

CHAPTER 1308
DISTRICT EXCEPTIONS, MODIFICATIONS, AND AMENDMENTS

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CROSS REFERENCES

Planning Board - Charter 503,504
Use Regulations - Zoning Chapter 1328

1308.01 DISTRICT BOUNDARIES

Where a district boundary divides a lot in one ownership and not less than 50 percent of the area of such lot lies in the less restricted district, the regulations prescribed by this Zoning Ordinance for the less restricted district shall apply to the remainder of such lot up to the distance of not more than 50 feet from such boundary.

1308.02 PERMITTED USES

A. Nothing in this Zoning Ordinance shall be deemed to prohibit the following accessory and incidental uses in addition to those specified in the schedule constituting Chapters 1308 and 1329.

1. In any R District, the renting of rooms to not more than two non-transient guests in a dwelling by the owner thereof, as an incidental use to its occupancy as a dwelling of the character permitted in the district, which may or may not include the providing of table board for the occupants of such rooms, provided that no sign shall be displayed in connection with such renting and further provided that the owner occupies the same dwelling as a primary residence.

2. Customary recreational, refreshment and service uses, and buildings in any public park, reservation, playground, or other recreational area, incidental to the recreational use of such area.
3. The excavating of natural materials for the construction of a building on the same lot.
4. Public utility substations and appurtenance facilities when necessary for the satisfactory and convenient provision of utility service for the neighborhood in which situated.

B. The use of fill, or excavated material shall be allowed only for the purpose of filling to the level of the established grade of the adjacent street or streets, or if no grade has been established, to the level of the surrounding ground, provided that a permit shall be obtained prior to any such filling from the City Administrator, or designated representative. No such permit shall be issued unless the City Administrator is satisfied that:

1. The material used for such filling is suitable for the purpose. No garbage, rubbish, refuse, waste, or waste by-products shall be dumped or used as fill in any district within the City.
2. The material used and the method of filling will not be objectionable by reason of dust or odor, or otherwise be detrimental to the public health or general welfare.
3. The resulting fill will not interfere with drainage to the extent of being injurious to adjacent land or buildings or detrimental to the public health or safety.

The City Administrator may attach such conditions to the granting of any such permit as will, in his opinion, accomplish the foregoing purposes.

1308.02-1 PUBLIC UTILITIES

Publicly owned and operated utilities such as: water distribution, electricity transmission and waste water collection infrastructure are permitted in any zone, providing that there shall be no buildings or yards used for the storage of materials or equipment in connection therewith, and further provided that prior to establishing such use or facility approval shall first be obtained from City Council.

1308.02-2 PRIVATE SECTOR UTILITIES *

Note: The following sections are a revision to the 1994 Zoning Ordinance—Chapter 1308.02 (part), Permitted Uses; Chapter 1308.03, Height of Structures; Chapter 1326.09 (renamed)

“Telecommunication Facilities;” and Chapter 1326.10, Satellite Earth Stations. Taken together, these sections serve to define and regulate the use of real property for telecommunication facilities, antennas, telecommunication towers, and satellite earth stations in all districts.

A. General

Exclusive of those uses specified in the schedule constituting Chapter 1326, and other uses permitted elsewhere in this ordinance, private sector utilities or service providers including: ground-wired and cable telecommunication infrastructure; overhead or underground electric and gas transmission and distribution lines, including facilities and equipment incidental to the construction or maintenance thereof, exclusive of any permanent deposition of excavated or other construction debris above the prevailing grade, are permitted, on any land owned by the service provider in accordance with the following schedule:

1. In any R District:

- Prior to establishing such use or facility listed in this section, a permit shall first be obtained from City Council providing that there shall be no materials or equipment storage buildings or storage yards in connection therewith and further provided that all other regulations for the district shall be complied with including the requirements in Chapters 1324 and 1331.

2. In any C District:

- Any use permitted in an R District, and;
 - a) Central telephone exchanges, bus and rail passenger terminals and other similar uses and facilities, as determined by the Planning Office as being included in this category, provided that there shall be no materials or equipment storage buildings or yards in connection therewith and further provided that all other regulations for the district shall be complied with including Chapters 1324 and 1331.

3. In any C-3 District:

1. Any use permitted in any more restrictive District, and;
 - b) Minor motor vehicle repair, storage facilities, and equipment used in connection with the maintenance and operation of motor vehicles for the transportation of passengers for hire, including the storage of gasoline and other fuel, provided that all other regulations for the district shall be complied with including Chapters 1324 and 1331.
 - c) Public and non-public utility material and equipment storage buildings and/or yards, provided that all other regulations for the district shall be complied with including Chapters 1324 and 1331.

4. In any M-1 or M-2 District:

1. Any use permitted in any more restrictive District, and;

- a) Any other use not heretofore authorized and not otherwise prohibited by law or regulated by ordinance, provided that all other regulations for the district shall be complied with including Chapters 1324 and 1331.

B. Telecommunications Facility—Exempt

Includes, but is not limited to the following, unless located within a recognized Historic, Scenic, or other Special Development District as identified in the City's Comprehensive Plan or elsewhere recognized as part of an approved neighborhood strategy or redevelopment plan approved by City Council:

1. A single ground or building mounted receive-only, non-parabolic, radio or television antenna, including any mast, in conjunction with a residential use on the same parcel where radio or television antenna is located, with a ground mounted antenna height not exceeding twenty-five feet (25'), or a building mounted antenna height not exceeding ten feet (10') from the building ridgeline.
2. A single ground or building mounted citizens band radio antenna with a ground mounted antenna height, including any mast, not exceeding thirty-five feet (35'), or a building mounted antenna height not exceeding ten feet (10') from the building's ridgeline.
3. A single ground, building, or tower mounted antenna operated by a federally licensed amateur radio operator as part of the Amateur Radio Service, if the height (post and antenna) does not exceed thirty-five feet (35'), or which existed prior to the adoption of this Ordinance (January, 1997).
4. Mobile services providing public information or coverage of news events of a temporary nature.
5. Hand held devices such as cell phones, business-band mobile radios, walkie-talkies, cordless telephones, garage door openers and similar devices as determined by the Planning Office.
6. City government owned and operated receive and/or transmit telemetry station antennas that support public safety or emergency services, or other similar use as determined by the Planning Office, with heights not exceeding seventy feet (70').
7. Minor modifications of existing wireless communications facilities and attached wireless communications facilities, whether emergency or routine, provided there is little or no change in the visual appearance. Minor modifications are those modifications, including the addition or co-location of antennas and accessory equipment, to conforming attached wireless communications facilities that meet the application requirements and performance standards contained herein.
8. Antennas and equipment cabinets or rooms completely located inside of structures.

Nothing herein contained shall be deemed or construed to limit the powers or duties of the Board of Appeals.

1308.03 HEIGHT OF STRUCTURES

Architectural towers, gables, penthouses, scenery lofts, cupolas, water tanks, similar structures, and necessary mechanical appurtenances may be erected on a building to a height greater than the limit established for the district in which the building is located; provided that such exception shall cover at most 50 percent of the area of the next lowest level; provided, further, that no such exceptions shall be used for any commercial purpose other than those incidental to the permitted use of the main building.

The height limitations of this Zoning Ordinance shall not apply to chimneys in industrial districts, water tanks, church spires, flag poles on public property, monuments, or electric transmission towers in existence at the time of this ordinance.

In any district with a height limit of less than 75 feet, public and semi-public buildings, schools, churches, hospitals, and other institutional uses permitted in such district may be erected to a height not exceeding 75 feet, provided that the front, rear, and side yards shall each be increased 1 foot for each 1 foot by which such buildings exceed the height limit herein before established for such district.

1308.04 YARD SETBACK VARIATIONS

- A. The following features may extend into any required front yard not to exceed the distances specified:
 1. Cornices, canopies, eaves, or any similar features, none of which is less than 10 feet above grade: 2 feet 6 inches.
 2. Open fire escapes: 6 feet.
 3. Any terrace or uncovered porch with its floor no higher than that of the entrance to the building: 8 feet, but in no event nearer than 15 feet to the front line of the lot.
 4. Chimneys: 2 feet.
 5. Any water table siding or shingles: 2 inches.
- B. Any of the above listed features may also extend into any required side or rear yard the same distance that it is herein permitted to extend into any required front yard, except that no porch, terrace, or outside stairway shall project more than 4 feet into any side yard nor closer than 3 feet to any side lot line, and any outside stairway may extend into any side yard only if the same is unroofed and unenclosed above and below the steps thereof.
- C. In any R District if 25 percent or more of the frontage of any block, exclusive of the frontage along the side of a corner lot, has been improved with buildings at the time of the passage of this Zoning Ordinance, which buildings are of a character permitted in such district but not in a more restricted district (including an R-1

District, buildings permitted in such district), excluding front yards which vary in depth to an extent greater than 6 feet, then the required front yard depth for such district shall be disregarded in such block and in lieu thereof the front yard required on each lot in such block shall be of a depth not less than the average depth of the front yards on the lots on which are located such existing buildings, to a maximum required depth of 40 feet, provided that the front yard on a lot that is adjoined on each side by a lot on which a building is situated need not have a depth greater than that of whichever of the front yards on such adjoining lots has the greater depth.

- D. When any interior lot in an R District adjoins at the lot line of the street on which it fronts (disregarding any alley) with a lot in a C or M District, the required front yard depth on such interior lot may be disregarded and either of the following rules may be applied to determine the required front yard depth on such lot:
1. The front yard shall have a depth of not less than the average of the depth required in the district and the depth or width of yard if any, required on such adjoining lot adjacent to the street on which such interior lot fronts; or
 2. That part of any building which is located on that part of the width of such interior lot not exceeding one-half thereof and not exceeding 30 feet which adjoins such lot in a C or M District (disregarding any alley) may be built to a line that is not nearer to the street line of the lot than the depth or width of yard, if any required on such adjoining lot in a C or M District adjoining the street on which such interior lot fronts; and the remainder of such building shall be not nearer to such street line than the distance equal to the depth of front yard otherwise required on such interior lot.
- E. On any lot in an R District on which a dwelling was in existence at the time of the adoption of this Zoning Ordinance, but on which there was then no accessory garage or on which any accessory garage then existing contained space for a less number of motor vehicles than permitted in the district, there may be erected an accessory garage, or an existing accessory garage may be enlarged, so as to provide space for the number of motor vehicles permitted in this district; provided, however, that if the resulting percentage of lot coverage by all buildings would thereby exceed by more than 5 percent of the maximum coverage permitted in the district, such new or enlarged accessory garage shall not contain space for more than one motor vehicle for each dwelling unit on the lot at the time of the adoption of this Zoning Ordinance.

For the purpose of the foregoing regulation, an accessory garage with space for one motor vehicle shall not exceed 308 square feet in floor area and an accessory garage with space for more than one motor vehicle shall not exceed 308 square feet in floor area for the first motor vehicle plus 200 square feet for each additional motor vehicle.

- F. Except as provided in Section 1308.04 hereof, the yard requirements of this Zoning Ordinance shall not be deemed to prohibit any necessary retaining wall,

nor prohibit any otherwise lawful fence or wall, provided that in any R District or in any NPD-District permitting similar uses:

1. No fence or wall shall exceed 4 feet in height in any front or side yard or 6 feet in height in any rear yard except as hereinafter provided, or as otherwise authorized by the Planning Board under the provisions of Chapter 1308.
2. No portion of a fence or wall shall be erected or shrubbery placed or maintained on any part of a any yard where such fence, wall or shrubbery obstructs the vision of a motor vehicle operator either exiting a driveway from an adjoining property, or exiting an alley adjoining any such yard so as to create a potential hazard to vehicular or pedestrian traffic.

A potential hazard shall be considered to exist on any such lot, where any fence or wall higher than 4 feet, or any obstruction to vision other than a post, column, or tree not exceeding 1 foot square in cross section, or 1 foot in diameter, is within the triangle formed by the lot lines of such lot(s) and a line drawn between points on such lines at the distances from the intersection thereof that are specified below.

- a) For a lot having an interior angle of 90 degrees or more at the corner thereof: Six (6) feet.
- b) For a lot having an interior angle of less than 90 degrees at the corner thereof: Six (6) feet, plus 1 foot for every 10 degrees of major fraction thereof by which such interior angle is less than 90 degrees.

G. On every corner lot in an R District within the triangle formed by the street lines of such lot and a line drawn between points on such lines at the distances from the intersection thereof that are specified below, there shall be no fence or wall higher than 4 feet, nor any obstruction to vision other than a post, column, or tree not exceeding in cross section 1 foot square or 1 foot in diameter, between a height of 4 feet and a height of 10 feet above the established grade of either street, or if no grade has been officially established, than above the average elevation of the existing surface of either street at center line thereof:

1. For a lot having an interior angle of 90 degrees or more at the street corner thereof: 20 feet.
2. For a lot having an interior angle of less than 90 degrees at the street corner thereof: 20 feet plus 1 foot for every 10 degrees of major fraction thereof by which such interior angle is less than 90 degrees.

H. Recognizing that there are trends in the planning of dwellings and groups thereof and in lot arrangement that seek to secure the benefit of solar orientation, climate control, and additional privacy which may necessitate variation in the front, rear, and side yard requirements of this Zoning Ordinance (which are designed primarily to apply to the traditional pattern of lot and building arrangement that generally prevails throughout the City), and in the regulations applying to accessory buildings, fences and walls, the Planning Board, on application, may permit variations in such regulations for the

accomplishment of the foregoing purposes, provided that such variations shall be so devised and applied that:

1. The distance between buildings in the same block shall not be less than what would result from the application of the regulations prescribed by this Zoning Ordinance for the district.
 2. Air, daylight, and sunlight shall not be obstructed from adjacent buildings to a greater degree than what would result from the application of the regulations prescribed for the district.
 3. The proposed location and arrangement of buildings will not be otherwise detrimental to adjacent buildings or to the neighborhood generally.
 4. The variations will conserve and promote health and safety.
- I. Any terrace or uncovered porch may extend into the required front yard a distance not to exceed 8 feet, but in no event nearer than 15 feet to the front line of the lot, and may be roofed or otherwise covered but shall have no enclosure of any part of the sides thereof that extend into the front yard that is higher than 2 feet 6 inches. All horizontal distances shall be measured to the foundation line of such terrace or porch, provided, however, that a roof overhang may extend not more than 1 foot beyond the foregoing permitted extension. The foregoing provisions shall not apply to lots within a block in which no covered porch extends into a required front yard.

1308.05 METHODS OF AMENDMENT

City Council may amend this Zoning Ordinance upon requesting and receiving recommendation of the Planning Board regarding any proposed change in the text, schedules, or for changes to the boundaries as shown on the Zoning Map, provided that the proceedings for any amendment shall be initiated only during the months of March, June, September, and December and only in the following manner:

1. By the filing with the Planning Board of a verified petition of owners of property within the City, which petition shall be on a standard form prescribed by the Planning Board Secretary and shall be accompanied by a fee of \$125 (fee subject to change), no part of which shall be returnable or,
2. By the adoption by the City Council of a resolution of intention to amend, which resolution, upon adoption, shall be referred to the Planning Board or,
3. By the Planning Board, by a vote of not less than five members, may initiate an amendment, at any time, by the adoption of a resolution of proposal to amend.

1308.06 PUBLIC HEARING AND NOTICE

The Planning Board shall hold a public hearing on any such petition or resolution, notice of which hearing and of the proposed amendment shall be given by at least one

publication in the official newspaper of the City at least ten days before the date of such hearing.

1308.07 CHANGE IN DISTRICT BOUNDARY; NOTICE

If the proposed amendment consists of or includes a change in any boundary of any district established by this Zoning Ordinance, the Planning Board shall also give notice of the proposed amendment and of the hearing thereon, at least ten days before the date of such hearing, by:

Mailing notices thereof to the owners of all land lying within a distance of 500 feet from the exterior boundaries of land involved in such proposed change, as the names of such owners appear on the assessment records of the City, and

The foregoing requirements as to mailed notices shall be substantially observed, but any minor inaccuracy in giving such notice shall not invalidate the proceedings that are involved.

1308.08 RECOMMENDATION OF PLANNING BOARD

At the subsequent meeting of the Planning Board following the aforesaid hearings, unless the proceedings are terminated as herein provided, the Planning Board shall report to Council its recommendations with respect to the proposed amendment. In recommending the adoption of any amendment, the Planning Board shall fully state its reason(s) for such recommendation, describing any change in conditions that it believes makes the amendment advisable and specifically setting forth the manner in which, in its opinion, the amendment would be in harmony with a Comprehensive Plan for the City and would be in furtherance of the purposes set forth in Section 1300.01.

1308.09 ADOPTION OF AMENDMENT

No amendment of this Zoning Ordinance, of whatever nature that has not been approved by the Planning Board shall be adopted except by unanimous vote of the City Council, provided that failure by the Planning Board to report to Council its recommendations with respect to any proposed amendment initiated by petition or by resolution of Council within sixty days after the date of the public hearing thereon shall be deemed to be approval thereof, unless such proceedings have theretofore been terminated.

Before adopting any amendment, the City Council shall adopt a resolution setting forth the findings upon which Council determined such amendment to be required by the public interest in furtherance of the purposes set forth in Section 1300.01.

1308.10 CITY COUNCIL DISAPPROVAL

If any amendment is disapproved by the City Council, no petition for substantially the same amendment shall be received by the Planning Board for a period of 6 months from and after the date of such disapproval.

1308.11 WITHDRAWING PETITION FOR AMENDMENT

Any petition for an amendment may be withdrawn at any time by the filing of a verified petition of withdrawal signed by not less than a majority of the number of persons who signed the original petition and such withdrawal shall terminate the proceedings initiated by the original petition; and any proceedings for an amendment initiated by a resolution of the City Council or the Planning Board may be terminated by the body that initiated the same at any time that such proceedings are before such body, provided in any event that any hearing of which notice has been given shall be held.

LIST OF DISTRICTS

The City of Niagara Falls is hereby divided into the following classes of districts:

| | |
|--------|---|
| (R-1) | One-Family Residential District |
| (RMHS) | Residential Mobile Home Subdivision |
| (R-2) | One and Two-Family Residential District |
| R-3) | Multi-Family Residential District |
| (R-4) | Multi-Family Residential District |
| (DCD) | Downtown Commercial District |
| (C-1) | Neighborhood Commercial District |
| (C-2) | General Commercial District |
| (C-3) | Heavy Commercial District |
| (M-1) | Light Industrial District |
| (M-2) | Heavy Industrial District |
| (NPD) | Negotiated Planned Development District |
| (PS) | Public Space District |
| (WO) | Waterfront Overlay District |