

Town of Fenwick Island, DE
Sunday, April 19, 2015

Chapter 160. Zoning

[HISTORY: Adopted by the Town Council of the Town of Fenwick Island 8-18-1956 by Ord. No. 4. Amendments noted where applicable.]

GENERAL REFERENCES

Building permits — See Ch. **61**, Art. **I**.

Flood damage prevention — See Ch. **88**.

§ 160-1. Purpose; authority.

[Amended 2-22-2013]

For the purpose of promoting health, safety, morals and the general welfare of the inhabitants of the Town of Fenwick Island, Delaware, and pursuant to the provisions of the Charter of the said Town and the provisions of Title 22, Delaware Code of 1953, Chapter 3, entitled "Municipal Zoning Regulations," the Town Council of the Town of Fenwick Island, Delaware enacts the Zoning Ordinance of the Town of Fenwick Island, Delaware as follows.

§ 160-2. Definitions and word use.

- A. Words used in the present tense include the future; words in the singular number include the plural number; the word "lot" includes the word "plot"; the word "building" includes the word "structure"; the word "shall" is mandatory and directory.
- B. For the purpose of this chapter, certain terms and words are defined as follows:

ACCESSORY BUILDING

A subordinate building which is totally detached from the main building, located in and occupying not more than 35% of the rear yard; the use of which is incidental to that of the main building and which does not exceed a height of 15 feet above the ground level at the location where it is placed.

ADVERTISING STRUCTURE

Any sign, billboard or other object or structure serving primarily for advertising purposes.

ALLEY

A public way designed as an alley on the record plat or dedicated as such by deed.

APARTMENT

A set of rooms with housekeeping facilities and used as a dwelling for a single family.

[Amended 9-23-2005; 2-22-2013]

APARTMENT BUILDING

Any structure containing two or more apartments; not applicable to mixed use in a building designed specifically for residential use.

[Added 9-23-2005; amended 2-22-2013]

BUILDING

A structure having a roof supported by columns, posts or walls which is utilized for the shelter, support or enclosure of persons, animals or chattels, provided that this definition shall not be construed so as to include a trailer, travel trailer, recreational vehicle or mobile home, irrespective of whether or not the trailer, travel trailer, recreational vehicle or mobile home is mounted on wheels or otherwise supported.

BUILDING LIMIT LINE

A line beyond which the front wall of a building shall not project, except as provided in § 160-6.

COMMISSION

The Zoning Commission of the Town of Fenwick Island.

COURT

An open, unoccupied space on the same lot with a building, opening upon a street, alley, yard or setback.

CURB LEVEL

The mean level of the established curb in front of the building.

DEPTH OF LOT

The mean horizontal distance between the front lot line and the rear lot line.

DISTRICT

Area within a particular zoning classification; a zone.

DWELLING, SINGLE-FAMILY

[Amended 7-26-1996 by Ord. No. 77; 6-22-2001; 9-28-2001]

- (1) A building constructed for occupancy as a single-family residence, having:
 - (a) A living room area, a dining room area and one kitchen for food preparation, individually or in combination; and
 - (b) Four or less bathrooms, each with a toilet; and
 - (c) Up to eight additional rooms, not including storage, utility or laundry rooms, of which five or less are bedrooms; and
 - (d) All enclosed living space on no more than two floor levels, not including a ground level used for storage, garage and/or entrance foyer, above a foundation of piling, cement blocks or poured concrete.
- (2) This definition shall not be construed so as to include a trailer, travel trailer, recreational vehicle or mobile home, irrespective of whether or not the trailer, travel trailer, recreational vehicle or mobile home is mounted on wheels or otherwise supported.

FAMILY

An individual or two or more persons who are related by blood or marriage living together and occupying a single housekeeping unit with single culinary facilities or a group of not more than five persons living together by joint agreement and occupying a single housekeeping unit with single culinary facilities on a non-profit, cost-sharing basis.

[Amended 2-22-2013]

FIXED ITEMS

Any items, including but not limited to decks, walkways, boardwalks, sheds and trash enclosures, which are designed to be a permanent part of the property.

[Added 4-25-2014]

FLOOR AREA

The total square footage of all horizontal floor areas of a detached single-family dwelling measured from outside walls or limits, including all enclosed areas and structures located more than 12 inches above ground, including, by way of example and not of limitation, decks, porches, balconies and residential pools, but excluding the following:

[Added 6-23-2006]

- (1) Uninhabitable attics.
- (2) Enclosed ground level storage areas, entries, foyers, utility rooms and crawl spaces that are below FEMA defined floodplain elevations.
- (3) Uncovered ground-level decks and boardwalks.
- (4) Unenclosed ground-level spaces that may be under pilings.
- (5) Accessory buildings.
- (6) Half the area of unenclosed uncovered decks and pools and all the area of unenclosed, uncovered roof-top decks.

FLOOR AREA RATIO (FAR)

The percentage obtained by dividing the floor area of a single-family dwelling by the lot area on which it is located.

[Added 6-23-2006]

GARAGE, PRIVATE

A garage for storage only with capacity for not more than three motor-driven vehicles, only one of which may be a commercial vehicle.

[Amended 2-22-2013]

GARAGE, PUBLIC

Any building or premises used for housing or care of more than three motor-driven vehicles, or more than one commercial vehicle, or where any such vehicles are equipped for operation, repaired or kept for remuneration, hire or sale.

[Amended 2-22-2013]

GROUND LEVEL

Any area not more than 12 inches above the ground as measured from the ground to the top of the finished surface.

[Added 6-23-2006]

HEIGHT OF BUILDING

The vertical distance measured from the highest point of the crown of that portion of the street or road which is immediately adjacent to and abutting the property on which the building is to be erected to the elevation of the highest point of the building.

HOME OCCUPATION

An occupation in connection with which there is no display (other than signs otherwise herein provided for), that will indicate from the exterior that the building is being utilized in whole or part for any purposes other than that of a dwelling; in connection with which there is kept no stock-in-trade nor commodity sold upon the premises, no person employed other than a member of the immediate family residing in the premises, and no mechanical equipment used except such as is permissible for purely domestic or household purposes.

LOT

A measured portion of land having three or more sides that form an enclosure designated by boundaries as set forth in a plot or survey, and having its frontage on a public street.

LOT AREA

The total square footage of land contained within its legally defined lot lines, excluding any area within any public right-of-way.

[Added 6-23-2006]

LOT, CORNER

A lot fronting on two or more streets intersecting at an angle.

[Amended 2-22-2013]

LOT, INTERIOR

A lot with frontage on but one street.

LOT LINES

Lines bounding a lot.

LOT, THROUGH

A parcel extending through a block from one street to another.

MOBILE HOME

A structure which is transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities.

MOTEL/HOTEL

A building containing 16 or more sleeping rooms occupied by transient persons as guests for compensation on a daily basis. Each motel/hotel building shall include an on-site management and reception area, daily housekeeping services, and a lighted exterior sign identifying the name of the motel/hotel and the vacancy/no vacancy status. Sleeping rooms may be offered individually or in combination in suites.

[Amended 9-23-2005^[1]]

NONCONFORMING USE

A use, whether of land or of a structure, which does not comply with the applicable use provisions of this chapter or an amendment heretofore or hereafter enacted, where such use was lawfully in existence prior to the enactment of this chapter or amendment, or prior to the application of this

chapter or amendment, by reason of its location.

[Amended 7-26-1996 by Ord. No. 77]

OFFICE

A place where business is transacted or a service is supplied. An "office" may be the directing headquarters of an organization or a place in which a professional person conducts his or her professional business.

POOLS, RESIDENTIAL

Any permanent outdoor recreational structure, including spas and hot tubs, that can contain 24 inches or more in depth of water.

[Added 4-23-2004]

PROFESSIONAL BUSINESS

The business conducted by a professional person.

PROFESSIONAL OFFICE, RESIDENTIAL ZONE

A place in which a professional person conducts his or her professional business and which shall be subject to all the same conditions and restrictions as those which are contained within the definition of home occupation listed above.

PROFESSIONAL PERSON

Those individuals who are duly licensed by the State of Delaware to practice their occupations and including but limited to physicians, optometrists, dentists, attorneys, architects, surveyors, engineers, insurance agents, accountants, stock brokers, commodity brokers and real estate brokers.

[Amended 2-22-2013]

PUBLIC BUILDING

Any building held, used or controlled exclusively for public purposes by any department or branch of government, state, county or municipal, without reference to the ownership of the building or of the realty upon which it is situated.

RENEWABLE ENERGY SYSTEM

Energy generated from natural resources, such as but not limited to sunlight, wind and geothermal heat, which are renewable (naturally replenished).

[Added 5-29-2009]

SMALL WIND ENERGY SYSTEM

A wind energy conversion system consisting of a wind turbine (rotor, blades, generator, alternator, tail), a tower, and associated control or conversion electronics and which is intended primarily to reduce on-site consumption of utility power.

[Added 8-28-2009]

STORY

That portion of a building included between the surface of any floor and the surface of the floor next above it, or, if there is no floor above it, then the space between such floor and the ceiling above it, provided that a cellar shall not be considered a "story."

STREET

A paved thoroughfare for public access.

[Amended 2-22-2013]

STRUCTURAL ALTERATIONS

Any change in the supporting members of a building, such as but not limited to bearing walls, columns, beams or girders, excepting such alterations as may be required for the safety of the building.

[Amended 2-22-2013]

TOTAL HEIGHT (SMALL WIND ENERGY SYSTEM)

The distance measured from ground level (including the wind turbine itself) to its highest point.

[Added 8-28-2009]

TOWN

Town of Fenwick Island, Delaware.

TOWNHOUSE

A single-family dwelling forming one of a group or series of two to four attached single-family dwellings separated from one another by a fireproof party wall(s).

UNINHABITABLE ATTIC

The area between roof framing and the ceiling of the rooms below that is not habitable but may be reached by ladder or pull-down stairs/ladder only and used for storage and mechanical equipment.

[Amended 2-22-2013]

YARD, REAR

The area between the rear line of a building and the rear lot line.

[Amended 2-22-2013]

YARD, SIDE

An open, unoccupied space on the same lot with a building between the building and the side lot lines and extending the complete depth of the lot from the front property line to the rear property line.

ZONE

An area for which the regulations governing the use of buildings and the premises are identical; a district.

[1] *Editor's Note: This ordinance replaced the former separate definitions of "hotel" and "motel" in this section.*

§ 160-3. District boundaries.

[Amended 5-18-2012]

- A. For the purposes of this chapter, the Town is hereby divided into three zones: Commercial, Parks and Residential. The boundaries of the zones are set forth on a map posted in the Town Hall.
- B. The Commercial Zone is designated in yellow. More specifically, the Commercial Zone extends to a depth of 150 feet on the west side of Route No. 1 between Delaware Avenue and James Street, and to a depth of 130 feet on the east side of Route No. 1 between Atlantic Street and James Street.
- C. The Parks Zone is designated in green. More specifically, the Parks Zone shall include public or private sites designated for use as a park and used for recreational activities common to a park such as, but not limited to, playgrounds, sports, kayaking and other recreational uses.
- D. All remaining land in the Town of Fenwick Island, Delaware, is zoned Residential.

§ 160-4. Residential Zone.

- A. Use regulations. Unless hereinafter provided, no building or premises shall be used and no building or structure shall be hereafter erected, altered or repaired except for one or more of the following uses. No mobile home (manufactured home, as designated by FEMA) as defined in this chapter shall be permitted to be placed or located on any lot within the corporate limits of the Town of Fenwick Island.
[Amended 7-26-1996 by Ord. No. 77]
- (1) One detached dwelling, single-family.
[Amended 5-31-2002]
 - (2) Accessory building or private garage and uses incident to the above-mentioned single-family dwelling when located on the same lot and not involving the conduct of a retail or wholesale trade, and including:
 - (a) One accessory building, which shall be located not less than seven feet from the side lot line, not less than four feet from the rear lot line, except that in the case of a corner lot it shall be located not less than 15 feet from the side lot line which is adjacent to and abutting the street.
 - (b) One private garage.
 - [1] When constructed as an integral portion of the main single-family residence structure, the building limit line setback requirements shall be the same as those which apply to the main structure.
 - [2] When constructed as a detached garage (separate individual building), it shall be located not less than 60 feet from the front property lot line, not less than seven feet from any rear or side lot line, except that in the case of a corner lot it shall be not less than 15 feet from the side lot line adjacent to the street. The height of the garage shall not exceed 15 feet above existing ground contour level at the garage site location.
 - (c) Home occupations, provided that no sign or signs shall be displayed on the premises so used exceeding a total of three square feet in area.
 - (d) Professional office when situated in the building used by a practitioner as his or her private dwelling, provided that no nameplate shall be displayed exceeding one square foot in area and containing the name and occupation of the resident of the premises.
 - (e) Residential pools.
[Added 5-28-2004]
 - [1] The building line setback requirements for pools shall be the same as those which apply to the main structure for that property.
 - [2] Every unenclosed portion of a residential pool shall be protected by a continuous safety barrier consisting of county-approved fencing or its equivalent. Fencing which is part of such a required pool safety barrier may be up to six feet. Barriers are not required for hot tubs or spas when a cover is provided.
[Amended 2-22-2013]
- B. Height regulations. No building shall exceed a height of 30 feet, except as provided in § 160-6A(2).
[Amended 7-26-1996 by Ord. No. 77]

- C. Area regulations. The minimum dimensions of yards and the minimum lot area, except as provided in § **160-8**, shall be as follows:
[Amended 5-31-2002; 6-23-2006; 7-27-2007; 2-22-2013]
- (1) Lot area. Each dwelling erected after July 11, 1956, in this zone shall occupy a lot with a minimum area of 5,000 square feet and a minimum width of 50 feet at the front building line, except as provided in § **160-8A(3)**. No lot area shall be so reduced or diminished by this chapter.
 - (2) Front building limit line. The building limit line shall be set back from the front property line a minimum of 25 feet.
 - (3) Side yard. There shall be a side yard of not less than seven feet in width on each side of a main building, and eaves shall be set back not less than six feet from the side property line, excepting that in the case of a corner lot the side yard adjacent to and abutting the side street shall be not less than 15 feet in width, eaves setback not less than 14 feet from the side property line and further excepting as provided in § **160-6A(3)** and (7) of this chapter.
 - (4) Rear yard building limit line.
 - (a) Rear yard building limit line shall be 20 feet from rear property line.
 - (b) In the case where the rear property line extends beyond an established bulkhead, the building limit line shall be 20 feet as measured from the bulkhead.
 - (c) In the case where the bulkhead extends beyond the property line, the building limit line shall be measured 20 feet from the property line.
 - (d) In the case where the rear property is ripped, the rear building limit line shall be measured from the established surrounding bulkhead line or the average high water line as determined by the Building Official.
 - (5) No dwelling shall be built on a lot or plot which does not front directly on a public street, road or highway.
 - (6) Floor area ratio and floor area. For a detached single-family dwelling, the maximum floor area ratio shall be 70% and the maximum floor area shall be 7,500 square feet.
- D. Minimum size of dwelling erected on a lot; valuation thereof. No building erected, maintained or occupied in this zone exclusive of accessory buildings shall occupy less than 750 square feet of a lot nor have a fair valuation of less than \$50,000.

§ 160-5. Commercial Zone.

- A. Use regulations. Unless herein provided, no building or premises shall be used or any building or structure be hereafter erected, altered or repaired in the Commercial Zone except for one or more of the following uses:
[Amended 1-27-1995; 7-26-1996; 4-28-2000; 10-20-2000; 11-15-2002; 5-23-2003; 9-23-2005; 6-23-2006; 7-27-2007; 5-20-2011; 7-22-2011; 2-22-2013]
- (1) Any use permitted in the Residential Zone.
 - (2) Retail store or personal services shop (not including activities requiring outdoor use of power tools or

- animal treatment and/or sale).
- (3) Professional offices and banks.
 - (4) Motels/hotels.
 - (5) Utility buildings.
 - (6) Educational, religious and fraternal/service organizations.
 - (7) Vehicle filling or service station, subject to the following requirements:
 - (a) When such use abuts the side and/or rear line of a lot in any Residential Zone, a solid wall or substantial, solid fence seven feet in height shall be constructed and maintained along said lot line.
 - (b) When such use occupies a corner lot, the ingress or egress driveways shall be located at least 20 feet from the intersection of the front and side street intersection of the front and side street lines of the lot, and such driveways shall not exceed 25 feet in width.
 - (c) Gasoline pumps or other service appliances shall be located on the lot at least 10 feet behind the building limit line; and all service, storage or similar activities in connection with such use shall be conducted entirely within the premises.
 - (d) A lot shall not be used for a vehicle filling station if it is within 300 feet of a public park or playground or a hospital.
 - (8) Farmers' market.
 - (a) Definitions. As used in this subsection, the following terms shall have the meanings indicated:

FARMERS' MARKET

An open outdoor market setting whereat fresh agricultural items, horticultural items, baked goods, seafood and/or other fresh food items that have been locally grown, produced or processed by vendors who are members of the Fenwick Island Farmers' Market may be sold.

FENWICK ISLAND FARMERS' MARKET

The nonprofit organization consisting of community volunteers and local growers, which has been sanctioned by the Town Council of the Town of Fenwick Island and the Delaware Department of Agriculture.

RULES AND REGULATIONS OF THE FENWICK ISLAND FARMERS' MARKET

The rules and regulations imposed by the Fenwick Island Farmers' Market nonprofit organization.

VENDORS

Persons or entities selling only agricultural, horticultural, baked goods, seafood and/or other fresh food items that they themselves have grown, produced or processed.

[1] Individual vendors operating outside the established hours of the Fenwick Island Farmers' Market will be permitted to sell local items purchased from members of the Fenwick Island Farmers' Market.

[2] All vendors must be members of the Fenwick Island Farmers' Market.

- [3] All vendors must also receive a business license from the Town of Fenwick Island to operate individually outside the established hours of the Fenwick Island Farmers' Market.
 - [4] Proof of membership in the Fenwick Island Farmers' Market must be submitted at the time of application for a business license.
 - [5] No license fee shall be charged for members of the Fenwick Island Farmers' Market.
- (b) Permitted locations. Farmers' markets will be permitted on vacant or improved lots, which shall be at least 100 feet by 100 feet in size (either individually or combined), in the Commercial Zone in Town.
[Amended 3-28-2014]
- (c) Regulations.
- [1] If a vendor is not the record owner of the vacant or improved lot where the farmers' market will be located, the vendor must submit to the Town Manager at the time of licensing written proof that the record owner consents to the operation of a farmers' market on the vacant or improved lot in question. If a vendor is the record owner of the vacant or improved lot in question, then proof of ownership must be submitted to the Town Manager at the time of licensing.
[Amended 3-28-2014]
 - [2] Vendors shall comply with all local, county, state and other health laws, rules or regulations pertaining to their operation.
 - [3] Vendors must provide for the removal of all waste generated by or in connection with the operation of the farmers' market. Such waste removal shall include, but not be limited to, the removal of all recyclable materials for the designated purpose of recycling .
 - [4] Farmers' markets shall be operated on a seasonal basis only, from May 1 through October 31 of any calendar year.
 - [5] All meat, seafood, dairy and baked products sold at a farmers' market must meet the safety and quality control requirements of the rules and regulations of the Fenwick Island Farmers' Market.
 - [6] No live animals of any kind, except seafood, may be sold, kept or slaughtered at a farmers' market.
- (g) Restaurant or eatery as herein defined, subject to the following requirements:
- (a) Definitions. As used in this subsection, the following terms shall have the meanings indicated:

BAR

A commercial establishment, not part of a restaurant, whose primary activity is the sale of alcoholic beverages to be consumed on the premises.

BAR AREA

The floor space in any restaurant that is used primarily for the service or consumption of alcoholic beverages for patrons waiting to be seated in the permanent seated dining area. It shall include, but not be limited to, any bar counter and the contiguous floor and seating area where alcoholic beverages are dispensed or consumed, together with all other portions

of the patron area except the permanent seated dining area, whether contiguous to the bar or not. A counter in a "bar area" where food is served is not considered part of the permanent seated dining area.

EATERY

A commercial establishment where food is prepared and served to the public.

OUTSIDE SERVICE AREA

A porch, patio, deck or area of land or buildings which is not enclosed on all sides with permanent structural walls and roofing and which has a floor level no higher than three feet above ground level, is not more than 700 square feet in area and which is used for seated dining only in conjunction with a restaurant or eatery. No part of any outside service area may be located in any setback area and may not eliminate parking spaces to achieve sufficient space for outside service area.

PATRON AREA

The area of a restaurant open to the public as patrons and exclusive of kitchen, storage areas and restrooms.

PERMANENT SEATED DINING AREA

The floor space in any restaurant where tables and chairs and/or booths are provided for serving complete meals to seated patrons. The floor space of any outside service area shall not be included as part of a restaurant's permanent seated dining area.

RESTAURANT

A commercial establishment with a patron area of less than 4,000 square feet and which is regularly used and kept open for the purpose of serving complete meals, as referred to in the Delaware Code, to patrons for consideration and which has seating and tables for dining and suitable kitchen facilities connected therewith under the charge of a chef or cook. The service of only such foods as snacks, sandwiches, salads, pizza, hamburgers, etc., at anytime in the evening are not considered complete meals.

(b) Requirements.

- [1] No bar, as defined, shall be allowed in Fenwick Island.
- [2] No bar area, as defined, shall be allowed in any outside service area.
- [3] In-car or drive-through service may not be provided by a restaurant.
- [4] A restaurant may have a bar area as defined where stand-up consumption of alcoholic beverages for patrons waiting to be seated is allowed, provided that the number of patrons in the bar area does not exceed the Fire Marshal's occupancy limit for that area and such bar area is located on the same floor level as the permanent seated dining area.
- [5] Stand-up consumption of alcoholic beverages is not allowed in the permanent seated dining area, including any outside service area.
- [6] All tables and chairs in the permanent seated dining area of a restaurant shall be maintained and located in an accessible and usable configuration at all times and may not be temporarily moved so as to increase any bar area.
- [7] Music or entertainment, live or recorded, shall not be allowed in any outside service area

except for occasions approved by the Town Council.

- [8] All windows and doors of any restaurant or bar area shall remain closed except for the passage of patrons when music is being played.
- [9] A minimum of 85% of the patron area must be dedicated as a permanent seated dining area.
- [10] A restaurant may not serve alcoholic beverages in the morning before 9:00 a.m. or in the evening later than 1:00 a.m., or later than the time when the offering of complete meals in the permanent seated dining area ends, whichever is earlier. Hours of operations for any restaurant or eatery outside service area shall be no earlier than 8:00 a.m. and no later than 11:00 p.m., including set-up and final clean-up. In the case of a restaurant that includes outside service area, such outside service may be suspended or revoked if there have been three or more cases during a calendar year of violations of any Town ordinances. Oral and written notice of each such violation will be given to the licensed restaurant owner. Such revocation may be immediate, deferred to the entire season for the following year, or both.

(c) Certificates of compliance for restaurants or eateries.

- [1] No establishment license will be issued for a restaurant or eatery as defined in Chapter **160**, Zoning, unless it first receives a valid certificate of compliance from the Building Official indicating compliance with all applicable Town codes. The procedures related to a certificate of compliance will be the same as described for an establishment license in § **100-4** through § **100-16** of Chapter **100**, Licensing, except for the following:
 - [a] The words "Building Official" will be substituted for the words "Town Manager."
 - [b] The words "certificate of compliance" will be substituted for the word "license."
 - [c] In addition to the information required in § **100-9A(1)** through **(8)**, the applicant for a certificate of compliance will provide the following:
 - [i] A floor plan showing the dimensions, square footage and location of the patron area, permanent seated dining area, outside service area and bar area as defined in § **160-5A(9)**.
 - [ii] The number of patrons that can be seated in the permanent seated dining area and the outside service area.
 - [iii] The hours in which complete meals will be offered as described in § 160-5A(9)(b) [12].
 - [iv] Copies of existing Delaware Alcoholic Beverage Control Commission licenses and applications therefor and Fire Marshal permits.
- [2] All existing restaurants and eateries must apply for a certificate of compliance on or before September 1, 1996, or at the time of application for a building permit under Chapter **61**, whichever comes sooner. Authorization by the Town Council of the issuance of a certificate of compliance to a restaurant conducting business as of June 21, 1996, which does not conform to the requirements of Chapter **160**, Zoning, will be based on conditions existing as of June 21, 1996. Such authorization will document the specific type(s) and degree(s) of nonconformance allowed (i.e., grandfathered) to existing and future owners of such restaurants and eateries.

- [3] Any modifications to the floor plan described in § **160-5A(9)(c)** must be submitted to the Building Official prior to implementation to determine whether a new certificate of compliance and/or building permit is required.
- [4] A certificate of compliance must be renewed each year and/or whenever there is a change in the ownership of a restaurant or eatery.

(10) Townhouses.

- (a) The average minimum lot area per dwelling unit shall be 5,000 square feet.
- (b) Lot frontage, measured at the front building limit line, for individual dwelling units of a townhouse may be reduced to not less than 16 feet.
- (c) For the purpose of the side yard regulations, a townhouse building shall be considered as one building on one lot and shall have minimum side yards of seven feet. Any side yard adjacent to the line of a lot in a single-family Residential District shall not be less than 10 feet. Any side yard adjacent to a street shall be not less than 15 feet.
- (d) There shall be a front setback of not less than 25 feet and a rear setback of not less than 10 feet for all construction including decks and steps. For a townhouse building, the maximum floor area ratio shall be 70%.
- (e) Detached garages or carports shall not be permitted.
- (f) Unless otherwise restricted by district regulations, not more than four dwelling units shall be included in any one townhouse building, with no overall outside wall dimensions of more than 85 feet.
- (g) Required off-street parking space of two spaces per family dwelling unit shall be provided on the lot of each dwelling unit or within an on-site parking area within the common area with approval subject to site plan review.
- (h) No family unit shall be so designed or constructed that would locate any part of one family unit above another family unit.
- (i) Any issue or item involving townhouses that is not specifically covered by § **160-5** shall be governed by § **160-4C**.
- (j) Commercial buildings and townhouses, as defined herein, may be constructed so as to extend over more than one lot area in which event the side yard requirements shall apply only to the perimeter of the building or the nearest building of the cluster to the adjacent side property line.
- (k) A townhouse is defined as a single-family dwelling and may not be used for any other use which is not permitted in the Residential Zone.

(11) Auctions.

- (a) Definitions. As used in this subsection, the following terms shall have the meanings indicated:

AUCTION HOUSE

Any premises within the Commercial Zone where personal or real property is sold by auction to the highest bidder by a professional auctioneer.

PROFESSIONAL AUCTIONEER

Every person engaged in the business of crying sales of real or personal property on behalf of other persons for profit. A professional auctioneer must be licensed as an auctioneer by the State of Delaware and the Town of Fenwick Island. All professional auctioneers must be insured to the extent required by the State of Delaware and Delaware law.

REAL ESTATE AUCTION

An auction whereat any real property within the Town of Fenwick Island is sold to the highest, qualified bidder. Real estate auctions must be conducted by a professional auctioneer and may be, but are not required to be, held on the real property being sold at auction.

- (b) Regulations for auction houses and real estate auctions:
- [1] Auctions must adhere to all federal and state laws and regulations.
 - [2] All auctions must be conducted by a professional auctioneer licensed by the State of Delaware and the Town of Fenwick Island.
 - [3] Any and all personal property being sold at auction must be stored and displayed inside the auction house. No such personal property may be stored or displayed outside of the auction house.
 - [4] No signs or devices which produce noise or sound, or which emit visible smoke, vapor, particles or odor shall be used for advertising purposes or to attract attention.
 - [5] A register of all buyers and sellers participating in an auction must be maintained at all times by the professional auctioneer responsible for conducting the auction. As part of said register, the professional auctioneer must also maintain an accurate list of all real and/or personal property bought and sold, together with a description of said real and/or personal property.
 - [6] All auctions must be completed by 9:30 p.m.
 - [7] No auctions of livestock or domestic, foreign and/or exotic animals are permitted.
- (c) A license issued by the Town of Fenwick Island to a professional auctioneer may be suspended and/or revoked for any violation of the regulations for auction houses and real estate auctions set forth above. Such a suspension and/or revocation may also occur for reasons that include, but are not limited, to the following:
- [1] Misleading or untruthful advertising.
 - [2] Flagrant misrepresentation of the quality or existence of the personal or real property being sold at auction.
 - [3] Knowingly using false bidders.
 - [4] Absent a good faith, bona fide dispute, failure to remit payment to the seller of any real or personal property sold at auction and/or failure to transfer any real or personal property sold at auction to the ultimate purchaser thereof.
- (d) Inspection of auction houses. Town officials shall have the power to inspect, during reasonable business hours, any auction house for the purpose of determining compliance with this § **160-5A(11)** or any other applicable provision of the Town Code, as well as to determine compliance

with state licensing or other regulatory requirements. During any such inspection, Town officials may secure and confiscate any evidence discovered that may be necessary for prosecution under this chapter. Town officials may, but shall not be obligated to, refer any suspected criminal activity to the proper police authorities.

- (e) Violations and penalties. Any person or entity in violation of this § **160-5A(11)** shall be obligated to pay a civil fine in the amount of \$500 for the first violation. Subsequent violations shall be punishable by a fine in such amount of \$1,000 per violation. Each day that a violation continues shall be deemed to be a separate and additional violation for purposes of the civil fine imposed hereby. Any appeal of the civil fine imposed shall be lodged with the Fenwick Island Town Council within 10 days of receipt of written notice from the Town that the civil fine has been imposed. In the event of an appeal, the appealing party shall be given an opportunity to be heard and to present his case for rescission or reduction of the civil fine before the Town Council. The decision of the Town Council following any such appeal shall be final. Any and all civil fines imposed hereby shall be collectible in the same manner as delinquent taxes, and the Town shall be entitled to recover all costs and reasonable attorneys' fees incurred in connection with any such collection effort.
- B. Height regulations. No building shall exceed a height of 30 feet, except as provided in § **160-8A(2)**.
[Amended 2-22-2013]
- C. Area regulations. Same as § **160-4C** as to use for single-family dwellings. For uses other than residential, the front building limit line setback, side yard and rear yard requirements shall be as follows:
- (1) Front building limit line. The building limit line shall set back from the front lot line not less than 25 feet.
 - (2) Side yard. There shall be side yards on each side not less than seven feet in width, except as provided in § **160-8A(3)** and **(8)**, and except that, in the case of corner lots, the side yard adjacent to the side street shall have a minimum width of 15 feet.
[Amended 2-22-2013]
 - (3) Rear yard. There shall be a rear yard having a minimum depth of 10 feet.
 - (4) The area between the front lot line and the front building limit line may be used for driveways only. The side yard and rear yard areas may be used for driveways and parking areas, provided, further, that only limited-access entrances and exits to such driveways and parking areas are permitted from the bordering streets. The limited-access entrances and exits shall be controlled by drop curbs or, where no curbs exist, by a fence, wall or other such structure or planting between such entrances and exits, and the parking areas shall comply with the parking regulations of this chapter. No part of any required building setback area in the front, rear, or side of any lot in the Commercial Zone may be covered or paved with impervious or semi-impervious materials such as concrete, asphalt, brick, flagstone, etc. Such coverings or paving existing at the time of enactment of this subsection may continue to be used and repaired as a nonconforming use, but may not be expanded in any horizontal dimension nor rebuilt or replaced with such materials.
[Amended 8-22-2008]
 - (5) Each motel/hotel permitted to be erected or altered hereafter shall occupy a lot(s) providing a minimum of 1,000 square feet of land area for each sleeping room therein, including sleeping rooms in any apartment included in the motel/hotel building.
[Amended 9-23-2005]

- D. ^[1] Fire regulations. All construction in the Commercial Zone must be approved by the State Fire Marshal, except individual single-family dwellings.
- ^[1] *Editor's Note: Former Subsection D, regarding townhouses, as amended 7-26-1996 by Ord. No. 77, was amended and renumbered as § 160-5A(55) by ordinance of 10-20-2000. See now § 160-5A(10).*
- E. Lighting. Lighting (inside and/or outside) on commercial properties must be arranged so as not to reflect or cause glare into any residential property where the intensity of light is strong enough to seriously disturb a person of normal sensibilities. This includes the lighting of permitted illuminated signs.

§ 160-6. Parks Zone.

[Added 5-18-2012^[1]]

- A. Use regulations. Unless herein provided, no building or premises or site shall be used or any building or structure be hereafter erected, altered or repaired in the Parks Zone except for one or more of the following principal permitted uses:
- (1) Public athletics facilities.
 - (2) Playgrounds.
 - (3) Outdoor educational facilities.
 - (4) Public outdoor meetings.
 - (5) Public recreation.
 - (6) Public piers and docks.
- B. Accessory uses and accessory structures permitted:
- (1) Off-street parking and loading facilities.
 - (2) Other accessory uses which are incidental to recreational uses.
 - (3) Small utility buildings or other small storage structures used for storage of equipment and supplies used in connection with park-related activities.
 - (4) The height of an accessory structure shall not exceed 15 feet above existing ground contour level at the accessory structure site location.
- C. Area and yard requirements:
- (1) Building structures, such as but not limited to, utility buildings, playground equipment, picnic tables, and gazebos shall meet the following minimum setbacks requirements:
 - (a) Front yard setback: 20 feet from the front lot line.
 - (b) Rear yard setback: 10 feet from the rear lot line.
 - (c) Side yard setback: five feet from each side lot line.
 - (2) A fence not to exceed six feet in height shall be permitted to screen the park from adjacent residential

properties. Such a fence shall not be completely solid, but shall have openings comprising approximately 20% to 30% of the total surface area of the fence in order to provide for the flow-through of air.

- D. The Town Council may adopt by resolution additional rules and regulations applicable to any park owned and/or operated by the Town. Additional rules and regulations applicable to any park that is privately owned may be imposed by the Town Council from time to time, but shall require an amendment to the Zoning Ordinances of the Town.

[1] *Editor's Note: This ordinance also renumbered former §§ 160-6 through 160-14 as §§ 160-7 through 160-15, respectively.*

§ 160-7. Commercial Zone/Mixed Use.

[Added 2-22-2013^[1]]

- A. Apartment regulations/mixed use:

- (1) One apartment per lot of 6,500 square feet.
- (2) For building utilizing multiple lots, apartment shall be allowed as one apartment per lot of 6,500 square feet.
- (3) The number of apartments located within a mixed use building is restricted by the number of lots on which the building is constructed.
- (4) Two designated parking spaces per apartment.
- (5) Landlord shall supply a recycle bin and trash receptacle. No cans, bins or trash bags are allowed on any exterior area of the building.
- (6) All recycle bins and trash receptacles shall be screened from view of all public streets and residential areas with a type of screening such as fencing or landscaping.
- (7) Each apartment must be registered in the Town, and the owner shall keep all information related to the unit current or risk revocation of permit.
- (8) Each apartment must be occupied by nontransient person(s) as tenant(s) on a long-term basis of not less than three months.
- (9) Each apartment shall contain a full kitchen, a bathroom plus a washer and dryer.
- (10) An apartment must be in compliance with § 160-2B (Definitions and word use), definition of "dwelling, single-family," Subsection (1)(a), (b) and (c).

[1] *Editor's Note: This ordinance also renumbered former §§ 160-7 through 160-15 as §§ 160-8 through 160-16, respectively.*

§ 160-8. General regulations; exceptions.

- A. Height and area requirements shall be subject to the following regulations and exceptions:

- (1) Notwithstanding any contrary provisions of this chapter, public telephone booths shall be permitted in the Commercial Zone and shall be exempt from the front building limit line setback and yard requirements of this chapter, provided that such structures and their location are approved by the Town Council.
- (2) Chimneys may be erected to a height which is required to provide efficient draft.
- (3) In the case of a lot or parcel of land having a width of at least 35 feet but less than 50 feet, and which is included in a plat or deed of record at the time of adoption of this chapter, there shall be a side yard on each side of a dwelling of not less than five feet in width, and the provisions of § **160-4C(1)** shall not apply to such lot or parcel. Eaves shall be set back not less than four feet from the side property line.
- (4) Every part of a required yard or court shall be open and unobstructed, without cover of any kind being partial or total from its lowest point to the sky except as follows:
 - (a) Accessory building and private garage in accordance with § **160-4A(2)** of this chapter are permitted.
 - (b) Fire escapes when required by the State Fire Marshal and chimneys where placed so as not to obstruct light and ventilation are permitted.
 - (c) Open decks, not enclosed with any material of any kind, and open stairways, not enclosed with any material of any kind, may be permitted to be constructed to a line not less than 10 feet from the rear property line and not less than seven feet from the side property line. Any open deck or open stairway which is over the top of or in any way covers another deck or stairway shall not be constructed so as to provide a weatherproof or waterproof covering which would provide for a roof for the open deck or open stairway below it. All decks must meet the minimum criteria for a deck of ingress and egress and be structurally sound to support the use as a deck.
[Amended 6-29-1990]
- (5) Open deck, not enclosed with any material of any kind, and open stairways, not enclosed with any material of any kind, may be permitted to encroach on the front building limit line not to exceed nine feet. Any open deck or open stairway which is constructed within the above-mentioned permitted nine-foot encroachment area, which is over the top of or in any way covers another deck or stairway shall not be constructed so as to provide a weatherproof or waterproof covering which would provide for a roof over the open deck or stairway below it. All decks must meet the minimum criteria for a deck as to ingress and egress and be structurally sound to support the use as a deck. The above-mentioned nine-foot encroachment shall not apply to any building which has a front building limit line of less than 25 feet.
- (6) Nothing contained in this chapter shall prevent in any zone the erection and use of a structure or premises for public or private utility purposes when deemed necessary by the Town Council of the Town for public convenience and welfare.
- (7) In the case of corner lots having a side yard along a street upon which no lots front directly on that same side of the street, between two adjacent intersecting cross streets, such side yard may be reduced to a minimum width of seven feet. Eaves shall be set back a minimum of six feet from the side lot line.
- (8) No yard, court or other open space provided about any building for the purpose of complying with the provisions of these regulations shall be considered as a yard, court or other open space for another building, nor shall the size of any yard, court or open space be reduced to less than the area

requirements of this chapter.

(9) Fences.

- (a) No fence, wall, hedge, partition or other such structure shall be permitted in any zone under this chapter unless such fence, wall, hedge, partition or other such structure is not more than four feet above the grade level of the land on both sides of such fence, wall, hedge, partition or other such structure.
- (b) An exception to Subsection **A(9)(a)** above is that a fence, wall, hedge, partition or other such structure along the rear lot line within the limits of any lot zoned commercial which fronts on Route 1, and/or along the corresponding property line in the Residential Zone comprising such property line, shall be permitted, not to exceed seven feet in height above the curb or crown level of the adjoining street of such structure, except that, in the case of corner lots fronting on Route 1, the structure from the side street property line to a point 15 feet in from said property line shall not exceed four feet in height above the curb or crown level of the adjoining street of such structure. A solid foundation or retaining wall for such structure shall be permitted, not to exceed two feet in height above the crown of the side streets adjacent to the commercial property. The remainder of the fence, wall, partition or other such structure shall not be solid but shall have openings approximately 20% to 30% of the total surface area to provide for the flow-through of air. A detailed design drawing of the structure shall be submitted with the application for a building permit.

[Amended 8-24-2012]

- (10) No land area required to comply with a specific provision of the ordinances of the Town of Fenwick Island shall be utilized for any purpose, use or computation, in order to comply with a second requirement of said ordinances.
- (11) No part of any required building setback area in the front, rear or side of any lot in the Residential Zone may be covered or paved with impervious or semi-impervious materials such as concrete, asphalt, brick, flagstone, etc., for driveways, parking spaces or any other purpose except for a single walkway, no more than three feet in width, in any front, rear or side yard. Such coverings or pavings existing at the time of enactment of this subsection may continue to be used and repaired as a nonconforming use but may not be expanded in any horizontal dimension nor rebuilt or replaced with such materials.
- [Added 6-30-2000]
- (12) In new construction, all fixed items not located at or above base flood elevation and designed to be a permanent part of the property shall either be properly anchored using an auger type of anchor a minimum of two feet in the ground, proper footings designed to resist flotation, collapse or permanent lateral movement, or an anchor system design approved by the Building Official. In accordance with Delaware Code, Title 26, (Chapter 8 - Underground Utility Damage Prevention and Safety Act), "Miss Utility" must be contacted at 1-800-282-8555 before proceeding with any anchoring. Existing fixed items such as listed above are recommended to be anchored but are not required.
- [Added 4-25-2014]

B. Regulations for structures such as but not limited to docks, piers, wharves, boat ramps, steps, boat houses, gazebos, piling and navigational aids in lagoons and canals.

- (1) In order to provide clear, safe and unobstructed operation of watercraft in lagoons or canals 60 feet or less in width within the corporate limits of Fenwick Island, Delaware, no structure such as but not limited to docks, piers, wharves, boat ramps, steps, boat houses, gazebos, piling and navigational aids

shall be constructed which project beyond the bulkhead line of such lagoon or canal. Davits shall be permitted, provided that they shall not project over the waterways more than 12 feet from the bulkhead and, when not in use, they shall be retracted to a line at least four feet parallel to the bulkhead. This installation shall require a building permit.

[Amended 8-25-1989; 3-26-1999]

- (2) In all lagoons or canals in excess of 60 feet in width, such structures may be permitted to extend into the lagoon or canal a distance of not more than four feet beyond the bulkhead line. No construction of any kind is permitted to extend beyond the bulkhead line at the end of a lagoon or canal. Boat lifts shall be permitted, provided that the outside frame of said lift does not protrude more than 12 feet from the bulkhead and the perimeters of submerged boat lifts shall be clearly identified by reflectors so as not to be a hazard to boat traffic. Boat lifts shall be securely anchored and such installation shall require a building permit. Davits shall be permitted, provided that they shall not project over the waterways more than 12 feet from the bulkhead and, when not in use, they shall be retracted to a line at least four feet parallel to the bulkhead. This installation shall require a building permit.
- [Amended 3-26-1999]
- (3) Proposed construction of any structures in any lagoon or canals must receive prior approval by the State of Delaware, Department of Natural Resources and Environmental Control and the United States Army Corps of Engineers in addition to the approval and issuance of a permit by the Town of Fenwick Island, Delaware.
- (4) When application is made for a building permit for the construction of structures such as but not limited to bulkheads, docks, piers, wharves, boat ramps, steps, boat houses, gazebos, piling and navigational aids, the procedure shall be as follows:
- (a) Prior to submitting an application to the State of Delaware, Department of Natural Resources and Environmental Control and the United States Army Corps of Engineers, the data required by Chapter **61**, Building Construction, § **61-3**, and copies of all material and data required for application for a permit from the State of Delaware, Department of Natural Resources and Environmental Control and the United States Army Corps of Engineers shall be submitted to the Town of Fenwick Island for preliminary review and clearance as to compliance with Town ordinances. The submission of applications to the State of Delaware, Department of Natural Resources and Environmental Control and the United States Army Corps of Engineers shall be accompanied by a letter from the Town of Fenwick Island stating that the project has preliminary clearance from the Town of Fenwick Island and complies with its regulations. Such preliminary clearance shall not be construed as permission to commence any work on the project.
- [Amended 9-29-1995]
- (b) When approval of the application and a permit have been obtained from the State of Delaware, Department of Natural Resources and Environmental Control and the United States Army Corps of Engineers, copies of such permits shall be submitted to the Town of Fenwick Island for final review, and, if finally approved by the Town of Fenwick Island, payment of the required fee shall be made and a building permit issued.

C. (Reserved)^[1]

[1] *Editor's Note: Former Subsection C, regarding anchoring of freestanding structures, added 4-26-2013, was repealed 4-25-2014. The ordinance dated 4-26-2013 also redesignated the previous Subsections C and D as Subsections D and E, respectively.*

- D. No parabolic or dish-type antenna, larger than 18 inches in diameter, shall be erected, constructed, altered or maintained on any lot within the Town of Fenwick Island. As used in this section, "parabolic or dish-type

antenna" shall mean any concave, circular or dish-shaped device of any size designed for receiving communication or telephone signals from a satellite. Such prohibition shall not apply if such antenna is housed in a building erected in compliance with all applicable ordinances.

[Added 7-26-1996 by Ord. No. 77]

E. Nonconforming uses.

- (1) Nonconforming use of land and buildings. Except as otherwise provided herein, the lawful use of land or buildings existing at the effective date of this chapter may be continued although such use does not conform to the provisions hereof.
- (2) Discontinuance of nonconforming uses. Without just cause, no building or portion thereof used in whole or in part for a nonconforming use in a Residential or Commercial District which remains idle or unused for a continuous period of 12 months, whether or not the equipment or fixtures are removed, shall again be used except in conformity with the regulations of the district in which such building or land is located.
- (3) Destruction or removal of a nonconforming structure or use to the extent of more than 50% of the fair market value.
[Amended 2-27-2004; 3-18-2005]
 - (a) Fair market value immediately prior to destruction or removal shall be for a structure only, not land, and shall be determined by the Town's Assessor at the expense of the property owner.
 - (b) When such destruction or removal occurs voluntarily by the property owner, any rebuilding and/or restoration must conform to current Town ordinances and all applicable regulations; otherwise all rights as a nonconforming structure or use shall terminate.
 - (c) When such destruction or removal occurs naturally or involuntarily, rebuilding and/or restoration may occur with no more than the same degree or amount of nonconformity as existed prior to the destruction or removal as verified by records provided by the Town or owner.
 - (d) When such destruction or removal occurs by any cause, all rights to maintain multiple dwellings on a single lot in the Residential Zone shall be terminated.
 - (e) The provisions of this § 160-6D(3) shall not alter the right to build a conforming structure on lots having an area less than 5,000 square feet and/or a width less than 50 feet as provided in § **160-6A(3)**.
- (4) Intermittent use. The casual, intermittent, temporary or illegal use of land or buildings shall not be sufficient to establish the existence of a nonconforming use, and the existence of a nonconforming use on a part of a lot shall not be construed to establish a nonconforming use on the entire lot.
- (5) Existence of a nonconforming use. Whether a nonconforming use exists shall be a question of fact and shall be decided by the Board of Adjustment after public notice and hearing and in accordance with the rules of the Board.
- (6) Alteration and/or renovation of a nonconforming building. A building nonconforming as to height, area or other regulations may be altered or renovated, provided that such alteration does not increase the degree of nonconformity in any respect and does not increase the amount of nonconforming horizontal or vertical areas. Where nonconformity is due to multiple dwellings existing on a single lot, no such dwelling (building) may be increased in size in any external dimension.
- (7) Nonconforming uses not validated. A nonconforming use in violation of a provision of the ordinance

which this chapter amends or replaces shall not be validated by adoption of this chapter unless such use complies with the terms of this chapter.

§ 160-9. Renewable energy systems.

[Added 5-29-2009^[1]]

A. Solar energy system.

- (1) A solar energy system is a renewable energy system designed and used to obtain energy from the sun in order to supply energy to a principal use or structure. Such system(s) may include but not be limited to solar hot water, air heating and cooling, and photovoltaic systems. These systems shall be allowed under the following conditions:
 - (a) The solar energy system must be located on the same lot as the principal use which it is serving or on an adjacent lot in the case of a common system servicing more than one principal use or structure.
 - (b) The system must comply with all applicable building, plumbing, electrical and Town codes. Systems must be installed according to manufacturers' specifications.
 - (c) No systems shall be permitted in setback areas.
 - (d) No freestanding systems shall be permitted.
- (2) Roof-mounted solar energy systems shall be allowed to exceed the maximum height requirement by a maximum of 36 inches.

B. Small wind energy systems; tower.

[Added 8-28-2009]

- (1) Provisions, regulations and conditions for small wind energy systems are as follows:
 - (a) Maximum rated capacity. No more than one tower-mounted small wind energy system may be placed on a property and may not exceed 10 kilowatts of production.
 - (b) Minimum yard requirement. The base of the tower shall be set back from all property lines, public rights-of-way, and public utility lines a distance equal to 1.1 times the total height. A turbine may be located at a property line by variance from the Board of Adjustment, which shall consider whether the abutting property owner objects.
 - (c) Total height. Total height (including the wind turbine itself) shall not exceed 33 feet above grade, and tower shall be independent of any other structures on the property.
 - (d) Noise. Sound produced by the system under normal operating conditions, as measured at the property line, shall not exceed 55 dBA. Manufacturer's specifications will serve as verification of dBA levels. Any complaints that noise from the small wind energy system exceeds 55 dBA shall be accompanied by an independent certified source. This sound level may be exceeded during short-term events such as utility outages and/or severe windstorms.
 - (e) Appearance. Wind turbines shall be painted in a nonobtrusive color such as the manufacturer's default color option.

- (f) Compliance with Building Code. System must obtain a building permit and must comply with applicable requirements of the International Building Code.
- (g) Inspections. A final inspection by the Sussex County Building Code Official of the installation, including an electrical inspection, is required before a system may be activated.
- (h) Requirement for engineered drawings. Building permit applications for small wind energy systems shall be accompanied by standard drawings of the system and stamped engineered drawing of the tower, base, footings, and/or foundation (with consideration given to specific soil conditions) as provided by the manufacturer. A manufacturer’s specification sheet, including a photograph of the system, shall accompany the application for the building permit.
- (i) Compliance with Federal Aviation Administration regulations. Small wind energy systems shall comply with FAA regulations described in FAR Part 77 of the FAA guidance on airspace protection.
- (j) Compliance with National Electric Code. Building permit applications for small wind energy systems shall be accompanied by a line drawing of the electrical components, as supplied by the manufacturer, in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code. Wiring and power lines shall be wireless or underground whenever possible.
- (k) Unsafe or abandoned systems. If a system is found to be unsafe by the Building Official, the system must be repaired and made code compliant with 30 days of notification of the property owner. A system that is unused or abandoned for a period of more that 12 months shall be ordered by the Building Official to be made operational or removed within 30 days of such order.
- (l) Signage. No signs or advertising shall be displaced on any part of a system other than the manufacturer’s or installer’s identification and appropriate safety warning signs.
- (m) Lighting. No illumination of the system shall be permitted unless required by the FAA or unless the tower is also used for street or parking lot lighting, or some similar compatible use.
- (n) Safety. Any steps or other devices to assist the climbing of the tower must start at 12 feet above ground level.

[1] *Editor’s Note: This amendment also provided for the redesignation of former § 160-7 through § 160-13 as § 160-8 through § 160-14, respectively.*

§ 160-10. Off-street parking regulations.

- A. Except as otherwise provided in this chapter, when any building or structure is hereafter erected or there is an addition to any building or structure which increases the square foot area of the building or structure or any building or structure or portion thereof is converted for the uses listed in Column 1 of the chart below, accessory off-street parking spaces shall be provided as required in Column 2 or Column 3 of the chart below or as required in subsequent sections of this chapter.

[Amended 7-26-1996; 10-20-2000; 9-23-2005; 2-22-2013]

Off-Street Parking Requirements		
Use or Use Category	Spaces Required Per Basic Measuring Unit	Additional Requirements
Single-family dwelling or townhouse	2 per dwelling	

Church or temple, auditorium or place of assembly	1 per 5 seats or bench seating spaces	(Seats in main auditorium only)
Public buildings such as public library, museum, art gallery or community center	10 per use	Plus 1 additional space for each 300 square feet of floor area
Motel/hotel	1 per sleeping unit	Plus 1 for each 10 rooms or portion thereof
Professional services building	1 per 200 square feet of floor area	6 minimum, 10 minimum for a clinic
Restaurant or eatery	1 per 100 square feet of total patron area	
Retail store	1 per 300 square feet of floor area	

B. Off-street parking regulations; size of parking spaces.

- (1) Residential. All required parking spaces shall be at least nine feet in width, 20 feet in length, and have a vertical clearance of at least six and one-half (6 1/2) feet.
- (2) Commercial. The required number of parking spaces shall comply with the minimum following dimensions based on the angle of parking:

Angle of Parking (degrees)	Parking Space Width (feet)	Parking Space Length	Parking Space Curb Length
0	9	9 feet	26 feet 4 inches
20	9	15 feet	23 feet
30	9	17 feet 4 inches	18 feet
40	9	19 feet 2 inches	14 feet 10 inches
45	9	19 feet 10 inches	12 feet 9 inches
50	9	20 feet 5 inches	11 feet 9 inches
60	9	21 feet	10 feet 5 inches
70	9	21 feet	9 feet 8 inches
80	9	20 feet 4 inches	9 feet 2 inches
90	9	19 feet	9 feet

C. Location of parking spaces.
[Amended 2-22-2013]

- (1) Residential. Parking spaces shall be located on the same lot(s) with the structure they are intended to serve in one of the following ways:
 - (a) Within a permitted garage or carport.
 - (b) On an open area of the lot.
- (2) Commercial. Parking spaces shall be located on the same lot(s) with the structure they are intended to serve in one of the following ways:
 - (a) Within a permitted garage or carport.
 - (b) On a open area of the lot, provided that the parking area(s) required for any building or structure hereafter erected shall be set back a distance of not less than three feet from any lot lines and

shall be set back a distance of not less than three feet from the structure.

(c) If approved by the Town Council, open parking spaces required for a structure may be located on a lot(s) other than those intended to be served, provided that:

[1] It is not practicable to locate such spaces in accordance with Subsection **C(2)** because of:

- [a] Unusual shape, size or dimensions of the lot;
- [b] The lack of an alley or the lack of appropriate ingress or egress facilities through existing or proposed alleys or streets; or
- [c] Traffic hazards.

[2] The Council may impose conditions as to screening, coping, setbacks, fences, the location of entrances and exits or any other requirement it shall deem necessary to assure the continued provision and maintenance of such spaces.

D. Access, maintenance and operation.

- (1) The parking spaces required by this section shall be provided and maintained so long as the structure exists for which the parking spaces are designed to serve.
- (2) Parking spaces shall not be reduced in total extent after their provision except upon approval of the Town Council, and then only after proof that the parking spaces provided are no longer needed by reason of a reduction of employees, seats, gross floor area, dwelling units or any other unit of measurement, provided that the Town Council may impose any condition it shall deem necessary to assure the addition of parking spaces in case of a subsequent increase in employees, seats, gross floor area, dwelling units or any other unit of measurement.
- (3) Each parking space in a Commercial Zone shall be individually accessible at all times from streets or alleys through means of ingress and egress, and no parking space will be authorized or approved if egress requires the vehicle to back directly, in order to exit, onto any of the following: Delaware Route 1, Delaware Avenue, Maryland Avenue or Island Street.
[Amended 1-27-1995; 2-22-2013]
- (4) Each parking space in a Commercial Zone shall be clearly designated by four-inch painted lines on three sides or by the use of the standard bumper (parking) blocks at the front of the parking space.
- (5) When parking spaces are so arranged that an aisle is used in conjunction with parking or is required for accessibility or maneuvering space between rows of two or more parking spaces or between a row of two or more parking spaces and the perimeter of the area based on the angle of parking shall be used:

Angle of Parking (degrees)	Aisle Width (feet)
0	14
20	14
30	14
40	14
45	14
50	14
60	20

70	20
80	25

- (6) Driveways which provide accessibility to parking spaces accessory to one-family dwellings shall be not less than eight feet in width.
- (7) Driveways which provide accessibility to parking spaces accessory to any structure in a Commercial Zone, other than a one-family dwelling, shall be not less than 14 feet in width.
- (8) Detailed plans shall be submitted to the Building Official for approval of all curb cuts or driveway openings.
- (9) All applications for building permits shall include plats, profiles, topographic maps or any other plans in sufficient detail to determine compliance with requirements of this section.
- E. Rules of interpretation. For the purposes of this section, the following rules of interpretation shall be applicable:
- (1) Where individual seats are not provided, each 18 inches of benches or other similar seating shall be considered as one seat.
- (2) The number of employees shall be computed on the basis of the greatest number of persons to be employed at any one period during the day or night.
- (3) In computing the number of parking spaces required, that portion of the gross floor area which is devoted completely to use as loading berths, loading platform, material, equipment, supply storage, kitchen food preparation area or food storage area may be excluded. The excluded areas shall not be open to the general public.
- (4) In the case of mixed uses, the parking spaces required shall be the sum of the requirements for the various individual uses computed separately in accordance with § **160-10A**. Parking space for one use shall not be considered as providing the required parking spaces for any other use.
- (5) Whenever calculations based on the schedule set forth in § **160-10A** result in a fractional space, any fraction under 1/2 shall be disregarded, and any fraction of 1/2 or over shall require one parking space.
- (6) If a structure is not included in one of the categories of structures in § **160-10A**, parking spaces shall be provided therefor to the extent required for a public building, or as determined by the Town Council.
- (7) As used herein, "use or use category" is used only as a criterion for setting forth the off-street parking requirements. To determine the use permissibility, see § **160-5**.
- F. Vehicle parking on an unimproved lot in the commercial zone for a fee or not and with or without the permission of the lot owner is prohibited.
[Added 4-28-2000]
- G. A parking area in the Commercial Zone which serves a permitted use included in § **160-5A** shall not also be used for a use which is not permitted in § **160-5A** such as a commercial parking lot or a shuttle bus service.
[Added 4-28-2000]

§ 160-11. Plats.

All applications for building permits shall be accompanied by a plat drawn to scale showing the actual dimensions of the lot to be built upon, the size of the building to be erected and such other information as may be necessary to provide for the enforcement of these regulations. An accurate and complete record of such applications and plats shall be kept in the office of the Building Official.^[1]

[1] *Editor's Note: See Ch. 61, Building Construction, Art. I, Building Permits, for information on application and issuance of building permits.*

§ 160-12. Interpretation; purpose; conflict.

In interpreting and applying this chapter, the requirements contained herein are declared to be the minimum requirements for the protection of the health, morals, safety or welfare. This chapter shall not be deemed to interfere with or abrogate or annul or otherwise affect in any manner whatsoever any easements, covenants or other agreements between parties; provided, however, that where this chapter imposes a greater restriction upon the use of buildings or premises or upon the height of buildings or requires larger open spaces than are imposed or required by other ordinances, rules, regulations or permits, or by easements, covenants or agreements, the provisions of this chapter shall control.

§ 160-13. Board of Adjustment.

[Amended 7-26-1996 by Ord. No. 77]

- A. Procedures. There shall be a Board of Adjustment, consisting of three to five members appointed in accordance with the provisions of 22 Delaware Code § 322(d)(1), and this Board shall have the powers defined and conferred, and the limitations imposed, by Title 22 of the Delaware Code, §§ 321 through 327 inclusive. Said §§ 321 through 327 are included herein by reference.
- B. Fee. Appeals to the Board of Adjustment for variances from the terms of ordinances shall be accompanied by a fee payable to the Town of Fenwick Island, Delaware. The fee shall be as set by resolution of the Town Council.^[1]

[1] *Editor's Note: The fees resolution is on file in the Town offices.*

§ 160-14. Zone boundaries.

Where uncertainty exists with respect to the boundaries of the various zones shown on the maps accompanying and made a part of this chapter, the following rules shall apply:

- A. The zone boundaries are either streets or alleys, unless otherwise shown, and where the designation on the maps accompanying and made a part of this chapter indicating the various zones are approximately bounded by street or alley lines, said street or alley shall be construed to be the boundary of such zones.
- B. Where the zone boundaries are not otherwise indicated and where the property has been or may hereafter be divided into blocks and lots, the zone boundaries shall be construed to be lot lines, and where the designations on the maps accompanying and made a part of this chapter indicating the various zones are approximately bounded by lot lines, said lot lines shall be construed to be the boundary of such zones unless said boundaries are otherwise indicated on the maps.

- C. Whenever a portion of any zone is indicated upon the zoning map as a strip paralleling an opened or unopened street, the width of this strip, unless delimited on said map by lot lines or otherwise, shall be assumed to be 120 feet measured at right angles from the lines of the street to which it is parallel and adjacent.

§ 160-15. Violations and penalties.

[Amended 2-22-2013]

A violation of the provisions of this chapter, or the failure to comply with any of its requirements, shall be punishable by a fine of \$100 for each offense, plus court costs. Whenever a person shall have been notified in writing, certified mail, return receipt requested, by the Building Official or other Town official or by service of a summons of a violation of this chapter, each day of continued violation shall be considered as a separate offense. The owner or tenant of any building, structure, premises or any part thereof, and any architect, builder, contractor, employee or agent for one of the aforementioned persons, or any other person who commits, furthers, participates in, assists in, or maintains any such violation may be separately convicted and be subject to the same penalties provided herein. Nothing in this section shall be construed to prevent or otherwise prohibit the prosecution of the same violation occurring on a date subsequent to the conviction. The commission, allowance or participation in any activity defined as a violation of this chapter shall be deemed and is hereby declared to be a common and public nuisance. The Town Council may institute appropriate proceedings to restrain or enjoin further construction in violation of the chapter and/or proceedings to abate any violation, and to require the removal of the violation. In this event, the Town Council shall be entitled to collect from the offending party or parties the Town's reasonable attorneys fees, legal costs and expenses and court costs, as a part of any judgment or award in a civil action brought to restrain or enjoin a violation. Civil remedies are in addition to and not in lieu of the penalties provided herein.

§ 160-16. Amendments.

[Amended 7-24-2000]

- A. The right to alter, amend or repeal and reenact this chapter is hereby expressly reserved.
- B. After the approval of a first reading of any proposed amendment to this chapter and prior to consideration of a second reading thereof, a public hearing shall be held with at least 15 days prior notice published in a local newspaper as prescribed by Title 22 of the Delaware Code, 304.
- C. At such time that a first reading of an amendment to this chapter is approved by Town Council, any building permit or license, which would not be allowed under the proposed amendment, shall not be issued unless a second reading of the proposed amendment is rejected by Town Council. Any building permit or license, which would be allowed under the proposed amendment but not allowed without the proposed amendment, shall not be issued unless a second reading of the proposed amendment is approved by Town Council.