

## **Middletown Zoning Ordinance**

### **Article 11A – Airport ~~Hazard~~ Area Overlay District**

#### **§11A01 Authorization and purpose.**

The State of Rhode Island has declared that "airport hazards may endanger the lives and property of users of the airport and of occupants of land and other persons in its vicinity" (RIGL §1-3-3) The state has also declared that "[t]he creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question," and "[i]t is necessary in the interest of public health, safety and general welfare that the creation or establishment of airport hazards be prevented." The state has also mandated that every city or town with an airport hazard area within its limits "shall adopt, administer, and enforce, under the police power and in the manner and upon the conditions prescribed, airport zoning regulations for that part of the airport hazard area which is within its territorial limits" (RIGL § 1-3-5(1)). These zoning regulations "may divide the airport hazard area into zones, and, within those zones, specify the land uses permitted and regulate and restrict the height to which structures and trees may be erected or allowed to grow."

The Middletown Airport ~~Hazard~~ Area Overlay District is hereby established to regulate airport hazards in accordance with state mandate. These regulations are reasonably necessary to effectuate the purpose of state and federal law, including Chapter 3 of Title 1 and Chapter 22.2 of Title 45 of the Rhode Island General Laws and 14 CFR 77, entitled "Objects Affecting Navigable Airspace" and the Federal Aviation Act (49 U.S.C. Chapter 401).

#### **§11A02 Statement of consistency with the Middletown Comprehensive Community Plan.**

The 2014 Middletown Comprehensive Community Plan recognizes the Town's responsibility, under the state mandate, to protect the public health and safety, and to prevent the creation or establishment of airport hazards. This recognition is specifically identified in the Comprehensive Plan by policy L-I.D. "Ensure land uses that surround the Colonel Robert F. Wood Airpark are compatible with airport operations" and action item L-I.D.1. "Develop and adopt an Airport Hazard Area Overlay District."

#### **§11A03 Ordinance administration.**

The Building Inspection Department of the Town of Middletown is hereby designated as the Administrative Agency, and the Zoning Official or his/her designee is charged with the administration and enforcement of this section.

**§11A04 Definitions.** Unless specifically defined below, words and phrases used in this section pertain to airport hazards, have the same meaning as they have in common usage and give this section its most reasonable application.

- (A) **Airport** The Newport State Airport, also known as Colonel Robert F. Wood Airpark.
- (B) **Airport Hazard** Any electronic transmission device or structure, which, as determined by the Federal Aviation Administration, interferes with radio communication between airport and aircraft approaching or leaving the airport, or any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking off at any airport or is otherwise hazardous to the landing or taking off of aircraft. Such uses include, but are not limited to those that create smoke, steam, or glare, and uses that attract large numbers of birds.
- (C) **Airport Hazard Area** Any area of land or water upon which an airport hazard might be established if not prevented as provided in this chapter and in accordance with Title 1, Chapter 3 of the RI General Laws and the Federal Aviation Act.

- (D) **Airspace** The space lying above the earth or above a certain area of land or water that is necessary to conduct aviation operations.
- (E) **Board of Appeals** The previously established Middletown Zoning Board of Review, pursuant to RIGL 1-3-19, shall be the Airport ~~Hazard~~ Area Overlay District Board of Appeals to hear and decide all variances and all appeals from any order, requirement, decision, or determination made in the enforcement of this section.
- (F) **FAA 7460-1 Airspace Analysis** An analysis performed by the Federal Aviation Administration (FAA) upon submission of an FAA 7460-1 (Notice of Proposed Construction or Alteration) form. This analysis performed pursuant to FAR Part 77, Objects Affecting Navigable Airspace, concerns the effect of proposed construction or alteration on the use of air navigation facilities or navigable airspace by aircraft. The conclusion of each study is normally a determination as to whether the specific proposal studied would be a hazard to air navigation and/or a determination for marking and/or lighting.
- (G) **Height Compliance Area** Those areas identified within the Airport ~~Hazard~~ Area Overlay District where ground elevation plus the maximum height restriction under current zoning (i.e., 35 feet above grade) is within the FAR Part 77 approach surface and may conflict with the regulated imaginary surfaces.
- (H) **Imaginary Surface** That surface established with relation to the airport and to each runway by the FAA. The size of each imaginary surface is based on the category of each runway according to the type of approach available for that runway. The slope and dimensions of the surface applied to each end of a runway are determined by the most precise approach procedure existing for that runway end.
- (I) **Obstruction** Any object of natural growth, terrain, or permanent or temporary construction or alteration, including equipment or materials used therein, the height of which exceed the standards established in Subpart C of Federal Aviation Regulations Part 77, Objects Affecting Navigable Airspace.
- (J) **Part 77 Surfaces** Imaginary airspace surfaces established with relation to each runway of an airport.
- (K) **Runway Protection Zone (RPZ)** An area off the end of a runway used to enhance the protection of people and property on the ground.
- (L) **Structure** For the purposes of only this section, any object constructed or installed by humans, excluding trees and vegetation, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines, including the poles or other structures supporting the same.
- (M) **Variance** For the purposes of this section, a variance is permission granted by the Board Of Appeals to depart from the literal requirements of this section in the establishment or maintenance of a use of land that is prohibited in the Airport ~~Hazard~~ Area Overlay District, including, without limitation, erecting any structures, increasing the height of any structure, permitting the growth of any tree, or otherwise using his or her property in violation of this section. The standards for a variance shall be those set forth in Subsection **§11A08** herein, and are based on RIGL 1-3-15 and are different from the definition and standards used in all other sections of this chapter, which are based on RIGL 45-24-31(66) and 45-24-41.

#### **§11A05 Regulatory limitations.**

The following additional regulations shall apply within the Airport ~~Hazard~~ Area Overlay District as defined on the Airport ~~Hazard~~ Area Overlay District Map, and consisting of the Runway Protection Zone and the Height Compliance Area.

- (A) **Runway Protection Zone (RPZ):** This zone is the closest area to each runway end and is intended to provide a clear area that is free of aboveground obstructions and any structures, to enhance the protection of people and property on the ground. The area

defined by the RPZ is represented at grade level and corresponds to the RPZ designated on the Airport Layout Plan for the Newport State Airport approved by the FAA April 16, 2008.

(1) Use restrictions. There shall be no residential or nonresidential development or other type of land use allowed in the RPZ except for open space areas, uses that do not attract wildlife, and those that do not interfere with navigational aids. The following potential compatible uses may be allowed only after development plan review approval, as set forth in Subsection **§11A05(B)(3)**:

- Parking uses (i.e., off-street parking surface lots).
- Transportation uses (i.e., roadways, driveways).
- Plant-related agricultural uses (i.e., crop farming, wholesale nurseries).
- Animal-related agricultural uses (i.e., livestock operations, dairy farms, horse farms).

(2) Height of structures and trees. Any structure as permitted under this subsection, and any trees and vegetation, shall not exceed 15 feet in height above ground level.

(B) Height Compliance Area: The height compliance areas depicted on the Airport Hazard Area Overlay District Map are based on FAR Part 77 surfaces designated on the Airport Layout Plan for the Newport State Airport, approved by the FAA, April 16, 2008.

(1) Height of structures. Any structure on a lot or parcel within the height compliance area shall not penetrate a FAR Part 77 surface, unless a variance is received from the board of appeals, as set forth herein. Following construction or installation of any structure, an applicant shall provide the Zoning Official an as-built drawing with a vertical survey performed by a registered professional engineer and/or registered land surveyor, demonstrating that the structure does not penetrate any FAR Part 77 surface.

(2) Use according to underlying zoning. Use of a lot or parcel within the height compliance area shall be in accordance with the standard use regulations for the underlying zone as set forth in this chapter.

(3) Development plan review (DPR). Any structure, development or subdivision, other than the construction of a single-family residence, the enlargement, expansion, or reconstruction of a single-family residence, or any administrative subdivision, on a lot or parcel within the height compliance area must submit an application for development plan review, with review to be conducted as set forth in Sections 305-309 of this chapter.

a. Submission Requirements. In addition to the standard DPR application form and submission requirements contained on the Middletown Rules and Regulations Regarding the Subdivision and Development of Land, the following items shall be provided:

- A vertical survey performed by a registered professional engineer and/or registered land surveyor, demonstrating whether or not the proposed development will result in the penetration of the FAR Part 77 surfaces within a height compliance area;
- A completed Federal Aviation Administration (FAA) Form 7460-1 "Notice of Proposed Construction or Alteration" and either FAA approval or an FAA "Determination of No Hazard to Air Navigation" (with or without conditions);
- Proof of submission to the Rhode Island Airport Corporation (at Rhode Island Airport Corporation, Attention Planning Department, 2000 Post Road, Warwick, RI 02886) with a request for their review and

recommendation as to the aeronautical effects of the proposed development; and

- Any additional information deemed necessary by the reviewing officer or town boards for adequate review of the proposed project.
- b. Standards for development plan review. In addition to the standards set forth in Section 521 of the Middletown Rules and Regulations Regarding the Subdivision and Development of Land:
- Relation of proposed structures to the FAR Part 77 surfaces. The design, layout and height of the proposed structures shall not result in a hazard to air navigation, or, where such hazard to air navigation is documented, it has been effectively addressed by marking and/or lighting in accordance with an FAA determination and/or RIAC opinion.
- c. Revisions. An approved development plan may be revised upon written approval of the Town Planner if all revisions are done in accordance with the provisions of this chapter and with any conditions to which the original approved plan is subject; provided, however, that any revision to a development plan determined by the Town Planner to be a substantial revision will require resubmission for approval as for a new plan.

#### **§11A06 Continuance of existing use or structure.**

- (A) No airport zoning regulations adopted under this chapter shall require the removal, lowering, or other change or alteration of any structure not conforming to the regulations when adopted, or otherwise interfere with the continuance of any nonconforming use, except as specified herein.
- (B) Continuation of a dimensionally nonconforming structure. Any preexisting dimensionally nonconforming structure shall not be required to be removed, lowered or otherwise changed or altered to conform to the requirements of this section. Nothing herein shall prevent any government entity otherwise authorized to regulate airport hazards or exercise the powers of eminent domain from exercising such powers, including requiring that any use or structure be lighted or marked and the removing of such use or structure or trees that violate the height requirements and/or constitute a hazard to air navigation.
- (C) Replacement of a dimensionally nonconforming structure. Before a dimensionally nonconforming structure within the Airport Hazard Area Overlay District may be replaced, substantially altered or repaired, or rebuilt, development plan review approval shall be obtained. No approval shall be granted that would allow the structure or tree in question to be made higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted.

#### **§11A07 Abandonment.**

Whenever the Zoning Official determines that a dimensionally nonconforming structure has been abandoned as defined in § 801 of this chapter, or more than 80% torn down, destroyed, deteriorated or decayed:

- No building permit shall be granted that would allow the structure to exceed the applicable height limit or otherwise deviate from the regulations of this section;
- Whether application is made for a building permit under this section or not, the Zoning Official may by appropriate action compel the owner of the nonconforming structure or tree, at his or her own expense, to lower, remove, reconstruct or equip the object as may be necessary to conform to this section.

#### **§11A08 Variances by the Zoning Board.**

Any person desiring to erect any structure, increase the height of any structure, permit the growth of any tree, or otherwise use his property in violation of the regulations of this section may apply to the Zoning Board sitting as the Airport ~~Hazard~~-Area Board of Appeals for a variance from the regulations in question.

(A) A variance under this section shall be allowed where:

- (1) Literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship; and
- (2) The relief granted would not be contrary to the public interest but do substantial justice; and
- (3) The relief granted would be in accordance with the spirit of the regulations found in Chapter 3 of Title 1 of the Rhode Island General Laws.

(B) Application requirements. All variance applicants before the Zoning Board shall, in addition to any application materials required by the Zoning Official, submit all items contained within a completed application for development plan review in accordance with Subsection **§11A05(B)(3)a**.

### **§11A09 Special conditions by Zoning Board or Planning Board.**

The Zoning Board, in granting a variance, and the Planning Board, in granting development plan review approval, may impose special conditions that may, in the opinion of such board, be required to promote the intent and purposes of this section, the Zoning Ordinance and the Comprehensive Plan. Those special conditions shall be based on competent credible evidence on the record, be incorporated into the decision, and may include, but are not limited to, provisions for:

- Requiring the owner of the structure or tree in question to install, operate and maintain suitable obstruction markers and obstruction lights thereon;
- Restricting the height of part or all of the structures below the applied-for height;
- Controlling the sequence of development, including when it must be commenced and completed;
- Controlling the duration of use or development, including hours of operation, and the time within which any temporary structure must be removed; and
- Designating the exact location and nature of development.

### **§11A10 Appeals.**

(A) An appeal may be taken by a person aggrieved by any order, requirement, decision, or determination made in the administration or enforcement of this section or by any development plan review decision of the Planning Board to the Board of Appeals (i.e., Zoning Board). Said appeal procedures shall be those outlined within § 319 of this chapter.

(B) In accordance with RIGL 1-3-27, any person or persons jointly or severally aggrieved by any decision of the Board of Appeals, or any taxpayer, or any officer, department, board, or bureau of the Town of Middletown, may appeal to the RI Superior Court in the manner prescribed by RIGL 45-24-63, and the provisions of that section shall in all respects be applicable to the appeal.

### **§11A11 Penalties.**

Any violations, penalties and associated noncompliance with this section, including failure to abide by any special conditions attached to an approval, shall be subject to those penalties listed within § 316 of this chapter.

**§11A12 Conflicting regulations.** In the event of conflict between the regulations set forth in this section and any other regulations applicable to the same area, whether the conflict is with

respect to the height of structure, the use of land, or any other matter adopted by the Town of Middletown, the more stringent limitation or requirement shall govern.

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