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Should a recommendation be made to the Town Board to deny the Planned Unit Development, the Planning Board shall issue a statement which contains the reasons for the unfavorable recommendation. The Planning Board may also recommend further study of the preliminary site plan and re-submission after revisions or re-design.

§109 Rezoning Process

- 1) Application for establishment of a Planned Unit Development District shall be made to the Town Board. The Town Board shall refer the application to the Planning Board for consideration;
- 2) The Town Board shall hold a public hearing on the proposal, with public notice, as provided by law in the case of an amendment to this Chapter;
- 3) The Town Board may then amend this Chapter so as to define the boundaries of the Planned Unit Development District, but such action shall have the effect only of granting permission for development of the specific proposal, in accordance with this Chapter, within the area so designated with the specifications, plans and elevations submitted.
- 4) The Town Board shall hold a public hearing within sixty two (62) calendar days receipt of the application. Approval of the Planned Unit Development shall be noted on the Town's Zoning Map.

§ 110 Final Site Plan

The final site plan shall substantially conform to the preliminary site plan that has been approved, incorporating any revisions or other features recommended by the Planning Board or Town Board. The final site plan shall conform to all requirements of Article XII - Site Plan Review. The rezoning shall not become effective until final site plan approval has been secured.

The application for final site plan approval shall be made within 12 (twelve) months from the date of the Town Board approval of the rezoning.

No construction or site improvement work may commence until final site plan approval has been granted. No building permits shall be issued for construction within a Planned Unit Development District until improvements are installed or performance bonds or other security is posted with the same procedures outlined in Article XII - Site Plan Review.

Article XV - Clustering Provisions

§ 111 Purpose

This Article provides for flexibility for residential development of unique or underutilized parcels of land. The application of this Article to future housing development will lead to more creative design solutions to ensure the character of the community is protected. The purpose of the cluster development is to:

- 1) permit a procedure for development which will result in improved living and working environments;
- 2) promote more flexible subdivision layout without increasing densities;
- 3) encourage a variety of types of residential dwellings;

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- 4) encourage ingenuity and originality to subdivision and site design;
- 5) preserve open space to serve recreational, scenic, sensitive natural resources, and public service purposes;

§ 112 Authority

A. The Town Board of the Town of Dunkirk is authorized to modify applicable provisions of this Chapter simultaneously with the approval of any plat within the Town subject to the conditions in this Article in accordance with §278 of New York State Town Law. Cluster housing shall be permitted within all zoning districts as defined in this Chapter. The Town Board may require the use of the cluster concept when one or more of the following conditions exist:

- (1) Important ground or surface waters, wetlands, floodplains, steep slopes, unique or locally important natural or historical areas exist on the parcel.
- (2) The number or length of new roads or driveways obtaining access from existing roads will be reduced.
- (3) Agricultural soils of state or local importance exist on the parcel.
- (4) An active agricultural operation or cropland exists on the parcel.
- (5) Preservation of important views or community open space will be ensured.
- (6) The land to be developed is contiguous to a recreational area(s), parkland or permanently protected open space or has the potential to be converted to such uses.
- (7) The specific goals and policy recommendations of the Master Plan will be accomplished.
- (8) Significant environmental impacts identified through the State Environmental Quality Review Act (SEQR) may be mitigated.

Commented [JS1]: Clustering is a mechanism for promoting good use of land and preservation of sensitive resources. At the very least it should apply to any R or AG districts, but really it could apply everywhere...

§113 Clustering Requirements

The minimum development area for cluster housing shall apply to land areas of at least ten (10) acres.

§ 114 Density Transfer

- A. In each zone allowing cluster development, the lot requirements may be reduced from the lot requirements established in this Chapter as deemed acceptable to the Town Board. All such lot reductions shall be compensated for by an equivalent amount of land in cluster open space to be preserved and maintained for its scenic value, recreation or conservation purposes.
- B. In the approval of a cluster subdivision, in no case shall the maximum density specified for the applicable zone be increased, nor shall the other applicable regulations or use limitations for the zone be changed or modified.
- C. Nothing shall prevent the Town Board from requiring that ten (10) percent of the entire cluster housing subdivision be set aside or otherwise permanently dedicated for park and recreation purposes and provisions for maintenance of said area shall be established to the satisfaction of

Commented [JS2]: Provided the density (number) of dwellings proposed is not increased from a typical subdivision, I don't think there's a need for a minimum land area for this.

Commented [JS3]: This term is misleading for this section – clustering isn't density transfer, that is a different, though similar mechanism. Really this section is outlining the requirements for clustering (113 above).

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the Town Board. Under certain conditions, the Town Board may require the payment of a recreational fee per dwelling unit rather than the dedication of park land. In either instance, the park space or fee shall be in addition to the private land assembled in common as the result of the clustering process referred to in these regulations.

D. The land set aside shall be provided in such a manner that the area is usable for recreation, continued agricultural use, or other such similar open space uses/activities. "Usable" land is otherwise developable but may contain no more than 20 percent of land that can otherwise not be developed due to feature restrictions, i.e., wetlands or floodplains. Where recreational and other such uses are proposed, they shall be accessible to all residents of the subdivision or, where the land has been dedicated to the Town, to the general public.

E. Siting Guidelines. Within a cluster development, lots shall be laid out so that dwelling units will be located in a manner that carries out the goals of the Town's Master Plan and consistent with the purpose of this Chapter. The following siting guidelines are to be considered, when applicable, on a case-by-case basis by the Town Board:

- (1) On the least fertile soils for agricultural uses, and in a manner which maximizes the usable area remaining for such agricultural uses;
- (2) Within any woodland contained in the parcel, or along the far edges of the open fields (to reduce impact upon agriculture, to provide summer shade and shelter from winter wind and to enable new construction to be visually absorbed by natural landscape features);
- (3) To provide permanent protection for significant natural, historic or cultural features identified on the site;
- (4) To minimize the number of driveways with access to existing roads;
- (5) In such a manner that the common boundary between the house lots and any active farmland is minimized in length (to reduce potential conflicts);
- (6) In locations least likely to block or interrupt scenic vistas as seen from the public roadway(s) or other public vantage points;
- (7) In locations where the greatest number of units could be designed to take maximum advantage of solar heating opportunities; and
- (8) In cluster developments exceeding 20 dwelling units, the Planning Board shall consider the layout of smaller groupings, each having some open space immediately surrounding it, so that large concentrations of units with little or no differentiation can be avoided, and so that cluster development will be more compatible with the neighborhood in which it is located.

Commented [JS4]: The intent here is we don't want the unusable land to be set aside and protected just because it can't be developed upon. Land set aside needs to be usable, but it can incorporate some sensitive/undevelopable lands, though to a much lesser extent. Flexibility.

Commented [JS5]: Any other additional siting guidelines desired?

§115 Review Criteria

Cluster development shall be allowed only if evidence is presented to the Town Board which establishes:

- 1) that the proposed development will be in harmony with the general purpose, goals, objectives of the Town's Comprehensive Plan, this Chapter and Subdivision Regulations;
- 2) that the proposed building or use complies with all applicable regulations of this Chapter except as modified pursuant to the authority of this Article;

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- 3) that the proposed building or use will not have a substantial impact upon adjacent property, the character of the neighborhood, traffic conditions, parking, utility facilities and other matters affecting the public health, safety and general welfare of Town residents;
- 4) that the proposed development will be served adequately by essential public facilities and services such as highways, roads, parking, sidewalks/trails, police and fire protection, drainage structures, refuse disposal, water & sewers and schools;
- 5) that the proposed development will not result in the destruction, loss or damage of any natural, scenic or historic feature of significant importance.

§116 Open Space Requirements

At least 25% of the total acreage is to be devoted to common, permanent open space. The open space shall be reserved and maintained as a natural area, active agricultural land, landscaped park or recreational space. This 25% is exclusive of the 10% dedication of land for park and recreation purposes or recreational fees paid to the Town.

If cluster open space is not dedicated to the Town, the land shall be protected by legal arrangements, satisfactory to the Town Board, sufficient to assure its maintenance and preservation for whatever purpose intended. Covenants or other legal arrangements shall specify:

- 1) ownership of the cluster open space;
- 2) method of maintenance;
- 3) responsibility for maintenance;
- 4) maintenance taxes and insurance;
- 5) compulsory membership and compulsory assessment provisions;
- 6) guarantees that any association formed to own and maintain cluster open space will not be dissolved without the consent of the Town Board;
- 7) any additional specifications deemed necessary by the Town Board.

All cluster open space shall be considered taxable unless deeded to the Town of Dunkirk.

§117 Lot, Area, Yard and Building Requirements

The lot/building requirements will be determined in conjunction with site plan review of the development.

SEE TYPICAL DEVELOPMENT ILLUSTRATIONS GRAPHIC

Article XVI - Sign Regulations

§ 118 Purpose

The purpose of this Article is to provide standards for the regulations of the height, size, location and appearance of signs to:

- 1) protect and enhance property values and neighborhood character;
- 2) protect public and private investment in buildings and open spaces;

Commented [JS6]: Eden example provided in earlier meetings:
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- 3) preserve and improve the appearance of the Town of Dunkirk as a place to live and work and as an attraction to visitors;
- 4) encourage sound signing practices to aid business and provide information to the public;
- 5) prevent excessive and confusing sign displays;
- 6) reduce hazards to motorists and pedestrians; and
- 7) protect the public health, safety and general welfare.

The regulations outlined shall apply to signs in all districts in the Town of Dunkirk.

§ 119 Exceptions

For the purposes of this law, the term "sign" does not include:

- 1) Signs erected and maintained pursuant to any governmental function
- 2) Integral, decorative or architectural features of building, except letters or trademarks
- 3) Signs, not exceeding eight (8) square feet per face, directing and guiding traffic and parking on private property and bearing no advertising. The location shall be approved as a part of a site plan or special permit
- 4) Signs, not exceeding one (1) square foot per face advertising the cost of gasoline when attached to a gasoline dispenser or service island canopy
- 5) Directional signage erected by the Town of Dunkirk

§ 120 General Provisions

Signs are an accessory use only; signs are not permitted as a principal use in any sign in the Town of Dunkirk. Sign shall be erected or maintained in accordance with the following:

- 1) Commercial Electronic Variable Messaging Signage (hereinafter referred to as CEVMS) are signs capable of displaying words, symbols, figures or images that can be electronically changed by remote or automatic means. CEVMS shall be permitted only in the C-1 and C-2 district and shall comply with the following:
 - a) Transition Methods: The transition between messages shall not exceed two (2) seconds
 - b) Message Frequency: Each message shall show no less than ten (10) seconds which may include up to two (2) second transition
 - c) Intensity/Brightness: All CEVMS shall be equipped with technology that automatically dims the electronic variable message displays according to ambient light conditions to a luminance of not more than 0.3 foot-candles (as measured using a foot-candle meter at 100 feet). The nighttime brightness level shall not exceed 500 NIT and the daytime brightness level shall not exceed 5000 NIT (meets FHWA Administration Guidelines)

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- d) Animation: Animation is permitted, except letter and/or text which are scrolling, blinking, flashing or changing of any light movement are prohibited (continuously lighted is permitted)
 - e) Orientation/Setback: CEVMS may be placed perpendicular to the street (single or double sided) and must be at least ten (10) feet from the street right of way
 - f) Height: The Maximum height of a CEVMS shall not exceed a hundred (25) feet measured from ground level
 - g) Size: the maximum size of the CEVMS shall not exceed fifty (50) square feet per side
 - h) All CEVMS are subject to site plan review
 - i) Permit Fee Schedule: Applications for CEVMS (which requires site plan review) will be charged \$250.00
 - j) Political signage: no political signage allowed
 - k) Off premise advertising is prohibited.
- 2) Signs on Public Property - No private sign shall be placed in any street right of way or on other public property. No sign shall be allowed in the triangle formed from measuring back on both streets from an intersection right of way a minimum of nine (9) feet or more as determined by the Town Board in accordance with any applicable standards, including, but not limited to the American Association of State Highway and Transportation Officials (AASHTO) and a height of 3 ½ feet above grade.
- 3) Roof Signs - No signs, except such direction devices as may be required by the Federal Aeronautical Authorities, shall be placed, inscribed or supported upon or above the height part of the facade line.
- 4) Traffic Safety - No sign shall create a traffic hazard by obstructing the view at any street intersection or by design resemblance through color, shape or other characteristics common to traffic control devices.
- 5) Maintenance of Signs - Every sign shall at all times be in a safe and structurally sound condition and maintained by replacement of defective or worn parts, painting, repainting and cleaning. The Town Zoning Enforcement Officer shall require compliance with all standards of this chapter. If the sign does not comply with adequate safety standards, the sign shall be removed at the property owner's expense.

No person shall maintain, or permit to be maintained on any premise owned, occupied or controlled by them, any sign which is either not structurally sound or creates an electrical hazard. Any such sign shall be removed or repaired by the owner or user of the sign or the owner of the premises. Where applicable, signs shall be supported by structures that are designed to resist wind pressures, dead and lateral loads in accordance with NYS Building Code; supports shall be reviewed as part of sign design.

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- 6) Abandoned Signs - Except as otherwise provided in this Chapter, any sign which is located on property which becomes vacant and unoccupied for a period of six (6) months or more, or any sign which pertains to a time, event or purpose which no longer applies, shall be deemed to have been abandoned. An abandoned sign is prohibited and shall be removed by the owner of the sign or owner of the premises.
- 7) Unlawful Signs - No person shall erect on any premise owned or controlled by them or use any sign which does not comply with the provisions of this Chapter.
- 8) Off Site Signs - No off-site signs shall be permitted in the Town of Dunkirk.
- 9) Awning Signs - The area of awning signs shall be included in calculations for allowed signage which shall also include the sides it print/graphics are included. Such signs shall be permitted on first floors only and no more than two awnings are allowed per business.
- 10) Temporary Signs - All temporary signs, including but not limited to, banners, pennants, spinners, etc., are prohibited in the Town of Dunkirk except as described in this Article.
- 11) Distance from Property Line - No attached sign shall extend within a street or road property line unless said line is the building line, in which case, signs may extend over the street or road property line for a distance not exceeding four (4) feet.
- 12) Freestanding Signs - No freestanding sign larger than eight (8) square feet shall have less than three (3) feet of open space at the bottom that extends the entire length. Bases or support structures for freestanding signs shall be designed to complement the sign and/or the use it is intended to service, utilize durable materials, and shall have a landscaped area at the base to the greatest extent practicable. Maintenance of such areas shall apply so the sign is not obscured and dead or decaying plant material replaced as necessary.
- 13) Height - No sign shall exceed twenty-five (25) feet in height or extend above the roof line of the building to which it is attached. Note: roof signs are not permitted (see §120(3)).
- 14) Building Advertising - Advertising displayed upon a building or other surface shall be conforming with the regulations of this Article.
- 15) Non-Conforming Signs - Any non-conforming sign which is portable in nature shall be removed within one hundred eighty (180) calendar days of the effective date of this Chapter. Any non-conforming sign painted, pasted or otherwise applied to a fence, wall or facade of a building shall not be repainted, restored or replaced.

16) Projecting Signs – Signs that are permanently attached to a building, dependent on the building for structural support, and extend more than six inches from the face of such building; signs that project less than six inches are considered wall signs. The maximum area of projecting signs are four (4) square feet.

§ 121 Zoning District Sign Restrictions

- 1) Accessory signs in all zones - In all zones, the following signs shall be considered accessory to the principal use of the premises on which they are located. Such sign may be illuminated only by a full cut-off, non-flashing light:

Commented [JS7]: I don't think this is needed here as it is covered in 122.

Commented [JS8]: This can fall under temporary signs – if so, I don't think this is needed here (See 122).

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- a) A single sign not over two (2) square feet in area attached to a building or detached and located in the front yard of a residential dwelling unit lawfully occupied as a home occupation in the Town of Dunkirk.
 - b) A single real estate sign not over twelve (12) square feet in area attached to a building or detached and located in front yard relating to sale, rental or lease of premises.
 - c) Plaques or markers indicating that a building or property is an historic resource.
 - d) One (1) sign indicating the name and address of the occupants of a dwelling, not exceeding two (2) square feet. An address sign shall not be permitted if a sign permitted for the office of a resident professional is in use.
 - e) One (1) sign indicating the project name and the names of the architect, engineer, contractor and participation public and private governmental agencies and officials, placed on the premises where construction, repair or renovation is in progress, not exceeding thirty-two (32) square feet in face area, fifteen (15) feet in height nor located less than twenty-five (25) feet from the lot line and seventy-five (75) feet from any dwelling not within the project.
 - f) On site directional signage.
- 2) R-1, R-2 and AR-1 Residential Zones - In all residential zones, the following signs shall be considered accessory to the principal use of the premises on which they are located. Such signs may be illuminated only by a full cut-off, non-flashing light:
- a) A single sign not over twenty-five (25) square feet in area attached to a building or detached and located in the front yard describing an apartment house or a conforming non-residential building or use.
 - b) Vehicles bearing signs more than two (2) square feet in area shall not be permitted to park as a customary operation in a residential area so as to be visible from the street.
 - c) One (1) bulletin board not exceeding twenty (20) square feet in area for a church or other institutional use.
- 3) C-1 and C-2 Zones - The following signs shall be permitted in the C-1 and C-2 Commercial Zones. Special requirements for signage related to adult entertainment, beyond the general regulations contained herein, are found in Article XVII.
- a) Wall signs identifying uses or services on the premises, totaling two and one half (2.5) feet in area for every foot of an occupant's building frontage to a maximum of two hundred (200) square feet of each premise. Where a building fronts on more than one (1) street, the frontage shall not exceed the length of the longest side of one (1) street.

Wall signs may be painted on or affixed to any wall of a building (projecting no more than six (6) inches from the face of such building), or signs composed of individual letters without a background may be located on the edge of a roof or wall on a flat roof or at the line of the eaves on other types of roof, but not projecting above the edge of the facade

Commented [JS9]: Changeable message board? Non-electronic?

Commented [JS10]: Also include the new C-R District I would assume

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or wall or line of the eaves. The area of signs composed on individual letters without a background shall be taken as that enclosed by a series of lines joined to form a perimeter bounding all parts of the display. Signs projecting more than six (6) inches shall be considered projecting signs and subject to §120-16 above.

- b) Detached signs shall not be permitted in the **C-1 and C-2 Commercial Zones** unless the following provisions are met:
 - i) The overall height of the detached signs, inclusive of any base or base structure, shall not exceed twenty five (25) feet above the ground
 - ii) Detached signs shall be set back a minimum of five (5) feet from the street right of way
 - iii) Detached signs in excess of four (4) feet in height above the ground shall be set back at least twenty-five (25) feet from the street right of way
 - iv) No detached signs shall be permitted to create a hazard or obstruction to vehicular or pedestrian circulation or to interfere with traffic sight lines
 - v) Detached signs shall be limited in display surface area to a maximum of forty (40) square feet per side of sign, with such sign area to be included within the two hundred (200) square feet overall maximum sign area permitted in the **C-1 and C-2 Zones**
 - vi) Detached signs shall be limited in number to one (1) sign (single or double sided) per lot
 - vii) All detached signs shall be fixed in place and of a permanent nature. Such signs shall not be revolving nor of an animated nature, nor shall they contain flashing lights.
- c) No billboard sign or billboard type sign advertising any business or entity off-site or off-premises shall be permitted.
- 4) M Zone- The following signs shall be permitted in the M zone.
 - a) Attached signs identifying uses or services on the premises, totaling one (1) square feet in area for every foot of an occupant's building frontage to a maximum of two hundred (200) square feet of each premise. Where a building fronts on more than one (1) street, the frontage shall not exceed the length of the longest side of one (1) street.

Attached signs may be painted on or affixed to any wall of a building (projecting no more than six (6) inches from the face of such building), or signs composed of individual letters without a background may be located on the edge of a roof or wall on a flat roof or at the line of the eaves on other types of roof, but not projecting above the edge of the facade or wall or line of the eaves. The area of signs composed on individual letters without a background shall be taken as that enclosed by a series of lines joined to form a perimeter bounding all parts of the display. Such signs shall not face an adjoining lot in a residential zone and may be illuminated only by a full cut-off, non-flashing light. Animated or revolving signs shall be prohibited. Signs projecting more than six (6) inches shall be considered projecting signs and subject to §120-16 above.

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- b) Detached signs shall not be permitted in the M Zone unless the following provisions are met:
 - i) The overall height of the detached signs, inclusive of any base or base structure, shall not exceed eight (8) feet above the ground;
 - ii) Detached signs shall be set back a minimum of five (5) feet from the street right of way;
 - iii) Detached signs in excess of four (4) feet in height above the ground shall be set back at least twenty-five (25) feet from the street right of way;
 - iv) No detached signs shall be permitted to create a hazard or obstruction to vehicular or pedestrian circulation or to interfere with traffic sight lines;
 - v) All detached signs shall be fixed in place and of a permanent nature. Such signs shall not be revolving nor of an animated nature, nor shall they contain flashing lights.
- c) A maximum of two (2) signs on each lot identifying the name of the company and product or services rendered shall be allowed. These signs shall not exceed a surface area of one hundred (100) square feet in each sign and shall be located only on the face of the building or free-standing, within fifteen (15) feet of the ground level at the location of the sign. Illuminated signs shall be erected so as not to create a nuisance to abutting properties or safety hazards on adjacent public streets.

§ 122 Temporary or Portable Signs

- 1) A temporary or portable sign is defined as any movable sign not permanently attached to the ground, a building or other permanent fixture on a parcel of land; banners, pennants and spinners shall be considered temporary or portable signs. A sign on a registered motor vehicle is not defined as a sign within the meaning of this section; however, motor vehicles used solely as a temporary sign shall apply. Temporary or portable signs shall be used for the following purposes only:
 - a) new business enterprises;
 - b) celebration of the anniversary date of a new business enterprise;
 - c) business enterprises which have lost the use of an existing sign by reason of fire or other catastrophe.
- 2) Temporary and portable signs shall be permitted only in the **AR-1, C-1, C-2 and M zones**. In no instance will they be permitted to be so located that they will interfere with the sight distance of traffic passing through a heavily traveled intersection, as determined by the Highway Superintendent and Zoning Enforcement Officer.
- 3) No temporary or portable sign shall be more than five (5) feet by eight (8) feet in size.
- 4) Portable signs shall conform to the front yard setback requirement in as much as the signs shall not be allowed to encroach on the public sidewalk or the Town street right of way. Signs shall in no instance be placed within the public right of way so as to interfere with the sight distance at a heavily traveled intersection or with the free passage of pedestrians on the public sidewalk.

Commented [JS11]: Advertising signs?

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- 5) No permanent, temporary or portable sign shall be illuminated by flashing lights of any kind or color.
- 6) Application must be submitted and, if approved, the sign will be permitted for no longer than thirty (30) days. There will be no charge for the application.

§ 123 Window Signs

No signs erected or maintained on the window of a building shall occupy more than thirty percent (30%) of the area of said window.

§ 124 Political Signs

Temporary signs in support of a political party or candidate are permitted in all zones in the Town of Dunkirk. Signs may be erected up to three (3) weeks prior to the election and must be removed within seven (7) calendar days following the election. No political sign shall exceed thirty-two (32) square feet in size. No political signs shall be permitted in the public right of way or easements. Violations of this section on political signs shall be chargeable to the property owner, owning the site and location on which the sign is located.

Article XVII - Adult Entertainment Facilities

§ 125 Purpose

The operation of adult entertainment facilities may have serious operational characteristics and damaging effects upon their surroundings as a result of their siting and concentration within the facilities. Special regulations pertaining to these uses are necessary to ensure adverse effects will not contribute to the blighting/downgrading of the surrounding neighborhood. These regulations will help ensure that adverse effects on the public health, safety, morals, comfort, convenience and general welfare are mitigated.

The development and proliferation of adult entertainment facilities without .regulation as to siting and concentration may result in the deterioration of residential and business neighborhoods. If placed near schools and other youth related facilities, adult entertainment facilities may adversely effect upon the welfare and morals of minors residing within the Town of Dunkirk.

§ 126 Location of Adult Entertainment Facilities

The following provisions shall apply to the location of adult entertainment facilities:

- 1) adult entertainment facilities shall be permitted in C-2 Commercial Zones upon approval of a special permit;
- 2) no adult entertainment facilities shall be permitted within five hundred feet of any area zoned for residential use;
- 3) no adult entertainment use shall be permitted within one thousand feet of the following:
 - a) a school;
 - b) a religious institution;
 - c) a public park or public recreation facility.