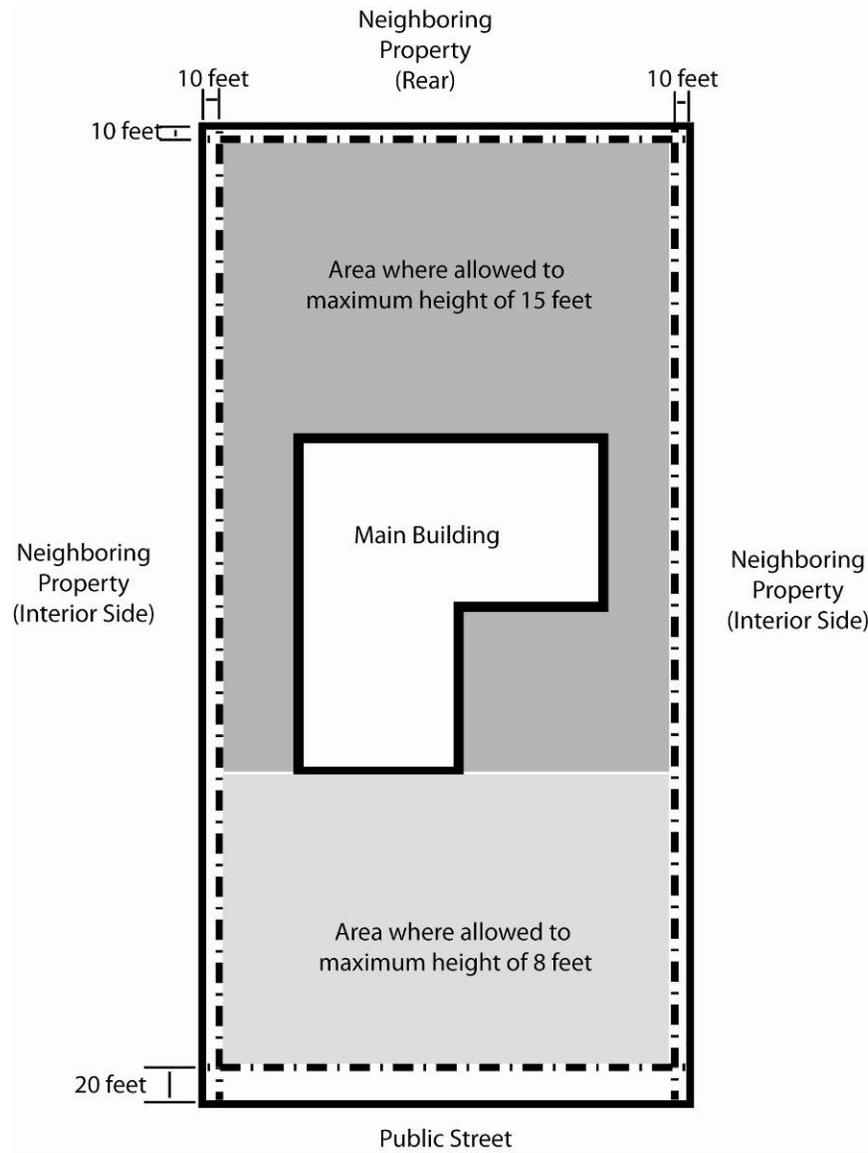
F. Inflatable Covers.

1. Screening. Inflatable covers shall be screened from public view or view from other properties.
2. Height. No inflatable cover shall exceed nine (9) feet in height.
3. The designated Approving Authority, in approving the conditional use permit, may establish time limits on the permit and other conditions as deemed appropriate by the Approving Authority.

G. Artwork and Fountains. Consistent with the setback requirements of Table 17.40.040-1 (General Setback Standards for Accessory Buildings and Structures), artwork and fountains may be allowed in the following lot areas, consistent with specified development standards:

1. Front Yards. Artwork and fountains may be located in required front yard areas provided they are set back twenty (20) feet from the front property line, are no taller than eight (8) feet in height, and are less than one hundred twenty (120) square feet in area (see Figure 17.40.050-2 (Setbacks for Artwork and Fountains)).
2. All other areas. Artwork may be located in side and rear yard areas provided they are set back from property lines consistent with Table 17.40.040-1 (General Setback Standards for Accessory Buildings and Structures) and are no taller than ~~fifteen~~eleven (11) feet in height (see Figure 17.40.050-2 (Setbacks for Artwork and Fountains)).

Figure 17.40.050-2
Setbacks for Artwork and Fountains



Chapter 17.42 Building Height and Measurement (New chapter)

Sections:

- 17.42.010 Purpose (New section)
- 17.42.020 Building Height (New section)
- 17.42.030 Height Measurement (Previously 17.08.070)
- 17.42.040 Exceptions to Height Limit (New section)

17.42.010 Purpose (New section)

This chapter describes the required methods for measuring the height of structures in compliance with the height limits and exceptions as established by this Zoning Ordinance Zoning Code.

17.42.020 Building Height (New section)

- A. Except as otherwise provided in Section 17.42.040 (Exceptions to Height Limit), the height of structures shall not exceed the height limit for the applicable zoning district established by article II.
- B. Additional height provisions for fences and walls are listed in Chapter 17.46 (Fences and Walls).
- C. Additional height provisions for accessory buildings and structures are listed in Chapter 17.40 (Accessory Buildings and Structures).

17.42.030 Height Measurement (Previously 17.08.070)

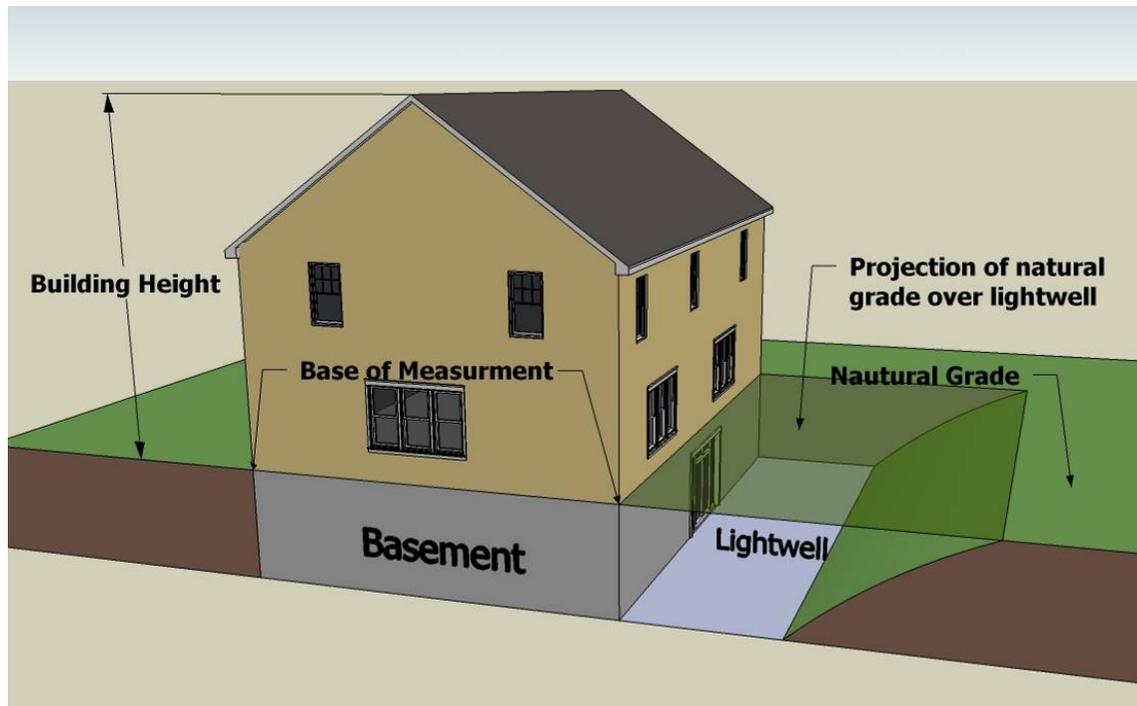
- A. **Height Measurement Generally.** The allowable height shall be measured as the vertical distance at any point from the average natural grade or finish grade, whichever is lowest to the topmost portion of the roof, including structural framing and roof covering material. Continuous decorative roof elements, including but not limited to widow walks and railings, shall be included in the maximum building height. Natural grade shall mean the original condition of the ground surface as it existed prior to mechanical grading or disturbance. Where the original condition of the ground surface cannot be determined, the Town Planner may approve a topographic survey of the property prepared by a Registered Civil Engineer or Licensed Land Surveyor indicating the approximate original condition of the ground surface of the site as can best be determined from record and survey data. Average natural grade shall mean the single vertical elevation of that portion of the lot located within the building footprint determined by averaging ~~at least 6 but not more than~~ twelve (12) natural grade elevation points around the perimeter of the building footprint. The number and location of the natural grade elevation points around the perimeter of the building footprint shall be determined by the Town Planner.
 - 1. The ~~building p~~Permit set of plans shall include the calculations determining the average natural grade for the property, including the locations and elevations of the natural grade elevation points around the perimeter of the building footprint.
 - 2. Certification by the applicant's Civil Engineer (or Licensed Land Surveyor) that the existing conditions topographic map accompanying the

Building permit set of plans shows natural grade as defined in the ordinance.

3. A certification by the applicant's Civil Engineer (or Licensed Land Surveyor) that, at the time of the roof framing inspection, the height of the building does not exceed the allowable height as specified in the ordinance. That certification shall be accompanied by survey notes or other similar data to permit verification of the calculations by a third party.

- B. Height Measurements for Basements. When a building includes a basement, as defined in this title, the height of the building shall be measured as described in 17.42.030(A). Where a home with a basement includes a lightwell, stairwell, driveway access, or other excavated feature, the height shall be measured from that point on the building where the natural grade would be if the lightwell or other excavated feature were not developed. See Figure 17.42.030-1 (Height Measurement for Basements).

Figure 17.42.030-1
Height Measurement for Basements



17.42.040 Exceptions to Height Limit *(New section)*

Exceptions to height limits include:

- A. Chimneys located on residential structures, provided they do not exceed six (6) feet in height above the roofline of the structure
- B. Solar panels located on the roof of structures, provided they do not exceed one (1) foot in height above the roofline of the structure.

Chapter 17.44 Basements (*Previously 17.36*)

Sections:

- 17.44.010 Purpose (*New section*)
- 17.44.020 Definitions (*Previously 17.08.054 and 290*)
- 17.44.030 Locations for Basements (*Previously 17.36.190.A*)
- 17.44.040 Floor Area Calculations (*Previously 17.36.190.B*)
- 17.44.050 Lightwells, Stairwells, and Other Excavated Features (*New section*)
- 17.44.060 Design Requirements (*Previously 17.36.190.C*)

17.44.010 Purpose (*New section*)

The purpose of this chapter is to provide for the regulation of basements on residential property. The intent is to regulate the location and size of basements and the orientation and screening of driveway approaches leading to basement garages.

17.44.020 Definitions (*Previously 17.08.054 and 290*)

For the purpose of this chapter, the following terms shall have the corresponding definitions:

"Basement" ~~For the purposes of this chapter, "basement" means that finished story below the finished floor of the first story of a building that is at no point in excess of two feet in height above the surrounding average natural grade. Basements are subject to the requirements of Section Chapter 17.36.190 17.44. Any portion of the story below the finished floor of the first story of a building that is in excess of two feet in height above the surrounding average natural grade shall be included in the calculation of floor area under Sections 17.20.040 and 17.24.040 of this code. (Ord. 497 § 1, 1998).~~ Basements do not include crawl spaces or other under-floor areas, which are separately defined.

~~"Story" means that portion of a building included between the surface of any floor and the surface of the next floor above it, then the space between such floor and the ceiling next above it.~~ means a horizontal section of a building with a single continuous or primarily continuous floor including all rooms on the same floor or level of a building. (Ord. 407 § 16-28, 1985)

"Story, first" means the first horizontal section of a building located above the natural grade.

"Under-floor area" (a.k.a. crawl space) is the space below the first floor in a building that has a ceiling height less than seven (7) feet, measured from the floor surface to the bottom of the floor joists above. A space below the first story in a building having a ceiling height greater than seven (7) feet may be considered an under-floor area when the natural grade in the under-floor space slopes more than two (2) percent due to hillside topography. In these cases, the area may be considered an under-floor area due to its non-usability features of not having a level floor surface. Once a sloped under floor area (or portion of such area) is excavated to achieve a ceiling height of seven (7) feet minimum and the space contains a relatively level floor surface (<2%), then the space will be considered a basement. Under-floor areas are considered restricted use areas and may not be used for any living purpose. The area cannot be finished to look as if it were going to be used as habitable space.

17.44.030 Locations for Basements (Previously 17.36.190.A)

- A. Basements are permitted under buildings located within the main building area. A basement in the main building area shall not exceed the floor area of the first floor of the main ~~dwelling building~~ unless a Conditional Use Permit is obtained from the Planning Commission for a basement area of up to ~~one hundred twenty~~ one hundred twentythree ~~(120)~~ (130) ~~percent~~ of the floor area of the first floor of the main ~~dwelling building~~. At least ~~eighty~~ (80) ~~percent~~ of the basement area shall be located under the footprint of the main ~~dwelling building~~. Basements shall not extend beyond the main building area except as defined below.
- B. Basements may be located under the footprint of accessory buildings outside of the main building area with a conditional use permit from the Planning Commission with the finding that the basement will not impact heritage trees and ~~with the condition that~~ light-wells be located on the interior side of the yard. The Planning Commission may impose reasonable conditions including, but not limited to, increased setbacks and limitation on size of light-wells.
- C. Garages in basements may be located under buildings located within the main building area.

17.44.040 Floor Area Calculations (Previously 17.36.190.B)

The following rules shall apply to the calculation of floor area ratio relative to basements:

- A. ~~Basements less than two feet in height above the surrounding average natural grade (measured to the elevation of the finished floor of the first story) are exempt from floor area. In instances where the basement measures less than two (2) feet from the average natural grade of the site to the finished floor of the first story, the basement area shall not be included in the calculation of floor area (see Figure 17.44.040-1 (Basements and Floor Area)).~~
- B. ~~Basements in excess of two feet in height above the surrounding average natural grade (measured to the elevation of the finished floor of the first story) shall be included in the calculation of floor area under sections 17.20.040 and 17.24.040. In instances where the basement measures more than two (2) feet from the average natural grade of the site to the finished floor of the first story, the basement area shall be included in the calculation of floor area (see Figure 17.44.040-1 (Basements and Floor Area)).~~
- C. Exceptions to the requirement of this section for hillside properties (where the average cross-slope is greater than twenty (20) percent as determined under Section 16.24.050 (Lot Size Requirements) of the Town municipal code) may be permitted upon issuance of a conditional use permit.

Figure 17.44.040-1
Basements and Floor Area



17.44.040 — Building Height (Merged with 17.42)

17.44.050 — Lightwells, Stairwells, and Other Excavated Features

Excavated features shall not affect the measurement of the grade for the purposes of determining gross floor area, so long as such features meet the following provisions:

- A. Lightwells, stairwells, and similar excavated features along the perimeter of the basement shall not affect the measurement of grade, provided that:
1. Such features are not located in the front of the building;
 2. Such features shall not exceed three (3) feet in width;
 3. The cumulative length of all such features does not exceed thirty (30) percent of the perimeter of the basement;
 4. Such features do not extend more than three (3) feet into a required side yard nor more than four (4) feet into a required rear yard, but where a side yard is less than six (6) feet in width, the features shall not encroach closer than three (3) feet from the adjacent side property line;
 5. The cumulative length of any features or portions of features that extend into a required side or rear yard does not exceed fifteen (15) feet in length;
 6. The owner provides satisfactory evidence to the planning division prior to issuance of a building permit that any features or portions of features that

- extend into a required side or rear yard will not be harmful to any mature trees on the subject property or on abutting properties; and
7. Such features have either a drainage system that meets the requirements of the public works department or are substantially sheltered from the rain by a roof overhang or canopy of a permanent nature.
- B. Below-grade patios, sunken gardens or similar excavated areas along the perimeter of the basement that exceed the dimensions set forth in subsection (A), are permitted and shall not affect the measurement of grade, provided that:
1. Such areas are not located in the front of the building;
 2. All such areas combined do not exceed two (2) percent of the area of the lot or two hundred (200) square feet, whichever is greater; that each such area does not exceed two hundred (200) square feet, and that each such area is separated from another by a distance of at least ten (10) feet. Area devoted to required stairway access shall not be included in the two hundred (200) square foot limitation.
 3. The cumulative length of any excavated area or portion thereof that extends into a required side or rear yard does not exceed fifteen (15) feet;
 4. Lightwells, stairwells, and other features, including approaches/slopes and terrace features, shall not be located within any required setback areas;
 5. The owner provides satisfactory evidence to the Town Planner, prior to issuance of a building permit, that any features or portions of features that extend into a required side or rear yard will not be harmful to any mature trees on the subject property or on abutting properties;
 6. Such features have either a drainage system that meets the requirements of the Town or are substantially sheltered from the rain by a roof overhang or canopy of a permanent nature;
 7. Such areas are architecturally compatible with the residence; and
 8. Such areas are screened to off site views by means of landscaping and/or fencing as determined appropriate by the Town Planner.

17.44.060 Design Requirements (*Previously 17.36.190.C*)

- A. The side(s) of a basement not wholly or otherwise substantially underground (e.g., greater than eighty (80) percent) may not be located facing any side of a lot that abuts a road.
- B. Areas for stairways and light-wells for basements in the main building area may extend beyond the footprint of buildings, but shall be limited to the main building area. (*Previously 17.36.190.C.1*)
- C. Driveway approach for garages in basements shall be screened from the public right-of-way by design, landscaping, or a solid wall and gate. The driveway approach shall not negatively impact heritage trees. (*Previously 17.36.190.C.2*)

Chapter 17.46 Fences and Walls (Previously 17.36)**Sections:**

- 17.46.010 Purpose (New section)
- 17.46.020 Permit Requirements and Exemptions (Previously 17.36.150)
- 17.46.030 Development Standards (Previously 17.36.150)
- 17.46.040 Entry Gate and Post Requirements (Previously 17.36.160)
- 17.46.050 Operation and Maintenance Provisions (Previously 17.36.150.E)

17.46.010 Purpose (New section)

This chapter provides regulations for the installation, construction, and placement of fences on private property. For the purposes of this zoning code, the term "fence" includes fences or walls. It is the intent of this chapter to regulate the height and location of fences to provide privacy and establish buffers between properties.

17.46.020 Permit Requirements and Exemptions (Previously 17.36.150)

- A. Zoning Clearance Required. Except as otherwise exempted below, zoning clearance shall be required for all fences, walls, entry gates, posts, decorative features, and similar structures. Each application shall be filed with the Town Planner on a prescribed form, together with all fees, plans, maps and any other information required by the the Office of the Town Planner.
- B. Conditional Use Permit Required. A conditional use permit is required for retaining walls that are taller than six (6) feet in height or located less than twenty (20) feet from other retaining walls on the same property; otherwise, only a building permit is required.
- C. Exemptions. The following walls and fences are exempt from permit requirements.
 - 1. A wall supporting a permitted structure is exempt from these regulations.
 - 2. Temporary fence around a construction site.
 - 3. Fences six (6) feet in height adjacent to private property and at least ten (10) feet from the public right-of-way.

17.46.030 Development Standards (Previously 17.36.150)

- A. Maximum allowed heights. Fences and walls shall not exceed the maximum heights shown Table 17.46.030-1 (Maximum Height of Fences and Walls).

Note: Standards in Table 17.46.030-1 are consolidated from 17.36.150.A and B.

Table 17.46.030-1
Maximum Height of Fences and Walls

Location of Fence/Wall	Maximum Height ¹
Generally along all property lines	6 feet
Coincident to town <u>Town</u> boundary ¹	8 feet
Along lot lines adjoining a public or private school or the Southern Pacific <u>railroad</u> right-of-way	8 feet
Along regulated streets ²	6 feet / 8 feet ²
At street intersections within clear visibility area	3 feet
Retaining w <u>W</u> alls ³	6 feet
<u>Wing walls⁴ and on other parts of lot</u>	<u>6 feet</u>

Notes:

1. Lot boundaries coincident to the ~~Town~~Town's boundary but facing a street shall be a maximum of six (6) feet high.
2. On those lots adjoining any of the following streets, a fence or wall may be constructed ~~on the boundary which borders such street, up to and including~~ at a height of six (6) feet above the elevation of the natural grade upon which it stands or eight (8) feet above the elevation of the ~~center~~centerline of the adjacent pavement or such boundary, whichever is higher:
 - A. El Camino Real
 - B. Marsh Road
 - C. Middlefield Road
 - D. Valparaiso Avenue
 - E. Alameda de la Pulgas
 - F. Bay Road
 - G. Ringwood Avenue (*Previously 17.32.150.B.1*)
3. Excludes basements and underground driveway approaches.
4. -Wing walls are walls of buildings that extend past the eave. They do not provide support to the building. See Figure 17.46.030-1 (Wing Walls).

Figure 17.46.030-1
Wing Walls



B. Height Measurement. In all areas except for the required clear visibility area, fence height shall be measured from the natural grade at the base of the fence to the uppermost part of fence. Within the clear visibility area, fence height shall be measured from surface of the closest adjoining pavement to uppermost portion of the fence.

C. Fence/Wall Design Compatibility. In considering whether to issue a permit for such a fence or wall, the ~~building official~~ Town Planner shall determine the effect of the proposed structure on the neighborhood, with particular reference to the immediately adjoining proper-ties, and shall ensure that it can meet each and all of the following criteria: *(Previously 17.36.150.B.3)*

1. Lindenwood Wall Exception. With the exception of renovations and additions to the portion of Lindenwood Wall located along Middlefied Road, any fence or wall shall be of uniform design, construction, and appearance. A fence or wall shall be constructed from the ground level, unless it is an addition to the top of an existing fence or wall. An addition shall be of the same design and feature the same material(s) and color(s) as the existing fence or wall, ensuring that the resulting fence or wall shall appear to have been constructed as a single project. *(Previously 17.36.150.B.3.a)*
2. Landscape Requirements. A fence or wall greater than six (6) feet in height shall be shielded from the public view by plants installed at the time of construction. The selected species shall reach maturity within three (3) years of planting. ~~To ensure the plants' proper growth, an application for a permit shall identify a source of sufficient water from a natural spring or include the installation of an adequate irrigation system.~~ *(Previously 17.36.150.B.3.b)*

- D. Retaining Walls. Retaining walls shall be located no closer than five (5) feet from any property line. Except for basements and underground driveway approaches, the maximum height of the retaining walls shall not exceed six feet solid wall construction, with a maximum three foot high safety fence on top. A safety fence may be placed on top of a retaining wall with a maximum height of three (3) feet. The safety fence shall be substantially open to light and air in compliance with applicable safety codes
- ~~C. The building official shall annually review all fences and walls subject to the provisions of this subsection, and furnish a report on the status of such fences and walls to the planning commission and city council. (Previously 17.36.150.B.4)~~

17.46.040 Entry Gate and Post Requirements (Previously 17.36.160)

Entry gates, posts, and decorative features in excess of the height limits established in ~~Section 17.36.150~~ Table 17.46.020-1 (Maximum Height of Fences and Walls), but not exceeding ten (10) feet in height, may be permitted upon the issuance of a building permit therefore. The width of the posts and columns incorporated in fences and walls shall not exceed thirty-three (33)% percent of the built height. Such gates, post and features shall not be in excess of ten feet in height.

It is permissible to maintain a light, not exceeding eighteen (18) inches in height (inclusive of the post height), at the top of any entry gate post or fence/wall column. In no instance, however, shall the entry gate post of fence/wall column exceed ten (10) feet in height.

Entry gates shall be located a minimum of twenty (20) feet from the edge of the adjacent paved roadways. The intent is to provide the necessary space so a vehicle can stay clear of vehicle travel lanes.

17.46.050 Operation and Maintenance Provisions (Previously 17.36.150.E)

- A. Maintenance. Fences and walls shall be continuously maintained in an orderly and good condition, at no more than their maximum allowed height.
- B. Public Nuisance Declared. Each fence, wall, shrub, or tree constructed or maintained in violation of any of the provisions of this section is declared to be a public nuisance, and subject to abatement as such.

Chapter 17.48 Home Occupations (Previously 17.48)**Sections:**

- 17.48.010 Purpose (New section)
- 17.48.020 Permit Required – Standards (Previously 17.48.010)

17.48.010 Purpose (New section)

The purpose of the home occupation is to allow limited non-residential uses within a residential neighborhood or zoning district consistent with established criteria to ensure compatibility and to keep the integrity of the surrounding residential uses and character. It will also minimize noise, traffic nuisances, hazardous material use, and other possible side effects of non-residential uses being conducted in residential areas.

17.48.020 Permit Required – Standards (Previously 17.48.010)

Home occupations shall be permitted upon issuance of a home occupation permit by the ~~city administrator~~ Town Planner only when that use conforms to all of the applicable following standards:

- A. The use is clearly incidental and secondary to the use of the dwelling for dwelling purposes.
- B. The use is conducted entirely within a dwelling and is carried on by the inhabitants thereof.
- C. No persons other than the inhabitants are employed at the premises in relation to the home occupation.
- D. No signs or commercial names are displayed for any purpose on or about the premises.
- E. No business address listings are used in telephone or business directories, advertisements, or similar publications.
- F. The use does not change the character of the dwelling or adversely affect the uses permitted in the surrounding district. There shall be no external evidence of business activity.
- G. The use creates only infrequent or occasional additional traffic.
- H. The entrance to the space devoted to such use is from within the building and no internal or external alterations or construction features not customary in dwellings are involved. (Ord. 407 § 13-1, 1985)

Chapter 17.50 Landscape Screening (*Previously 17.50*)

Sections:

- 17.50.010 Purpose (*Previously 17.50.010*)
- 17.50.020 Applicability (*Previously 17.50.020*)
- 17.50.030 General Requirements (*Previously 17.50.030*)
- 17.50.040 Maintenance (*Previously 17.50.040*)
- 17.50.050 Continued Landscaping (*Previously 17.50.050*)
- 17.50.060 Installation Requirements (*Previously 17.50.060*)
- 17.50.070 Plant Coverage and Tree Sizes (*Previously 17.50.070*)
- 17.50.080 Protection of Heritage Trees (*Previously 17.50.080*)
- 17.50.090 Violation (*Previously 17.50.090*)
- 17.50.100 Appeals (*Previously 17.50.100*)

17.50.010 Purpose (*Previously 17.50.010*)

The purposes of this chapter are to reduce the impact of structures on neighborhoods and to provide for the maintenance of the individual privacy of homes in a neighborhood to a reasonable degree by requirement of landscape screening where appropriate. (Ord. 508 § 1, 1999; Ord. 460 § 2 (part), 1991)

17.50.020 ~~Scope~~Applicability (*Previously 17.50.020*)

The requirements of this chapter shall apply to the following projects ~~which require approval of a building application pursuant to Section 17.04.020 involving:~~

- A. New construction that exceeds eighteen (18) feet above grade; or
- B. New construction of an accessory structure or to an existing accessory structure that exceeds six (6) feet above grade and less than twenty-five (25) feet from a property line; or
- C. New construction of an accessory structure or to an existing accessory structure that exceeds ten (10) feet above grade and less than thirty-five (35) feet from a property line.

In the case of additions to existing structures, only those areas adjoining each addition that meet the above criteria are required to be landscape screened. (Ord. 479 § 1, 1994; Ord. 460 § 2 (part), 1991)

17.50.030 General Requirements (*Previously 17.50.030*)

The following general landscape requirements apply to all residential and nonresidential property within the Town.

- A. All front yards and side and rear yards shall be landscape screened.
- B. Plantings shall be provided and located to reduce the visual impact of structures. Planting with appropriate trees and plants shall be used where necessary to provide privacy.
- C. The provisions contained in this chapter are intended to be minimum standards, and shall not preclude application of additional requirements where, in the opinion of the

~~building official~~ Town Arborist, such additional requirements are necessary to attain the purposes of this chapter and to attain compatibility with the general plan and the goals and policies of the Town. (Ord. 508 §§ 2, 3, 1999; Ord. 470 § 1(B),(C), 1992; Ord. 460 § 2 (part), 1991)

17.50.040 Maintenance (*Previously 17.50.040*)

All landscape screening areas shall be maintained reasonably free of weeds, litter, and debris. All required planting shall be maintained in a healthy growing condition, and, whenever necessary, replaced with plant materials approved by the ~~building~~ Town Arborists ~~official~~ to provide continued conformance with approved plans. All new screening plantings shall be provided with an automatic irrigation system to be installed at the time of planting. (Ord. 508 § 4, 1999; Ord. 460 § 2 (part), 1991)

17.50.050 ~~Submittals Required for Planning Applications and Building Permit Applications~~ Continued Landscaping (*Previously 17.50.050*)

A landscape screening agreement shall be signed by the applicant and shall be submitted to the Town before any planning or building application is deemed complete. ~~The landscape screening agreement shall be recorded with the county recorder.~~ The purpose of this agreement is to ensure that the landscaping will not be removed at a future date, resulting in a loss of privacy and landscape screening. (Ord. 508 § 5, 1999; Ord. 470 § 1(D), 1992; Ord. 460 § 2 (part), 1991) At no time shall the landscape screening be modified or amended without prior approval of the Town Building Official. The intent is to maintain continued landscape screening of property consistent with the objectives of this chapter. Failure to comply with this requirement without first receiving authorization from the Town may result in an administrative penalty and fine as established by the City Council.

17.50.060 Installation Requirements (*Previously 17.50.060*)

Prior to the final inspection or issuance of a certificate of occupancy (unless delay is authorized by the Building Official) all required landscape screening shall be installed in conformance with the approved plans. In the case of phased building construction, the ~~Town~~ Town Building Official may permit phased installation of landscape screening. If the required landscaping is not installed prior to the final inspection, then an agreement in writing, approved as to form by the City Attorney, and a minimum five thousand dollar (\$5,000) deposit, and stating that all required landscaping shall be installed within six (6) months, shall be executed by the applicant and submitted to the Town before approval of the final inspection or issuance of the certificate of occupancy. (Ord. 508 § 6, 1999; Ord. 470 § 1(E), 1992; Ord. 460 § 2 (part), 1991)

17.50.070 Plant Coverage and Tree Sizes (*Previously 17.50.070*)

Plantings shall be sized to adequately screen the proposed structure within a period of five (5) years from the date of issuance of a building permit. The following shall constitute minimum standards for plant coverage and tree sizes:

- A. All plantings shall be of adequate size and spacing to ensure compliance with the screening requirements. A site inspection shall be conducted after a completed landscape screening application has been submitted. It shall be at the discretion of the ~~building official~~ Town Arborists or Town representative to assess the adequacy of the proposed planting to meet the screening requirement;

- B. Minimum Tree Size. All trees shall be at least twenty-four (24)-inch box container size at the time of installation. Larger trees may be required in the sole discretion of the ~~building official~~ Town Arborist where deemed necessary to meet the objectives of this chapter. Fifteen (15) gallon trees or shrubs may be allowed at the discretion of the Building Official, when it can be shown that they will achieve the desired landscape screening requirements. (Ord. 524 § 1, 2001; Ord. 508 §§ 7, 8, 1999; Ord. 470 § 1(F), 1992; Ord. 460 § 2 (part), 1991)

17.50.080 Protection of Heritage Trees (*Previously 17.50.080*)

Every reasonable effort shall be made to protect heritage trees during the course of construction. Compliance with Chapter 8.10 (Removal of and Damage to Heritage Trees) of ~~this code~~ the Town municipal code relating to heritage trees is required. Landscape screening plans shall identify all heritage trees within the construction zone. Each application shall include a tree preservation plan to be implemented during construction. (Ord. 508 § 9, 1999; Ord. 470 § 1(G), 1992; Ord. 460 § 2 (part), 1991)

17.50.090 Violation (*Previously 17.50.090*)

Each violation of this chapter shall constitute a public nuisance and be subject to abatement as such. When, in the opinion of the ~~building official~~ Town Building Official or his duly authorized representative, this ordinance is not being complied with, the ~~building official~~ Town Building Official may issue a stop work order for all construction work on the entire site. (Ord. 508 § 10, 1999)

17.50.100 Appeals (*Previously 17.50.100*)

Any property owner applicant affected by a decision of the ~~building official~~ a town official hereunder may appeal such decision to the City Council in accordance with the provisions of Section 17.06 100 (Appeals) of this code. (Ord. 460 § 2 (part), 1991)

Chapter 17.52 Second Dwelling Units *(Previously 17.36)*

Sections:

- 17.52.010 Purpose *(New section)*
- 17.52.020 Allowed Use Provisions *(New section)*
- 17.52.030 Development Standards *(Previously 17.36.030)*

17.52.010 Purpose *(New section)*

The purpose of this chapter is to regulate second dwelling units in residential zoning districts and on residential property consistent with state law (California Government Code Sections 65852.1 through 65852.2). Implementation of this section is intended to provide for additional housing opportunities by increasing the number of units available within existing neighborhoods while maintaining the primarily single family residential character of the area.

17.52.020 Allowed Use Provisions *(New section)*

Second dwelling units shall be allowed in all residential zoning districts in compliance with the development standards set forth in section 17.52.030 (Development Standards) of this chapter.

17.52.030 Development Standards *(Previously 17.36.030)*

A second dwelling unit is permitted provided the following standards are incorporated into the structural design:

- A. Maximum Number. Only one second dwelling unit shall be allowed on each lot or parcel.
- B. Setback Requirement. Except as otherwise provided herein, each ~~such~~ second dwelling unit shall meet all applicable setback requirements in effect for residential structures.
- C. Maximum Size. The maximum size of each such second dwelling unit shall not exceed six hundred (600) square feet, and no unit shall contain fewer square feet than the minimum prescribed by the applicable building code.
- D. Owner Occupancy. Either the main residence or the second dwelling unit, or both, shall be occupied by the owner of the property.
- ~~E.~~ No more than two persons shall reside in any second dwelling unit.
- ~~F.~~ E. Parking Requirement. Each second dwelling unit shall have assigned to it ~~two~~ one parking space for each bedroom in the second dwelling unit. ~~designated, paved, off street parking spaces~~ Parking shall be accessible from a public street, and screened from view of the public street.
- ~~G.~~ F. Maximum Lot Size if Attached. Second dwelling units which are to be incorporated into or added to existing residence structures (e.g., attached to the main residence) shall be permitted only on lots which have area greater than excess of one-half (0.5) acre.
- ~~H.~~ G. Minimum Lot Size/Location Restrictions if Detached. Second dwelling units which are to be detached from main residence structures shall be permitted only on lots which have greater than forty thousand (40,000) square feet, ~~and may be located only in the rear yard.~~

- H. Separation Requirement. A separation of at least eight (8) feet shall be maintained between any detached second dwelling unit and its main residence structure.
- I. Entrance Requirements. Any new second dwelling unit which is incorporated into an existing main residence shall have a separate entrance facing the side or rear yard.
- J. Compliance with Applicable Requirements. The second dwelling structure shall meet all applicable zoning, building, and fire regulations.
- K. Lighting Restrictions. Any lighting associated with the second dwelling unit shall be shielded or downlit and shall not shine onto adjoining properties.
- L. Landscape Screening. Landscape screening shall be provided in compliance with the provisions of Chapter 17.50 (Landscape Screening). (Ord. 544 § 5, 2003; Ord. 442 §§ 6, 7, 1989; Ord. 407 § 12-1, 1985)

Chapter 17.54 Yard Measurements and Projections *(New chapter)*

Sections:

- 17.54.010 Purpose *(New section)*
- 17.54.020 Definitions *(Previously 17.08.133, 150, 180, 190, 200, 210, 220, 271, 340, 350, 360, and 370)*
- 17.54.030 Setback Measurements *(New section)*
- 17.54.040 Projections *(Previously 17.20.040.G and 17.24.040.G)*

17.54.010 Purpose *(New section)*

The purpose of this chapter is to establish rules and regulations for setback measurement and yard areas. These provisions, in conjunction with other applicable provisions of this title, are intended to ensure open areas around primary structures, maintain clear visibility for traffic safety and pedestrian access, buffer between property and land uses, and establish natural and visual light and air space for privacy, landscaping, and recreation.

17.54.020 Definitions *(Previously 17.08.133, 150, 180, 190, 200, 210, 220, 271, 340, 350, 360, and 370)*

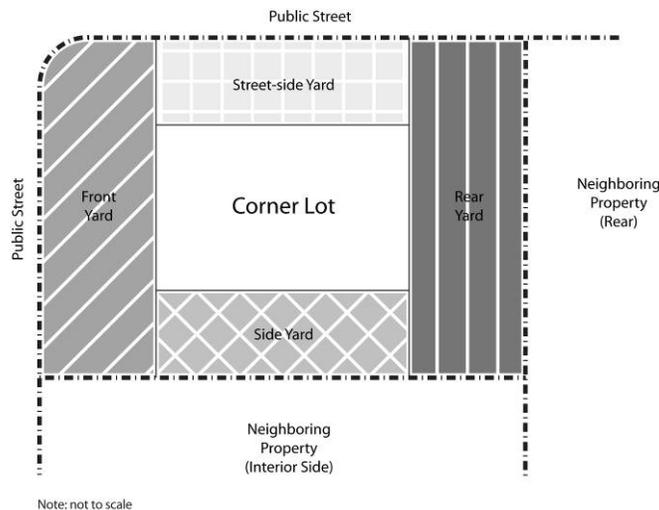
For the purposes of this title, the following words and phrases shall have the meaning respectively ascribed to them in this section.

“Front line of main building” means the line touching the front most point of the main building which is perpendicular to the line connecting the midpoints of the front and rear lot lines.

“Lot” means: A a parcel of land consisting of a single lot of record, used or intended for use under the regulations of this title as one site for a use or a group of uses. Lot types are as follows and are shown in the corresponding figures, which include illustrations of yard areas.

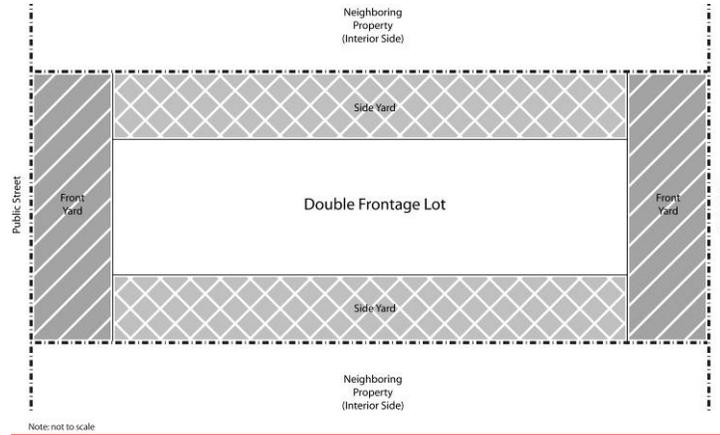
1.A. Corner lot. A lot bounded by two or more abutting and intersecting street lines.

Figure 17.54.020-1
Corner Lot



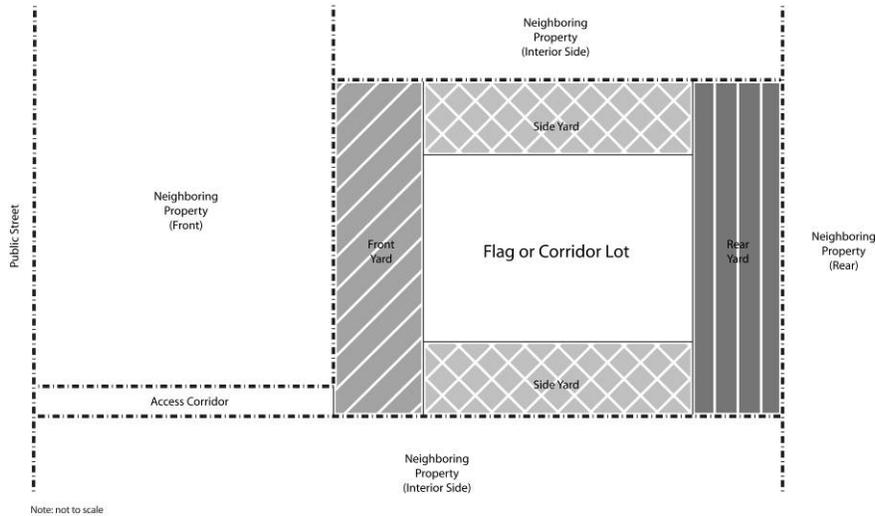
2-B. Double frontage lot. An interior lot bounded by two or more abutting street lines that do not intersect.

Figure 17.54.020-2
Double Frontage Lot



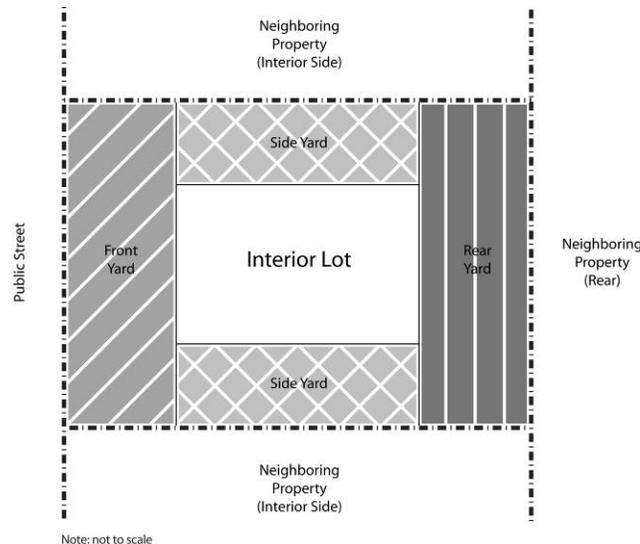
3-C. Flag lot. A lot having access to a street by means of a private driveway or parcel of land (known as the access area) not otherwise meeting the requirements of this title for lot frontage. Width of the access area shall be measured perpendicular to the side line of the access area.

Figure 17.54.020-2
Flag Lot



- D. Interior lot. A lot other than a corner lot abutting only one street.

Figure 17.54.020-2
Interior Lot



~~Front lot line.~~ front means that boundary of a lot whose narrowest portion abuts a public street or access area in the case of a flag lot, except where a different front has been previously officially designated or recognized by the Town.

~~Rear lot line.~~ Lot line, rear means the lot line or lines most nearly parallel to and most remote from the front property line.

~~Rear line of main building~~ shall be determined by drawing a line connecting the mid point of the front and rear lot line and drawing the second line perpendicular to the first line and touching the rearmost point of the dwelling. The perpendicular line shall be extended across the width of the lot. means the line touching the rear most point of the main building which is perpendicular to the line connecting the midpoints of the front and rear lot lines. A portion of the dwelling projecting to the rear of the dwelling, having a width of less than one fourth of the width of the dwelling and not in excess of twenty feet in depth shall not be considered in determining the rear line of the dwelling. (Ord. 469 § 1(B), 1992)

~~Yard-~~ means a—An open space other than a court on the same lot with a building which is unoccupied and unobstructed from the ground upward, except as otherwise permitted in this title.

~~Yard, front-~~ means t—The yard extending across the full width of the lot adjacent to the front lot line and measured from that line to the nearest line where the main building is permitted.

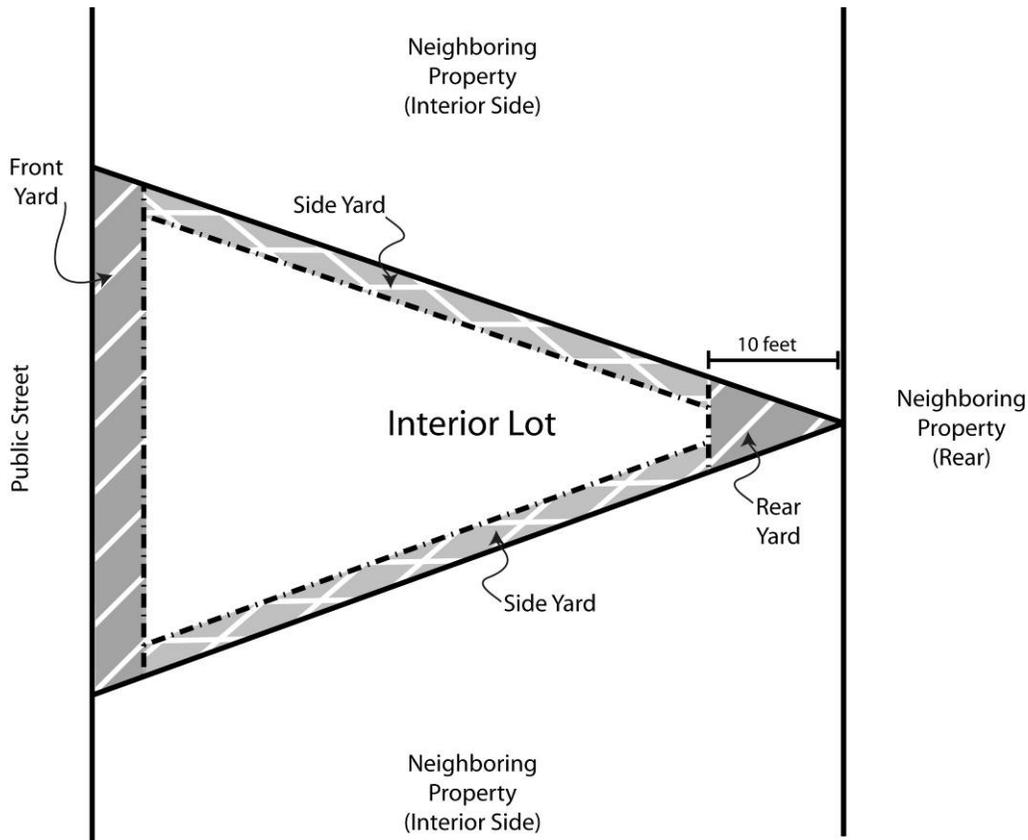
~~Yard, rear-~~ means t—The yard extending across the full width of the lot and lying between the rear line of the lot and the nearest line where the main building is permitted.

~~Yard, side-~~ means t—The yard lying between a side lot line and the nearest line where building is permitted, and extending from the front yard to the rear yard.

17.54.030 Setback Measurements *(New section)*

- A. All setback distances shall be measured at right angles from the designated property line (e.g., front, interior side, street-side, rear) and the setback line shall be drawn parallel to the designated property line at the required setback distance, except as follows:
1. The rear yard setback on the street side of a double frontage lot is a line parallel to the rear property line abutting the street. However, if a street right-of-way line extends into or through a rear yard, the minimum rear yard setback distance shall be measured at right angles from the access easement or right-of-way line; and
 2. Where the side lot lines converge to a point with two or three (3) lines, the rear yard setback shall be measured from an imaginary line drawn parallel to the front property line from a distance of ten feet from the point at which the lines converge. See Figure 17.54.030-1.

Figure 17.54.030-1:
Setback Determination for Converging Side Lot Lines



Note: not to scale

3. The Planning Commission shall have the authority, through the front/rear lot line redesignation process, to redesignate a different line as the front or rear lot line than as currently designated (see Chapter 17.20 (Front/Rear Lot Line Reclassification)).

- B. At time of building permit application, the applicant's engineer shall provide certification that the building is being located within the required setback lines.
- C. The setback lines shall be stakes at the same time as foundation staking so that the field inspector can visually verify that the building is being constructed within the setback lines.

17.54.040 Projections *(Previously 17.20.040.G and 17.24.040.G)*

Roof eaves may encroach into any yard not to exceed a maximum of four (4) feet on the main building and one (1) foot on accessory buildings.

Chapter 17.56 Special Events (Previously 17.38)**Sections:**

- 17.56.010 Title (Previously 17.38.010)
- 17.56.020 Purpose and Intent (Previously 17.38.020)
- 17.56.030 Definitions (Previously 17.38.030)
- 17.56.040 Permit Required (Previously 17.38.040)
- 17.56.050 Application Submittal Requirements (Previously 17.38.050)
- 17.56.060 Permit Issuance (Previously 17.38.060)
- 17.56.070 Permit Requirements (Previously 17.38.070)
- 17.56.080 Permit Revocation (Previously 17.38.080)
- 17.56.090 Violation as a Public Nuisance (Previously 17.38.090)

17.56.010 Title (Previously 17.38.010)

This chapter shall be known as the "Special Event Ordinance" and may be so cited. (Ord. 559 § 2 (part), 2005)

17.56.020 Purpose and Intent (Previously 17.38.020)

- A. The purpose of this chapter is to ensure the comfort, safety, and general welfare of the Town citizens by controlling the number of special events and impacts of such events on the community and by providing a simplified permit process. It is also the purpose of this chapter to defray the costs of processing applications for these events.
- B. The intent of this chapter is to protect the residents from excessive noise, traffic, and other intrusions upon their privacy. (Ord. 559 § 2 (part), 2005)

17.56.030 Definitions (Previously 17.38.030)

A "special event" is an activity sponsored by one or more organizations, individuals, or other entities, held at one (1) or more locations within the Town of Atherton to which the general public is invited. (Ord. 559 § 2 (part), 2005)

17.56.040 Permit Required (Previously 17.38.040)

- A. All special events held in the public right-of-way shall obtain a special event permit. Activities include, but are not limited to, processions such as walks, road races, bicycle rides, skate-a-thons, and similar activities.
- B. A special event permit is required for any special event held on private property, occurring on two (2) or more consecutive days where members of the general public are invited. Activities requiring a permit include, but are not limited to, the following:
 - 1. Motion picture filming;
 - 2. House and garden tours;
 - 3. Fundraisers;
 - 4. Auctions;
 - 5. Antique shows;

6. Concerts;
 7. Other similar activities.
- C. The following provisions shall apply to special events held at private and public schools and country clubs:
1. A permit is not required for on-site school-related events. Responsible parties shall notify the Town of school events that may result in additional traffic or parking.
 2. A permit is not required for non-school-related events held at schools and country clubs that meet the school event guidelines as prepared by the City Manager and accepted by the City Council. Responsible parties shall notify the Town of events that may result in additional traffic or parking.
 3. A special event permit is required for non-school-related events that are planned to occur outside of the school event guidelines.
- D. Open house tours for the purpose of selling property under the regular course of a real estate transaction shall be exempt. (Ord. 559 § 2 (part), 2005)

17.56.050 Application Submittal Requirements (Previously 17.38.050)

The following items and information shall be submitted to the City Manager or designee:

- A. Completed application (application form supplied by the Town) submitted to the Town at least two (2) months prior to the event;
- B. Detailed description of the event;
- C. Contact person available prior to and during the event;
- D. Application fee (as set by resolution of the City Council);
- E. The anticipated number of attendees and number of vehicle trips per day;
- F. An on- and off-site parking plan including the placement of barricades, etc.;
- G. A deposit as determined by the police chief for the funding of any additional security measures not provided by the applicant;
- H. A hold harmless agreement, naming the Town, its employees and agents; and certificate of insurance, naming the Town as additional insured. A form of hold harmless agreement and insurance in the amount of two million dollars (\$2,000,000) and the insurance provider shall be reviewed and approved by the City Attorney. (Ord. 559 § 2 (part), 2005)

17.56.060 Permit Issuance (Previously 17.38.060)

- A. The City Manager or designee may issue a special event permit when in the opinion of the City Manager or designee the event meets all of the requirements of this code and the Atherton general plan. The City Manager or designee may refer items to the Planning Commission when, in his or her opinion, the public interest would be better served by the Planning Commission conducting a public hearing. The City Manager or designee shall issue, deny, or refer a special event permit within thirty (30) days of

receipt of a completed application. If the event will not be in conformance with either this code or the Atherton general plan, the application shall be denied.

- B. If a special event permit is issued by the City Manager or designee, such official may impose any reasonable conditions to ensure the event will have a minimal impact on the community. Such conditions may include, but are not limited to, any of the following:
1. Adequate arrangements to prevent:
 - a. Violation of Chapter 8.16 (Noise Control),
 - b. Violation of Chapter 8.20 (Nuisance Abatement),
 - c. Amplified sound,
 - d. Violation of any traffic laws,
 - e. Violation of any other section of this code;
 2. Posting of docents at key/dangerous locations;
 3. Events, including setup and tear-down, will be done during daylight hours if feasible;
 4. Signs on public property shall be kept to a minimum and shall not be displayed for longer than one (1) hour prior to or after the end of the event;
 5. Other materials or mitigation measures deemed necessary by the City Manager or designee;
 6. Parking barricades shall be set back a minimum distance as required by the City Manager or his or her designee to ensure site distance clearance from special event site driveways and neighboring driveways. (Ord. 559 § 2 (part), 2005)

17.56.070 Permit Requirements *(Previously 17.38.070)*

- A. All special events held on private property shall be limited to no more than two (2) consecutive weeks, including no more than two (2) consecutive weekends. Any event for a longer period of time requires a conditional use permit from the Planning Commission.
- B. All special events shall be publicly noticed at least ten (10) days prior to the issuance of a permit, pursuant to the process outlined in State Planning and Zoning Law Section 65091, with a five hundred (500) foot radius notification. However, if the event is not conducted on a single site, or is to be conducted within the public right-of-way, the applicant shall pay for the cost associated with the publication of the notice in a newspaper of general circulation at least ten (10) days prior to issuance of a permit.
- C. The applicant shall execute an agreement acknowledging obligations to comply with all required conditions of the special event permit.
- D. No more than two (2) special event permits shall be issued in a twelve-month period for special events on any private residential property. (Ord. 559 § 2 (part), 2005)

17.56.080 Permit Revocation *(Previously 17.38.080)*

A special event permit may be revoked by the City Manager or his or her designee in the event of any violation of the special events permit or this code. (Ord. 559 § 2 (part), 2005)

17.56.090 Violation as a Public Nuisance *(Previously 17.38.090)*

Each violation of this chapter is a misdemeanor and shall constitute a public nuisance and be subject to abatement as such. (Ord. 559 § 2 (part), 2005)

Title 17 - Zoning

Article IV Zoning Definitions A-Z

Chapter 17.60 Definitions (*Previously 17.08*)

Revisions:

The following revisions have been made to article IV of title 17:

Date of Adoption	Ordinance Number	Subject	Section	Page Number

17.60 Definitions (Previously 17.08)**Sections:**

- 17.60.010 Purpose
- 17.60.020 Definitions

17.60.010 Purpose (Previously 17.08.010)

The purpose of this title is to provide definitions of the terms and phrases used in the Code that are technical or specialized in an effort to ensure consistency in the interpretation of the Zoning Code. For the purpose of this title, certain terms and words in the plural number include the singular and the singular includes the plural; the word "building" includes the word "structure," and the word "shall" is mandatory and not directory. (Ord. 407 § 16-1, 1985)

17.60.020 Definitions (Previously 17.08.020 through 17.08.370)

"Accessory building" shall mean a detached building where fifty (50) percent or more of the footprint of the enclosed space is covered. Accessory buildings are subordinate to, and their use is customarily incidental to, that of the main building, structure, or use on the same or attached/adjacent lot as regulated in this chapter. This classification includes: garages; greenhouses; poolhouses; sunrooms; workshops; storage sheds; barns, stables, and other agricultural outbuildings with solid roof construction; carports; patio covers; and gazebos.

"Accessory structure" shall mean a detached structure that is not enclosed by walls and a solid or partially enclosed roof. Accessory structures are subordinate to, and their use is customarily incidental to, that of the main building, structure, or use on the same or attached/adjacent lot as regulated in this chapter. Types of accessory structures regulated by the Town include the following:

- Antennas and satellite dishes. Antennas means are a system of wires, poles, rods, reflecting disks, or similar devices used for the transmission or reception of electromagnetic waves, ~~which system is either free standing or attached to the exterior of any structure.~~ A satellite dish is any antenna (as defined in this chapter) (typically parabolic in design) which is designed, usable, or used primarily for ~~used to collect signals from or transmit signals to~~ transmission or reception of signals to or from earth satellites orbiting the earth.
- Arbors/Trellises. A structure which is open on all sides and has a roof that is substantially open to the passage of light and air. For purposes of this definition "substantially open" shall mean a minimum of fifty (50) percent of the covered area is open to light and air. Typically, these structures are constructed with a lattice-like roof structure.
- Artwork and fountains/water features. Artwork shall mean sculptures and other decorative features of an artistic nature that are placed outside of any structure. Fountains/water features shall mean a structure where water is forced into the air under pressure, creating a jet. The pressure may be gravitational or may be produced by a motor-driven pump. Excludes bir baths which is a pedestal with a shallow basin filled with water for birds to bathe in and drink from.
- Athletic courts. means a ~~Any hard-surface area constructed~~ primarily ~~for athletic activity use which is~~ may be ~~equipped with nets, standards, backboards,~~ or other

- projections, ~~above grade~~ or which may be is equipped with sleeves suitable for the installation of ~~nets, standards, backboards or other projections~~ said features, above grade. Includes basketball courts, baseball, soccer, and other fields, and other sports facilities.
- Inflatable covers. Devices that cover pools, spas, hot tubs, and other similar structures. Such covers are inflated with air to maintain their structure and are designed to preclude the pooling of water and leaves on their surface.
 - Pool/Spa. As defined in the Uniform Building Code, any structure intended for swimming or recreational bathing that contains water over eighteen (18) inches deep. This includes in-ground, aboveground, and on-ground swimming pools, hot tubs, and spas. Also includes incidental equipment and housing (e.g., pumps, heating equipment, etc).

"Accessory use" means a use incidental and subordinate to the principal use of the premises, which does not alter the essential characteristics of the primary use, and does not include any kitchen facilities as defined by the Uniform Building Code. (Ord. 407 § 16-37, 1985)

"Attached/Adjacent lot" means one or more lots of record located adjacent to one or more lots of record all held in common ownership. The attached/adjacent lots may be designated as one, separate, or several Assessor's Parcels.

"Antenna height" means the total maximum height to which any part of an antenna is capable of being raised, extended or rotated, measured from the highest point of the natural grade adjacent to the antenna. (Ord. 421 § 1 (part), 1986)

"Average natural grade" means the single vertical elevation of that portion of the lot located within the building footprint determined by averaging not more than twelve (12) natural grade elevation points around the perimeter of the building footprint. The number and location of the natural grade elevation points around the perimeter of the building footprint shall be determined by the Town Planner, determined by adding the sum of the highest natural grade elevation and lowest natural grade elevation and dividing by two, for that portion of the lot covered by a building. (Ord. 497 § 4, 1998).

"Basement" For the purposes of this chapter, "basement" means that finished story below the finished floor of the first story of a building that is at no point in excess of two feet in height above the surrounding average natural grade. Basements are subject to the requirements of Section ~~Chapter~~ 17.36.190 17.44. Any portion of the story below the finished floor of the first story of a building that is in excess of two feet in height above the surrounding average natural grade shall be included in the calculation of floor area under Sections 17.20.040 and 17.24.040 of this code. (Ord. 497 § 1, 1998). Basements do not include crawl spaces or other under-floor areas, which are separately defined.

"Bathroom" means any room or area intended or designed for personal care and hygiene use and including a sink, toilet, and bathtub or shower. (Ord. 434 § 1, 1988)

"Building" means any structure ~~having a roof supported by columns or walls~~ having a roof supported by columns or walls.

"Building height" means the vertical distance from the ground to the highest point on the structure, ~~the natural grade or finish grade, whichever results in the lower height, measured to the~~

topmost point of the roof. Continuous decorative roof elements, including but not limited to widow walks and railings, shall be included in the maximum building height. (Ord. 539 § 2, 2003; Ord. 512 § 2, 2000; Ord. 497 § 5, 1998; Ord. 407 § 16-5, 1985). See Chapter 17.42 for an explanation of how to calculate height.

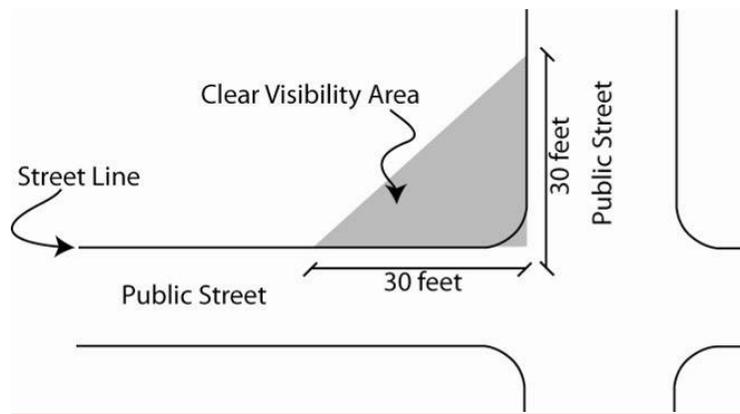
"Building or dwelling area" means the area within a lot in which the dwelling may be constructed. (Ord. 407 § 16-6, 1985)

"Building line" or "building setback line" means the front line of the building area. (Ord. 407 § 16-7, 1985)

"Butler's pantry" means a service room between the kitchen and dining room.

"Clear visibility area" means a triangular area bounded on two (2) sides by street lines extending a distance of thirty (30) feet from any street corner measured along the curb, gutter, or edge of pavement. See Figure 17.60.020-1 (Clear Visibility Area). (Previously 17.36.150.C)

**Figure 17.60.020-1
Clear Visibility Area**



"District" or "zone" means a portion of the ~~city~~ Town within which certain uses of land and buildings are permitted or prohibited, certain yards and other open spaces are required, and certain height limits are established for buildings. (Ord. 407 § 16-9, 1985)

"Dormer" means is a window which is set vertically on a sloping roof. The dormer has its own roof, which may be flat, arched, or pointed.

"Single family Dwelling, single family dwelling" means a building designed for use and occupancy by no more than one individual, family, or group of individuals and containing not more than one kitchen or kitchen facility. (Ord. 407 § 16-36, 1985)

"End wall" means any wall or group of walls parallel to one another as so designated by this title or the Town if no such designation exists. (Ord. 456 § 2, 1990)

"Entry gate" means a gate in a fence or wall intended for vehicle entry into a property.

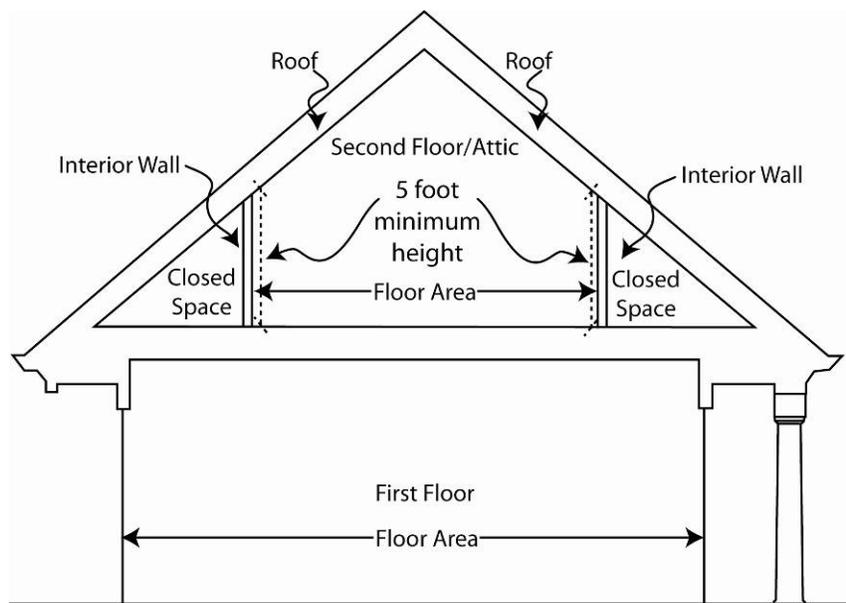
"Fence" means a vertical screening structure used to prevent the ~~having as its principal purpose the prevention of~~ ingress or egress of persons or animals or the obstruction of vision or noise.

Structures which are used to support a roof, awning, or other horizontal compositions, or structures which have a purpose other than those hereinabove specified, including, but not limited to, ~~without limiting the generality of the foregoing~~, tennis courts and other enclosures for athletic activities, compost bins, bath structure enclosures, and enclosures for the storage of tools, equipment and garden supplies, shall not be deemed to be fences. Wing walls, or extensions of a building wall that does not support the building, shall be included in the definition of a fence for purposes of this title. (Ord. 407 § 16-10, 1985)

"Finish grade" means the final contour of the ground surface of a site that conforms to the approved grading plan.

"Floor area" means the sum of the gross horizontal areas of the several planes of the building at each floor level measured from the outside perimeter of the exterior walls or roof in the case of open structures. In instances where the roof line creates the exterior wall of a floor, such as in an attic, the floor area shall be measured to the interior wall (see Figure 17.60.020-2 (Floor Area for Second Floor/Attic Spaces)). Floor area shall also include those portions of overhangs exceeding four (4) feet on the main building and those portions of overhangs exceeding one (1) foot on accessory structures. Floor area shall not include pools, tennis courts, drives and other paved surfaces, and basements (except as otherwise required by this title). In areas with an open height of sixteen (16) feet or greater at any point, the floor area for that portion of the building shall be multiplied by two (2). (Ord. 497 § 2, 1998; Ord. 478 § 1(B), 1994; Ord. 456 § 3, 1990)

Figure 17.60.020-2
Floor Area for Second Floor/Attic Spaces



"Floor area ratio" means the sum of the floor areas as defined in Section 17.08.128 of this code of all main and accessory structures on a lot, divided by the gross lot area. (Ord. 497 § 3, 1998; Ord. 407 § 16-11, 1985)

"Footprint" means the plan view projection of the perimeter of a building to the outside perimeter of the exterior walls. Open or partially covered flat work such as decks and patios six (6) inches in height or less are excluded from the footprint.

"Front line of main building" means the line touching the front most point of the main building which is perpendicular to the line connecting the midpoints of the front and rear lot lines. (Ord. 469 § 1(A), 1992)

"Garage or carport" means a separate building or portion of a main building or accessory building designed for shelter or storage of vehicles owned or operated by the occupants of the lot. For the purposes of this title, a carport is equivalent to a garage. (Ord. 434 § 2, 1988)

"Grade" means ~~the elevation of the ground in its natural state or other elevation that has been officially designated by the town.~~ the elevation of the ground surface. (Ord. 442 § 1, 1989)

"Home occupation" means any use customarily conducted entirely within a dwelling and carried on by the inhabitants thereof, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character of appearance thereof. (Ord. 407 § 16-12, 1985)

"Kitchen" means any room or area intended or designed to be used or maintained for the cooking, storing, and preparation of food and including facilities for cleaning, preparation, and storage of food and cooking and eating utensils. (Ord. 434 § 3, 1988)

"Landscape screening area" means the front yard, the side yard and, when required by the ~~building official~~ Town Arborist, the rear yard. (Ord. 470 § 1(A), 1992; Ord. 460 § 2 (part), 1991)

"Lot" or "site" means a parcel of land consisting of a single lot of record, used or intended for use under the regulations of this title as one site for a use or a group of uses. (Ord. 407 § 16-13, 1985)

"Lot area" means the area of a lot measured horizontally between bounding lot lines, including any portion of a flag lot providing access to the street. (Ord. 407 § 16-14, 1985)

~~"Lot coverage" means the area of a lot occupied by the principal building or buildings and accessory buildings, including all structures exceeding eighteen inches in height. (Ord. 407 § 16-15, 1985)~~

"Lot depth" means the mean distance between the front lot line and the rear lot line measured in the main direction of the side lines of the lot. (Ord. 442 § 2, 1989)

~~"Flag Lot, flag lot"~~ means a lot having access to a street by means of a private driveway or parcel of land (known as the access area) not other-wise meeting the requirements of this title for lot frontage. Width of the access area shall be measured perpendicular to the side line of the access area. (Ord. 407 § 16-16, 1985)

"Lot frontage" means that boundary of a lot along a public ~~street~~ right-of-way. (Ord. 407 § 16-18, 1985)

~~"Interior Lot~~ Lot, interior" means a lot other than a corner lot abutting only one street. (Ord. 407 § 16-20, 1985)

~~Front~~ Lot line, front” means that boundary of a lot whose narrowest portion abuts a public street or access area in the case of a flag lot, except where a different front has been previously officially designated or recognized by the ~~Town~~ Town. (Ord. 407 § 16-19, 1985)

~~Rear lot line~~ Lot line, rear” means the lot line or lines most nearly parallel to and most remote from the front property line. (Ord. 442 § 3, 1989; Ord. 407 § 16-21, 1985)

“Lot width” means the width measured at right angles to its depth at the front line of the building area. (Ord. 407 § 16-22, 1985)

“Main building” means a building or buildings containing the principal use of the building site. (Ord. 449 § 1, 1989)

“Natural grade” shall mean the original condition of the ground surface as it existed prior to mechanical grading or disturbance. Where the original condition of the ground surface cannot be determined, the Town Planner may approve a topographic survey of the property prepared by a Registered Civil Engineer or Licensed Land Surveyor indicating the approximate original condition of the ground surface of the site as can best be determined from record and survey data.

“Nonconforming building or structure” means a building or structure that does not conform to the regulations of the district in which it is located. (Ord. 407 § 16-23, 1985)

“Nonconforming use” means a use that does not conform to the regulations for the district in which it is situated. (Ord. 407 § 16-24, 1985)

“Rezoning” means the act of applying zoning designations to property that is presently outside the corporate limits of the Town just prior to or in conjunction with annexation of that same land into the Town.

“Private school,” for zoning purposes, means a building, group of buildings, or any tract of land or lot used for play, instruction, or care of children other than at public expense. (Ord. 407 § 16-25, 1985)

“Public school,” for zoning purposes, means a building, group of buildings, or any tract of land or lot used for play, instruction, or care of children at public expense. (Ord. 407 § 16-26, 1985)

“Rear line of main building” means the line touching the rear most point of the main building which is perpendicular to the line connecting the midpoints of the front and rear lot lines.

“Retaining wall” means a structurally designed and engineered wall, the primary purpose of which is to retain earth material in an excavated or filled area. ~~shall be determined by drawing a line connecting the mid point of the front and rear lot line and drawing the second line perpendicular to the first line and touching the rearmost point of the dwelling. The perpendicular line shall be extended across the width of the lot. A portion of the dwelling projecting to the rear of the dwelling, having a width of less than one fourth of the width of the dwelling and not in excess of twenty feet in depth shall not be considered in determining the rear line of the dwelling. (Ord. 469 § 1(B), 1992)~~

“Satellite dish antenna” means any antenna (as defined in this chapter) which is designed, usable, or used primarily for transmission or reception of signals to or from earth satellites. (Ord. 421 § 1 (part), 1986)

"Second dwelling unit" means a building or portion of a building designed for use and occupancy by one or two people living independently of the occupants of the main residence building and containing separate kitchen, bath, sleeping, or living facilities. (Ord. 544 § 1, 2003; Ord. 407 § 16-38, 1985)

"Side wall" means any wall not parallel to the end wall. A sidewall shall be measured from the natural grade or finish grade, whichever results in the lower height of sidewall. (Ord. 512 § 3, 2000; Ord. 456 § 4, 1990)

"Site area" means a lot or parcel of land occupied or to be occupied by a main and accessory buildings, together with such open spaces as are required by the terms of this title and having its principal frontage on the street. (Ord. 407 § 16-8, 1985)

"Story" means that portion of a building included between the surface of any floor and the surface of the next floor above it, then the space between such floor and the ceiling next above it. means a horizontal section of a building with a single continuous or primarily continuous floor including all rooms on the same floor or level of a building. (Ord. 407 § 16-28, 1985)

"Story, first" means the first horizontal section of a building located above the natural grade.

"Street line" means the boundary line between a public or private street, road or way, and a lot or parcel of land. (Ord. 407 § 16-29, 1985)

"Structure" means anything constructed or erected, the use of which requires attachment to the ground or attachment to something located on the ground. means anything, except herein after provided, constructed or erected, including pools and housings for incidental equipment thereto, the use of which requires location on the ground or attached to some thing having location on the ground. The restricted elevations herein are from grade. Exempted structures include:

- A. Fences, entrance gates and walls not within ten feet of a street line, not over six feet high. The entry gate posts may have a light on top not in excess of eighteen inches in height;
- B. Mailboxes, flagpoles, outside lighting not on poles over three feet high, benches to be used for seating, header boards, whether constructed of wood or other materials and fish ponds not over two feet deep including bridges and railings not over six feet above grade;
- C. Driveways, walkways, patios, and other flat wood, concrete or asphalt work or other similar materials not over six inches above grade;
- A. A well, located less than six inches above grade, exclusive of tanks, controls, separator discharge plumbing, or other equipment located outside of the well casing, may be constructed in required side or front yards. In no event shall a well be closer than ten feet to any property line. (Ord. 449 § 2, 1989; Ord. 442 § 4, 1989; Ord. 407 § 16-29, 1985)

"Structural alteration" means any change in the supporting members of a building, such as bearing wall, columns, beams or girders, or any addition to a building by the erection of new supporting members. (Ord. 407 § 16-30, 1985)

"Substantially open" means a structure or portion of a structure that is fifty (50) percent open to the passage of light and air in all aspects. (Ord. 478 § 1(B), 1994)

"Use" means the purpose for which land or a building thereon is designed, arranged, or intended or for which it is or may be occupied or maintained. (Ord. 407 § 16-31, 1985)

"Under floor area" (a.k.a. crawl space) is the space below the first floor in a building that has a ceiling height less than seven (7) feet, measured from the floor surface to the bottom of the floor joists above. A space below the first story in a building having a ceiling height greater than seven (7) feet may be considered an under-floor area when the natural grade in the under-floor space slopes more than two (2) percent due to hillside topography. In these cases, the area may be considered an under-floor area due to its non-usability features of not having a level floor surface. Once a sloped under-floor area (or portion of such area) is excavated to achieve a ceiling height of seven (7) feet minimum and the space contains a relatively level floor surface (<2%), then the space will be considered a basement. Under-floor areas are considered restricted use areas and may not be used for any living purpose. The area cannot be finished to look as if it were going to be used as habitable space.

"Yard" means an open space other than a court on the same lot with a building which is unoccupied and unobstructed from the ground upward, except as otherwise permitted in this title. (Ord. 407 § 16-32, 1985)

~~Front yard~~ Yard, front means the yard extending across the full width of the lot adjacent to the front lot line and measured from that line to the nearest line where the main building is permitted. (Ord. 407 § 16-33, 1985)

~~Rear yard~~ Yard, rear means the yard extending across the full width of the lot and lying between the rear line of the lot and the nearest line where the main building is permitted. (Ord. 407 § 16-34, 1985)

~~Side yard~~ Yard, side means the yard lying between a side lot line and the nearest line where building is permitted, and extending from the front yard to the rear yard. (Ord. 449 § 3, 1989; Ord. 442 § 5, 1989; Ord. 407 § 16-35, 1985)