ORDINANCE NO. 20-10

AN ORDINANCE APPROVING A REZONING AMENDMENT FOR TERRA ALTA LLC., FOR TERRA ALTA SUBDIVISION FROM A-1 AND R-2 PMU TO A-1 AND R-2 PMU ON APPROXIMATELY 472.9 ACRES AND LOCATED NORTH OF BRAUMILLER ROAD, EAST OF POLLOCK ROAD AND WEST OF BERLIN STATION ROAD (NO ZONING CHANGES TO THE STOCKDALE FARMS PORTION OF THE DEVELOPMENT).

WHEREAS, the Planning Commission at its meeting of March 4, 2020 recommended approval of a Rezoning Amendment for Terra Alta LLC., for Terra Alta Subdivision from A-1 and R-2 PMU to A-1 and R-2 PMU on approximately 472.9 acre and located north of Braumiller Road, east of Pollock Road and west of Berlin Station Road (No zoning changes to the Stockdale Farms portion of the development) (PC Case 2020-0258).

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Delaware, State of Ohio:

SECTION 1. That the Rezoning Amendment for Terra Alta LLC., for Terra Alta Subdivision from A-1 and R-2 PMU to A-1 and R-2 PMU on approximately 472.9 acre and located north of Braumiller Road, east of Pollock Road and west of Berlin Station Road (No zoning changes to the Stockdale Farms portion of the development), is hereby confirmed, approved, and accepted with the following condition that:

1. The Development Text, as currently proposed, is generally acceptable and any revisions shall require conformance to all provisions of the Development Text and the subsequent approved development plans and plats.
2. Any change of use or major modification of the plan shall require conformance to all provisions of the Development Text.
3. A $1,000 per dwelling unit transportation contribution fee shall be collected with each building permit for needed area transportation improvements.

SECTION 2. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including Section 121.22 of the Revised Code.

Digital signature on file used due to meeting being held remotely due to State of Emergency issuance.

VOTE ON RULE SUSPENSION: YEAS 7 NAYS 0
ABSTAIN 0

PASSED: March 23, 2020 YEAS 7 NAYS 0
ABSTAIN 0

ATTEST: Elaine McCloskey
CITY CLERK

Cindy Kaplan
MAYOR

Digital signature on file used due to meeting being held remotely due to State of Emergency issuance.

February 5, 2020

TERRA ALTA
PLANNED MIXED USE DEVELOPMENT TEXT
DELAWARE, OHIO

1. DESCRIPTION OF DEVELOPMENT & RELATIONSHIP TO THE CITY OF DELAWARE COMPREHENSIVE PLAN

Developer is amending the PMU zonings for the developments known as "Terra Alta" zoned in 2008 and "Stockdale Farms" zoned in 2014 and is rezoning to a Planned Mix Use (PMU) Overlay District within the existing Agricultural A-1 zoning district the property known as "Rogers" located between Terra Alta and Stockdale, in order that all three properties (collectively, the "Property") become part of one coordinated and comprehensive Planned Community known as "Terra Alta", consisting of detached single-family homes, attached/detached single-family condominiums, duplexes and patio homes, together with related amenities. For all purposes hereof, "duplexes" shall mean homes on platted lots containing two connected dwelling units with a zero lot line/common wall, and "patio homes" shall mean homes located on subdivided lots generally having a first floor master suite, 1 ½ stories, catering to purchasers desiring a more carefree lifestyle where certain maintenance provided, and governed by a homeowners association. The Property will be developed in a series of Sub-Areas, as defined and provided in Section 3 and elsewhere herein, Reserves and open spaces.

All former references in the Stockdale Farms rezoning to "Stockdale Farms" shall be re-designated as a part of Terra Alta such that the entire Property shall be known as "Terra Alta". Developer believes that these amendments will provide for the highest and best use of the Property, thereby permitting quality housing stock to be constructed within the City of Delaware. Additionally, as further discussed below, Developer believes that such amendments are in accordance with the City of Delaware Comprehensive Plan.

The purpose of this Development Text is to set forth all supplemental information required by the Zoning Code and set forth in textual form certain development standards that will apply to the Property. Accompanying this Development Text is an Amended Preliminary Development Plan for the Property (the "Preliminary Development Plan"). All terms and conditions of the Preliminary Development Plan are incorporated in this Development Text by this reference.

The Property consists of approximately 472.9 acres located north of Braumiller Road between Pollock Road and Berlin Station Road, being located in the Highlands Subarea of the City's Land Use Element incorporated in the Comprehensive Plan. The Property has been designated for development as residential housing in the City's Future Land Use Map and has been earmarked as one of the City's Priority Growth Areas (PGAs) for development. The PGAs establish the City's geographic preference for development and drive the City's infrastructure investment program. See, GM19 and GM19.3 of the Growth Management

Element of the City's Comprehensive Plan. The proposed amendments are in keeping with the goals and policies established by the Comprehensive Plan for the following reasons:

a. The Property will be developed as residential housing as contemplated by the Land Use Element incorporated in the Comprehensive Plan.

b. The use of the Planned Mixed Use (PMU) Overlay District is consistent with the City's Objectives and Strategies in maintaining a reasonable land use balance to reflect the vision of the Comprehensive Plan. As stated in LU6.7 of the Land Use Element, planned district zoning "should be used as a flexible tool to meet the City's gross density requirements while providing a creative development plan with a mix of units, densities, and housing values within individual developments."

c. The Comprehensive Plan anticipates supporting residential development in the Highlands Subarea and encourages mixing densities and unit types, as well as small open spaces to create interest and a sense of place within neighborhoods. See, LU22.2 of the Land Use Element.

d. Being designated as a PGA, development of the Property is consistent with the City's Capital Improvement Plan as required by the Comprehensive Plan's Growth Management Element at GM20 and as the City has already made a huge investment in the Southeast Highlands trunk sewer that would serve this property.

e. Residential development in the Highlands Subarea will be served by the Southeast Highlands Sanitary Trunk. See, LU22.1 of the Land Use Element.

f. The policies set forth in the Comprehensive Plan concerning expansion to the City's waste water treatment system and storm water management system will be implemented in connection with development of the Property.

g. The policies set forth in the Comprehensive Plan concerning parks and recreational facilities for Delaware residents will be implemented with development of the Property.

h. The residential development and parkland dedication consisting of approximately 24.5 acres abutting the Olentangy River is consistent with the Rivers & Streams section of the Environmental Resources Element of the Comprehensive Plan at ER9.

In summary, by the amendments to the current PMU zonings for Terra Alta and Stockdale and amendment to the Zoning Ordinance for Rogers in connection with the development of all of the Property as a Planned Mixed Use (PMU) development, the goals and objectives of the Comprehensive Plan will be met. This development will provide the City of Delaware an opportunity to obtain quality housing stock in one of the City's Priority Growth Areas and will preserve in a park like setting approximately 24.5 acres abutting the Olentangy River together with other open space and reserves throughout the Property.

2. GENERAL DEVELOPMENT STANDARDS

a. **Purpose and Intent.** It is the intent of this development to provide a mixed residential use development with compatible and common architectural design, streetscape, signage, lighting, and pedestrian amenities throughout the entire development, together with certain amenities such as walking/biking trails, pools and clubhouses. Architectural and site design that is not consistent with this purpose and intent will not be accepted. This Development Text represents the zoning requirements for the entirety of the Property unless otherwise noted.

b. **Conformance with Codified Ordinances and City Policy.** Unless noted otherwise within this Development Text or the Preliminary Development Plan, all development will be constructed and provided in conformance with the then current Codified Ordinances and City Policy in effect at the time of application.

c. **Limitations.** Nothing in this Development Text shall prohibit additional restrictions or requirements from being placed on the approval of any Final Development Plan consistent with this Development Text or the Preliminary Development Plan.

d. **Major Modifications.** Once a Final Development Plan for a Sub-Area has been approved by City Council, any subsequent major modification to that plan shall only be permitted by resubmission and approval of a revised Final Development Plan for such Sub-Area through the procedures set forth in the Zoning Code. Major modification for the purposes of this Development Text shall mean any modification of the approved Final Development Plan for a Sub-Area, as determined by the Director of Planning & Community Development, that results in:

- Any major increase in the number of or change in the type and/or mix of dwelling units or any major increase in the non-residential building area.
- Major change in the approved location of land uses or land use sub-areas.
- Substantial alteration of the basic geometry, including right-of-way width, and/or operation characteristics of any element of the approved public and private street pattern, access points, parking facilities, service access, trash storage facilities, and system of pedestrian paths that results in a change in operating characteristics or character.

e. **Minor Modifications.** Once a Final Development Plan for a Sub-Area has been approved by City Council, any subsequent minor modification to that plan shall only be permitted by resubmission and approval by the Director of Planning and Community Development of a revised Final Development Plan for such Sub-Area. Minor modification for the purposes of this Development Text shall mean any modification of the approved Final Development Plan for a Sub-Area, as determined by the Director of Planning & Community Development, that results in:

- Any modification that is not considered a major modification by this Development Text or by determination of the Director of Planning & Community Development.

- Any minor increase in the number of or change in the type and/or mix of dwelling units less than 5% in the total number of dwelling units.
- Minor change in the approved location of land uses or land use sub-areas.
- Minor alteration of the basic geometry, including right-of-way width, and/or operation characteristics of any element of the approved public and private street pattern, access points, parking facilities, service access, trash storage facilities, and system of pedestrian paths that results in a change in operating characteristics or character.
- Minor structural alterations that do not alter the overall design intent of the building.

f. **Tree Removal and Replacement.** The Property is a unique development opportunity for the City of Delaware and the Developer. While certain portions of the Property are heavily treed, the Developer working in concert with the City desires to create a high quality subdivision taking advantage of the topography of the site while saving as many trees as possible. At the preliminary development plan stage, for planning purposes only, the Developer for purposes of tree removal has assumed clear cutting of Sub-Areas 10,11 and 12 to be developed with condominiums and/or patio homes. However, every effort will be made to save as many trees as possible on such condominium/patio home parcels, especially on the perimeter of such condominium/patio home parcels. It is assumed that at the time of development, certain tree parcels, reserves and preservation easements will be created. It should also be noted that in connection with single family lot development, every effort has been extended to create tree buffers along boundaries and in backyards. Consequently, the following Tree Replacement Plan specific to the overall Terra Alta development only and reflective of the diverse and unique site elements which are present at this particular site shall implemented. The Tree Replacement Plan enumerated herein creates an innovative and unique approach to the issue of saving trees on this particular Property. Instead of focusing on the economics and environmental issues of trees lost to development, this Tree Replacement Plan focuses on efforts to save trees (particularly large, mature trees), providing an incentive to save large, mature trees, compensating for trees lost, and, ultimately, creating a higher quality development for the City of Delaware than would be expected under a standard subdivision. Notwithstanding the following Tree Replacement Plan, the City acknowledges compliance to date by the Developer with all trees removed or replaced on the Property.

The following Tree Replacement Plan shall be the controlling regulation for the Terra Alta development:

(1) *Tree Survey.* An estimate of the total number, type, size, and health of trees to be preserved and replaced has been provided according to a set of representative tree survey sites as determined and verified by the City of Delaware and as authorized by the current Zoning Code. Included as Sheets 9-13 of the Preliminary Development Plan is an estimate of overall tree impact based on the Tree Replacement Plan.

(2) *Calculation of Replacement Trees.* Only trees six (6) caliper inches and greater that are removed in the development of the Property and construction of housing units shall be replaced according to the following schedule:

A. Trees considered in good health as determined by a Certified Arborist or Landscape Architect and verified by the City of Delaware shall be replaced on a 100% replacement schedule meaning every good tree removed shall be replaced with tree(s) that have a total caliper equal to or greater than the total caliper of the tree removed.
B. Trees considered in fair health as determined by a Certified Arborist or Landscape Architect and verified by the City of Delaware shall be replaced on a 50% replacement schedule meaning every fair tree removed shall be replaced with tree(s) that have a total caliper equal to or greater than 50% of the total caliper of the tree removed.
C. Trees considered in poor health or ash trees as determined by a Certified Arborist or Landscape Architect and verified by the City of Delaware shall be exempt from replacement. However, to the maximum extent allowed by local, state, and federal regulations, poor trees and ash trees located in areas that are not required for development shall be left undisturbed on-site provided such trees are not considered hazardous to life or property as determined by the City of Delaware Arborist.

(3) *Tree Preservation.* The Developer will include a significant amount of tree preservation areas, distributed throughout the Property, which shall be recorded on each individual final subdivision plat as applicable and will be permanently recorded with such. The Preliminary Development Plan notes the tree preservation areas preliminarily contemplated, subject to change with the detailed investigation that occurs with final submission. The City will consider reasonable proposed changes at the time of final submission.

(4) *Tree Replacement Fee.*

A. Single-Family and Units. A $500 per single-family detached dwelling unit tree replacement fee shall be charged on each single-family detached dwelling unit at the time of building permit application. This fee is to be paid per the usual and customary procedures of the City, which currently requires payment of all required building and zoning permit fees prior to issuance of the permit but not at the time of application. Assuming approval of 646 such housing units x $500 = $323,000 paid to the City specifically for its Tree Fund.

B. Condominium Patio Home and Duplex Units. A $200 per dwelling unit tree replacement fee shall be charged on each condominium, patio home or duplex dwelling unit at the time of building permit application. This fee is to be paid per the usual and customary procedures of the City, which currently requires payment of all required building and zoning permit fees prior to issuance of the permit but not at the time of application. Assuming approval of 213 such condominium, patio home and duplex units x $200 = $42,600 paid to the City specifically for its Tree Fund.

(5) *Required Trees Not Considered Replacement Trees.* Trees that are required by the Zoning Code, such as but not limited to street trees and front yard trees, shall not be considered Replacement Trees.

(6) *Replacement Tree Criteria.* To receive credit as a Replacement Tree, a tree shall be required to have a minimum caliper of two (2) inches. Evergreen (pine for example) trees shall be calculated as two (2) feet in height equals one (1) inch in caliper with a minimum required height of six (6) feet. For example, a pine tree six (6) feet in height would net three (3) caliper inches of replacement tree credit. Trees meeting this criterion are referred to herein as "Replacement Trees."

(7) *Single Family Home Tree Replacement Requirement.* At the time of construction of each single family home, the builder shall be required to plant and install two (2) Replacement Trees on each such lot. Assuming 646 single family home lots with two (2) Replacement Trees results in a credit of 2,584 caliper inches. [Need to address duplexes]

(8) *Condominium, Patio Home and Duplex Tree Replacement Requirement.* At the time of construction of each building housing condominium, patio home or duplex unit, the builder shall be required to plant and install two (2) Replacement Trees for each condominium unit in each building, patio home unit or duplex unit. Assuming 213 condominium, patio home and duplex units with two (2) Replacement Trees results in a credit of 852 caliper inches.

(9) *Credit for Tree Preservation.* In recognition of the Developer's efforts to save trees in the design, layout and development of the Property through the provisions of this Tree Replacement Plan, the Developer shall receive credit against the replacement required by Section 2 of this Tree Replacement Plan for all single family home tree replacement pursuant to Section 7, all condominium, patio home and duplex tree replacement pursuant to Section 8, and in accordance with the following schedule for permanently preserved trees:

A. Good Tree Credit Schedule
   (1) Trees six (6) caliper inches but less than twelve (12) caliper inches saved shall receive one (1) caliper inch credit for each caliper inch saved.
   (2) Trees twelve (12) caliper inches but less than eighteen (18) caliper inches saved shall receive two (2) caliper inches credit for each caliper inch saved.
   (3) Trees eighteen (18) caliper inches but less than twenty-four (24) caliper inches saved shall receive three (3) caliper inches credit for each caliper inch saved.
   (4) Trees greater than (24) caliper inches saved shall receive four (4) caliper inches for each caliper inch saved.

B. Fair Tree Credit Schedule
   (1) Trees six (6) caliper inches but less than twelve (12) caliper inches saved shall receive one-half (1/2) caliper inch credit for each caliper inch saved.

(2) Trees twelve (12) caliper inches but less than eighteen (18) caliper inches saved shall receive one (1) caliper inch credit for each caliper inch saved.
(3) Trees eighteen (18) caliper inches but less than twenty-four (24) caliper inches saved shall receive one and one-half (1-1/2) caliper inches credit for each caliper inch saved.
(4) Trees greater than (24) caliper inches saved shall receive two (2) caliper inches for each caliper inch saved.

(10) Credit for Removal of Ash Trees. The removal of ash trees from the Property that would not otherwise be removed as a result of development (i.e., ash trees removed from Reserves and preservation easements) shall be given a credit of one (1) caliper inch for every $100 cost of ash tree removal as submitted by the Developer and as certified by the City Arborist.

(11) *Replacement Completion.* Fulfillment of this Tree Replacement Plan as written and in total shall result in no additional "fees-in-lieu" or other tree replacement, tree banking or other payments being required by the City.

g. **Expiration**. These tree replacement requirements shall expire upon the completion of the entire Terra Alta Subdivision development. The completion of development shall be considered the acceptance of final public improvements and expiration of any required maintenance period for Terra Alta as it relates to the tree replacement aspects of this Tree Replacement Plan, however, the provisions of Sections 4, 5, 6, 7 and 8 shall continue in full force and effect with respect to each dwelling unit until such time as each dwelling unit in the Terra Alta Subdivision receives a Final Certificate of Occupancy. After the completion of development or receipt of a Final Certificate of Occupancy, as applicable, the tree preservation and replacement requirements of the then current Zoning Code shall apply.

h. **New Community Authority.** A New Community Authority ("NCA") has previously been established for the entire Terra Alta development. The NCA will own and maintain all Reserves except Reserve A, entrance features, common open spaces and amenities including pools and clubhouses serving the Terra Alta development.

i. **Master Association.** A master homeowners association will be created for the entire Terra Alta Subdivision. The master homeowners association shall include all single family home owners, duplex owners, condominium owners and patio home owners in the Terra Alta development and shall impose various assessments. The master homeowners association declaration shall be reviewed and approved by the City prior to the recording of the declaration. By majority vote of the property owners, the master association shall be transferred to the homeowners when 75% of the units have received a certificate of occupancy, unless the Developer establishes to the satisfaction of the City Director of Planning and Community Development that less than 75% of the units have been sold to third party buyers, in which event such transfer shall be deferred at the election of the Developer until such time as 75% of the units have been sold to third party buyers.

j. **Common Open Space.** The common open space for the development of the Property shall consist of Reserves A through R located on the Terra Alta and Rogers tracts together with the open space located on the Stockdale Farms tract as shown on Sheet 3 of the Stockdale Farms Preliminary Development Plan ("Stockdale Farms Open Space") containing approximately 178.98 acres. All open space and Reserves (except Reserves A and I) will be owned and maintained by the NCA subject to all necessary easements and agreements in connection with the overall development of the Property. Reserves A through R and the Stockdale Farms Open Space shall satisfy all common open space requirements. All common open space shall be improved, if improvements are necessary or required, concurrent with the public improvements with the respective phase in which the improvement is located. Reserve A shall be deeded to the City and the Developer shall not be required to make any improvements to or maintain Reserve A.

k. **Parkland.** The Parkland grant required by the Zoning Code shall be satisfied in part by the dedication of Reserve A consisting of approximately 24.5 acres of land abutting the Olentangy River at the western edge of the Property, which the City may, at its discretion decide to improve or permanently preserve through covenants and restrictions. The City may subsequently grant any covenants, easements, or restrictions to a third party for the purposes of holding the same. Additionally the Parkland grant will be satisfied in part by the dedication of approximately 4.2 acres of land located along the eastern side of the creek traversing the Terra Alta Subdivision south of Terra Alta Drive, and approximately 15.2 acres located along the eastern side of the creek traversing the Property north of Braumiller Road, all as depicted on the Preliminary Development Plan. As presently depicted, this results in a deficiency of 3.39 acres of required Parkland grant. The Developer will make a payment to the City in the amount of $30,000 per acre in lieu for this deficiency or construct improvements on the parkland equivalent to the same total dollar amount. The Developer shall grant to the City an easement for a bikepath along the eastern side of the creek traversing the Terra Alta Subdivision, as depicted on the Preliminary Development Plan and as designed and constructed by Developer. Prior to or concurrent with the submittal of each Preliminary Subdivision Plat, Developer shall submit for review and approval a Parkland and Open Space Improvement Plan for the portion of the Property subject to each Preliminary Subdivision Plat for a Sub-Area. All public parkland shall be improved, if improvements are necessary or required, concurrent with the public improvements with the respective phase in which the improvement is located. The aforementioned calculations include all of the Property (Terra Alta, Rogers and Stockdale) which requires 10% of the gross area of the Property. The Rogers tract has no public parkland.

l. **Utilities to be Located Underground.** All new utilities serving the Terra Alta Subdivision shall be located underground except for the existing transmission line located approximately 1,000 fee north of Braumiller Road and traversing the Property west to east. Additionally, and if determined to be economically feasible, any existing utilities that will serve the Terra Alta Subdivision that are located above ground, including those along either side of Pollock Road, the west side of Berlin Station Road adjacent to the site or the north side of Braumiller Road adjacent to the Property, shall be relocated underground. Developer and the City shall work together to ensure that any technical

and financial information provided by the respective utility company is fair and reasonable.

m. **Composite Utility Plan Required.** Prior to the installation of any non-City owned utility, a composite utility plan shall be submitted for review and approval by the City. Such plan shall depict the location and type of all non-City owned utilities including the location and type of any above ground pedestal, transformer, meter, cabinet, and other such above ground structures that support the respective utility. Any above ground structure shall be inconspicuously located, dark green in color, and if located in any front yard shall be screened with landscaping as approved by the City.

n. **Removal of Existing Farm Fencing.** Unless demonstrated to the City that such fencing is not in the ownership of Developer, all existing farm fencing and barbed wire fencing shall be removed from the Property at minimum on a lot by lot basis.

o. **Construction Trailers.** Construction trailers shall meet all requirements of the Zoning Code and shall be removed once construction activity has moved to another non-adjacent phase of the development. For example, once the public improvements have been accepted in Phase 2 any construction trailer located in Phase 1 serving Phase 2 shall be relocated to Phase 2 provided the respective builder is or will be constructing lots in the subsequent phase.

p. **Sidewalks and Multi-Use Paths.** Multi-use paths will be constructed and accepted concurrently with the public improvements in which the multi-use path is located. Sidewalks will be constructed concurrently with the construction of a home on each lot. However, once ninety percent (90%) of the lots in a respective phase have obtained a certificate of occupancy, any sidewalk not yet installed in the respective phase shall be installed within one (1) year from the date of issuance of the certificate of occupancy establishing the ninety percent (90%) lot completion. Sidewalks along Terra Alta Drive and part of a condominium or patio home development shall be installed prior to the issuance of the first certificate of occupancy for the condominium or patio home development. Sidewalks and multi-use paths located within a condominium or patio home development shall be installed with each respective phase of the development as shown on the approved Final Development Plan.

3. SUB-AREAS GENERALLY

Terra Alta Subdivision is separated into a number of sub-areas (each a "Sub-Area") to represent the distinct areas of development, the types of housing products and amenities to be developed therein and certain Development Standards applicable thereto. Each Sub-Area is identified on the Preliminary Development Plan and the Development Standards applicable to such Sub-Area are as contained herein and on the Preliminary Development Plan. The following Single Family Home Standards and Condominium, Patio Home and Duplex Standards set forth in the immediately following Sections 4, 5 and 6 will apply to the housing products permitted in each applicable Sub-Area.

4. SINGLE-FAMILY HOME STANDARDS

a. **Uses.** The following uses shall be considered permitted or conditionally permitted in all Sub-Areas permitting single family homes, as represented in the chart below by P (Permitted Use) or C (Conditional Use), respectively, and as defined by attached Chapter 1121 of the Zoning Code. Any use not listed in the chart shall be considered a prohibited use unless amended by action of the Planning Commission and City Council through a Zoning Amendment process.

b. **Permitted Uses.** Permitted uses are permitted by-right and shall meet all development standards specified within this Development Text and the Zoning Code, as applicable.

c. **Conditionally Permitted Uses.** In addition to all standards specified within this Development Text, uses listed as conditionally permitted uses shall meet all the then current Zoning Code standards for approval of a Conditional Use Permit current at the time of application for the specific conditional use as well as any other regulations contained within the Zoning Code and applicable to the conditional use.

d. **Accessory Uses and Structures.** Although not specified in the chart below, accessory uses, which are considered allowed uses, include those items that are customarily incidental and secondary to the principal use of the land. Such items include but are not limited to signs, fences, trash receptacles and enclosures, and off-street parking areas.

Land Use Category	Terra Alta Uses
(a) Residential	
(1) Detached single-family dwelling	P
(2) Minor home occupation	P
(b) Recreational/Open Space/Reserves	
(1) Park, playground, pool, clubhouse	P
(2) Non-commercial recreation facility (including NCA and homeowner association controlled facilities)	P

e. **Density & Mix of Dwelling Unit Type.** The overall Sub-Area density and mix of dwelling unit types shall not exceed that approved on the Preliminary Development Plan for each Sub-Area.

f. **Lot Standards.** The minimum lot sizes and frontages shall be determined by Sub-Area (see Section 6).

g. **Building Setback Standards.** The minimum principal building setbacks (including accessory structures attached to the principal structure) for each Sub-Area are set forth in Section 6; provided that: (i) side and rear yard setbacks shall not apply to minor

architectural projections such as eaves, chimneys and bay windows; and (ii) patios and attached decks may extend up to five (5) feet into a rear setback, except with respect to Sub-Area 4 where such permitted encroachment is extended to ten (10) feet provided such encroachment does not adversely affect any easement.

h. **Maximum Building Height.** The maximum height of any principal building or structure within each Sub-Area shall be as set forth in Section 6.

i. **Building Design.** Unless otherwise modified within this Development Text, all dwellings shall meet the building design requirements of Chapter 1171, R-2 District standards for detached single-family dwellings.

(1) To create a cohesive and unified design throughout the entire development yet provide a diversity of housing types within each Sub-Area, each building within a Sub-Area shall be consistent in overall design, color, material, and architectural pattern and include a similar and/or repeating pattern of design elements such as architectural styles, roof and building massing, window proportion, or other elements as determined through the Final Development Plan review process for such Sub-Area.

(2) Representative home elevations (all sides) for each Sub-Area shall be reviewed and approved by the Planning Commission as part of the Final Development Plan for such Sub-Area. Minor variations thereafter shall be potentially administratively approvable as written in this Development Text.

(3) Exterior Material and Trim Standards.

A. At least 35% of the front elevation of all homes constructed on the Property (excluding foundations, garage doors, entry doors, roofs, gutters, downspouts and windows) will consist of brick, stone or cultured stone.
B. All vinyl siding products used on homes constructed on the Property shall be architectural grade, Vinyl Siding – Higher End, as defined in Chapter 1171.08 (c) on all elevations.
C. Trim board around all corners, windows, and doors shall be a minimum of 4 inches all around.
D. Standing seam metal roofs are encouraged on select architectural elements of front elevations, such as porches or front entrance features.
E. EIFS or similar products are prohibited as an exterior material.
F. All exposed foundation walls shall be brick patterned concrete.
G. Frieze trim a minimum of 4 inches wide is required under all overhangs and gables.
H. All home elevations shall be reviewed and approved by the Director of Planning & Community Development to establish compliance with the Building Design requirements of this Development Text.
I. All homes will have, at a minimum, dimensional shingles.

(4) Design Standards

A. Materials on each home within a Sub-Area shall be varied to provide variety throughout the Sub-Area.
B. All front elevations shall include a variety of styles, colors, and/or materials types of materials including as an example, but not limited to, vinyl shake siding.
C. All homes will have not less than a 2 car attached garage.
D. The principal roof structure on all homes will have a roof pitch of not less than 6/12.
E. The principal roof structure on all homes will have an overhang of not less than 12 inches and an end rake of not less than 8 inches.
F. Lintels and sills in masonry walls shall be brick soldier course, limestone, or sandstone, along with other manufactured stone products.
G. Although porch railing and column details are encouraged to vary from home to home, porch columns shall have a minimum 6 x 6 inch cross section or diameter.
H. Treated lumber shall be painted or stained, except when used on outdoor decks.
I. Where wood burning fireplaces are utilized the exposed chimney shall be faced with brick or stone at a minimum. All direct vent fireplaces shall be located in a side or rear yard and screened from view when visible from a public street.
J. All homes shall provide an identifiable entry with entry coverings and stoops being a minimum of 3 feet deep or the minimum necessary for building code regulations, which ever is greater. Any porch shall be a minimum depth of 5 feet.
K. Side elevations shall include multiple windows and design elements that provide visual interest as well as allow light into the unit.
L. Rear elevations facing a public right-of-way shall have a minimum of two windows.

j. **Accessory Structures.** Fences (other than decorative fencing along front entrance paths and front porches) are prohibited in any front yard and must meet the standard fence specifications included in the master declaration for Terra Alta. Privacy fences are prohibited except to screen outdoor hot tubs and spas. Attached decks may extend up to five (5) feet into a required rear setback provided the encroachment does not adversely impact any easement. All other accessory structures shall meet the requirements of the Zoning Code.

k. **Landscaping and Screening.** All landscaping shall meet the requirements of the then current Zoning Code and the Gateways & Corridors Plan unless modified herein.

(1) All street tree plantings shall meet the requirements and approval process of the Zoning Code unless modified in this Development Text.
(2) Street trees shall be a minimum of 1.75 caliper inches as measured at breast height at the time of installation.
(3) Along the Berlin Station Road, an earth mound, no less than 4 feet in height as measured from the proposed average finish grade elevations of the adjacent dwelling with a mix of deciduous and coniferous plantings providing, at the time of installation, a minimum 60% year round opacity at a combined mound and landscaping height of no less than 10 feet at planting shall be provided. Such mounding shall not interfere with any required sight distance.

(4) Along Braumiller Road, an earth mound, no less than 3 feet and not more than 6 feet in height as measured from the proposed average finish grade elevations of the adjacent dwelling units with a mix of deciduous and coniferous plantings, providing, at the time of installation, a minimum 60% year round opacity at a combined mound and landscape height of no less than 10 feet at planting shall be provided. Such mounding shall not interfere with any required sight distance.
(5) A typical landscaping plan for each unit type within a Sub-Area shall be submitted and approved with the Final Development Plan for such Sub-Area. This typical landscaping shall set forth the minimum amount of required landscaping for each unit type at the time of building of each structure prior to the issuance of a Certificate of Occupancy. Landscaping species may be varied on a permit by permit basis.
(6) Ground mounted equipment shall be screened from view using plant materials providing 100% year round opacity. Air conditioning units shall be located in manner that minimizes the view from the public right-of-way.
(7) For the purposes of aesthetics and aquatic health, all ponds shall have a fountain or aerator.

l. **Pedestrian Connectivity.** Pedestrian connectivity shall be provided throughout the Sub-Area with stub connections to other sub-areas and future development. Concrete sidewalks, 4 feet in width, shall be provided on both sides of all public streets and multi-use paths of appropriate width and material shall be provided as shown on the approved Final Development Plan for each Sub-Area.

m. **Open Spaces.** With the exception of Reserve A to be deeded to the City in its "as is, where is" condition, open spaces shall be landscaped and designed in a manner consistent with the overall development. Landscaping and design plans for all open spaces shall be submitted and approved with the Final Development Plan for each Subarea and adjacent Reserve(s) being developed and include, at a minimum, the following:

(1) Sidewalks or multi-use paths shall be provided throughout the open space to link the amenities of the open space to the adjacent public sidewalk or pathway network and provide active recreation throughout.
(2) Crosswalks leading to open spaces and public parkland shall be defined with special paving or alternative pavement coloring acceptable to the City Engineer.
(3) Amenities such as benches, gazebos, or other such features are encouraged in the open spaces.
(4) All open spaces shall be constructed with the public infrastructure with the respective phase in which the open space is located. Landscaping shall be installed at the first time of year in which it is appropriate to install such plant material provided the acceptance of public improvements occurs during an inappropriate time for planting and the incomplete landscaping is bonded with the City.
(5) Reserve F shall contain a pool and clubhouse, Reserve I shall contain passive recreational facilities, and certain designated open space on the the Stockdale Farms tract shall contain a pool house and pool.

n. **Entry Features and Signs.** With each Sub-Area Final Development Plan, a comprehensive entry feature and signage plan shall be submitted. All signs shall be

designed and located in a manner that is appropriate and consistent with the overall design of the Sub-Area. Internally illuminated signs are prohibited. The entry feature and signage for the entrance to Terra Alta Subdivision from Pollock Road installed in connection with the development of Sub-Area 1 which is already completed is approved as built.

5. CONDOMINIMUM, PATIO HOME AND DUPLEX STANDARDS

a. **Uses.** The following uses shall be considered permitted or conditionally permitted in all Sub-Areas allowing the development of condominiums, patio homes and duplexes as represented in the chart below by P (Permitted Use) or C (Conditional Use), respectively, and as defined by Chapter 1121 of the Zoning attached hereto as Exhibit 1. Any use not listed in the chart shall be considered a prohibited use unless amended by action of the Planning Commission and City Council through a Zoning Amendment process.

b. **Permitted Uses.** Permitted uses are permitted by right and shall meet all development standards specified within this Development Text and the Zoning Code, as applicable.

c. **Conditionally Permitted Uses.** In addition to all standards specified within this Development Text, uses listed as conditionally permitted uses shall meet all the then current Zoning Code standards for approval of a Conditional Use Permit current at the time of application for the specific conditional use as well as any other regulations contained within the Zoning Code and applicable to the conditional use.

d. **Accessory Uses and Structures.** Although not specified in the chart below, accessory uses, which are considered allowed uses, include those items that are customarily incidental and secondary to the principal use of the land. Such items include but are not limited to signs, fences, trash receptacles and enclosures, and off-street parking areas.

Land Use Category	Terra Alta Uses
(c) Residential	
(1) Detached single-family dwelling in a condominium or patio home setting	P
(2) Attached single-family dwelling in a condominium or duplex setting	P
(3) Minor home occupation	P
(d) Recreational/Open Space	
(1) Park, playground	P
(2) Non-commercial recreation facility (including NCA or homeowner association controlled facilities)	P

e. **Density & Mix of Dwelling Unit Type.** The overall Sub-Area density and mix of dwelling unit types shall not exceed that approved on the Preliminary Development Plan for each Sub-Area.

f. **Building Setback Standards.** The minimum principal building setbacks (including accessory structures attached to the principal structure) for each Sub-Area are set forth in Section 6; provided that: (i) side and rear yard setbacks shall not apply to minor architectural projections such as eaves, chimneys and bay windows; and (ii) patios and attached decks may extend up to five (5) feet into a rear setback, provided such encroachment does not adversely affect any easement.

g. **Floor Area Requirements.** See Section 6 for each Sub-Area.

h. **Maximum Building Height.** The maximum height of any principal building or structure within each Sub-Area shall be as set forth in Section 6.

i. **Building Design.** Unless otherwise modified within this Development Text, all dwellings shall meet the building design requirements of Chapter 1171, R-5 and R-6 District standards for detached single-family dwellings and R-5 and R-6 District multi-family standards for attached single-family dwellings.

(1) To create a cohesive and unified design throughout a Sub-Area yet provide a diversity of housing types each building within a Sub-Area shall be consistent in overall design, color, material, and architectural pattern and include a similar and/or repeating pattern of design elements such as architectural styles, roof and building massing, window proportion, or other elements as determined through the Final Development Plan review process for such Sub-Area.

(2) All home elevations (all sides) shall be reviewed and approved by the Planning Commission as part of the Final Development Plan. Minor variations thereafter shall be potentially administratively approvable as written in this Development Text.

(3) Exterior Material and Trim Standards.

A. At least 35% of the front elevation of all buildings (excluding foundations, garage doors, entry doors, roofs, gutters, downspouts and windows) will consist of brick, stone or cultured stone.
B. All vinyl siding products used on buildings shall be architectural grade, Vinyl Siding – Higher End, as defined in Chapter 1171.08 (c) on all elevations.
C. Trim board around all corners, windows, and doors shall be a minimum of 4 inches all around.
D. Standing seam metal roofs are encouraged on select architectural elements of front elevations, such as porches or front entrance features.
E. EIFS or similar products are prohibited as an exterior material.
F. All exposed foundation walls shall be brick pattern concrete.

G. Frieze trim a minimum of 4 inches wide is required under all overhangs and gables.
H. All building elevations shall be reviewed and approved by the Director of Planning & Community Development to establish compliance with the Building Design requirements of this Development Text.
I. All buildings will have, at a minimum, dimensional shingles.

(5) Design Standards

A. Exterior Materials on each building shall be varied to provide variety throughout each Sub-Area.
B. All condominium units and patio homes will have not less than a 1 car attached garage.
C. The principal roof structure on all buildings will have a roof pitch of not less than 6/12.
D. The principal roof structure on all buildings will have an overhang of not less than 12 inches and an end rake of not less than 8 inches.
E. Lintels and sills in masonry walls shall be brick soldier course, limestone, or sandstone, along with other manufactured stone products.
F. Although porch railing and column details are encouraged to vary from home to home, porch columns shall have a minimum 6 x 6 inch cross section or diameter.
G. Treated lumber shall be painted or stained, except when used on exterior decks.
H. Where wood burning fireplaces are utilized the exposed chimney shall be faced with brick or stone at a minimum. All direct vent fireplaces shall be located in a side or rear yard and screened from view when visible from a public street.
I. All housing or condominium units shall provide an identifiable entry with entry coverings and stoops being a minimum of 3 feet deep or the minimum necessary for building code regulations, which ever is greater. Any porch shall be a minimum depth of 4 feet.
J. Side elevations shall include multiple windows and design elements that provide visual interest as well as allow light into the unit.
K. Rear elevations facing a public right-of-way shall have a minimum of two windows.

j. **Accessory Structures.** Fences (other than decorative fencing along front entrance paths and front porches) are prohibited in any front yard. Privacy fences, except those immediately adjacent to a deck or patio or to enclose a hot tub or spa are prohibited. Attached decks may extend up to five (5) feet (ten (10) feet in Sub-Area 4) into a required rear setback provided that encroachment does not adversely impact any easement. All other accessory structures shall meet the requirements of the current Zoning Code.

k. **Landscaping and Screening.** All landscaping shall meet the requirements of the then Zoning Code and the Gateways & Corridors Plan unless modified herein.

(1) All street tree plantings shall meet the requirements and approval process of the Zoning Code unless modified in this Development Text.

(2) Street trees shall be a minimum of 1.75 caliper inches as measured at breast height at the time of installation.
(3) A typical landscaping plan for each Sub-Area shall be submitted and approved with the Final Development Plan for such Sub-Area. This typical landscaping shall set forth the minimum amount of required landscaping for each unit at the time of building of each structure prior to the issuance of a Certificate of Occupancy. Landscaping species may be varied on a permit by permit basis.
(4) Ground mounted equipment shall be screened from view using plant materials providing 100% year round opacity. Air conditioning units shall be located in manner that minimizes the view from the public right-of-way.
(5) For the purposes of aesthetics and aquatic health, all ponds shall have a fountain or aerator.

l. **Pedestrian Connectivity.** Pedestrian connectivity shall be provided throughout each Sub-Area with stub connections to other sub-areas, adjacent Reserves, as appropriate, and future development. Concrete sidewalks, 4 feet in width, shall be provided on both sides of all public streets and as appropriate and necessary on private streets and multi-use paths of appropriate width and material shall be provided as shown on approved Final Development Plan.

m. **Open Spaces.** Open spaces shall be landscaped and designed in a manner consistent with the overall development. Landscaping and design plans for all open spaces shall be submitted and approved with the Final Development Plan and include, at a minimum, the following:

(1) Sidewalks or multi-use paths shall be provided throughout the open space to link the amenities of the open space to the adjacent public sidewalk and provide active recreation throughout.
(2) Crosswalks leading to open spaces and public parkland shall be defined with special paving or alternative pavement coloring acceptable to the City Engineer.
(3) Amenities such as benches, gazebos, or other such features are encouraged in the open spaces.
(4) All open spaces shall be constructed with the public infrastructure with the respective phase in which the open space is located. Landscaping shall be installed at the first time of year in which it is appropriate to install such plant material provided the acceptance of public improvements occurs during an inappropriate time for planting and the incomplete landscaping is bonded with the City.
(5) For the purposes of aesthetics and aquatic health, all ponds shall have a fountain.

n. **Entry Features and Signs.** With the Final Development Plan for each Sub-Area, a comprehensive entry feature and signage plan shall be submitted. All signs shall be designed and located in a manner that is appropriate and consistent with the overall design of the Sub-Area. Internally illuminated signs are prohibited.

o. **Condominium Association.** All units and property developed as a condominium regime shall be governed by a condominium declaration and bylaws as reviewed and approved by the City. By majority vote of the condominium owners, the association shall be

transferred to the homeowners when 75% of the units have received a certificate of occupancy, unless the Developer establishes to the satisfaction of the Director of Planning and Community Development that less than 75% of the units have been sold to third party buyers, in which event such transfer shall be deferred at the election of the Developer until such time as 75% o the units have been sold to third party buyers.

p. **Patio Home Homeowners Association.** All patio homes developed within a Sub-Area shall be governed by a homeowners association as reviewed and approved by the City. By majority vote of the patio home owners, the association shall be transferred to the homeowners when 75% of the patio homes have received a certificate of occupancy, unless the Developer establishes to the satisfaction of the Director of Planning and Community Development that less than 75% of the patio homes have been sold to third party buyers, in which event such transfer shall be deferred at the election of the Developer until such time as 75% of the patio homes have been sold to third party buyers.

q. **Private Street Width.** All interior streets within Sub-Areas containing condominiums or patio homes shall be permitted to have private streets and in the case of patio homes, such patio homes shall be located on platted subdivided lots adjacent to such private streets. All private streets shall have a width (including gutters) of 28' unless parking is restricted to one side of street, in which event, such width is reduced to 24'. All private streets shall be maintained by the condominium or homeowners association for such Sub-Area unless the City otherwise agrees.

6. SUB-AREA STANDARDS

a. **General.** Each Sub-Area with the Terra Alta Subdivision is identified on the Preliminary Development Plan and shall maintain the following Development Standards set forth in this Section 6.

b. **Sub-Area 1 -** Sub-Area 1 consists of Section 1, Part 1, Phase A, Section 1, Part 1, Phase B, Section 1, Part 2, Reserve A, Reserve B, Reserve C and Reserve E of Terra Alta Subdivision, all of which have been previously developed and platted and on which (other than Reserves) single family homes have been or are currently being constructed. Consequently, no amendments to the area within Sub-Area 1 shall be implemented as a consequence of this Development Text and all development matters pertaining to Sub-Area 1 shall continue to be governed by the previously effective Development Text, Final Development Plan, Preliminary Plat and Final Subdivision Plats for Sub-Area 1.

c. **Sub-Areas 1, 2, 3 and 6:**
   - Permitted Units – Single family homes
   - Maximum Density – 371 Lots
   - Minimum Lot Area – 9,100 sf
   - Minimum Lot Width at Building Line – 70'
   - Front Yard Setback/Building Line – 30'
   - Side Yard Setback – 10' each side

- Rear Yard Setback – 30'
- Minimum Square Footage
  - One story ranch – 1,800 sf
  - Two story – 2,000 sf
- Maximum Building Height – 35'

d. **Sub-Area 4**:
- Permitted Uses – Single family homes
- Maximum Density – 92 Lots
- Minimum Lot Area – 7,540 sf
- Minimum Lot Width at Building Line – 58'
- Front Yard Setback/Building Line – 30'
- Side Yard Setback – 6' each side
- Rear Yard Setback – 30'
- Minimum Square Footage – up to 10% of homes from 1,400-1,500 sf, remainder 1,500 sf.
- Maximum Building Height – 35'

e. **Sub-Area 5:**
- Permitted Uses – Single family homes
- Maximum Density – 62 Lots
- Minimum Lot Area – 8,060 sf
- Minimum Lot Width at Building Line – 62'
- Front Yard Setback/Building Line – 30'
- Side Yard Setback – 6' each side
- Rear Yard Setback – 30'
- Minimum Square Footage
  - One story ranch – 1,700 sf
  - Two story –2,000 sf
- Maximum Building Height – 35'

f. **Sub-Areas 7 and 8:**
- Permitted Uses – Single family homes
- Maximum Density – 71 Lots
- Minimum Lot Area – 10,400 sf
- Minimum Lot Width at Building Line – 80'
- Front Yard Setback/Building Line – 30'
- Side Yard Setback – 10' each side
- Rear Yard Setback – 30'
- Minimum Square Footage
  - One story ranch – 2,000 sf
  - Two story –2,300 sf
- Maximum Building Height – 35'

g. **Sub-Area 9:**
- Permitted Uses – Single family homes

- Maximum Density – 61 Lots
- Minimum Lot Area – 12,600 sf
- Minimum Lot Width at Building Line – 90'
- Front Yard Setback/Building Line – 30'
- Side Yard Setback – 10' each side
- Rear Yard Setback – 35'
- Minimum Square Footage
  - One story ranch – 2,000 sf
  - Two story – 2,300 sf
- Maximum Building Height – 35'

h. **Sub-Areas 10, 11 and 12:**
- Permitted Uses – Condominiums, patio homes and duplexes
- Maximum Density – 213 units
- Minimum Square Footage – 1,200 sf
- Private streets permitted

7. OTHER DEVELOPMENT REQUIREMENTS

a. **Completion of Terra Alta Drive:** Terra Alta Drive shall be connected to its intersection with Berlin Station Road no later than at such time as the 166th building permit is requested for the construction of a dwelling unit in Sub-Areas 1, 4 and 10.

b. **Talla Road Parking:** No parking shall be permitted along the curves at the western end of Talla Road within Sub-Area 4.

c. **Temporary Emergency Access:** Until such time as Terra Alta Drive is connected to its intersection with Berlin Station Road, an emergency access to Pollock Road shall be maintained within Sub-Area 4 at a location agreed to be the City Engineer and not home shall be built on the lot containing such emergency access until such emergency access is no longer required.

d. **Reserve A Conveyance:** Reserve A shall be conveyed to the City at such time as a plat containing Reserve A is approved by the City and recorded.

e. **Prato Court On Street Parking:** No on street parking shall be permitted on Prato Court south of the intersection of Prato Court and Passina Road to the cul-de-sac located at the southern end of Prato Court.

f. **Mail Kiosks:** Cluster mailbox kiosks shall be identified and located on the engineering plans for each Sub-Area in compliance with United States Postal Service standards and requirements and as approved by the City Engineer.

Chapter 1121 - Definitions

1121.01 Interpretation of terms and words. 1121.02 Definitions.

SECTION 1121.01 INTERPRETATION.

For the purpose of this Zoning Ordinance, terms or words used herein shall be interpreted according to this Section. In the case of a discrepancy in meaning or implication between the text of this Ordinance and any illustration or caption, the text shall control.

1. The word "shall" signifies a mandatory requirement, one that is not discretionary; the word "may" signifies a permissive or discretionary requirement; and the word "should" is a preferred requirement.
2. The word "building" includes the word "structure." The word "structure" includes the word "building".
3. The word "person" includes a firm, association, organization, partnership, trust, company, corporation, or similar entity, as well as an individual.
4. The words "used" and "occupied" include the words "arranged, designed, constructed, altered, or intended to be used."
5. The word "lot" includes the words "plot" and "parcel."
6. The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.
7. Whenever a number of days are specified, days shall mean calendar days, unless specifically noted otherwise.

SECTION 1121.02 DEFINITIONS.

A. Words used in this Ordinance are used in their ordinary English usage.

B. For the purpose of this Zoning Ordinance, the following terms shall have the meaning herein indicated:

1. **ACCESSORY USE OR STRUCTURE.** "Accessory use" (or "structure") means a use, object or structure constructed or installed on the same lot as, and of a nature subordinate and customarily incidental to the principal (primary) use, object or structure of a lot.
2. **ADDITION.** "Addition" means a section added to a structure either through construction, thereby forming one architectural whole, or by joining, as by a passage, so that each section is a necessary adjunct or appurtenance of the other and thus constitutes the same structure.
3. **ADULT ENTERTAINMENT BUSINESS.** "Adult entertainment business" means one or more of the following business.
   a) **ADULT BOOK/VIDEO STORE.** An establishment that utilizes five percent (5%) or more of its retail selling area for the purpose of retail sale or rental, or for the purpose of display or viewing, for any compensation, of books, magazines, other printed material, films, tapes and video cassettes, or any other visual representation, which are distinguished by their emphasis on adult materials as defined in this chapter.
   b) **ADULT MOTION PICTURE THEATER.** An enclosed motion picture theater that regularly uses or utilizes 5 percent (5%) or more of its total viewing time for presenting material distinguished or characterized by an emphasis on matter depicting, describing or related to adult material as defined in this chapter.
   c) **ADULT MOTION PICTURE DRIVE-IN THEATER.** An open air drive-in theater which regularly uses or utilizes 5 percent (5%) or more of its total viewing time for presenting material distinguished or characterized by an emphasis on matter depicting, describing or related to adult material as defined in this chapter.
   d) **ADULT ONLY LIVE ENTERTAINMENT BUSINESS.** An establishment where the patron directly or indirectly is charged a fee, and where the establishment features:
      1) Entertainment or services which constitute adult material or

2) Exhibitions, dance routines, or gyrational choreography or persons totally nude, topless, or bottomless, or strippers, male or female impersonators or similar entertainment or services which constitute adult material.

4. **ADULT MATERIAL.** Any book, magazine, newspaper, pamphlet, poster, print, picture, slide, transparency, figure, image, description, video cassette, motion picture film, record, tape or, any other tangible thing, or any service, capable of creating sexual interest through sight, sound or touch, and:
   a) Which material is distinguished or characterized by an emphasis on matter displaying, describing, or representing sexual activity, masturbation, sexual excitement, nudity, bestiality, or human bodily functions of elimination; or
   b) Which service is distinguished or characterized by an emphasis on sexual activity, masturbation, sexual excitement, nudity, bestiality, or human bodily functions or elimination.
5. **AGRICULTURE.** "Agriculture" means the production, keeping or maintenance, for sale, lease or personal use, of plants and /or animals useful to humans, including but not limited to: forages and crops; dairy, poultry and livestock including products breeding and grazing thereof; trees and forest products; or lands devoted to a soil conservation of forestry management program.
6. **ALTERATION.** "Alteration" means any change, rearrangement or modification in the construction or in the exit facilities of a structure, and/or the moving of partitions from one location to another within a structure.
7. **ALTERATION, STRUCTURAL.** "Structural alteration" means any change in the supporting members of a structure such as a bearing wall, column, lintel or beam or girder; or a change in the floor construction.
8. **ACCESSORY RETAIL/SERVICE** means a retail or service facility that is clearly incidental and subordinate to the primary use of a structure.
9. **APPLICANT.** "Applicant" means a person, corporation or other legal entity submitting an application to the City for legislative or administrative approval including, but not limited to, zoning amendments, subdivision or lot splits, conditional uses, development plan approval, variances or appeals. The applicant shall be the owner of the property for which action is being sought or be its representative who shall have express written authority to act on behalf of the owner.
10. **ASSOCIATION.** "Association" means a legal entity operating under recorded land agreements or contracts through which each unit owner in a development is a member and each unit is subject to charges for a proportionate share of the expenses of the organization's activities such as maintaining common open space and other common areas and providing services needed for the development. An association can take the form of a homeowners' association, a community association, a condominium association, or similar entity.
11. **AUTOMOTIVE REPAIR GARAGE.** "Automotive repair garage" means the repair or restoring of motor vehicles, including the repair, reconditioning or rebuilding of engines and/or transmissions; collision service (such as body, frame or fender straightening or repair); and the overall painting, undercoating or steam cleaning of vehicles. All activities must be conducted within a completely enclosed building. Persons working on vehicles owned by themselves or family are not included.
12. **AUTOMOTIVE SERVICE STATION.** "Automotive service station" means a building or part of a building, structure or space where the retail sale of lubricants and motor vehicle accessories, the routine maintenance and service of vehicles and/or the making of repairs to motor vehicles are conducted. Repairs described as major repairs in "automotive repair garage" shall not be permitted. Persons working on vehicles owned by themselves or family are not included.

13. **AUTOMOTIVE SALES AND RENTAL.** "Automotive sales and rental" means the use of any building, land area or other premise for the display and sale, lease or rental of new or use motor vehicles, and which may include the display and sale, lease or rental or new or use motorcycles, light trucks and vans, trailers or recreation vehicles that are used primarily for personal needs. Vehicles for sale by owner are not included, if less than 3 vehicles are for sale at any one time.
14. **BASEMENT OR CELLAR.** "Basement" or "cellar" means the portion of a building which is partly or wholly below grade but so located that the vertical distance from the average grade to the floor is greater than the vertical distance from the average grade to the ceiling. A basement shall not be counted as a story for the purpose of Height Regulations use OBBC 502.1
15. **BED-AND-BREAKFAST.** "Bed-and-breakfast" means a residential building, other than a hotel, motel or boarding house, where overnight lodging, together with breakfast, is offered for hire.
16. **BERM.** "Berm" means an earthen mound designed to provide visual interest, screen undesirable views, and/or decrease noise. (ORD 04-92 Passed 6-14-04)
17. **BOTTOMLESS.** Less than full opaque covering of male or female genitals, pubic area or buttocks.
18. **BUFFER OR BUFFER YARD.** "Buffer" or "buffer yard" means a unit of land, together with a specified type and amount of planting thereon and any required structures, that is intended to eliminate or minimize conflicts between land uses.
19. **BUILDING.** "Building" means any structure having a roof support by or suspended from columns or walls designed or intended for the support, enclosure, shelter or protection of persons, animals or property. The term "building" does not include any vehicle, trailer (with or without wheels), or any removable device, such as furniture, machinery, or equipment.
    a) **ACCESSORY BUILDING.** "Accessory building" means a subordinate building detached from, but located on the same lot as, the principal building, the use of which is incidental and accessory to that of the principal building.
    b) **PRINCIPAL BUILDING** "Principal building" means a building in which is conducted the main or principal use of the lot on which said building is situated.
20. **BUILDING COVERAGE.** "Building coverage" means the total area of a site covered by principal and accessory buildings or roofed areas, excluding allowed projecting eaves, balconies, and similar features.
21. **BUILDING HEIGHT.** "Building height" means the vertical distance, measured from the average elevation of the finished grade at the front of the building to the highest point of the roof for flat roofs; to the deck lines of mansard roofs; and to the peak of the roof for gable, hip and gambrel roofs. Where a building is located on sloping terrain, the height may be measured from the average ground level of the grade at the building wall.
22. **BUILDING LINE.** "Building line" means an imaginary linear extension of the building wall parallel to the street right-of-way line defining the limits of the front yard, or in the case of a corner lot, the corner side yard abutting the street.
23. **CAR WASH.** "Car wash" means a building or area that provides facilities for washing and cleaning motor vehicles, which may use production line methods with a conveyor, blower, or other mechanical devices and/or which may employ hand labor for the washing and/or waxing of automobiles.
24. **CALIPER.** "Caliper" means the American Association of Nurseryman standard for trunk measurement of nursery stock. Caliper of the trunk shall be taken six (6) inches above the ground up to and including four-inch caliper size, and twelve (12) inches above the ground for a caliper size greater than four (4) inches. (ORD 04-92 Passed 6-14-04)

25. **CELLAR OR BASEMENT.** "Basement" or "cellar" means the portion of a building which is partly or wholly below grade but so located that the vertical distance from the average grade to the floor is greater than the vertical distance from the average grade to the ceiling. A basement shall not be counted as a story for the purpose of height regulations.
26. **CEMETERY.** "Cemetery" means land used or intended to be used for the burial of the human or animal dead, and which is dedicated for cemetery purposes. Cemetery purposes include crematories, mausoleums and mortuaries if operated in connection with, and within the boundaries of, a cemetery. The burial of cremains is not a cemetery.
27. **CERTIFICATE OF OCCUPANCY.** "Certificate of occupancy" means a certificate issued by the Director of Planning and Community Development that declares that a building, structure or zoning lot may lawfully be employed for specific uses. Such structure(s) and use(s) shall conform fully to the provisions of this Ordinance.
28. **CERTIFICATE OF ZONING COMPLIANCE.** "Certificate of zoning compliance" means a certificate issued by the Director of Planning and Community Development, which declares that plans for a proposed structure, building, use, or zoning lot conform to the provisions of this Ordinance.
29. **CODE.** "Code" means codified ordinances and all regulations of the city of Delaware, Ohio. (ORD 04-92 Passed 6-14-04)
30. **COMMON AREA.** "Common area" means any land area, and associated facilities, within a planned residential multiple-family, commercial or industrial development that is held in common ownership by the residents of the development through a Homeowners' Association, Community Association or other legal entity.
31. **COMMON WALL STRUCTURE.** "Common Wall Structure" means a single-family structure that adjoins another single-family structure at any point. (ORD 02-107 Passed August 26, 2002)
32. **CONDITIONAL USE PERMIT.** "Conditional use permit" means the permit indicating approval by the Planning Commission for a specific conditional use.
33. **CONFINED FEEDING OPERATIONS.** "Confined feeding operations" means the confinement of animals in a specific location or area for the purposes of feeding and growth prior to slaughter, where food is supplied to the animals by means other than grazing.
34. **CONGREGATE CARE FACILITY.** "Congregate care facility" means a residential facility to provide for the needs of individuals who are elderly or handicapped. The facility shall consist of residential dwelling units or rooms designed specifically for the elderly or handicapped, and shall have common social, recreational, dining and/or food preparation facilities. The facility may be for independent living and/or may provide the residents with a range of personal and medical assistance including nursing care. This includes assisted living.
35. **DAY CARE CENTER, CHILD OR ADULT.** "Day care center" means any building in which day care is provided for five (5) or more infants, preschool children, or school-age children outside of school hours, or five (5) or more adults; with or without compensation. An adult day care center shall not include a convalescent home, hospital or any other full-time care facility. Centers shall meet all applicable state laws governing such centers as administered by the Ohio Department of Human Services.
36. **DENSITY.** The number of dwelling units per acre of land. More specifically:
    a) **GROSS DENSITY** "Gross density" means the number of dwelling units permitted per acre of total land area.
    b) **NET DENSITY** "Net density" means the number of dwelling units permitted per acre of land when the acreage involved includes only the land devoted to residential uses and excluding land dedicated to public thoroughfares or other unbuildable land areas.
37. **DEVELOPMENT.** "Development" means the construction of a new principal structure on a lot; the expansion or relocation of an existing principal structure on a lot; the use of open land

for construction of a principal structure; the use of open land for any non-agricultural use that does not involve the construction of a principal structure, including (but not limited to) paving, mining, drilling (but not including soil testing or the first water well on a parcel), and dredging; plus the preparation of land for a use, including (but not limited to) demolition, grading, excavating, or filling of land, as well as the removal of more than 10 trees of greater than 6-inch caliper at 24 inches above ground level; but does not include a homeowner's lot with an existing home. (ORD 03-76 Passed September 22, 2003)

Development also includes the construction, expansion, or relocation of an accessory structure that is larger or taller than the principal structure; involves lights, noise, or odors that can be detected more than 100 feet distant from the lot lines; or involves inflammable or explosive materials; but does not include a homeowner's lot with an existing home. (ORD 03-76 Passed September 22, 2003)

38. **DEVELOPMENT PLAN.** "Development plan" is a plan prepared to scale, showing accurately and with complete dimensioning the boundaries of the site, the location of buildings, landscaping, parking areas, access drives, signs, outdoor storage areas and any other features that comprise a proposed development.
    a) **PRELIMINARY DEVELOPMENT PLAN.** "Preliminary development plan" is a plan indicating the overall concept of development for an entire site and including the elements required in Section 1129.04.
    b) **FINAL DEVELOPMENT PLAN.** "Final development plan" is a plan indicating the exact data of the various features proposed for development and including the elements required in Section 1129.05.
39. **DIAMETER AT BREAST HEIGHT (DBH).** "Diameter at breast height" means the diameter of a tree trunk measured in inches at a height 4.5 feet above ground. If a tree splits into multiple trunks below 4.5 feet, the trunk is measured at its most narrow point below the split. (ORD 04-92 Passed 6-14-04)
40. **DISTRIBUTION FACILITY/TRUCK TERMINAL.** "Distribution facility" or "truck terminal" means a facility where trucks load and unload cargo and freight and where the cargo and freight may be broken down or aggregated into smaller or larger loads for transfer to other vehicles or modes of transportation.
41. **DISTRICT.** "District" means a portion of the municipality within which specific regulations and requirements, or various combinations thereof, shall apply under the provisions of this Ordinance.
42. **DORMITORY.** "Dormitory" means a building arranged, intended or designed to be occupied by unrelated persons, either as individuals or groups of individuals, who occupy common sleeping rooms and share related facilities such as bathrooms. A use of this type differs from an apartment house, in that separate cooking facilities are not available for each individual or group, but common eating facilities and kitchens may be provided in these buildings.
43. **DRIVE-THRU FACILITY.** "Drive-thru facility" means any portion of a building or structure from which a business is transacted, or is capable of being transacted, directly with customers located in a motor vehicle during such business transactions. The term "drive-thru" shall also include "drive-up" and "drive-in" but shall not include "car wash", "gasoline station" or "automotive service station".
44. **DWELLING.** "Dwelling" means any building or portion thereof intended or designed to be used for sleeping, living, cooking and dining purposes, having its own permanently installed cooking and sanitary facilities; and which shall consist of one or more dwelling units.
45. **DWELLING, ATTACHED SINGLE-FAMILY.** "Attached single-family dwelling" means dwelling units in side-by-side groupings, which are physically attached to one another by common or adjoining vertical walls without openings which extend from the basement floor

to the roofline. Each dwelling unit in the grouping has individual heating and plumbing systems and separate ground floor entrances.

46. **DWELLING, CLUSTER SINGLE-FAMILY.** "Cluster single-family dwelling" means a dwelling unit designed and used exclusively by one family and separated from all other dwelling units by open space from ground to sky, which is grouped with other dwelling units in an arrangement on a site. The dwelling does not need to be located on its own subdivided lot and is not required to have a front, side and/or rear yard that complies with the standard zoning district regulations. Property ownership outside the building envelopes is commonly held by all single-family cluster dwellings in the cluster development.
47. **DWELLING, DETACHED SINGLE-FAMILY.** A dwelling unit designed and used for one family situated on a parcel having front, side, and rear yards as required by this Ordinance and separated from all other dwelling units by open space from ground to sky.
48. **DWELLING, EFFICIENCY.** "Efficiency dwelling" means a dwelling unit consisting of not more than one habitable living/sleeping room together with kitchen and sanitary facilities, which may be located in separate rooms.
49. **DWELLING, MULTIPLE-FAMILY.** "Multiple-family dwelling" means a dwelling consisting of three (3) or more dwelling units for occupancy by three (3) or more families living independently of each other with varying arrangements of entrances and party walls.
50. **DWELLING, SINGLE-FAMILY.** "Single family dwelling" means a dwelling consisting of a single dwelling unit used for residential purposes by one family.
51. **DWELLING, TWO-FAMILY.** "Two-family dwelling" means a dwelling consisting of two (2) dwelling units, which may be either attached side by side, or one above the other, with each dwelling unit having a separate entrance, and each occupied by one family.
52. **DWELLING UNIT.** "Dwelling unit" means a building or portion thereof providing complete housekeeping facilities including kitchen and toilet facilities for only one (1) family. A garage shall not be included as part of the dwelling unit.
53. **EASEMENT.** "Easement" means authorization by a property owner for the use, for a specified purpose, of a designated area of his property by another.
54. **ESSENTIAL SERVICES.** "Essential services" means the underground gas, electrical, steam or water transmission, or distribution systems, collection, communication, supply or disposal systems or sites, including poles, wires, mains, drains, sewers, pipes, traffic signals, hydrants or other similar equipment and accessories in connection therewith which are reasonably necessary for the furnishing of adequate service by such public utilities or municipal or other governmental agencies or for the public health or safety or general welfare, but not including buildings.
55. **FAMILY.** "Family" means a person living alone, any number of individuals related by blood, adoption, foster or marriage plus no more than two persons related by blood, marriage or adoption, or not more than five (5) unrelated persons living together occupying a dwelling unit but not including groups occupying motel or hotel, dormitory or fraternity and sorority.
56. **FENCE.** "Fence" means any structure composed of wood, steel or other material, including plant material, erected in such a manner and positioned to enclose or partially enclose any premises or part of any premises. Structures, which have solely an ornamental purpose and which do not serve the purpose of enclosing or partially enclosing premises or of separating premises from adjoining premises, shall not be included within the definition of the word "fence".
    a) **FENCE, BARBED WIRE.** "Barbed wire fence" means a fence made with metal wire having sharp points or barbs along its length.
    b) **FENCE, CHAIN LINK.** "Chain link fence" means a fence made of metal loops interconnected in a series of joined links.

c) **FENCE, ELECTRIFIED.** "Electrified fence" means all fences or structures, included or attached to any device or object which emits or produces an electrical charge, impulse or shock when the same comes into contact with any other object, person or animal or which causes or may cause burns to any person or animal.

d) **FENCE, ORNAMENTAL.** "Ornamental fence" means a fence usually made of wood constructed for its beauty or decorative effect and when viewed at a right angle, has at least fifty percent (50%) of the area of its vertical plane, the area within a rectangular outline enclosing all parts of the fence in its plane, open to light and air.

e) **FENCE, PRIVACY.** "Privacy fence" means a fence made to inhibit public view and provide seclusion and when viewed at right angles, has less than fifty percent (50%) of the area of its vertical plane open to light and air.

57. **FLEET VEHICLE.** "Fleet vehicle" means a truck, van, or other vehicle used as part of the operation of a principal use, but does not include privately owned customer or employee vehicles or farm equipment.

58. **FLOOD PLAIN.** "Flood plain" means a watercourse and its adjacent area subject to inundation by the base flood. The flood plain is composed of the floodway and the floodway fringe, and is the total area subject to Flood Plain Development Regulations pursuant to Chapter 1150.

59. **FLOOR AREA, GROSS.** "Gross floor area" means the total number of square feet of all floor space within the outside surface of the exterior faces of the exterior walls or from the centerline of common walls separating two (2) buildings. The floor area measurement is exclusive of the areas of, unfinished attics without flooring, attached garages, terraces, open porches or uncovered steps. Cellar or basement shall be counted as floor area in computing off-street parking regulations.

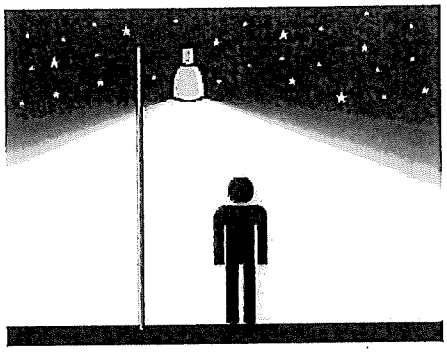
60. **FLOOR AREA, RESIDENTIAL.** "Residential floor area" means the sum of the horizontal areas (in square feet) of each story of the building measured from the exterior faces of the exterior walls or from the centerline of walls separating two (2) buildings. The residential floor area measurement is exclusive of the area of basements, unfinished attics, attached garages, breezeways and enclosed or unenclosed porches.

61. **FOOTCANDLE.** "Footcandle" means a unit of illumination produced on a surface, all points of which are one foot from a uniform point source of one candle. Footcandles will be measured with the meter pointed perpendicular to the property line or grade plane. (ORD 04-92 Passed 6-14-04)

62. **FRATERNITY.** "Fraternity" means a building, associated with an institution of higher learning, containing sleeping rooms, bathrooms, common rooms, and a central kitchen and dining room maintained exclusively for fraternity members and their guests or visitors.

63. **FULL-SHIELDED OR FULL CUT-OFF TYPE FIXTURE.** "Full-shielded or Full Cut-off Type Fixture" means an outdoor lighting fixture that is shielded or constructed so that all light emitted is projected below a horizontal plane running through the lowest light-emitting part of the fixture. (ORD 04-92 Passed 6-14-04)

Full cut-off lighting



- Full cut-off lighting directs light down and to the sides as needed and provides more control of light.
- Reduces glare and provides more even illumination.
- Reduces light trespass onto neighboring properties.
- Helps preserve the dark night sky.

University of Texas, Austin

64. **FUNERAL HOME.** "Funeral home" means a building or part thereof used for human funeral services. Such building may contain space and facilities for: (a) embalming and the performance of other services used in preparation of the dead for burial; (b) the performance of autopsies and other surgical procedures; (c) the storage of caskets, funeral urns, and other related funeral supplies; and (d) the storage of funeral vehicles, but shall not include facilities for cremation. Where a funeral home is permitted, a funeral chapel shall also be permitted.
65. **GARAGE, PRIVATE.** "Private garage" means an accessory building or portion of a principal building designed or used solely for the storage of motor vehicles, boats or similar vehicles owned and used by the occupants of the building to which it is accessory.
66. **GARAGE, PUBLIC.** "Public garage" means a principal or accessory building other than a private garage, used for parking or temporary storage of passenger automobiles, and in which no other service shall be provided for remuneration.
67. **GASOLINE STATION.** "Gasoline station" means an establishment where motor fuels are stored and dispersed into the fuel tanks of motor vehicles and may include facilities for the sale of other retail products. See "Automotive Service Station", which is different.
68. **GLARE.** "Glare" means the direct light that causes annoyance, discomfort, or loss in visual performance and visibility. (ORD 04-92 Passed 6-14-04)
69. **GO-PED.** "Go-ped" means a motorized scooter, including the Segway™. (ORD 04-92 Passed 6-14-04)
70. **GRADE, FINISHED.** "Finished grade" means the average level of the finished surface of ground adjacent to the exterior walls of the building after final grading and normal settlement.
71. **GRADE, NATURAL.** "Natural grade" means the elevation of the undisturbed natural surface of the ground prior to any recent excavation or fill.
72. **HANDICAPPED.** "Handicapped" means a physical or mental impairment, as defined in 42 U.S.C. 3602 (h), which substantially limits one or more of such person's major life activities so that such person is incapable of living independently. However, "handicapped" shall not include current illegal use of or addiction to a controlled substance, nor shall it include any person whose residency in a home would constitute a direct threat to the health and safety of other individuals.
73. **HISTORIC DISTRICT.** "Historic district" means a designated district within which the buildings, structures, appurtenances and places are of basic and vital importance because of their association with history, or because of their unique architectural style and scale, including materials, proportion, form and architectural detail, or because of their being a part

of or related to a square, park or area the design or general arrangement of which should be preserved and/or developed according to a fixed plan based on cultural, historical or architectural motives or purposes.

74. **HOME OCCUPATION.** "Home occupation" means a secondary use of a dwelling unit or accessory building of said dwelling, carried on by one or more persons, one of who is a resident of the household. The use is conducted entirely within the dwelling unit or the accessory building. The home occupation is clearly incidental and secondary to the use of the dwelling unit for residential purposes and does not change the character thereof or adversely affect the uses permitted in the zoning district of which it is a part. Two levels of home occupation exist under this Code:
    a) **HOME OCCUPATION, MINOR.** "Minor home occupation" means home occupations that have little or no impact on the surrounding residential area, and therefore are a permitted use in residential areas as specified in the Zoning Ordinance.
    b) **HOME OCCUPATION, MAJOR.** "Major home occupation" means home occupations that have or might have a noticeable impact on the surrounding residential area, and therefore are specifically approved by the Board of Zoning Appeals as specified in this Zoning Ordinance.
75. **HOSPITAL.** "Hospital" means an establishment which provides accommodations and medical or surgical facilities and services for the observation, diagnosis and care of two (2) or more individuals, primarily inpatients, suffering from illness, disease, injury, deformity and other abnormal physical or mental conditions, and including, as an integral part of the institution, related facilities such as laboratories, outpatient or training facilities.
76. **HOTEL OR MOTEL.** "Hotel" or "motel" means any building, or part of a building, other than a bed-and-breakfast, which provides transient lodging accommodations to the general public in exchange for a fee.
77. **ILLUMINANCE.** "Illuminance" means the quantity of light arriving at a surface divided by the area of that surface, measured in footcandles. (ORD 04-92 Passed 6-14-04)
78. **JUNK.** "Junk" means any personal property which is bought, bartered, acquired, possessed, collected, accumulated, dismantled, sorted or stored; metal for reuse or resale such as: salvage metal, metal alloys, metal compounds and combinations; used or salvaged fibers, bags, paper, rags, glass or any latex or plastic product; used or salvaged motor vehicles which are primarily used for parts or scrap metal and similar or related articles or property.
79. **JUNK OR WRECKING YARD.** "Junk or wrecking yard" means the use of any land, property, building, structure or combination thereof, to store, dump, sell, exchange, disassemble, or otherwise handle partly dismantled, obsolete, or wrecked vehicles or their parts, second hand building materials, waste, debris, or other salvaged material which, unaltered or unchanged and without further reconditioning, cannot be used for its original purpose as readily as when new. It does not include salvaged materials incidental to manufacturing operations.
80. **KENNEL.** "Kennel" means any lot or premises on which four or more dogs more than four months old are housed, groomed, bred, boarded, trained or sold.
81. **LIGHT POLLUTION.** "Light Pollution" means any measurable exterior artificial illumination that strays beyond a property line both horizontally at grade and vertically to the structure height. (ORD 04-92 Passed 6-14-04)
82. **LIGHT TRESPASS.** "Light Trespass" means light in sufficient quantity that crosses over property boundaries, impacts surfaces, and produces a negative response in persons owning or using the violated space. (ORD 04-92 Passed 6-14-04)
83. **LIGHT UNIFORMITY RATIOS.** The light uniformity ratio is expressed as either the maximum or average illuminance divided by the minimum illuminance. (ORD 04-92 Passed 6-14-04)

84. **LOADING SPACE.** "Loading space" means space logically and conveniently located for bulk pickups and deliveries, which is scaled to delivery vehicles, and accessible to such vehicles when required off-street parking spaces are filled.
85. **LOT.** "Lot" means a parcel of land that is a lot of record in the Delaware County Recorder's office. Specific lot types include the following (see illustration, also):
    a) **LOT, CORNER.** "Corner lot" means a lot located at the intersection of two (2) streets on which the interior angle of two adjacent sides of the two streets is less than 135 degrees. A lot abutting on a curved street or streets shall be considered a corner lot if the arc is of less radius than 150 feet and the tangents to the curve, at the two points meet the curve or the straight street line extended, form an interior angle of less than 135 degrees.
    b) **LOT, FLAG.** "Flag lot" means a lot utilizing a strip of land to provide access to or legal frontage on a public street, but where the majority of the area of the lot is situated immediately behind one or more lots relative to the street right-of-way to which such lot has access. Such lots are also commonly referred to as "panhandle lots".
    c) **LOT, INTERIOR.** "Interior lot" means a lot with only one frontage on a street.
    d) **LOT, THROUGH.** "Through lot" means a lot that has either opposite ends, or opposite sides, each having frontage on a public street.

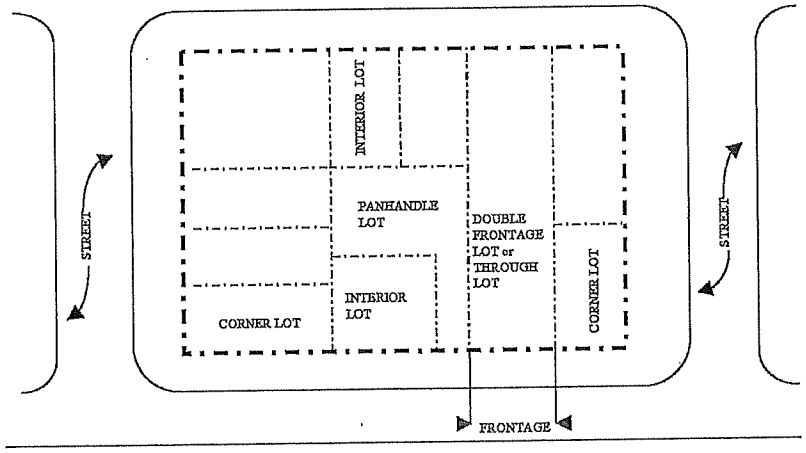


Figure 2 – Lot Types

86. **LOT AREA.** "Lot area" means the area of a lot computed exclusive of any portion of the right of way of any public or private street.
87. **LOT DEPTH.** "Lot depth" means the distance between the midpoints of straight lines connecting the foremost points of the side lot lines in front and the rearmost points of the side lot lines in the rear.
88. **LOT FRONTAGE.** "Lot frontage" means the width of the lot, as measured at the right-of-way line or where no public street exists, along a public way.
89. **LOT LINE.** "Lot line" means the line of demarcation between properties. Lot line is synonymous with "property line". More specifically:
    a). **LOT LINE, FRONT.** "Front lot line" means any lot line separating a public street from a parcel.
    b). **LOT LINE, REAR.** "Rear lot line" means the lot line opposite and most distant from the front lot line.

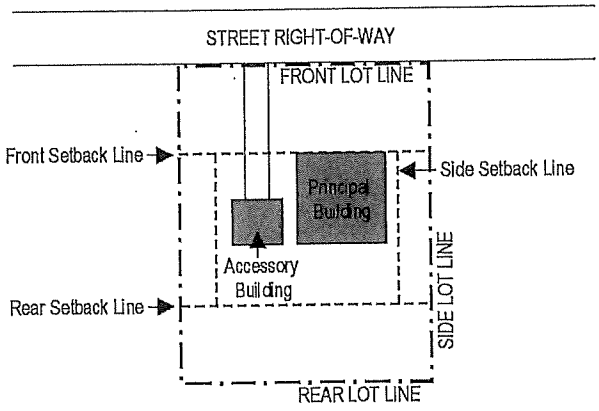


Figure 3 – Lot Terms

c). **LOT LINE, SIDE.** "Side lot line" means any lot line, other than a front or rear lot line. A side lot line separating a lot from a street is called a side street lot line. A side lot line separating a lot from another lot is called an interior side lot line.

90. **LOT OF RECORD.** "Lot of record" means any lot, which, individually or as part of a subdivision, has been recorded in the office of the Recorder.
91. **LOT OF RECORD, NONCONFORMING.** "Lot of record" means any lot, which, individually or as part of a subdivision, has been recorded in the office of the recorder.
92. **LOT WIDTH.** "Lot width" means the distance between the side lot lines, as measured at the building setback line.
93. **LUMINAIRE.** "Luminaire" means a complete lighting unit consisting of a light source and all necessary mechanical, electrical and decorative parts. (ORD 04-92 Passed 6-14-04)
94. **MAJOR TREE.** "Major Tree" means a living tree with a diameter at breast height measurement of six (6) inches or more. (ORD 04-92 Passed 6-14-04)
95. **MANUFACTURED HOME.** "Manufactured home" means a dwelling unit fabricated at an off-site manufacturing facility for installation or assembly at the building site, bearing a label certifying that it is built in compliance with the Federal Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401 et. seq.) and meeting all applicable regulations of the City of Delaware.
96. **MEDICAL CENTER OR CLINIC.** "Medical center" or "clinic" means an establishment where human patients are examined and treated by a group of dentists, physicians or similar professionals. Clinics provide outpatient service only.
97. **MINING AND MIXING OF STONE SAND AND GRAVEL.** "Mining and mixing of stone sand and gravel" means any mining, quarrying or processing of limestone, sand and gravel, or other mineral resources but not including oil or gas.
98. **MOBILE HOME" OR "MOBILE UNIT.** A "mobile home" or "mobile unit" means a factory-constructed, transportable structure designed as a permanent residential unit when placed upon a foundation and connected to utilities.
99. **MOBILE HOME PARK.** "Mobile home park" means any tract of land upon which at least one mobile home is used for habitation are parked, either free of charge or for revenue purposes, and including any roadway, building, structure, vehicle or enclosure used or intended for use as part of the facilities of such a park. "Mobile home park" does not include a tract of land used solely for the storage or display for sale of mobile homes.
100. **MODEL DWELLING UNIT.** "Model dwelling unit" means a dwelling unit used as a sales or lease office by a builder/developer and which is built with the purpose of displaying the

craftsmanship of that builder/developer. The unit may initially serve as a marketing tool to sell future, similar units in the building or on other lots but eventually is occupied as a residential dwelling unit.

101. **NONCONFORMING LOT.** "Nonconforming lot" means a lot lawfully existing on the effective date of this Zoning Ordinance or any amendment thereto, which, on such effective date, does not conform to the regulations of the district in which it is located.
102. **NONCONFORMING STRUCTURE.** "Nonconforming structure" means a structure lawfully existing on the effective date of this Zoning Ordinance or any amendment thereto, which, on such effective date, does not conform to the regulations of the district in which it is located.
103. **NONCONFORMING USE.** "Nonconforming use" means a use of land or a building or portion thereof, lawfully existing on the effective date of this Zoning Ordinance or any amendment thereto, which, on such effective date, does not conform to the regulations of the district in which it is located.
104. **NON-RESIDENTIAL ZONING DISTRICTS.** "Non-Residential Zoning Districts" means those Districts classified in the Codified Ordinances of the City of Delaware, Part Eleven of the Planning and Zoning Code, as O, PO/I, B-1, B-2, B-3, B-4, B-5, B-6, PBO, M-1, and M-2. (ORD 04-92 Passed 6-14-04)
105. **NUDE OR NUDITY.** The showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than full, opaque covering of any portion thereof, or female breast(s) with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state.
106. **NURSING HOME.** "Nursing home" means an establishment providing full-time nursing and medical care to three (3) or more people, not related by blood or marriage, who are unable to care for themselves. Hospitals are not included in this definition.
107. **OPEN SPACE.** "Open space" means an area open to the sky that may be on the same lot with a building and may include, along with environmental features, recreation facilities such as pools, tennis courts and similar outdoor activities.
108. **OPEN SPACE.** "Open Space" means land devoted to conservation or recreational purposes and/or land designated by the city to remain undeveloped (may be specified on a zoning map). (ORD 04-92 Passed 6-14-04)
109. **OPEN SPACE, REQUIRED.** "Required open space" means the portion of the open space that is of sufficient size and shape to meet the minimum zoning requirements.
110. **OUTDOOR DISPLAY.** "Outdoor display" means the placing of merchandise in an outdoor area that is open to the general public when the merchandise on display is removed from its shipping packaging and is representative of merchandise that is available for purchase inside the building and/or is available for purchase by the general public directly from the display area.
111. **OUTDOOR STORAGE.** "Outdoor storage" means the keeping, in an area outside of a building, of any goods, material, merchandise, or vehicles in the same place for more than 24 hours, except for merchandise placed in an area for outdoor display.
112. **OVERLAY DISTRICT.** "Overlay District" means a district that is added on top of another zoning district and imposes additional regulations and requirements beyond those normally required for the underlying district.
113. **PARKING SPACE, OFF-STREET.** "Off-street parking space" means a permanently surfaced rectangular area, exclusive of any driveways or circulation areas, accessible from a street or alley, designed for parking a motor vehicle.
114. **PERFORMANCE STANDARD.** "Performance standard" means a criterion established in the interest of protecting the public health, safety and welfare from nuisance factors and other objectionable or dangerous elements generated by, or inherent in, uses of land or buildings.

115. **PLACE OF WORSHIP.** "Place of worship" means a building, structure, or other indoor or outdoor facility used for public worship. The term "place of worship" includes the words "church", "chapel", "synagogue" and "temple" and their uses and activities that are customarily related.
116. **PLANNED RESIDENTIAL DEVELOPMENT.** "Planned residential development" means an area of land to be planned and developed as a single entity, in which a variety of housing units are accommodated under more flexible standards, such as lot size and setbacks, than those that would normally apply under single-family district regulations, allowing for the clustering of houses to preserve open space while maintaining the same overall density limitations of the district in which the planned residential development is located.
117. **PROJECT BOUNDARY.** "Project boundary" means the boundary defining the tract(s) of land that is included in a proposed development to meet the minimum required project area for a planned residential multiple-family, commercial or industrial development. The term "project boundary" shall also mean "development boundary".
118. **PUBLIC SAFETY FACILITY.** A "public safety facility" means a governmentally owned and operated facility established to provide police, fire, or other safety services to the surrounding area.
119. **PUBLIC SERVICE FACILITY.** "Public service facilities" means the buildings, power plants or substations, water treatment plants or pumping stations, sewage disposal or pumping plants, and other public or essential service structures used by a utility, by a railroad or by a municipal or governmental agency, including the furnishing of electrical, gas, rail transport, communications, public water and sewerage services.
120. **PUBLIC USE.** "Public use" means any use of a building or land by any governmental entity for any public purpose.
121. **PUBLIC UTILITY.** "Public utility" means a public service or services for the generation, transmission and/or distribution of electricity, gas or steam, including water and irrigation systems and sanitary systems used for the collection and disposal of garbage, sewage and other wastes by means of destroying or processing materials.
122. **PUBLIC WAY.** "Public way" means a street, easement, walk, bicycle path or other way in which the general public or a public entity has a right, or which is dedicated, whether improved or not.
123. **RECESSED CEILING FIXTURE.** "Recessed Ceiling Fixture" means an outdoor lighting fixture recessed into a canopy ceiling so that the bottom of the fixture is flush with the ceiling. (ORD 04-92 Passed 6-14-04)
124. **RECREATIONAL FACILITY, NONCOMMERCIAL.** "Noncommercial recreational facility" means a recreational facility that is privately owned and intended to serve the residents of the development, such as an apartment complex, a homeowners' association, a condominium association, an assisted living facility, and the like and may include, but is not limited to, such facilities as swimming pools, tennis courts, etc.. A non-commercial recreation facility may sell memberships or charge a fee to non-resident households, provided such households may not exceed ten per cent of the total number of households in the development.
125. **RECYCLING FACILITY.** "Recycling facility" is a building or area where recyclable materials are sorted and temporarily stored prior to shipment for remanufacture into new materials. This shall not include junkyards.
126. **RESIDENTIAL CARE FACILITY.** "Residential care facility" means a facility that provides 24-hour accommodations, supervision and personal or custodial care services, for three (3) or more unrelated individuals who are dependent on the services of others by reason of age and/or physical or mental impairment. Specific services provided by a residential care facility are limited by the Ohio Department of Health. "Residential care facility" does not

include clinics, institutions, hospitals, convalescent or nursing homes, dormitories or similar uses.

127. **RESIDENTIAL ZONING DISTRICTS.** "Residential Zoning Districts" means those districts classified in this Code as A-1, ER-1, ER-2, R-1, R-2, R-3, R-4, R-5, R-6, R-7, and R-8. (ORD 04-92 Passed 6-14-04)
128. **RESTAURANT, COUNTER SERVICE.** "Restaurant, counter service" means a retail service establishment whose principal business is the sale of foods, frozen desserts, or beverages in ready-to-consume servings, for consumption either within the restaurant building or for carry-out, and where customers are not served their food, frozen desserts, or beverages by a restaurant employee at the same table or counter where the items are consumed.
129. **RESTAURANT, TABLE SERVICE.** "Restaurant, table service" means a retail service establishment wherein the entire business activity, or substantially all of the business activity, consists of the sale of food and service to patrons seated at tables for consumption within the building.
130. **RESEARCH AND DEVELOPMENT FACILITY.** "Research and development facility" means a building or group of buildings used for scientific research, investigation, testing or experimentation, but not facilities for the manufacture or sale of products, except as incidental to the main purpose of the laboratory.
131. **RETAIL ESTABLISHMENT.** "Retail establishment" means an establishment engaged in the selling of goods or merchandise to the general public for personal or household consumption, which is open to the general public during regular business hours and which has display areas that are designed and laid out to attract the general public. In determining a use to be a retail use, the Planning Commission may consider the proportion of display area vs. storage area and the proportion of the building facade devoted to display windows.
132. **RIGHT-OF-WAY.** "Right-of-way" means a strip of land taken or dedicated for use as a public way.
133. **SATELLITE EARTH STATION (DISH-TYPE).** "Satellite earth station (dish-type)" means a round parabolic antenna designed to send or receive television broadcasts from communications satellites orbiting the earth.
134. **SCHOOL, PUBLIC OR PRIVATE.** "School, public or private" means publicly or privately owned facilities providing full-time day instruction and training at the elementary, junior high and high school levels in accordance with the requirements of Chapter 3313 of the Ohio Revised Code, or facilities providing kindergarten or nursery school training and care whose annual sessions do not exceed the school sessions for full-time day schools and which are operated by a board of education or an established religious organization.
135. **SCHOOL, TRADE, BUSINESS OR CULTURAL ARTS.** "School, trade, business or cultural arts" means facilities primarily teaching usable skills that prepare students for jobs within a specific trade or facilities providing instruction on social and religious customs and activities, performing arts and/or sports. Such facilities may include beauty schools, dance instruction centers and martial arts schools.
136. **SELF-SERVICE STORAGE FACILITY OR MINI-WAREHOUSE.** "Self-service storage facility" means a facility consisting of a building or group of buildings, usually, in a controlled access compound that contains varying sizes of individual, compartmentalized and controlled-access stalls or lockers for the dead storage of customers' residential goods or wares.
137. **SETBACK.** "Setback" means the required minimum horizontal distance between a property line or other line and a structure, parking lot, or use.
138. **SETBACK LINE.** "Setback line" means the line established by the Zoning Ordinance, generally parallel to and measured from the lot line, defining the limits of a yard in which no

building or other structure may be located aboveground, except as may be provided in this Ordinance.

139. **SEXUAL ACTIVITY.** Sexual conduct or sexual contact, or both.
140. **SEXUAL CONTACT.** Any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is female, a breast, for the purpose of sexually arousing or gratifying either person.
141. **SEXUAL EXCITEMENT.** The condition of the human male or female genitals when in a state of sexual stimulation or arousal.
142. **SHADE TREE.** "Shade Tree" means a tree with foliage that usually sheds annually and is planted primarily for its high crown of foliage or overhead canopy. (ORD 04-92 Passed 6-14-04)
143. **SHRUB.** "Shrub" means a woody plant, smaller than a tree, consisting of several small stems from the ground or small branches near the ground. (ORD 04-92 Passed 6-14-04)
144. **SIGN.** "Sign" means any visual communication display, object, device, graphic, structure or part, situated indoors or outdoors, or attached to, painted on or displayed from a building or structure, in order to direct or attract attention to, or to announce or promote, an object, person, service, product, event, location, organization or the like, by means of letters, words, designs, colors, symbols, fixtures, images or illuminations.
145. **SITE DBH.** "Site DBH" means the total combined diameter at breast height of all major trees existing on a site. (ORD 04-92 Passed 6-14-04)
146. **SORORITY.** "Sorority" means a building, associated with an institution of higher learning, containing sleeping rooms, bathrooms, common rooms, and a central kitchen and dining room maintained exclusively for sorority members and their guests or visitors.
147. **STORY.** "Story" means 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 the floor and the ceiling next above it.
148. **STREET, PRIVATE.** "Private street" means a local private way or driveway that provides vehicular access to more than one residential structure that is not and will not be dedicated to public use, but which is owned and maintained by an association, person, corporation or similar private entity.
149. **STREET, PUBLIC.** "Public street" means an avenue, highway, road, thoroughfare, boulevard, parkway or other way proposed for vehicular traffic, and any existing State, County, or City street or way shown upon a plat heretofore duly approved, filed and recorded in the office of the County Recorder that has been dedicated or deeded to the public for public use and which affords principal access to abutting property. Included is the land between the street right-of-way lines, whether improved or unimproved, and may comprise pavement, shoulder, gutters, sidewalks, division strips or other areas within the street lines.
    a). **ALLEY.** "Alley" means a means a minor street used primarily for vehicular service access to the back or side of properties abutting on another street. For the purposes of frontage calculation, alleys shall not be considered a public street.
    b). **ARTERIAL.** "Arterial" means a highway primarily for through traffic, carrying heavy loads and large volume of traffic, usually on a continuous route.
    c). **COLLECTOR.** "Collector" means a street that primarily carries traffic from local streets to other collector streets or to arterial streets.
    d). **CUL-DE-SAC.** "Cul-de-sac" means a local street of relatively short length with one end open to traffic and the other end terminating in a vehicular turnaround.
    e). **DEAD-END.** "Dead-end" means a street temporarily having only one outlet for vehicular traffic and intended to be extended or continued in the future.
    f). **FREEWAY.** "Freeway" means a divided high-volume traffic way for through traffic and for the connection of the major districts of the City and having limited access and grade-separated intersections.

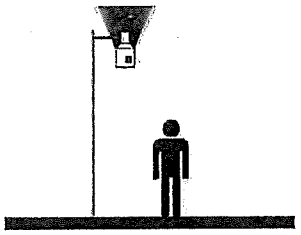
g). **INTERIOR.** "Interior Street" means a street wholly within the boundaries of a development.

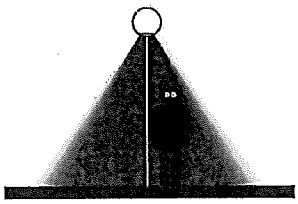
h). **LOCAL.** "Local Street" means a street that carries traffic to collector, arterial streets, or other local streets.

i). **SERVICE, MARGINAL, OR FRONTAGE STREET.** "Service, marginal, or frontage street" means a local or collector street, parallel and adjacent to an arterial or collector street, providing access to abutting properties and protection from arterial or collector streets.

150. **STREET RIGHT-OF-WAY.** "Street right-of-way" means a strip of land taken, dedicated, or otherwise recorded as an irrevocable right-of-passage for use as a public way. In addition to the roadway, it normally incorporates the curbs, tree lawn strips, sidewalks, water lines, sewer lines, lighting, and drainage facilities.
151. **STRUCTURE.** "Structure" means anything constructed or erected, with a fixed location on the ground or attached to something having a fixed location on the ground. Among other things, structures include buildings, mobile homes, walls, and billboards. For the purposes of this Zoning Code, fences and architectural features are separately regulated and are not considered structures.
152. **SUBDIVISION.** "Subdivision" means the division of a lot, tract or parcel into two or more lots, tracts or parcels or other divisions of land.
153. **SUBSTANTIAL ALTERATION.** "Substantial Alteration" means an alteration or expansion of existing development is substantial when such alteration or expansion involves or exceeds twenty-five percent (25%) of the total floor area of the existing building, structure, or vehicular use area. (ORD 04-92 Passed 6-14-04)
154. **THOROUGHFARE.** See "street".
155. **TOPLESS.** The showing of a female breast with less than a full opaque covering of any portion thereof below the top of the nipple.
156. **TRAILER.** "Trailer" means a structure on wheels, towed or hauled by another vehicle and used for short-term human occupancy, carrying materials, goods or objects, or as a temporary office.
157. **TREE BANK.** "Tree Bank" means a public site designated by the Director of Grounds and Facilities where a property owner or developer shall donate and plant required replacement trees when it is not feasible to plant the required trees on their project site. (ORD 02-55 PASSED MAY 13, 2002) (ORD 04-92 Passed 6-14-04)
158. **TREE BANK FUND.** "Tree Bank Fund" means an account maintained by the City of Delaware that receives cash payments in lieu of planting required replacement trees. Such funds shall be used for reforestation on public property. (ORD 04-92 Passed 6-14-04)
159. **TRUCK TERMINAL/DISTRIBUTION FACILITY.** "Distribution facility" or "truck terminal" means a facility where trucks load and unload cargo and freight and where the cargo and freight may be broken down or aggregated into smaller or larger loads for transfer to other vehicles or modes of transportation.
160. **UPLIGHTING.** "Uplighting" means any light source that distributes illumination above a 90-degree horizontal plane (see illustration below). (ORD 04-92 Passed 6-14-04)

Uplighting





- Uplighting wastes energy into the sky.
- Uplighting causes glare, light trespass, and harsh illumination.
- Uplighting is sometimes ineffective.

University of Texas, Austin

161. USE, ACCESSORY. "Accessory use" (or "structure") means a use, object or structure constructed or installed on the same lot as, and of a nature subordinate and customarily incidental to the principal (primary) use, object or structure of a lot.
162. USE, PERMITTED, CONDITIONAL. "Conditional use" means a use, other than a principal use permitted by right, which may be permitted within a district, if specified conditions are met as set forth in Chapter 1148 and which requires a conditional use permit.
163. USE, PERMITTED. "Permitted use" means any use allowed in a zoning district and subject to the restrictions applicable to that zoning district.
164. USE, PERMITTED BY RIGHT. "Use permitted by right" means a use approved administratively when it complies with the standards and requirements set forth for the zoning district in which it is located.
165. USE, PRINCIPAL. "Principal use" means the use that is of primary importance or which is the predominant use on a parcel of land. USE, PERMITTED, TEMPORARY. "Temporary use" means a use that is established for a fixed period of time with the intent to discontinue such use upon the expiration of such time and does not involve the construction or alteration of any permanent structure.
166. VARIANCE. "Variance" means a modification of the strict terms of the relevant regulations.
167. VETERINARY HOSPITAL. "Veterinary hospital" means a place where animals are given medical treatment and the boarding of animals occurs only as an incidental use.
168. WIRELESS TELECOMMUNICATION FACILITY. "Wireless telecommunications facility" means any cables, wires, lines, wave guides, antennae, towers and any other equipment or facilities associated with the transmission or reception of communications as authorized by the FCC. Such facilities are further defined in Chapter 1181.
169. YARD. "Yard" means an open space on the same lot with a principal use or building extending between a building or structure and the adjoining lot lines, unoccupied and unobstructed from the ground upwards, except as otherwise permitted by this Ordinance. (ORD 02-107 Passed August 26, 2002)

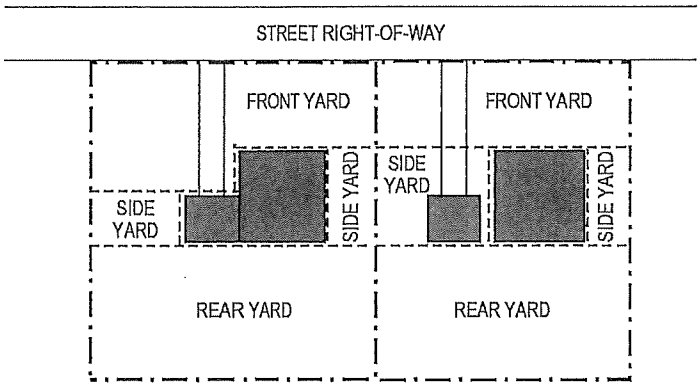


Figure 4 – Yards

Diagram of Side Yards for Corner Lots.

a). **YARD, FRONT.** "Front Yard" means a yard extending between side lot lines across the front of a lot and from the front lot line to the front of the principal building.

b). **YARD, REAR.** "Rear yard" means a yard extending between side lot lines across the rear of a lot and from the rear lot line to the rear of the principal building.

c). **YARD, SIDE.** "Side yard" means a yard extending from the principal building to the side lot line on both sides of the principal building between the lines establishing the front and rear side yards.

170. **YARD, REQUIRED.** "Required yard" means the space between a lot line and a setback line for a building, parking area or use that is the minimum area required to comply with the regulations of the district in which the lot is located, and within which no structures shall be located except as expressly permitted in this Ordinance.

171. **ZONING MAP.** "Zoning map" means an accurate map depicting the City of Delaware, Ohio, and indicating the boundaries of the zoning districts established by this Ordinance.

172. **ZONING ORDINANCE.** "Zoning Ordinance" or "Ordinance" means Ordinance 01-79, passed August 13, 2001 as amended, which comprises Titles Five through Nine of this Part Eleven - Planning and Zoning Code.