

Town of New Scotland

ALBANY COUNTY

NEW YORK

ZONING LAW

Local Law # 2

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Planning Consultants



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**ZONING LAW
OF THE
TOWN OF NEW
SCOTLAND**

A law regulating and restricting the height, number of stories, and size of buildings and other structures, their construction, alteration, extension, repair, maintenance and all facilities in or about such buildings and structures, the percentage of lot that may be occupied, the size, depth, and width of yards and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, manufacturing, residence or other purposes; providing for the appointment of a Zoning Board of Appeals and setting forth the duties and functions of said Board; and providing for the administration and enforcement of this Law and Laws of the State of New York.

Article I. Title and Purpose

§1.000. Short Title

This Law shall be known and cited as the "Town of New Scotland Zoning Law".

§1.100. Purpose

This Law is adopted pursuant to the laws of the State of New York in order to protect and promote the health, safety and welfare of the community. The regulations, administrative procedures, enforcement mechanisms and penalties have been prescribed to implement the policies of the Comprehensive Land Use Plan of the Town of New Scotland, as may be edited and amended by the Town of New Scotland.

§1.200. Interpretation

In this interpretation and the application of the provisions of this Law, they shall be held to be the minimum requirements for the promotion of the public health, safety, morals and general welfare. It is not intended to interfere with or abrogate or annul

other rules, regulations or laws, including those of the State of New York and the County of Albany, provided that where this Law imposes greater restrictions upon the use of buildings or premises, or upon the height or bulk of a building, or requires larger open spaces, the provisions of this Law shall control.

§1.300. Validity

If any section, subsection, sentence, clause or phrase of this Law is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this Law.

§1.400. Controlling Regulation

Where provisions of this chapter impose greater restrictions than those of any statute, other law, or regulation, the provisions of this chapter shall be controlling. When the provisions of any statute, other law or regulation impose greater restrictions than the law, the provisions of such statute, other law or regulation shall be controlling.

Article II. Establishment and Designation of Districts

§2.000. Zoning Map and Districts

The zoning map officially entitled "Town of New Scotland Zoning Map" dated 1980 is hereby adopted as part of this law. The Town of New Scotland Zoning Map shows a division of the Town into the following districts:

"R-F" - Residential-Forestry
"R-A" - Residential
Agricultural
"LDR" - Low Density
Residential
"R-H" - Residential - Hamlet
"C-H" - Commercial - Hamlet
"Com" - Commercial
"Ind" - Industrial
"R-Com" - Rural Commercial

§2.100. Copies of Zoning Map

Regardless of the existence of other printed copies of the zoning map,

which from time to time may be made or published, the official zoning map which shall be on file with the Town Clerk shall be the final authority as to the current zoning status of the land and water areas, buildings, and other structures in the town.

§2.200. Interpretation of District Boundaries

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the zoning map, the following rules shall apply:

2.201. Unless otherwise shown, the district boundaries shall be construed to coincide with the center lines of streets, roads, highways, and/or waterways, or such lines extended.

2.202. Where such boundaries are indicated as approximately following the property or jurisdictional lines of publicly owned lands or municipalities, such lines shall be construed to be such boundaries.

2.203. Where the boundary of a district follows a railroad line, such boundary shall be deemed to be located in the middle of the main track or tracks of said railroad line except where the map clearly shows it to be one side or the other.

2.204. Where district boundaries are so indicated that they are approximately parallel to the center lines of streets, roads, highways, or railroad track or tracks, such district boundaries shall be construed as being parallel thereto and at such distances therefrom as indicated on the zoning map.

2.205. In all other cases, where not dimensioned, the location of boundaries shown on the map shall be determined by the use of the scale appearing thereon.

2.206. In all cases where district boundary divides a lot in single or joint ownership and where 50

percent or more of the area of such lot lies in the less restricted district, the regulations described by this Law for the less restricted district shall apply to the remainder of said lot up to a distance of not more than 30 feet. For the purposes of this Section, the more restricted district shall be deemed that district which is subject to regulations which prohibit the particular use intended to be made of said lot or which regulations require higher standards with respect to coverage, yards, screening, landscaping and similar requirements.

§2.300. Lots

2.301. Minimum Lot Size. Except as explicitly defined in this Law, no division of land may be made whereby any lot created is smaller than the minimum size permitted in the district in which said lot is located, or has less width, setback

or yard space than the minimum required.

2.302. Corner Lots and Lots with Double Frontage. Lots which border on and adjoin more than one street shall provide minimum road frontage on one street and minimum front setback on every street adjoined, as required by this Law.

2.303. Building Location. All structures, except unattached accessory structures as regulated in Section 3.304 of this Law, whether open or enclosed including porches, carports, balconies, or platforms above normal grade level, shall not project into any minimum front or side yard or rear setback.

2.304. Pre-Existing Lots. Any lot in existence prior to the effective date of this Law, single and separate in ownership from that of

any adjacent land, which does not meet the description of 3.406, may be granted an area variance by the Board of Appeals for the construction of an otherwise permitted structure. Such variance shall include conditions of approval established by the Board of Appeals such as reductions in front, side and rear setbacks and lot frontage.

§2.400. District Objectives and Land Use Controls

The following tables state the objectives of each district and the regulations for each district.

No building or land shall hereafter be used or occupied and no building or part thereof shall be erected, moved or altered unless in conformity with the regulations herein specified for the district in which it is located.

2.401. "R-F" Residential-Forestry Statement of Purpose:

The forestry area contains soils and slopes that are not desirable for agricultural use. It contains less desirable soils for urban development than the Residential-Agricultural and Low Density Residential area. The permitted uses therefore, are designated as forest land where forest management practices are carried out, agricultural production where practical, single-family homes at a density not to exceed one residence per three acres, outdoor recreational activities, and other low density uses desirable for rural areas. The purpose of this district is to encourage constructive development of land to retain areas for non-intensive uses, to prevent intensive development of land where it would be a burden to the town and to retain the present character of the town.

Minimum Lot Size		Minimum Lot Area Per Family in Square Feet	Minimum Yard Dimensions in Feet Each Side		
Area in Acres	Width in Feet		Front	Yard	Rear
3	200	125,000	50	50	50

Add 30 feet front yard setback on state roads to be measured from the right-of-way lines where a plan of the right-of-way is on file with the County Clerk, or in the absence of such a plan, from a line 25 feet from and parallel with the center line of the travelled way.

Permitted Uses

1. Forestry
2. Agriculture-farms and nurseries, (more than 5 acres) including display, sale of products raised, except hog, pig and fur-bearing animals
3. Single-family dwelling
4. Private non-profit and public outdoor recreational facilities
5. Accessory uses
6. Essential services
7. Less than 5 acres - horses (private) (max. 3)
8. Home Occupation

Special Uses

1. Two-family dwelling
2. Removal of fill, gravel or loam
3. Temporary sawmill
4. Water recreation and water storage
5. Summer camps and retreats
6. Churches and cemeteries
7. Private non-profit and public recreational buildings
8. Essential service building
9. Boarding and riding stable and/or kennels
10. Hog, pig and fur-bearing animals
11. Radio or transmission towers

2.402. "R-A" Residential-Agricultural**Statement of Purpose:**

The Residential-Agricultural district generally has soils and slopes suitable for development. For reasons of access: soils, slopes and contemplated community facilities and utilities, such lands should not be built upon at a high density. The Residential-Agricultural district is designated to accommodate houses at a low density for people who wish to live in a rural atmosphere without interfering with prime agricultural areas. The continuation of forestry and agricultural activities and low intensity uses are encouraged. Density may be increased if public water of sewer is provided.

*Class	Minimum Lot Size		Minimum Lot Area Per Family in Square Ft.	Minimum Yard Dimensions in Feet		
	Area in Sq. Ft.	Width in Feet		Front	Each Side Yard	Rear
1	20,000	100	20,000	40	25	30
2	40,000	140	40,000	40	25	30

Add 30 feet front yard setback on state roads to be measured from the right-of-way lines where a plan of the right-of-way is on file with the county clerk, or in the absence of such a plan, from a line 25 feet from and parallel with the center line of the travelled way.

Permitted Uses

1. Forestry
2. Agriculture-farms and nurseries, (more than 5 acres) including display, sale of products raised, except hog, pig and fur-bearing animals
3. Single-family dwelling
4. Private non-profit and public outdoor recreational facilities
5. Accessory uses
6. Essential services
7. Less than 5 acres - horses (private max. 3)
8. Two family dwellings
9. Home Occupation

Special Uses

1. Cemeteries
2. Water impoundment for recreation and storage
3. Churches and cemeteries
4. Essential service buildings
5. Boarding and riding stable
6. Hog, pig and fur-bearing animals
7. Multi-family dwellings
8. Mobile home park
9. Private airport
10. Animal hospital and/or kennels
11. Private non-profit and public recreational buildings

*** Type of Utility:**

Class 1 - Public water and sewer

Class 2 - On-lot water and/or sewage disposal

2.403. "LDR" Low Density Residential

Statement of Purpose:

The low density residential areas generally have suitable soils and slopes for urban development, are accessible to other population centers, are feasible of being served with public water and sewer and are generally outside the prime agricultural area. The purpose of this district is to accommodate growth where it can be provided with adequate facilities and utilities at densities attractive to development, to free prime agricultural areas from scattered development.

*Class	Minimum Lot Size		Minimum Lot Area Per Family in Square Feet	Minimum Yard Dimensions in Feet Each Side		
	Area in Square Feet	Width in Feet		Front	Yard	Rear
1	20,000	100	15,000	40	25	30
2	30,000	130	15,000	40	25	30

Add 30 feet front yard set back on state roads to be measured from the right-of-way lines where a plan of the right-of-way is on file with the county clerk, or in the absence of such a plan, from a line 25 feet from and parallel with the center line of the travelled way.

Permitted Uses

1. Agriculture-farms and nurseries, (more than 5 acres) including display, sale of products raised, except hog, pig and fur-bearing animals
2. Single-family dwelling
3. Private Non-profit and public outdoor recreational facilities
4. Accessory uses
5. Essential services
6. Home Occupation

Special Uses

1. Two-family dwellings
2. Multi-family dwelling
3. Essential service buildings
4. Hospitals and clinics
5. Nursing and convalescent homes
6. Hotels-Motels
7. Eating and Drinking Establishments
8. Planned unit developments
9. Less than 5 acres -horses (Private) (max. 3)
10. Water improvement for recreation and storage
11. Private non-profit and public recreational building
12. Churches and cemeteries
13. Boarding and riding stables

*** Type of Utility:**

Class 1 - Public water and sewer

Class 2 - On-lot water and/or sewage disposal

2.404. "R-H" Residential-Hamlet

Statement of Purpose:

Residential Hamlet is for residential type uses where higher densities of development are compatible with the existing character of the neighborhood.

*Class	Minimum Lot Size		Minimum Lot Area Per Family in Square Feet	Minimum Yard Dimensions in Feet Each Side		
	Area in Square Feet	Width in Feet		Front	Yard	Rear
1	10,200	100	7,500	30	15	30
2	20,000	100	10,000	30	15	30

Permitted Uses

1. Agriculture-farms and nurseries, (more than 5 acres) including display, sale of products raised, except hog, pig and fur-bearing animals
2. Single-family dwelling
3. Accessory uses
4. Essential services
5. Private Non-profit and public outdoor recreational facilities
6. Home Occupation

Special Uses

1. Two-family dwellings
2. Multi-family dwelling
3. Essential service buildings
4. Hospitals and clinics
5. Nursing and convalescent homes
6. Private Non-profit and public recreational buildings
7. Water impoundment for recreation and water storage
8. Churches and cemeteries
9. Public or private schools
10. Semi-public uses
11. Professional building
12. Rooming house
13. Agricultural uses - less than 5 acres
14. Less than 5 acres - horses (private max. 3)
15. Non-profit lodges and social halls

*** Type of Utility:**

Class 1 - Public water and sewer

Class 2 - On-lot water and/or sewage disposal

2.405. "C-H" Commercial - Hamlet

Statement of Purpose:

This is a district in the center of the Hamlet and is designed to continue the rural town character. It provides services and shopping opportunities to the residents of the Hamlet and to visitors. It is a district that is designed to promote the pleasant residential characteristics and shopping environment of a small village.

COMMERCIAL

Minimum Lot Size	Yard Dimensions		Maximum Building Area for Each Store	Minimum Yard Dimensions		
	Minimum Lot Width	Minimum Depth		Front	Side Yard	Rear
20,000 sq. ft.	100 ft.	100 ft.	2,000 sq. ft.	30	15	30

RESIDENTIAL

*Class	Minimum Lot Size		Minimum Lot Area Per Family in Square Feet	Minimum Yard Dimensions in Feet Each Side		
	Area in Square Feet	Width in Feet		Front	Yard	Rear
1	10,000	100	7,500	30	15	30
2	20,000	100	10,000	30	15	30

Permitted Uses

1. Retail businesses
2. Business office
3. Banks
4. Accessory use
5. Essential services
6. Mortuary funeral home
7. Eating and drinking establishments

Special Uses

1. Automobile service station or filling station
2. Religious institution
3. Community center
4. Private non-profit and public recreation
5. Private club
6. Parking area
7. Single-family dwelling
8. Multi-family dwelling
9. Auto sales and service
10. Two family dwellings

*** Type of Utility:**

Class 1 - Public water and sewer

Class 2 - On-lot water and/or sewage disposal

2.406. "COM" Commercial

Statement of Purpose:

These areas permit business development in the Town. These areas have to be relatively large to provide for a selection of stores and adequate parking.

COMMERCIAL

Minimum Lot Size Area in Square Feet	Width in Feet	Minimum Yard Dimensions In Feet		
		Front	Each Side Yard	Rear
10,000	100	50	15	15

RESIDENTIAL

*Class	Minimum Lot Size		Minimum Lot Area Per Family in Square Feet	Minimum Yard Dimensions in Feet		
	Area in Square Feet	Width in Feet		Front	Each Side Yard	Rear
1	10,000	100	7,500	30	15	30
2	20,000	100	10,000	30	15	30

Permitted Uses

1. Agriculture-farms and nurseries, (more than 5 acres) including display, sale of products raised, except hog, pig and fur-bearing animals
2. Accessory uses
3. Essential services
4. Banks
5. Eating and drinking establishments
6. Motels, hotels, and/or Inns
7. Theaters
8. Clinics
9. Commercial recreation
10. Office, private or public
11. Retail business
12. Professional services

Special Uses

1. Single-family dwelling
2. Two-family dwelling
3. Multi-family dwelling
4. Essential service buildings
5. Churches and cemeteries
6. Public buildings
7. Automobile service stations or filling stations
8. Auto sales and service
9. Shopping facilities consisting of more than one store
10. Car washes
11. Parking Lots
12. Illuminated signs
13. Home occupation

*** Type of Utility:**

Class 1 - Public water and sewer

Class 2 - On-lot water and/or sewage disposal

2.407. "Ind" Industrial

Statement of Purpose:

This area provides for the establishment of industrial facilities, warehousing and related activities. This area has easy access with water and sewer services, or is where they are available. A variety of types of manufacturing and offices are permitted, provided they are in keeping with the goals of the community.

INDUSTRIAL

Minimum Lot Size		Minimum Yard Dimensions		
Area in Square Feet	Width in Feet	Front	In Feet Each Side Yard	Rear
75,000	200	40	25	50

RESIDENTIAL

*Class	Minimum Lot Size		Minimum Lot Area Per Family in Square Feet	Minimum Yard Dimensions in Feet		
	Area in Sq. Ft.	Width in Feet		Front	Each Side Yard	Rear
1	10,000	100	7,500	30	15	30
2	20,000	100	10,000	30	15	30

Permitted Uses

1. Agriculture-farms and nurseries, (more than 5 acres) including display, sale of products raised, except hog, pig and fur-bearing animals
2. Essential services
3. Accessory uses
4. Public facilities
5. Offices
6. Wholesale businesses
7. Any manufacture, compounding, processing, packing, treatment, warehousing or storage of goods and products, provided the use meets standards of the State of New York

Special Uses

1. Commercial and retail uses servicing the industrial area
2. Research and testing laboratories
3. Industrial parks
4. Animal hospital
5. Single-family dwelling
6. Public garages
7. Warehousing and trucking terminal
8. Essential service buildings
9. Illuminated signs
10. Auto wrecking facilities

*** Type of Utility:**

Class 1 - Public water and sewer

Class 2 - On-lot water and/or sewage disposal

2.408. "R-COM" Rural Commercial District

Statement of Purpose:

The purpose of the Rural Commercial District is to provide select areas in the Town where retail and service businesses may be located which are dependent on automobile borne customers primarily for the convenience of surrounding residents. The design standards are intended to permit individual lots and buildings as well as limited shopping plazas. In all circumstances, the site planning and building designs are intended to coordinate traffic flow, parking, building orientation, landscaping, drainage, and other similar factors.

Applicability:

The standards of the Rural Commercial District shall apply to all land shown on the "Official Zoning Map of the Town of New Scotland" as being located within the Rural Commercial District.

*Class	Minimum Lot Size		Minimum Yard Dimensions in Feet		
	Area in Square Feet	Width in Feet	Front	Each Side Yard	Rear
1	10,890	90	40**	25***	25***
2	43,560	180	40**	25***	25***

Permitted Uses

1. Retail Stores, up to 5,000 square feet each.
2. Professional Offices
3. Neighborhood Grocery/Convenience Stores
4. Municipal Buildings and Facilities except for solid waste disposal and sewerage disposal systems.

Special Uses

1. Automobile service, Gasoline, or Filling Station
2. Religious Institution
3. Restaurants
4. Drive-In Establishments
5. Private Clubs
6. Personal Service Outlets excluding dry cleaners or any services requiring the use of Hazardous Substances at or above reportable quantities as listed in the code of federal regulations, Title 40, Chapter 1, Part 302, Designation, Reportable Quantities, and Notification
7. Illuminated Signs

Secondary Uses

The following secondary uses in the Rural Commercial District to complement any primary permitted use.

1. Accessory uses and structures.
2. Essential services needed to meet the demands of development within this zone.

*** Type of Utility:**

- Class 1 - Public water and sewer
- Class 2 - On-lot water and/or sewage disposal

** 40 feet is the minimum setback for all uses without parking in front. 75 feet is the maximum setback for all uses without parking in front. For all uses with parking in front, an 80 foot setback is required with a 35 foot landscaped parking setback from the front property line.

*** Except where additional buffers are required.

Additional Requirements:

- Maximum building coverage ratio 0.50
- Maximum impervious surface ratio 0.75
- Maximum Building Height 35 feet
- Minimum usable open space 0.25
- Minimum distance between principal buildings on the same site 15 feet

Additional Standards:

1. Any principal building may contain more than one principal use and/or organization provided that the total building coverage of the combined activities does not exceed the maximum building coverage ratio for the district.

2. No merchandise, products, equipment, advertising or similar material or other objects are to be displayed or stored outside the structure except permitted signs and commercial vending machines.

3. All building walls facing

any street or residential district line are to be suitably finished for aesthetic purposes as determined by the Planning Board. All buildings in small shopping or office plaza clusters are to be compatibly designed whether constructed all at one time or in stages over a period of time.

designed whether constructed all at one time or in stages over a period of time.

4. All areas not utilized for buildings, parking, loading, access and driveways, or pedestrian walkways are to be maintained in good condition and suitably landscaped with trees, shrubs, ground covers, lawns, or similar plantings.

5. Parking is not allowed in the area between the principal building front face and the pavement edge of any street or road unless an eighty (80) foot setback is provided for any structure, and a thirty-five (35) foot landscaped strip is maintained between any parking area and any property line abutting any street or road. This applies for corner lots with two street faces. Parking is encouraged to locate within side yards where practical.

6. Front setbacks and side yards are to be landscaped in accordance with any landscape requirements of this Law. At least the first twenty feet adjacent to any street line and ten feet adjacent to any side or rear lot line is to be landscaped with trees, shrubs and groundcovers.

7. A minimum buffer area of fifty (50) feet in width is to be maintained along any common property line with a residential district or dwelling in use in accordance with any buffer standards outlined in this Law.

8. Parking lots and service areas are to be paved in accordance with the pavement requirements of this Law.

9. Existing lots of record having one hundred eighty (180) feet or less of frontage on a street will be limited to one point of vehicular access to the street to service all development on the lot

including the division of the lot into additional lots.

10. Existing lots of record having more than one hundred eighty (180) feet but less than five hundred (500) feet of frontage on a street will be limited to two (2) points of vehicular access to the street to service all development on the lot including the division of the lot into additional lots.

11. Existing lots of record having five hundred (500) feet or more of frontage on a street will be limited to two (2) points of vehicular access to the street for up to one thousand (1,000) feet of frontage, plus one additional point of access to the street for each additional five hundred (500) feet of frontage on the street or portion thereof. These points of access shall service all development on the lot, including the division of the lot into additional lots.

12. Prior to the division of all or any portion of any existing lot of record having a gross lot area of five (5) acres or more or five hundred (500) or more of street frontage, the owner is required to file a Master Development Plan (Plan) with the Planning Board. The Planning Board will review the plan and determine its acceptability.

a. A Plan is to be prepared in accordance with §4.300 and §4.400 of this Law.

b. A Plan should be conceptual in nature. It must identify major development opportunities and constraints associated with the site. This information is to be prepared by a registered architect, landscape architect, or registered professional engineer.

c. In addition to the requirements contained in §4.300 and §4.400 of this Law, a Plan shall show, in conceptual

manner, natural drainage features, environmentally sensitive areas, prime development areas, and other significant man-made and natural features.

Article III. General Provisions

The following provisions shall apply to all districts except where listed:

§3.000. Open Space Requirement

Open space shall be required for any subdivision in compliance with the subdivision regulations of the Town of New Scotland, (except Cluster Development. At least ten (10) percent of the area of any commercial or industrial development may be required to be retained in usable open space for common usage with appropriate landscaping. Open space shall not include parking areas or roadways.

§3.100. Parking

Parking. Off-street parking spaces shall be provided in accordance with the specifications in this section in any district whenever any new use is established or existing use is enlarged.

Use of parking areas. Parking areas are to be used for vehicle parking only with no sales, dead storage, repair work, dismantling or service of any kind. The required parking areas are to be permanently available for the use by patrons and employees of establishments providing such spaces.

Public, off-street parking in lieu of on-site parking may be utilized to fulfill parking requirements when provided for this purpose.

Handicap parking spaces are to be supplied in accordance with Part 1102 of the General Building Construction section of the State of New York Building Code.

Parking Requirements

Use	Minimum Parking Spaces Required
Residential (1 and 2 family)	2 per dwelling unit
Church and school	1 per 3 seats in principal assembly room
Private club or lodge	1 per 4 members
Theater	1 per 3 seats
Hospital, nursing and convalescent homes	1 per 3 beds and 1 for each employee based on the expected average employee occupancy
Professional offices and business services, and medical clinics	1 for every 250 sq. ft. of gross leasable area
Retail business and personal service establishments	1 for each 180 sq. ft. of gross leasable space
Eating and drinking establishments	1 for every 3 seats and 1 for each 2 employees
Industrial	1 for each 400 sq. ft.
Funeral Homes	1 for each 75 sq. ft. of floor space in slumber rooms, parlors, and individual service rooms
Multi-family dwelling	1 1/2 per unit plus 1 per additional 10 units

§3.101. *Design of Off-Street parking Facilities.* The following parking area design standards shall apply:

a. Each parking space is to contain a rectangular area which complies with the table titled "Parking Lot Sizes and Dimensions".

b. Lines demarcating parking spaces may be drawn at various angles in relation to curbs or aisles, so long as the parking spaces so created contain within them the rectangular area required by this section.

c. Driveways providing access to parking aisles must be at least ten (10) feet in width for one-way traffic and twenty (20) feet in width for two-way traffic, except that eighteen (18)

foot wide driveways are permissible for two-way traffic when the driveway is not longer than fifty (50) feet, it provides access to not more than six (6) spaces, and sufficient turning space is provided so that vehicles need not back onto a public street.

d. Each off-street parking area is to have a landscaped area equivalent to one (1) parking space for every thirty (30) parking spaces which is to be located to allow for no more than fifteen (15) cars in a row without a break. Said spaces are to be landscaped with shrubs no higher than three feet over at least half their surface and canopy trees of a minimum of 2 1/2" caliper with branches no lower than seven (7) feet. A minimum of one (1) canopy tree per equivalent

landscape space is required. Such landscape spaces are to be distributed throughout the parking area in order to break the view of long rows of cars in a manner not impairing visibility. Parking lot landscaping of this nature is not to be construed as meeting any other landscaping, screening and/or buffering requirements of this Law.

e. A screen planting of appropriate plant material not less than three feet in height is to be provided between off-street parking areas and any lot line except where a building intervenes or where the distance between such areas and the lot line is greater than one hundred fifty (150) feet.

Parking Lot Sizes and Dimensions

	Stall Width	Stall to Curb (19' stall)	Aisle Width	Curb Length Per Car
90°	9.0'	19.0'	24.0**	9.0'
60°	9.0'	21.0'	18.0'	10.4'
45°	9.0'	19.8'	13.0'***	13.4'
30°	9.0'	17.3'	11.0'***	18.0'
0°	9.0'	9.0'	12.0'	23.0'

* Two-way circulation

** One-way circulation

§3.200. Off Street Loading

Off-street loading shall be spaced logically, conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off-street parking spaces are filled, and shall be provided for all commercial and industrial uses. Required off-street loading space is not to be included as off-street parking space.

§3.201. Off Street Loading. The following off-street loading design standards shall apply:

- A. Whenever the normal operations of any development requires that goods, merchandise, or equipment be delivered to or shipped from that development, a sufficient off-street loading and unloading area is to be provided in accordance with this section to accommodate the delivery or shipment operations in a safe and convenient manner.
- B. The loading and unloading area must be of sufficient size to accommodate the numbers and types of vehicles that are likely to use this area, given the nature of the development in question. The following indicates the number and size of spaces that, presumptively, satisfy the standard set forth in this subsection. The Planning Board may require more or less loading and unloading area if reasonably necessary to satisfy the foregoing standard.

Gross Leasable Area of Building (S.F.)	# of Spaces*
5,000-79,999	1
80,000-127,999	2
128,000-191,999	3
192,000-255,999	4
256,000-319,999	5
320,000-391,999	6

Plus one space for each additional seventy-two thousand (72,000) square feet or fraction thereof.

*A minimum distance of twelve (12) feet x fifty-five (55) feet and overhead clearance of fourteen (14) feet from street grade is required.

- C. Loading and unloading areas are to be located and designed such that the vehicles intended to use them can maneuver safely and conveniently to and from a public right-of-way and complete the loading and unloading operations without obstructing or interfering with any public right-of-way or any parking space or parking lot aisle.
- D. No area allocated to loading and unloading facilities may be used to satisfy the area requirements for off-street parking, nor shall any portion of any off-street parking area be used to satisfy the area requirements for loading and unloading facilities.
- E. Whenever: a) there exists a lot with one or more structures on it constructed before the effective date of this code, and b) a change in use not involving any enlargement of a structure is proposed for such lot, and c) the loading area requirements of this section cannot be satisfied because there is insufficient area available on the lot that can practicably be used for loading and unloading, then the developer need only comply with this section to the extent reasonably possible.
- F. All loading areas are to be landscaped and/or screened sufficiently to obscure the view of the parked vehicles and loading platforms from any public street, adjacent residential land uses or districts and the front setbacks of any commercial uses.

§3.202. Pavement Requirements. The following pavement design standards shall apply:

- A. Off-street parking areas and loading areas including access aisles, driveways and fire lanes are to be paved as outlined below. Alternate pavement methods of an equivalent quality may be permitted subject to approval by the Town Engineer:

1. Areas of ingress and egress, loading and unloading areas, major interior driveways or access aisles and other areas likely to experience similar heavy traffic are to be paved with not less than six (6) inches of suitable subbase material in compliance with NYSDOT Standard Specification Type 4 equivalent gravel.

Areas with poor soil conditions may require additional subbase material per Town Engineers recommendation. Under extremely soft soil conditions, a soil stabilization fabric may also be deemed necessary and required after review by the Town Engineer.

All areas of heavy duty pavement will be surfaced with a bituminous material unless and equivalent is approved by the Town Engineer. Bituminous surfacing is to consist of one (1) inch of compacted Type 7 or 7F NYSDOT equivalent top course and a three (3) inch compacted Type 1 NYSDOT equivalent base course for a total compacted bituminous material thickness of at least four (4) inches. Should unsuitable subsurface soil conditions exist, additional bituminous base course may be required as per Town Engineers recommendation.

2. Parking stall areas and other areas likely to experience similar light traffic are to be paved with not less than six (6)

inches of NYSDOT Type 4 equivalent gravel.

Bituminous surfacing is to be used unless an equivalent is approved by the Town Engineer. Bituminous surfacing is to consist of one (1) inch of compacted Type 7 or 7F NYSDOT equivalent top course and a two (2) inch compacted Type 3 or Type 1 NYSDOT equivalent binder or base course for a total compacted bituminous material thickness of at least three (3) inches. Should unsuitable subsurface soil conditions exist, additional bituminous binder or base course may be required as per Town Engineers recommendation.

3. All parking areas, regardless of size and location, shall be suitably drained and maintained with slopes on paved surfaces established between two (2) percent and eight (8) percent in parking stall areas and with driveway grades no greater than twelve (12) percent grade.

4. All off-street parking lots are to be adequately demarcated with painted lines or other markings to indicate traffic flow and parking spaces.

5. Granite, concrete and/or precast concrete curbing is to be installed, as required, to adequately control storm water runoff and to delineate and protect other site features including but not limited to sidewalks, ingress and egress locations, landscaped islands and planting beds, parking and loading areas, and at intersections with town, county or state roads. The appropriateness of curbing shall be reviewed and approved by the Town Planning Board and/or its consultant.

All concrete curbing will have a 28 day compressive strength

of 4,000 psi. Expansion joints are to be provided at intervals not to exceed twenty (20) feet and are to be sealed. Curb vertical face exposure is to be at least six (6) inches above the pavement surface.

Granite curbing is to be constructed to show a vertical face above the pavement surface of at least six (6) inches.

§3.300. Yard and Height Regulations

3.301. Coverage. In all districts, structures may not cover more than 30 percent of the lot except in Com or C-H Districts, where commercial uses shall not cover more than 50 percent of the lot and R-Comm Districts where coverage is uniquely specified. In planned development projects, although individual lots may exceed this requirement, the overall project may not.

3.302. Height Regulations. In the case of single-family dwelling, no building shall exceed two and one half (2.5) stories, with a maximum height of thirty-five (35) feet.

In the case of a building other than a single-family dwelling, including commercial and industrial buildings, no building or part thereof shall exceed three (3) stories with a maximum height of forty-five (45) feet, except church spires or belfries, windmills, solar panels, silos and smoke stacks. No such structure shall hinder solar access of any adjacent parcel of land.

3.303. Front Yard Setback. Notwithstanding provisions for front yards elsewhere in these regulations, on streets with less than fifty (50) foot right-of-way or where the right-of-way line is not known, the front yard requirement shall be measured from the centerline of the existing roadway and twenty five (25) feet shall be added to the front yard requirement.

3.304. Accessory Structures. Maximum permitted height-unattached structure - Twenty (20) feet, except that the maximum permitted height may be increased up to thirty (35) feet if lot size is three or more acres and front, side and rear setbacks are each at least fifty (50) feet.

Maximum yard regulations - Unattached accessory structures in all districts. Accessory structures unattached to a principal structure may be erected provided such structures are not located within the front setback, or within five (5) feet of any property line.

Attached accessory structures in all districts. When an accessory structure is attached to the principal building, it shall comply in all respects with the requirements of this Law applicable to the principal building.

Non-residential accessory structures. Non-residential accessory structures shall comply with front and side yard requirements for the principal structure to which they are accessory and shall not be closer to any rear property line than ten (10) feet.

§3.400. Non-Conformance

3.401. Continuation and Prior Approval. A use, building or structure, lawful prior to the adoption or subsequent amendment of this Law, may continue, although not in conformance with this Law. Nothing herein shall require any change in the plans, construction or designated use of a structure in compliance with previous laws, or for which a final permit had been duly granted prior to the date of adoption of this Law or any applicable amendment thereto.

3.402. Maintenance and Enlargement of Non-conforming Structures. A structure in lawful existence prior to the adoption or subsequent amendment of this Law

that meets the use regulations but does not meet yard, setback and/or height regulations of the district in which it is located, may be repaired and maintained. Such a nonconforming structure may be reconstructed, extended, added on to, substituted or structurally altered provided the proposed construction project conforms in all possible respects to the height, setback, use and yard requirements of this Law, and does not increase the degree of any nonconformity.

3.403. Regulation of Nonconforming Uses. Except as provided herein, no nonconforming use may be enlarged, extended, reconstructed, substituted or structurally altered.

3.403.1. Change of Use

- A. A nonconforming use may not be changed into another nonconforming use.
- B. A nonconforming use may be changed into a conforming use in accordance with this Law.

3.403.2. Repairs, Maintenance or Structural Additions to a Non-Conforming Use

- A. Normal maintenance, repairs and alterations incidental to a building or other structure containing a nonconforming use is allowed, provided it does not extend the area or volume of space occupied by the nonconforming use.
- B. A building or other structure containing a residential nonconforming use may be altered in any way to improve interior livability, provided that no alterations shall be made which would increase the number of dwelling units or square footage.
- C. A building or other structure containing a residential nonconforming use may be the site of a minor exterior

structural addition or alteration, such as the addition of an unenclosed porch, deck, stairway, or enclosed accessory structure, or other similar facility provided that such proposed construction conforms in all respects to the affected district's height, setback and yard requirements and does not increase the degree of any yard, volume of space, parking or other nonconformity of the property.

- D. With special authorization from the Planning Board, the inspector may allow up to 25% expansion of a nonconforming use. A larger expansion would require an area variance from the ZBA. Special authorization shall be solicited from the applicant by submitting the following documentation at least two weeks (14 days) prior to the Planning Board meeting at which it is to be introduced, on forms prescribed by the Inspector:

1. A completed application form, containing the applicant's name, address and interest in the property; the name of the owner of the subject property (if different from the applicant); the subject property address; the current zoning district classification and present use of the subject property.

2. A written general description of the proposed project.

3. Ten (10) copies of a site plan, at a scale of one (1) inch to fifty (50) feet or less as may be required by the Inspector, which shall display:

- a. A north arrow, property boundary lines, scale and date.

- b. All proposed buildings, fencing, paving, sidewalks, storage areas, curbing,

parking and loading areas, access drives, exterior lighting, open space areas, recreational facilities, landscaping, utilities, drainage, signs, storm water facilities, typical building elevations, site contours and general building layout or floor plan and any other planned improvements.

3.404. Termination of a Non-Conforming Use

3.404.1. Abandonment. The discontinuance of a nonconforming use for a period of one (1) year shall be considered an abandonment thereof and such nonconforming use shall not be revived. Occupancy of a residential structure shall require that the structure be occupied and/or operated for at least one thirty (30) consecutive day period. In the case of a commercial or institutional use, occupancy shall require that the structure be occupied and/or operated for a sufficient time period to indicate that the property in question is employed for a legal actual and viable business or not-for-profit enterprise.

3.404.2. Change of Use. The change of a nonconforming use to a conforming use for any period of time shall be considered an abandonment of the nonconforming use and such nonconforming use shall not be revived.

3.405. Damage or Destruction

3.405.1. Partial Damage

- A. Where any structure containing a non-conforming use is partially damaged or destroyed by any means to the extent of fifty percent (50%) or less of the cost of replacement of the structure new, repairs may be made to reconstruct the structure and use as it existed prior to the damage. No repairs or restorations shall be made which increase the

degree of any yard, volume of space, parking or other nonconformity existing prior to the damage. In all cases they may be allowed to lessen the degree of nonconformity.

- B. In the event said structure remains vacant due to partial damage, the owner or agent shall have one (1) year to apply for a building permit. In the event the building remains vacant for one (1) year without application for a building permit, it shall constitute an abandonment and such nonconforming use shall not be revived.

3.405.2. Substantial Damage or Destruction of a Non-conforming Use. In the event that any structure containing a nonconforming use is substantially damaged or destroyed, by any means, to the extent of more than fifty percent (50%) of the cost of replacement of such structure new, such structure shall not be restored unless the structure and use thereof shall conform to all current regulations of this Law.

3.405.3. Substantial Damage or Destruction of a Non-Conforming Structure. In the event that any non-conforming structure is substantially damaged or destroyed, by any means, to the extent of more than fifty percent (50%) of the cost of replacement of such structure new, such structure shall not be restored unless the structure and use thereof shall conform to all current regulations of this Law.

3.406. *Nonconforming lots.* A nonconforming lot officially subdivided prior to the effective date of this Law may be utilized as if it were a conforming lot provided that all of the following conditions are met:

- A. The proposed use is allowed within the district under the provisions of this Law.

- B. The proposed use and structure will conform to all requirements of the appropriate district including all space, bulk and setback requirements, excluding lot size, frontage and width to depth ratio. Fifteen (15) foot minimum frontage is required on a public road.

- C. The use conforms to all other applicable local, county, state and federal land use regulations including New York State SEQRA requirements.

- D. The site possesses adequate water and sewer capacity as verified by the Albany County Department of Health, as required.

§3.500. Temporary Structures

Temporary structures used in conjunction with construction work shall be permitted only during the period that the construction work is in progress. Permits for temporary structures shall be issued for six-month periods by the Building Inspector.

§3.600. Signs

Signs may be erected and maintained only when in compliance with the provisions of this Article and any and all other laws and regulations relating to the erection, alteration or maintenance of signs and similar devices. Flashing signs are prohibited in all districts.

3.601. *Signs in Residential Districts*

3.601.1. Single-family homes and accessory home occupations and professions, and trades. One sign not over two (2) square feet in area.

3.601.2. Other Permitted Uses

- A. In LDR and R-H Districts not more than two (2) signs pertaining to a permitted use with a total area of not more than ten (10) square feet each.

- B. In R-A Districts, not more than two (2) signs pertaining to a permitted use with a total area of not more than twelve (12) square feet each.

- C. In R-F Districts, not more than two (2) signs pertaining to a permitted use with a total area of not more than sixteen (16) square feet each.

No sign permitted by this Section shall extend above a peak roof line or a parapet wall, whichever is the higher.

3.601.3. For Sale Signs. In addition to any signs authorized by the preceding sections, one (1) temporary, unlighted sign not over six (6) square feet in area pertaining to lease or sale of the property on which it is displayed shall be permitted.

3.602. *Signs in Industrial, Commercial and Hamlet Districts*

3.602.1. Business Signs (Including Temporary Signs). Not more than three (3) signs, not to exceed a total combined area of fifty (50) square feet, attached flat against the wall of the building, advertising the name of the firm or the goods or services available or produced on the premises. No sign shall project above a peak roof line or a parapet wall, whichever is the higher.

3.602.2. Detached Signs (Including Temporary Signs). One (1) sign, not attached to the building, advertising the name of the firm or goods or services available or produced in each separate business establishment and not to exceed twenty-five (25) square feet in area including the area of both sides if both used for pedestrian or vehicular traffic. The sign setback shall be not less than half (1/2) of the building setback.

3.602.3. The total sign area of all permitted signs for one permitted use under Sections 3.602.1 and

- C. The project is consistent with any advisory guidelines the Planning Board may adopt, for the Town as a whole, or tailored to specific geographic areas, such as hamlet areas or commercial corridors, as necessary to further implement the policies contained in the Town's Comprehensive Land Use Plan.

§4.600. Determination

4.601. *Denial.* If the Planning Board determines that the proposed use would not comply with the requirements of this Law and in particular with the standards stated in Section 4.500, it shall deny the application.

4.602. *Approval.* If the Planning Board determines that the proposed use will comply with this Law and in particular with the standards stated in Section 4.500, the Board shall grant a special use permit for the proposed use.

4.603. *Conditional Approval.* In rendering its decision, the Board shall issue a written decision that shall include any reasonable additional conditions imposed on the proposed use by the Board to prevent or minimize any potentially adverse impacts of the proposed use on adjacent properties or the surrounding neighborhood. Such conditions may incorporate the standards set forth in Section 4.500. Such conditions shall only go as far as to minimize or mitigate any adverse impacts directly associated with the use in question and the conditions imposed may not have the primary effect of benefiting the Town.

§4.700. Action on the Application

Upon making a determination on the application for a special use permit, the Planning Board shall file its decision with the Town Clerk and inform the Inspector. If the application for a special use permit is approved, the Inspector

will issue a written permit to the applicant, containing the Planning Board's written explanation of any special conditions of the permit. If the Planning Board disapproves the application, the Inspector shall not issue a building or use permit to the applicant but shall supply a copy of the Planning Board's written notice of the disapproval to the applicant.

§4.800. Effect of Issuance

The issuance of a Special Use Permit shall not authorize the establishment or extension of any use, nor the development, construction, reconstruction, alteration, or moving of any building or structure, but shall merely authorize the processing of applications for any permits or approvals which may be required by Town, County or State codes. Where applicable, the review of a Special Use Permit application shall replace Site Plan Review that otherwise would be required under Section 5.000 Site Plan Review.

§4.900. Limitations on Special Use Permits

- A. A Special Use Permit shall authorize only the use described in the approved application and permit materials.
- B. A Special Use Permit shall be valid upon date of Planning Board approval.
- C. A Special Use Permit shall not expire upon change in property ownership or property transfer.

§4.1000. Expansion or Alteration of Special Use Permit

A new special use permit shall be required prior to issuance of any permit to extend, alter or vary the permitted Special Use as described in permit documents. Applications for such a permit shall follow the application review procedures described in this Article.

§4.1100. Expiration of Special Use Permit

- A. A Special Use Permit shall expire if the use for which it was granted shall cease for more than one (1) year.
- B. Where a building permit is required in connection with a special use permit, it must be applied for and obtained within one (1) year of the special use permit approval, and remain active and renewed as necessary through completion and issuance of a certificate of occupancy, use or compliance, to avoid expiration of the special use permit. One or more extensions of time, not to exceed one (1) year each, may be granted by the Planning Board to extend the life of a Special Use Permit, provided the facts which supported granting the permit have not materially changed.

§4.1200. Exceptions

The requirements for a special use permit shall not apply to any use lawfully existing as of the effective date hereof.

§4.1300. Existing Violations

No special use permit shall be issued for a property whereon there exists a violation of this Law, or upon which a violation would exist if a special permit were to be issued, other than that explicitly approved by special use permit, except for a showing of extraordinary circumstances and a specific finding relative to such showing by the Planning Board.

Article V. Special Regulations

§5.000. Site Plan Review

The purpose of Site Plan Review is to provide for the review and approval of development plans to ensure that land development occurs in harmony with surrounding uses, without causing adverse impacts to neighboring

3.602 shall not exceed seventy-five (75) square feet including all used sides.

3.603. General Sign Regulations

3.603.1. Sign Area. The maximum areas for signs set forth in this Article shall apply to a single side of any such sign and the use of two sides of such sign is permitted and when so used be considered as one (1) sign so long as the interior angle formed by the two display surfaces shall not exceed fifteen (15) degrees.

3.603.2. Height of Detached Signs. No sign, not attached to a building, shall exceed twenty-five (25) feet in height.

3.603.3. Illuminated Signs Stationary or revolving illuminated signs are permitted in industrial and all commercial districts by special use permit only.

3.603.4. Exterior Lighting. Exterior lighting of buildings or grounds is permitted in commercial and industrial districts only, provided such lighting be from shaded sources and be so located that beams are not directed toward any residential property or a public highway.

§3.700. Home Occupations

Any home occupation as defined in this Law, shall be permitted as an accessory use in residential districts if it complies with the requirements of this section.

The home occupation shall be carried on by a member of the family residing in the dwelling unit only. Two employees who are not part of the family are permitted.

The home occupation shall be carried on entirely within the dwelling.

Exterior displays or signs other than those permitted under Section 3.600. Signs, exterior storage of

materials, and exterior indication of the home occupation or variation from the residential character of the principal structure shall not be permitted.

Objectionable circumstances such as noise, vibration, smoke, dust, electrical disturbance, odors, heat or glare shall not be permitted.

No traffic shall be generated by such home occupation in greater volumes than would normally be expected in the neighborhood.

Parking shall be provided off-street and shall not be located in front yards except with special use permit.

§3.800. Proposed Streets

After a line of a future street is placed on the official map of the Town, buildings shall be set back from such line as though it were a street line.

§3.900. Storage of Motor Homes, Boats, Trailers and Trucks

No motor home, boat, trailer or truck shall be placed in the front yard or side yard in any district. In addition, when such vehicles or boats are stored elsewhere, they shall be stored in a manner that is not obnoxious.

Article IV. Special Use Permits

§4.000. Purpose

The purpose of Special Use Permits is to provide for evaluation and approval of uses, beneficial and allowable within a particular zoning district, provided certain controls and conditions are implemented and/or exist. A Special Use Permit shall not involve the varying of this Law, but rather assurance of compliance with provisions stated, which make Special Use Permits compatible with other allowed uses within the zoning district.

§4.100. Applicability

A building, structure, or parcel of land may be employed for a special use if the use is specifically listed as a special use in the regulations governing the zoning district, and if a special permit is approved by the Planning Board in accordance with this section.

§4.200. Optional Preapplication Procedure

Prior to filing a Special Use Permit application as per Section 4.300, a prospective applicant may, at their discretion, make a preapplication. This submission shall not be considered an official submission, but shall be for the purpose of establishing in advance, insofar as possible, the extent to which the proposed use concept is consistent with this Law and the Town's Comprehensive Land Use Plan.

4.201. Optional Preapplication Submission Requirements

A. An acceptable presubmission shall include the following:

1. A sketch site plan, substantially to scale, showing existing and proposed buildings, roads, drives, parking areas and utilities, and the relationship of physical site elements to buildings or lots within fifty (50) feet of the property line of the site.

2. A narrative explaining the nature of the proposed special use to the Inspector.

B. As soon as practically feasible, the Inspector shall transfer the sketch site plan and narrative to the Chair of the Planning Board. A preapplication conference shall be scheduled by the Chair to take place at a regular meeting of the Planning Board, no less than fifteen (15) days, nor more than forty-five (45) days from the date a sketch site plan is received by the Inspector. The applicant

shall be provided at least five (5) days notice of the meeting by the Inspector.

- C. The applicant shall be present to participate in the preapplication conference. Upon mutual agreement between the Planning Board and the applicant or applicant's agent, a preapplication conference may be re-scheduled exceeding the time limits established in Section 4.201.B.

4.202. Preapplication Review

- A. Upon review of a sketch site plan, the Planning Board may determine to waive or modify any of the application requirements of Section 4.300, if the Board deems such information unnecessary or extraneous to review of the project proposed in the sketch site plan. However, the Planning Board reserves the right to require any application components waived as a result of the sketch site plan review process, in the event a project concept submitted in the Special Permit application has been changed from that represented on the sketch site plan.
- B. Record of the presubmission conference and a copy of the sketch site plan and narrative statement shall be recorded in the minutes of the Planning Board. Action taken by the Planning Board at the preapplication conference shall be binding on the Planning Board provided the concepts approved at the preapplication conference do not interfere with the project's overall compliance with this Law and other applicable County, State and federal laws and requirements.

§4.300. Special Use Permit Application Procedure

A special permit application shall be filed with the Inspector by the owner or owner's agent, at least two weeks (14 days) prior to the Planning Board meeting at which it is to be introduced, on forms prescribed by the Inspector. A non-refundable special permit application fee, as set forth by the Town Board shall accompany each application. A special permit application shall contain the following to be deemed complete:

- A. A completed application form, containing the applicants name, address and interest in the property; the name of the owner of the subject property (if different from the applicant); the subject property address; the current zoning district classification and present use of the subject property.
- B. A written general description of the proposed project, the number of buildings to be constructed or converted, their present and proposed uses and the number and type (resident, employee, or etc.) of occupants anticipated to be accommodated by the project after completion.
- C. Ten (10) copies of a site plan, at a scale of one (1) inch to fifty (50) feet or less as may be required by the Inspector, which shall display:
1. A north arrow, property boundary lines, scale and date.
 2. Existing structures within two hundred (200) feet of the property boundaries and an indication of any water bodies or other sensitive environmental features lying within two hundred (200) feet of the site.
 3. All proposed buildings, fencing, paving, sidewalks, storage areas, curbing,

parking and loading areas, access drives, exterior lighting, open space areas, recreational facilities, landscaping, utilities, drainage, signs, storm water facilities, typical building elevations, site contours and general building layout or floor plan and any other planned improvements.

4. Wells and effluent treatment systems serving the site and documentation of preliminary approval by the Albany County Department of Health, N.Y. State Health Department or Department of Environmental Conservation, or where these agencies have no authority, evidence that a Town Designated Engineer has reviewed and approved the proposed system.

5. The following site information shall be required and may be provided on the site plan or on additional drawings, as appropriate:

a. Location of any water bodies, floodplains, wetlands or other potentially sensitive environmental features.

b. Location of topographic slopes in excess of 15% grade.

c. Location of exposed bedrock and other significant geological features.

D. A statement and documentation, as may be required by the Planning Board, or other section of this Law, or other relevant Town code, describing the intended method of ownership and maintenance of open space.

E. Copies of any applications or reports as required to comply with the State Environmental Quality Review Act.

F. Other elements integral to the proposed development necessary as determined by

the Planning Board to carry out the intent of this Law, including, but not limited to, environmental testing.

- G. The names and mailing addresses of all owners within five hundred (500) feet of the property to which the application applies.

§4.400. Application Hearing

Within forty-five (45) days of receipt of a complete special permit application, the Planning Board shall hold a public hearing to receive comments on the application. Notice shall be provided by the Planning Board in accordance with §274-a of N.Y. State Law and any amendments thereof.

§4.500. Planning Board Action on Application

After considering the evidence presented at the public hearing and after making any further investigations considered necessary to ensure compliance with this code, the Planning Board shall determine whether or not to grant a special permit for the proposed use by applying the following standards:

- A. Operations in connection with the proposed use will not be more objectionable to nearby properties by reason of noise, odors, vibration, illumination, or other potential nuisance, than the operation of any allowed use in the particular district; and
- B. General site standards:
1. Community infrastructure and services, including protective services, roadways, garbage collection, schools, and water and sewer facilities, are currently, or will be, of adequate capacity to accommodate the proposed use.
 2. The proposed site possesses adequate soil

capacity and natural features to safely support proposed facilities and structures, including water and septic services at the site.

3. The proposed use, building design, and site layout complies with all applicable provisions of the Zoning Law, as well as any other Town, State or federal laws or standards.

4. Vehicular and pedestrian traffic patterns associated with the proposed use will be appropriate and satisfactorily established and managed for the area involved. Factors for the Planning Board to consider in making this determination include turning movements in relation to traffic flow, proximity to and relationship to intersections, adequacy of sight distances, location and access of off-street parking, provision for pedestrian traffic, capacity of existing roads, and minimizing pedestrian-vehicular contacts.

5. The proposed use, design and layout will be of such a location, size, and character, that it will be in harmony with the appropriate and orderly development of the surrounding area.

6. The proposed location and height of buildings or structures, walls and fences, parking, loading and landscaping shall be such that it will not significantly impact appropriate development of land adjacent to the proposed site.

7. In areas where there are patterns and similarities in the scale and design of neighborhood structures, the scale, design and material of the proposed structure(s) shall be compatible with existing structures within five hundred (500) feet of the site.

8. Adequate screening, landscaping, exterior lighting, signs and architectural design, compatible with the neighborhood, and of appropriate size and style will be provided to protect neighborhood properties within five hundred (500) feet of the site from any adverse impacts that might result from the proposed use.

9. The development will reflect the natural capabilities of the site to support such a use. Buildings, lots and support facilities will be clustered in those portions of the site that have the most suitable conditions for development. Environmentally sensitive areas, such as wetlands, steep slopes, floodplains, and unique natural features, will be maintained and preserved.

10. The existing landscape will be preserved in its natural state in so far as practical by minimizing tree removal, disturbance and compaction of soil and the project will provide adequate landscaping to define street edges and break up parking areas.

11. As appropriate, recreation areas and open space sufficient to meet the needs of users and residents will be provided, owned and managed in accordance this Law.

12. The proposed use has been approved by all other governmental entities and agencies which have jurisdiction.

13. The proposed use will comply with the requirements of the State Environmental Quality Review Act.

14. Proper facilities are to be installed in compliance with any applicable storm water management plan or storm water management requirements.

parcels, property values, public facilities, infrastructure or the natural environment.

5.001. Applicability

- A. Prior to approval of a building permit for any project to which this section applies, a site plan must be approved by the Planning Board and filed with the Town Clerk.
- B. The requirements of this section shall apply to the following projects only if a special use permit is not required and whether or not such development includes a subdivision or resubdivision of a site:
 - 1. All commercial, industrial, educational, municipal facility or institutional development;
 - 2. All new multiple dwellings;
 - 3. Any expansion, or successive expansions within a three (3) year period, of an existing commercial or industrial property or multiple dwelling which involves cumulatively increasing the gross floor area of an existing structure by more than twenty (20) percent, provided such expansion involves at least five hundred (500) square feet;
 - 4. Any conversion of an existing residential structure to a nonresidential use;
 - 5. Conversion or modification of any existing structure into a structure containing three (3) or more dwelling units;
 - 6. Any new development or expansion of a mobile home park;
 - 7. Any change of an existing nonresidential building from one type of use to another (i.e. conversion of a commercial structure to an

industrial facility);

- C. This section does not apply to the construction of single family homes, two family dwellings and agricultural or forest management buildings or structures.

5.002. Optional Preapplication Procedure. Prior to filing a Site Plan application as per Section 5.005, a prospective applicant may, at their discretion, make a preapplication. This submission shall not be considered an official submission, but shall be for the purpose of establishing in advance, insofar as possible the extent to which the proposed use concept is consistent with this Law and the Town's Comprehensive Land Use Plan.

5.003. Optional Preapplication Submission Requirements

- A. An acceptable preapplication shall consist of a sketch site plan, substantially to scale, showing existing and proposed buildings, roads, drives, parking areas and utilities, and the relationship of physical site elements to buildings or lots within fifty (50) feet of the property line of the site.
- B. As soon as practically feasible, the Inspector shall transfer the sketch site plan to the Chair of the Planning Board. A preapplication conference shall be scheduled by the Chair to take place at regular meeting of the Planning Board, no less than fifteen (15) days, nor more than forty-five (45) days from the date a sketch site plan is received by the Inspector. The applicant shall be provided at least five (5) days notice of the meeting by the Inspector.
- C. The applicant or the applicant's agent shall be present to participate in the preapplication conference. Upon mutual agreement

between the Planning Board and the applicant or applicant's agent, a preapplication conference may be re-scheduled exceeding the time limits established in Section 5.003.B.

5.004. Preapplication Review

- A. Upon review of a sketch site plan, the Planning Board may determine to waive or modify any of the application, requirements of Section 5.003.B., if the Board deems such information unnecessary or extraneous to review of the project proposed in the sketch site plan. However, the Planning Board reserves the right to require any application components waived as a result of the sketch site plan review process, in the event a project concept submitted in the Site Plan application has been changed from that represented on the sketch site plan.
- B. Record of the preapplication conference. A copy of the sketch site plan and discussion of same, shall be recorded in the minutes of the Planning Board. Action taken by the Planning Board at the preapplication conference shall be binding on the Planning Board provided the concepts approved at the preapplication conference do not interfere with the project's overall compliance with this Law and other applicable County, State and federal laws and requirements.

5.005. Site Plan Application Procedure. A site plan application shall be filed with the Inspector by the owner or owner's agent, at least two weeks (14 days) prior to the Planning Board meeting at which it is to be introduced, on forms prescribed by the Inspector. A non-refundable site plan application fee, as set forth by the Town Board shall accompany each application.

A site plan application shall contain the following to be deemed complete:

- A. A completed application form, containing the applicants name, address and interest in the property; the name of the owner of the subject property (if different from the applicant); the subject property address; the current zoning district classification and present use of the subject property.
- B. Ten (10) copies of a site plan, at a scale of one (1) inch to fifty (50) feet or less as may be required by the Inspector, which shall display:
 - 1. A north arrow, property boundary lines, scale and date.
 - 2. Existing structures within two hundred (200) feet of the property boundaries and an indication of any water bodies or other sensitive environmental features lying within two hundred (200) feet of the site.
 - 3. All proposed buildings, fencing, paving, sidewalks, storage areas, curbing, parking and loading areas, access drives, exterior lighting, open space areas, recreational facilities, landscaping, utilities, drainage, signs, storm water facilities and any other planned improvements.
 - 4. Wells and effluent treatment systems serving the site and documentation of preliminary approval by the Albany County Department of Health, N.Y. State Health Department or Department of Environmental Conservation, or where these agencies have no authority, evidence that a Town Designated Engineer has reviewed and approved the proposed system.

5. The following site information shall be required and may be provided on the site plan or on additional drawings, as appropriate:

- a. Location of any water bodies, floodplains, wetlands or other potentially sensitive environmental features.
- b. Location of topographic slopes in excess of 15% grade.
- c. Location of bedrock and other significant geological features.
- C. A statement and documentation as may be required by the Planning Board or other section or this Law or other relevant Town law describing intended method of ownership and maintenance of open space.
- D. Copies of any applications or reports as required to comply with the State Environmental Quality Review Act.
- E. Other information determined by the Inspector or Planning Board as necessary to review the development for compliance with this Law, including but not limited to building elevations, fences, plant materials, and elevations and elevations and front views of all signs to be employed at the project.
- F. Application for a Site Plan Approval shall be accompanied by a fee in accordance with the fee schedule established by the Town Board.

5.006. Application Hearing. Upon receipt of a complete site plan application, the Inspector shall refer the application to the Planning Board. The Planning Board shall review the site plan application and, within forty-five (45) days of receipt, the Planning Board may schedule a public hearing to receive comments on the application.

5.007. Planning Board Action on Application. The Planning Board shall review the project to determine consistency with the following standards:

A. Site design:

- 1. Community infrastructure and services, including protective services, roadways, garbage collection, schools, and water and sewer facilities, are currently, or will be, of adequate capacity to accommodate the proposed use.
- 2. The proposed site possesses adequate soil capacity and natural features to safely support proposed facilities and structures, including water and septic services at the site.
- 3. The proposed use, building design, and site layout complies with all applicable provisions of the Zoning Law, as well as any other Town, State or federal laws or standards.
- 4. Vehicular and pedestrian traffic patterns associated with the proposed use will be appropriate and satisfactorily established and managed for the area involved. Factors for the Planning Board to consider in making this determination include turning movements in relation to traffic flow, proximity to and relationship to intersections, adequacy of sight distances, location and access of off-street parking, provision for pedestrian traffic, capacity of existing roads, and minimizing pedestrian-vehicular contacts.
- 5. The proposed use, design and layout will be of such a location, size, and character, that it will be in harmony with the appropriate and orderly development of the surrounding area.

6. The proposed location and height of buildings or structures, walls and fences, parking, loading and landscaping shall be such that it will not significantly impact appropriate development of land adjacent to the proposed site.

7. In areas where there are patterns and similarities in the scale and design of neighborhood structures, the scale, design and material of the proposed structure(s) shall be compatible with existing structures within five hundred (500) feet of the site.

8. Adequate screening, landscaping, exterior lighting, signs and architectural design, compatible with the neighborhood, and of appropriate size and style will be provided to protect neighborhood properties within five hundred (500) feet of the site from any adverse impacts that might result from the proposed use.

9. The development will reflect the natural capabilities of the site to support such a use. Buildings, lots and support facilities will be clustered in those portions of the site that have the most suitable conditions for development. Environmentally sensitive areas, such as wetlands, steep slopes, floodplains, and unique natural features, will be maintained and preserved.

10. The existing landscape will be preserved in its natural state in so far as practical by minimizing tree removal, disturbance and compaction of soil and the project will provide adequate landscaping to define street edges and break up parking areas.

11. As appropriate, recreation areas and open space sufficient to meet the needs of users and residents

will be provided, owned and managed in accordance this Law.

12. The proposed use has been approved by all other governmental entities and agencies which have jurisdiction.

13. The proposed use will comply with the requirements of the State Environmental Quality Review Act.

14. Proper facilities are to be installed in compliance with any applicable storm water management plan or storm water management requirements.

B. The Planning Board shall review the site plan for consistency with any advisory guidelines the Planning Board may adopt, for the Town as a whole, or tailored to specific geographic areas, such as hamlet areas or commercial corridors, as necessary to further implement the policies contained in the Town's Comprehensive Land Use Plan.

5.008. Determination. The Planning Board shall either approve, approve with conditions or disapprove the application within forty-five (45) days after such hearing. If there is no public hearing held, the Planning Board shall either approve, approve with conditions or disapprove the application within forty-five (45) days of receipt of a complete application. The time within which the Planning Board must render its decision may be extended by mutual consent of the applicant and the Planning Board.

In acting on a site plan application, the Planning Board may issue any one of the following decisions:

A. Approval. Upon approval of the site plan, the Planning Board shall endorse a copy of

the site plan and immediately file it with the Town Clerk. The Inspector shall notify the applicant of approval.

B. Conditioned Approval. Upon conditioned approval of the site plan, the Planning Board shall issue a written statement to the applicant, indicating the modifications which are required prior to approval of the site plan. After adequate demonstration to the Planning Board that all conditions will be met, the Planning Board shall endorse its approval on a copy of the site plan and shall immediately file it with the Town Clerk, along with the written statement containing modifications required by the Planning Board. The applicant shall be transmitted a copy of same.

C. Disapproval. Upon disapproval of the site plan, the decision of the Planning Board shall immediately be filed with the Town Clerk and a copy thereof mailed to the applicant.

5.009. Action on the Application. Upon making a determination on the application for a Site Plan Permit, the Planning Board shall file its decision with the Town Clerk and inform the Inspector. If the application for a Site Plan Permit is approved, the Inspector will issue a written permit to the applicant, containing the Planning Board's written explanation of conditions of the permit, if any. If the Planning Board disapproves the application, the Inspector shall not issue a building or use permit to the applicant but shall supply a copy of the Planning Board's written notice of the disapproval to the applicant.

5.010. Effect of Issuance. The issuance of a Site Plan Permit shall not authorize the establishment or extension of any use, nor the development,

construction, reconstruction, alteration, or moving of any building or structure, but shall merely authorize the processing of applications for any permits or approvals which may be required by Town, County or State codes.

5.011. Limitations on Site Plan Permits. A Site Plan Permit shall not be valid for a period longer than one (1) year from the date of issuance if a building permit for all improvements necessary to initiate the site plan has not been issued. If a building permit has been issued within the first year, and construction is diligently pursued to completion within the third year, the Site Plan Permit shall remain in full force. In the event construction has not been completed three (3) years from the date of permit issue, the Site Plan Permit shall expire, unless extended by the Planning Board. The Inspector shall be responsible to carry out any administrative or enforcement duties related to the expiration of a Site Plan Permit.

5.012. Expansion or Alteration of Site Plan Permit. A Site Plan Permit authorizes only the activity expressly described in the application and approved permit materials. A new Site Plan Permit shall be required prior to the issuance of any permit for any expansion, alteration or variation of a use already authorized. A request for such a permit shall be subject to the application and review procedures described in this Article.

5.013. Failure to Take Action on Application. Failure of the Planning Board to render a decision within the prescribed time limits shall constitute approval by the Planning Board.

§5.100. Planned Unit Development

The Planned Unit Development regulations are intended to provide for new residential, commercial or manufacturing uses in which economies of scale, or creative architectural or planning concepts

may be utilized by the developer without departing from the spirit and intent of this Law. In no case shall the regulations of this Article be so interpreted as to circumvent the benefits of this Law for the owners or residents of such development, or the owners or residents of adjacent properties.

The purpose of Planned Unit Development shall be to encourage development which will result in:

- A. A choice in the types of environment and living units available to the public and quality in residential land uses so that development will be a permanent and long-term asset to the Town.
- B. Open space and recreation areas.
- C. A pattern of development which preserves unique natural features such as but not limited to outstanding natural topography and geologic features and prevents soil erosion.
- D. An efficient use of land resulting in smaller networks of utilities and streets.
- E. An environment in harmony with surrounding development.
- F. A more desirable environment than would be possible through the strict application of other sections of the Law.
- G. Creation of new hamlets when needed to prevent the sprawl of the residential area.
- H. Encourage energy efficiency.

5.101. Establishment of a Planned Unit Development District. Application for the establishment of a Planned Unit Development District by amendment of the Town Zoning Law shall be made in writing to the Town Board. Application shall be made by the owner(s) of the land(s) to be

included in the district, or by a person or persons holding an option to purchase the lands contingent only upon approval of the application for the change of zone.

The Town Board shall refer the application to the Planning Board. The Planning Board may require such changes in the preliminary plans as are found to be necessary or desirable to meet the requirements of this Law to protect the established or permitted uses in the vicinity, and to promote the orderly growth and sound development of the community. The Planning Board shall notify the applicant of such changes and may discuss the changes with the applicant.

The Planning Board shall approve, approve with modification, or disapprove the application and shall report its findings to the Town Board. Planning Board approval of the preliminary plans shall not constitute nor imply approval of a building project for the area included in the application.

Following receipt of the report of the Planning Board, the Town Board shall hold a public hearing on the application. The Town Board shall then either amend the law to establish the Planned Unit Development District or reject the application.

5.101.1 Planned Unit Development Standards. In all Planned Unit Development the following standards shall apply:

- A. The area of land to be developed shall not be less than twenty-five (25) acres.
- B. All Planned Unit Developments shall comply with the Town's Comprehensive Land Use Plan. The predominant use of the land shall not differ substantially from the uses permitted in the immediate vicinity.

C. All Planned Unit Developments shall have a gross maximum density of one family per 10,000 square feet.

D. At least twenty-five (25) percent of the area of the Planned Unit Development shall be retained in usable open space for common usage.

5.101.2 Required Data. The applicant shall furnish with the petition for the desired zoning change basic data, including a map at a scale sufficient to show the boundaries of the proposed Planned Unit Development District, existing zoning, topography, drainage and soil conditions, and such preliminary plans as may be required for an understanding of the proposed development and such additional information as may be required by the Planning Board and/or Town Board.

5.102 Establishment of a Building Project within a Planned Unit Development District. Upon the establishment of a Planned Unit Development District by the Town Board, no building or land shall be used in that District except by a special permit as provided in this Law under Article IV. Special Uses.

§5.200. Cluster Development

Proposals for Cluster Projects shall be submitted to the Building Inspector who shall submit copies to the Planning Board. The Planning Board shall have 45 days to review such plans. The material accompanying the proposal shall contain a site plan showing all buildings, parking landscaping at the scale sufficient to permit the study of all elements in the plan. All utilities shall also be shown and described. Typical elevations and floor plans of all buildings may also be required. In addition, the site plans shall show adjacent building outlines and other outstanding features within 200 feet. Surrounding property

ownership should be identified. The Planning Board possesses the power to approve or deny any proposal for a Cluster Development. This power is commensurate with subdivision plat approval, also the responsibility of the Planning Board. By reviewing Cluster Development in the form of a subdivision plat, the Planning Board is able to modify provisions of the Zoning Law subject to the following conditions:

- A. The proposal is of benefit to the Town.
- B. The proposed density does not exceed that permitted in the district where such development is to be located.
- C. Any proposed uses are permitted in the districts where such development is to be located.

After reviewing the project, the Planning Board must hold a public hearing (the same hearing required under subdivision review.) If the subdivision plat incorporating the Cluster Project is approved and filed, the Town Clerk must note the necessary changes on the Zoning Law and zoning map.

The purpose of Cluster Development shall be to encourage a development which will result in:

- A. A choice in the types of environment and living units available to the public and quality in residential land uses so that development will be a permanent and long-term asset to the Town.
- B. Open spaces and recreation areas.
- C. A pattern of development which preserves unique natural features such as but not limited to trees, outstanding natural

topography and geologic features and prevents soil erosion.

- D. An efficient use of land resulting in smaller networks of utilities and streets.
- E. An environment in harmony with surrounding development.
- F. A more desirable environment than would be possible through the strict application of other sections of the law.

The area of the land to be developed shall not be less than six contiguous acres. Lot size, width, front yard depth, and side yard requirements may be waived; however, these will be evaluated by the Planning Board on their individual merit.

A Cluster Development shall incorporate at least 30 percent usable open space.

§5.300. Essential Services

Public utility services shall include electric substations, transformers, switches, and auxiliary apparatus serving a distribution area, and water and sewage pumping stations in all districts and shall be subject to the following regulations:

5.301. Such facility shall not be located on a residential street or highway (unless no other site is available), and shall be so located as to draw to a minimum of vehicular traffic to and through such streets.

5.302. The location, design and operation of such facility may not adversely affect the character of the surrounding residential area.

5.303. Adequate fences, barriers and other safety devices shall be provided and shall be landscaped.

§5.400. Mobile Homes

5.401. Mobile Home Parks. Each mobile home court or park located within the Town shall be subject to the following regulations.

- A. Such facility shall be situated on a minimum parcel of five acres of land.
- B. Each mobile home shall be situated on a space of not less than five thousand (5,000) square feet in area and at least fifty (50) feet in width and one hundred (100) feet in depth.
- C. Surface drainage shall be such that it will not subject adjoining properties, streets or highways to improper, undirected drainage.
- D. Such mobile home court or park shall not be closer than five hundred (500) feet to an R-H district and 200 feet from any permanent residential building located outside the mobile home court.
- E. Each mobile home shall abut on a roadway of not less than thirty (30) feet in width with a pavement width of not less than eighteen (18) feet. Each mobile home shall have a minimum setback of thirty (30) feet from any roadway center line.
- F. All access pavements and parking berths shall be provided with a dust proof surface.
- G. Each mobile home space or berth shall have a potable water connection, a sewage disposal connection, and an electrical power source.
- H. All sewage shall be discharged into a public or private sewer system and/or disposal system approved by the Albany County Health Department.

- I. Roadway or area lighting shall be reflected away from adjoining property, streets and highways.
- J. A site plan at an appropriate scale as determined by the Planning Board, showing roadways, parking berths, services structures and facilities, drainage, landscaping, lighting and provision for sanitary facilities shall be filed with the application for a permit.
- K. The permit for a mobile home park shall be renewable each year. The fee for a mobile home park permit shall be as outlined in the Town of New Scotland Fee Schedule and shall be paid to the Town Building Inspector at the time of approval or renewal.
- L. A mobile home dwelling within a mobile home park in lawful existence prior to the adoption or subsequent amendment of this Law may be maintained, repaired, reconstructed, extended, added on to, substituted structurally altered or may be the site of a minor exterior structural addition or alteration, such as the addition of an unenclosed porch, deck, stairway, or enclosed accessory structure, or other similar facility provided that such proposed construction conforms in all respects to the affected district's height, setback and yard requirements and does not increase the degree of any yard, volume of space, parking or other nonconformity of the property. Section 3.404 and 3.405 governing Termination, Damage or Destruction of a Nonconforming Use shall apply to mobile home dwellings.

5.402. Mobile Homes Outside of Mobile Home Parks.

- A. The installation of a mobile home outside a specified mobile home park is prohibited.
- B. A mobile home dwelling located outside of a mobile home park in lawful existence prior to the adoption or subsequent amendment of this Law may be maintained, repaired, structurally altered or may be the site of a minor exterior structural addition or alteration, such as the addition of an unenclosed porch, deck, stairway, or accessory structure, or other similar facility provided that such proposed construction conforms in all respects to the affected district's height, setback and yard requirements and does not increase the degree of any yard, volume of space, parking or other nonconformity of the property. Section 3.404 and 3.405 governing Termination, Damage or Destruction of a Nonconforming Use shall apply to mobile home dwellings.

With special authorization from the Planning Board, the inspector may allow up to a 25% expansion of a mobile home outside a mobile home park. A larger expansion would require an area variance from the ZBA.

Special authorization shall be solicited from the applicant by submitting the following documentation at least two weeks (14 days) prior to the Planning Board meeting at which it is to be introduced, on forms prescribed by the Inspector.

- 1. A completed application form, containing the applicant's name, address and interest in the property; the

name of the owner of the subject property (if different from the applicant); the subject property address; the current zoning district classification and present use of the subject property.

2. A written general description of the proposed project.

3. Ten (10) copies of a site plan, at a scale of one (1) inch to fifty (50) feet or less as may be required by the Inspector, which shall display:

a. A north arrow, property boundary lines, scale and date.

b. All proposed buildings, fencing, paving, sidewalks, storage areas, curbing, parking and loading areas, access drives, exterior lighting, open space areas, recreational facilities, landscaping, utilities, drainage, signs, storm water facilities, typical building elevations, site contours and general building layout or floor plan and any other planned improvements.

§5.500. Swimming Pools

Swimming pools shall be permitted as an accessory use to one and two family dwellings and shall be regulated as follows:

A. A building permit will be required for construction of a non-portable swimming pool in the Town. Application for such a permit shall be made in writing to the Building Inspector and shall include an accurate plot plan of the lot on which the pool is to be built. The plot plan shall include the location of existing structures, lot lines and the proposed pool fencing.

B. The pool shall be located so as to conform to the yard restrictions as set forth in the zone it is located in with the

exception of the rear yard setback. Swimming pools shall not be constructed nearer than fifteen (15) feet to the rear property line, nor less than ten (10) feet distant from the principal structure and shall not occupy more than 10% of the area of the lot on which it is located.

C. Outdoor swimming pools shall be provided with an enclosure which shall comply with the following:

1. Shall be at least 4 feet in height and have a maximum vertical clearance of grade of 2 inches.

2. Where a picket-type fence is provided, horizontal openings between pickets shall not exceed 4 inches.

3. Where a chain-link fence is provided, the openings between links shall not exceed 2-3/8 inches.

4. Enclosure shall be constructed so as not to provide footholds.

5. Pickets and chain-link twists shall extend above the upper horizontal bar.

6. Such enclosure shall have railings and posts within the enclosure, which shall be capable of resisting a minimum lateral load of 150 lbs. applied midway between posts and at top of posts respectively. Enclosure, fence material or fabric shall be capable of withstanding a concentrated lateral load of 50 lbs. applied anywhere between supports on an area 12 inches square, without failure or permanent deformation. Gates provided in the enclosure, shall be self-closing and self-latching with the latch handle located within the enclosure and at least 40 inches above grade.

7. A wall of a dwelling is permitted to serve as part of the enclosure under the following conditions:

a. Windows in the wall shall have a latching device at least 40 inches above the floor.

b. A swinging door in the wall, shall be self-closing and self-latching.

c. A sliding door in the wall, shall have a self-latching device.

8. Exemptions:

a. Aboveground pools with at least 45 inches between pool decking or pool top and adjoining grade, are exempt from the requirements of Sub-section C, provided that their access ladder steps can be blocked in an approved manner when not intended for use.

b. A pool less than 24 inches deep is exempt from the requirements of Part C.

D. Swimming pool wastes. Where sewage from the sanitary drainage system is disposed of through a private sewage disposal system, swimming pool wastes shall not be discharged into the regular sanitary drainage system but shall discharge through an independent sanitary drainage and disposal system.

E. Any electrical installations in connection with or in the vicinity of the pool shall be accomplished by a qualified electrician and shall be inspected by the Town Building Inspector or his designated agent. The costs of these inspections will be borne by the home owner.

F. The pool shall be constructed and operated consistent with the New York State Code of

Rules and Regulations governing swimming pools and methods of handling objectionable wastes.

Any provisions in the New York State Code of Rules and Regulations providing for more restrictive requirements for swimming pool, will take precedence over these regulations.

Article VI. Waivers and Modifications

§6.000. Waivers

- A. The Planning Board may grant a waiver of certain provisions contained herein where by reason of the exceptional shape of a specific piece of property, or where by reason of exceptional topographic conditions, the strict application of these regulations would result in extreme practical difficulties upon the owner of such property; provided, however, that such relief may only be granted without detriment to the public good and without substantially impairing the intent and purposes of these regulations.
- B. In granting such waiver, the Planning Board may require such conditions as will, in its judgment, secure substantially the objectives of the standards or requirements so waived.

§6.100. Modifications

The standards and requirements of this Law may be modified by the Planning Board in the case of subdivisions for complete communities or neighborhood units or other large scale developments which, in the judgement of the Planning Board achieve substantially the objective of the regulations contained herein and which are further protected by such covenant or other

legal provisions as will ensure conformity to and achievement of the plan. Such developments will comply with the standards for Planned Unit Development and/or Cluster Development as set forth in the Town of New Scotland Zoning Law.

§6.200. Procedure for Applying

- A. Applications for waivers and modifications shall be submitted in writing by the subdivider at the time the Preliminary Plat is filed with the Inspector. The application shall state fully the grounds and all the facts relied upon by the applicant.
- B. Applications for reconsideration shall be submitted to the Inspector, in writing by the subdivider, not less than fourteen (14) calendar days in advance of a regularly scheduled Planning Board meeting at which reconsideration is desired.

Article VII. Zoning Board of Appeals

§7.000. Purpose

The purpose of this Article is to establish the organization, authority and responsibilities of the Town of New Scotland Zoning Board of Appeals (hereinafter the "ZBA"). The ZBA is established pursuant to §267 New York State Town Law.

§7.100. Membership

- A. The ZBA shall consist of five (5) members appointed by the Town Board. The Town Board shall appoint a Chair and members of the ZBA in accordance with the Town Law of the State of New York. An appointment to a vacancy occurring prior to expiration of a term shall be for the remainder of the unexpired term.

- B. Upon temporary absence or disqualification of the Chair, members of the ZBA will appoint a temporary Acting Chair to preside for up to three (3) consecutive meetings.
- C. Upon resignation or disability of the Chair, involving a long term absence to exceed three (3) consecutive meetings, the Town Board shall appoint an Acting Chair to preside over the ZBA.

§7.200. Organization & Procedure

7.201. Meetings

- A. The ZBA shall adopt and publicize a meeting schedule.
- B. All hearings of the ZBA shall be public.
- C. The ZBA shall keep minutes of its proceedings, showing the action taken and the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep public records of all its activities. Each action taken by the ZBA on an application shall be filed with the Town Clerk.
- D. The Chair may administer oaths and compel the attendance of witnesses.

7.202. Voting

- A. A quorum entitling the ZBA to take action shall be a majority of the entire membership of the ZBA.
- B. Each member present at a meeting shall be entitled to one (1) vote on each matter before the ZBA.
- C. ZBA action may be taken only upon the concurring vote of a majority of the entire membership of the ZBA.

D. Any member who has a personal interest in a matter pending before the ZBA shall disclose that an interest exists and shall abstain from voting on the matter. A majority of the disinterested members will be sufficient for ZBA action to be taken, provided a quorum exists.

§7.300. Powers and Duties

The ZBA shall have the following powers and duties under this Law:

7.301. Administrative Appeals. To hear and decide appeals from and review any order, requirement, decision or determination made by an official charged with enforcing any part of this Law.

7.302. Grant Variances. To approve, approve with conditions, or disapprove appeals for variances from the strict enforcement of only the provisions of this Law which relate to the use, space and bulk standards of the district regulations and performance standards.

7.303. Permit Building in Bed of Mapped Streets. The ZBA, after due notice and hearings required under §279 of New York State Town Law, may grant a permit for a building on land within the bed of a mapped street located on the Official Map of the Town of New Scotland. Said Official Map to be in compliance with §270 of New York State Town Law. Said permit shall only be granted where the land within such mapped street is not yielding a fair return on its value to the owner. The ZBA may impose reasonable requirements as a condition of granting such permit designed to lessen, as practicable, increased costs of opening such street, of which tend to cause a change of such Official Maps.

7.304. Interpret District Boundaries of this Law. Upon appeal from a decision by the Inspector to decide any question involving the interpretation of any

provision of this Law, or where uncertainty exists as to the boundaries of any zone district, the ZBA shall, upon written application or upon its own motion, determine the location of such boundaries of such districts as are established and as designated on the Official Zoning Map of the Town of New Scotland.

7.305. Authorize Temporary Uses. To permit temporary occupancy and use of a structure in any district for a purpose that does not conform with the district requirements provided that such occupancy and use is truly of a temporary nature and subject to any reasonable conditions and safeguards which the ZBA may impose to minimize any negative effect upon the neighborhood or to protect contiguous property. The approval of the ZBA and any permit based thereon, for such temporary occupancy and use, shall not be granted for a period of more than twelve (12) months and shall not be renewable more than once, and then for a period of not more than twelve (12) months.

§7.400. Initiation of Proceedings

7.401. Procedure for Appellant

- A. An appeal to the ZBA pertaining to a ruling of any town officer administering any portion of this Law, may be taken by any person aggrieved, or by an officer, department, board, or bureau of the Town affected. Such appeal shall be made by filing a notice of appeal specifying the grounds of the appeal, with the Inspector and officer whose action is the subject of the appeal.
- B. A notice of appeal shall be filed by the appellant within sixty (60) days of notification of the decision to which an appeal applies.
- C. All applications and appeals made to the ZBA shall be in writing on forms prescribed

by the ZBA. Every application or appeal shall contain the following information:

1. The name, address and phone number of the applicant or appellant.
2. The name and address of the owner of the lot to be affected by such proposed change or appeal.
3. A brief written description and location of the lot to be affected by such proposed change or appeal including the present zoning classification of the lot in question, the improvements thereon and the present use thereof, and the additions or changes intended to be made under this application, indicating the size of such proposed improvements, material and general construction details.
4. Fifteen (15) complete copies of any application form prescribed by the ZBA.
5. Additional Information.
 - a. If seeking an interpretation, a written description of the specific provision of the Law in question and the interpretation claimed and a sketch plan of the real property to be affected, indicating the location and size of the lot and the size of improvements proposed to be completed.
 - b. If seeking a variance, fifteen (15) copies of a site plan as required by Section 5005.B., a legal description of the property, plans and elevations necessary to show the proposed variance, and other drawings or information reasonably considered necessary by the ZBA to establish an understanding of the proposed use and its relationship to surrounding properties.

6. Name and mailing addresses of the owners of all property within five hundred (500) feet of the subject property.

7.402. Procedure for the Inspector

A. The Inspector shall forthwith transmit to the ZBA all papers consisting of the record upon which the action appealed from was taken, or in lieu thereof, certified copies of said papers.

B. It shall be incumbent upon the Inspector to recommend to the ZBA a modification or reversal of the Inspector's action in cases where the Inspector believes substantial justice requires the same but where the Inspector has not himself sufficient authority to grant the relief sought.

7.403. Stay of Proceedings. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Inspector certifies for the ZBA, after the notice of appeal shall have been filed, that by reason of facts stated in the certificate, stay would, in the Inspector's opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the ZBA, or by the Supreme Court on application, on notice to the Inspector and on due cause shown.

7.404. Referral to the Planning Board

A. Upon receipt of any application to the ZBA, the ZBA shall transmit a copy of said application to the Planning Board and shall request that the Planning Board submit to the ZBA its advisory opinion on said applications. The Planning Board shall submit a report of such advisory opinion within forty five (45) days and prior to the time set for the ZBA to render its decision. Failure of the

Planning Board to submit such report shall be interpreted as a "no recommendation" opinion by the Planning Board.

B. In case of a request or an application to build in the bed of a mapped street, the Inspector shall transmit a copy of the application, plans, and other available data to the Planning Board, upon receipt. Prior to, or at the time of hearing, the Planning Board shall submit a report as to the probable effect such an application would have on the comprehensive land use plan and on the public health, safety and welfare of the Town of New Scotland.

7.405. Public Hearings and Notice. The ZBA shall, within 45 days of the receipt of Planning Board recommendations, hold a hearing and give public notice in compliance with §267 of New York State Town Law by publishing a notice of such hearing in the official paper at least five (5) days prior to the date thereof, and, at least five (5) days prior to the date of the hearing, mailing notices of the hearing to the following officials, persons and owners of property:

A. In case of an appeal alleging error or misinterpretation in any order or other action by the Inspector, the appellant, and the person or persons, if any, who benefit from the order, requirement, regulations or determination, and any regional state park commission having jurisdiction over any state park within five hundred (500) feet of the property affected by such appeal;

B. In case of an appeal for a variance, all owners of the property within five hundred (500) feet of the nearest line of the property for which the variance is sought, and to such other property owners as the

Chair of the ZBA may direct.

7.406. Adjournment of Hearing. Upon the day for hearing any application or appeal, the ZBA may adjourn the hearing for a period not to exceed 45 days for the purpose of causing such further notice as it deems proper to be served upon such other property owners as it decides may be interested in said application or appeal.

§7.500. Decision

A. The ZBA shall decide each appeal within sixty (60) days from the date of the final hearing, and notice shall be given to all parties in interest in accordance with §267 of the N.Y. State Town Law. At the hearing any party may appear in person or be represented by an agent or attorney.

B. In the exercise of its functions upon such appeals or upon exceptions, the ZBA may, in conformity with the provisions of this Law, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from or may make such order, requirement, decision or determination in accordance with the provisions hereof.

§7.600. Granting Appeals

Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this Law, the ZBA shall have the power in passing upon appeals, to vary or modify the application of any of the regulations or provisions set out here, in a way which observes the spirit of this Law and secures public safety, yet provides relief from practical difficulties or unnecessary hardship caused by this Law. In carrying out this power, the ZBA may modify a remedy requested by the appellant and prescribe and approve a remedy, the specifics of which, in their opinion, most closely effect the intent of this Law.

§7.700. Standards for Granting of Appeals

The ZBA shall grant an appeal only when it finds that the following standards have been met:

A. Administrative Appeals.

That the administrative official at whom the appeal is directed, erred in either interpretation of a code or in the application of it to a particular circumstance of the application. If the ZBA finds that the administrative official misinterpreted or misapplied the provisions of this Law or another code, the decision of the administrative official shall be reversed and the ZBA shall make an interpretation of the code to be used by the administrative official.

B. Area Variances. The ZBA shall have the power, upon an appeal from a decision or determination of the Planning Board to grant area variances as defined herein.

In making its determination, the ZBA shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the district, neighborhood or community by such grant. In making such determination the ZBA shall also consider the following:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;

3. Whether the requested area variance is substantial;

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the district or neighborhood; and

5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA, but shall not necessarily preclude the granting of the area variance.

The ZBA, in granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate while at the same time preserve and protect the character of the district or neighborhood and the health, safety and welfare of the community.

C. Use Variances. The ZBA shall have the power, upon an appeal from the decision or determination of the Planning Board to grant use variances as defined herein.

No such use variance shall be granted by the ZBA without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the ZBA the following:

1. Under applicable zoning regulations the applicant is deprived of all economic use or benefit from the property in question, which deprivation must be established by competent financial evidence;
2. That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or

neighborhood;

3. That the requested use variance, if granted, will not alter the essential character of the district or neighborhood; and

4. That the alleged hardship has not been self-created.

The ZBA, in granting a use variance, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the district or neighborhood and the health, safety and welfare of the community.

§7.800. Imposition of Conditions

The ZBA shall, in granting of both use variance and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, and/or the period of time such variance shall be in effect. Such conditions shall be consistent with the spirit and intent of the zoning law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the district, neighborhood or community.

Such conditions may include, but are not limited to, specifications for the following:

- A. Vegetation, buffering, and screening;
- B. Increased setbacks and yards, and access restrictions;
- C. Hours of use and operational controls;
- D. Location and design of signs, parking, and lighting;
- E. Conservation easements and other deed restrictions;

F. Professional maintenance and inspection of facilities or improvements necessary to ensure adequate maintenance and inspection;

G. Any other standard or specification contained in this Law.

§7.900. Expiration of Appeal Decision

Unless otherwise specified by the ZBA, a decision of any appeal or request for a variance shall expire if the applicant fails to obtain necessary building permits, or comply with the conditions of said authorized permit within one (1) year from the date of authorization.

§7.1000. Required Interval for Hearings on Applications and Appeals After Denial

Whenever the ZBA, after hearing all evidence presented upon an application or appeal under the provisions of this Law, the ZBA shall refuse to hold further hearings on the said or substantially similar application or appeal by the same applicant, its successors or assigns, for a period of one (1) year, except and unless the ZBA shall find and determine from the information supplied by the request for a rehearing, that changed conditions have occurred relating to the promotion of the public health, safety, convenience, comfort, prosperity, and general welfare, and that a reconsideration is justified.

Article VIII. Administration and Enforcement

§8.000. Administrative Official

The Building Inspector ("the Inspector") and his duly authorized assistant is hereby given the duty, power and authority to enforce the provisions of this Law.

§ 8.100. Duties of the Administrative Official

8.101. General Responsibility. Except as otherwise specifically provided by law, law, rule or regulation, or except as herein otherwise provided, the Inspector shall administer and enforce the provisions of laws, laws, rules and regulations applicable to the plans, specifications or permits for the construction, alteration and repair of buildings, structures or other land uses, the installation and use of materials and equipment therein and the location, use and occupancy thereof.

8.102. Rules, Regulations and Forms. The Inspector shall have the authority to make, adopt and promulgate written rules, regulations and forms as may be necessary for administration and enforcement of the content and intent of this Law. The Inspector shall be responsible to submit such rules, regulations and forms to the Town Board, which shall move to approve, reject, or modify the same within 60 days after submission. Once approved by the Town Board and filed with the Town Clerk, rules, regulations and forms shall have the same force and effect as the provisions of this Law and be subject to the same penalties for violation thereof.

8.103. Entry and Inspection. The Inspector shall have the right to enter upon, examine and inspect, or cause to be entered, examined and inspected, any building or property, for the purpose of carrying out the provisions of this Law.

8.104. Receipt of Applications. The Inspector shall receive applications for the erection and alteration of buildings and structures or parts thereof.

Every application shall be signed by the owner, or, if signed by a person other than the owner, accompanied by a statement from the owner that the proposed work is authorized by the owner and that

the applicant is authorized to make application on the owner's behalf and the Inspector is permitted to enter upon the premises without a search warrant.

8.105. Referral of Applications. The Inspector shall direct and refer any applicant or application to the appropriate agency to whom the application shall be presented prior to issuance of a building permit.

8.106. Issuance of Notices of Violations. The Inspector is authorized to issue, in writing, on behalf of the municipality, all appropriate notices or orders as defined in Section 8.402.

8.107. Information From Other Sources. Whenever the same may be appropriate to determine compliance with the provisions of applicable laws, laws, rules or regulations covering building construction or alteration, the Inspector, in his/her discretion, may accept and rely upon a written report of tests in the field by experienced, professional persons or by an accredited authoritative testing laboratory or service and inspection bureaus or agencies.

8.108. Issuance of Certificate of Occupancy, Use or Compliance. The Inspector shall issue a certificate of occupancy, use or compliance, where appropriate, for a building constructed, altered or used in accordance with the laws and laws of the Town of New Scotland, provisions of the New York State Uniform Fire Prevention and Building Code and any other applicable laws or regulations.

8.109. Records and Supervision of Staff. The Inspector shall keep permanent official records of all transactions and activities conducted by the Inspector or staff including all applications received with accompanying plans and documents, permits and certifications issued, fees charged and collected, inspection reports, all rules and regulations

promulgated by the Town, notices and orders issued by the Inspector. The Inspector shall also have the responsibility of supervision of any employees including, but not limited to, any Code Enforcement Officers, Zoning Officer, Records Management Officer pursuant to Part 444 of NYCRR Title 19 on minimum standards for administration and enforcement. The Inspector shall have such other duties as provided by this Law and the subdivision regulations or as assigned by the Town Board.

§8.200. Building Permit Administrative Procedure

No person, firm or corporation shall commence with the erection, construction, alteration, enlargement, improvement, conversion or change to any building or structure or part thereof, or change the use or occupancy of any building, structure or land without first obtaining a separate building permit and other approvals as may be required from the Inspector for each such building, structure or use, except that a building permit may not be required for the performance of necessary repairs which do not involve material alteration of structural features, and/or plumbing, electrical or heating/ventilation systems, however, such work shall never be less be done in conformance with the New York State Uniform Fire Prevention and Building Code and any other applicable laws and regulations.

8.201. Application

- A. Application for a building permit shall be made by the owner or by his agent, architect, engineer or builder employed in connection with the proposed work.
- B. Application for a building permit shall be made to the Inspector on forms prescribed by him/her at the office of the New Scotland Building Department. A signed,

completed, application form, accompanied by a fee established by the Town Board and the following information shall constitute a complete application:

1. Duplicate copies of specifications, including a plot plan drawn to scale, showing location and size of all proposed new construction and all existing structures on the site, the nature and character of work to be performed and materials to be incorporated, distance from lot lines, walks, alleys and, where required by the Inspector, details of structural, mechanical and electrical work, including computations, stress diagrams and other essential data. Plans and specifications, bearing the signature of the person responsible for the design and drawings, shall be required when deemed necessary by the Inspector.
2. A description of the land on which the proposed work is to be done.
3. A statement of the use or occupancy of all parts of the land and the proposed building or structure.
4. The valuation of the proposed work and of the existing buildings and structures.
5. The signature of the applicant or agent.
6. The full name, address and phone number of the owner and of the applicant, and the full names and addresses of their responsible officers, if any of them are corporations, and the name and address of the owner's authorized agent, if any.
7. A brief description of the nature of the work.
8. Such other information as may reasonably be required

by the Inspector to establish compliance of the proposed work with the requirements of the applicable building laws, rules and regulations.

8.202. Issuance of Permits. It shall be the duty of the Inspector to issue a building permit, provided the Inspector is satisfied that the structure, building, sign, parking area or premises, and the proposed use thereof, conform with all requirements of this Law, and that all other reviews and actions, if any, called for in this Law have been complied with and all necessary approvals, permits and variances required have been secured. All building permits shall be issued in duplicate and one (1) copy shall be kept conspicuously on the premises affected.

8.203. Duration of Permits

- A. A building permit issued pursuant to this section shall expire one (1) year from the date of issuance or upon the issuance of a certificate of occupancy, use or compliance (other than a temporary certificate of occupancy, use or compliance), whichever occurs first. The permit may, upon written request, be renewed for two (2) successive twelve (12) month periods provided that:
 1. The relevant information in the application is up to date; and
 2. The renewal fee, as established by the Town Board, is paid; and
 3. Should the permit have been revoked, the necessary surety, if required, has been provided to the Town of New Scotland.
- B. Thirty-six (36) months from the date of original permit issuance, application for renewal shall be reviewed by the Planning Board prior to

any action by the Inspector. The Planning Board shall determine whether said permit shall be renewed and may require such information, evidence or security as necessary to assure that the structure, or activity for which the permit was issued, will be completed upon permit renewal. Failure to receive such information, evidence or security will result in denial of building permit renewal and immediate removal of the construction, associated with the structure for which the permit was issued, completed prior to permit expiration.

8.204. Denial of Permits. If the application, together with other documents filed therewith, describes work which does not conform to all of the requirements of the applicable building regulations, the Inspector shall disapprove the same. Upon request of the applicant, the Inspector shall cause the refusal, together with the reasons therefor, to be transmitted to the applicant. The applicant may appeal such a denial to the ZBA, in writing.

8.205. Stop Work. Whenever the Inspector has reasonable grounds to believe that the work on any building or structure is being prosecuted in violation of the provisions of the applicable building laws, rules or regulations, or not in conformity with the provisions of an application, or in an unsafe and dangerous manner, the Inspector shall notify the owner of the property or the owner's agent to suspend all work and suspend all building activities until the stop order has been rescinded. Such order and notice shall appear in writing, shall state the conditions under which the work may be resumed and may be served upon a person to whom it is directed either by delivering it personally or by posting the same upon a conspicuous portion of the building where the work is being performed

and sending a copy of the same to the applicant by certified mail at the address set forth in the application for the permission for construction of such building and structure.

8.206. Revocation of Permits.

A. The Inspector may revoke a building permit in the following instances:

1. Where there has been any false statement or misrepresentation as to a material fact in the application or other documents on which the building permit was based.

2. Where the building permit was issued in error and should not have been issued in accordance with applicable law.

3. Where the work performed under the permit is not being prosecuted in accordance with the applicable law and provisions of the application.

4. Where the person to whom a building permit has been issued fails or refuses to comply with a stop order issued by the Inspector.

B. It shall be the duty of the person holding the building permit to surrender it and all copies thereof to the Inspector.

C. After the building permit has been revoked, the Inspector may, in his/her discretion, before issuing the new building permit, require the applicant to file sufficient surety, in the form of cash escrow, certified check, indemnity bond or other, at the discretion of the Planning Board conditioned for compliance with this Law and all building laws and laws then in force and in a sum sufficient to cover the cost of removing the structure if it does not so comply.

8.207. Construction Inspections.

A. With each building permit, the Inspector shall issue a schedule of required construction inspections.

B. Provisions shall be made by the recipient of a building permit for approvals of work prior to enclosing or covering any portion thereof and upon completion of each stage of construction including but not limited to building location, site preparation, excavation, foundation, structural elements, electrical systems, plumbing systems, heating, ventilation and air conditioning systems, fire protection and detection systems, existing features and energy requirements to determine compliance with applicable laws, rules, regulations, codes and laws and any other items relative to the individual approved application and or plans. It shall be the duty of the permit holder to notify the Inspector at least forty-eight hours in advance of the need for the inspection. Failure to provide access to the work or timely notification will require removal of such completed work as necessary to observe the areas noted above.

C. The Inspector is authorized to make the following additional inspections:

1. Fire safety inspections in areas of public assembly as defined by the Codes, Rules and Regulations of New York State, at least once per year.

2. Inspections where a certificate of occupancy, use or compliance or certificate of compliance is required, prior to its issuance.

3. Fire safety inspections of all multiple dwellings and all non-residential occupancies at least once per thirty-six (36) month period.

4. Inspections in response to bona fide complaints regarding conditions or activities allegedly failing to comply with the New York State Uniform Code, Town Zoning Law or any other applicable federal, State, County or municipal law.

5. Inspections deemed appropriate from time to time during and upon completion of work for which a building permit has been issued.

6. A person subject to inspection under this Article may be required by the Inspector to have such inspection performed at his or her expense and cost by a competent observer whose experience and training has been demonstrated to the satisfaction of the Inspector.

7. Inspections as required for the issuance and administration of a temporary certificate of occupancy, use or compliance.

D. If entrance to make an inspection is refused or cannot be obtained, the Town of New Scotland, after being notified by the Inspector of the situation, may apply to any court of competent jurisdiction for a warrant to make an inspection.

E. Notwithstanding any requirement of this Article to the contrary, no regular, periodic inspection of occupied dwelling units shall be required provided, however, that this shall not pose a limitation on inspections conducted at the invitation of the occupant, where there is cause to believe the conditions of the premises threaten or

present a hazard to public health, safety, welfare, or as required by New York State Town Law.

§8.300. Procedure for Issuance of Certificate of Occupancy, Use or Compliance

8.301. Applicability.

A. No building hereafter erected shall be used or occupied in whole or in part until a certificate of occupancy, use or compliance has been issued by the Inspector.

B. No building hereafter erected, enlarged, extended or altered by construction which required the issuance of a building permit shall be occupied or used after the completion of the alteration or work unless a certificate of occupancy, use or compliance has been issued.

C. No change shall be made in the occupancy and/or use of an existing building unless a certificate of occupancy, use or compliance authorizing such change shall have been issued.

D. No special permit shall be considered in effect until a certificate of occupancy, use or compliance has been issued.

8.302. Application. Written application from the owner, tenant or occupant for a Certificate of occupancy, use or compliance shall be made with the Inspector and may consist of a drawing of the site to scale showing property dimensions, existing buildings, on-site water and sanitation facilities, leach field, a statement as to the use and occupancy of all parts of the land and structures and any other information as may be designated by the Inspector as necessary to review the project for compliance with all applicable laws and regulations.

8.303. Action by the Inspector. When, after final inspection, it is found that the construction work has been completed in accordance with the applicable laws, laws, rules or regulations and also in accordance with the application, the Inspector shall issue a certificate of occupancy, use or compliance. If it is found that the proposed work has not been properly completed, the Inspector shall not issue a certificate of occupancy, use or compliance and shall order the work completed in conformity with the building permit and in conformity with the applicable building regulations.

8.304. Temporary Certificates of Occupancy. Upon request, the Inspector may issue a temporary certificate of occupancy, use or compliance for a building or structure or part thereof before the entire work covered by the building permit shall have been completed, provided that such portions as have been completed may be occupied safely without endangering life or the public health and welfare. A temporary certificate of occupancy, use or compliance shall remain effective for a period not exceeding three (3) months from its date of issuance. For good cause, the Inspector may allow a maximum of two (2) extensions for periods not exceeding three (3) months

8.305. Issuance of Certificates of Occupancy, Use or Compliance Upon Request of the Owner. Upon written request from the owner, tenant or occupant, the Inspector, after inspection, shall issue an occupancy permit for an existing use legally existing at the time this Law is made effective, certifying the extent and kind of use and whether any such existing use conforms to the provisions of this Law.

§8.400. Violation Defined

It shall be a violation for any person, firm or corporation to construct, alter, repair, move, equip, occupy or use any building, structure or portion thereof, or to

use, divide, or subdivide any land in violation of this Law, the subdivision regulations or of any law or regulation made under authority conferred hereby, or to fail in any manner to comply with a notice, directive or order of the Inspector or other proper official, or to construct, alter, occupy or use any building, structure, land or portion thereof, in a manner not permitted by an approved building permit or occupancy permit.

8.401 Complaint of Violations. Whenever a violation of this Law occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Inspector, who shall properly record such complaint and immediately investigate the reporting complaint, thereon to the Town Board, and/or Planning Board.

8.402. Procedure for Abatement of Violations. In instances where a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of this Law, the Subdivision Regulations, or of any Law or regulation made under authority conferred hereby, the Town Board, or, with their approval, the Inspector or other proper officials, in addition to other remedies, may institute any appropriate action of proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.

A. Notice of Violation. Whenever it shall appear to the satisfaction of the Inspector that work or activity in any building or structure or part thereof or upon any land or the use of any land is being

carried on in violation of any of the provisions of this Law or of the Subdivision Law, the Inspector is hereby authorized to serve upon the owner of any such building, structure, or land or the architect, contractor or any other person in charge thereof, either as owner or agent, a notice in writing as hereinafter prescribed, which shall contain a description of the building, premises or property on which said violations exist, specify the particular work on such building, structure, or land which is being carried on in violation of the provisions of this Law or the subdivision, and which shall direct that the violation be removed within ten (10) days after such service of notice, and shall further direct that all work on said building, structure or land cease until such violation is removed.

B. Issuance of Notice. All notices of the violation of any of the provisions of this Law and all other notices directing anything to be done required by this Law and all other notices that may be required or authorized to be issued thereunder, including notice that any building, structure, premises, or any part thereof, are deemed unsafe or dangerous, shall be issued by the Inspector and shall have his name affixed thereto and may be served by any officer or employee of said Inspector or by any person authorized by said Inspector.

C. Service of Notice. All such notices and any notice or order issued by any court in any proceeding, instituted pursuant to this Law to restrain or remove any violation or to enforce compliance with any provision or requirement of this Law, may be served by delivering to and leaving a copy of the same with any person or persons violating, or

who may be liable under any of the several provisions of this Law, or to whom the same may be addressed, and if such person or persons cannot be found after diligent search shall have been made for them, then such notice or order may be served by posting the same in a conspicuous place upon the premises where such violation is alleged to have been placed or to exist, or to which such notice or order may refer, and mail a copy thereof enclosed in a sealed wrapper, addressed to said person or persons at their last known place of residence, with the postage paid thereon and said postage and mailing a copy of said notice or order shall be equivalent to a personal service of said notice or order upon all parties for whom such service shall have been made.

D. Service Upon Owners Residing Out-of-State. If the person or persons or any of them to whom said notice or order is addressed do not reside in the State of New York and have no known place of business therein, the same may be served by delivering to, and leaving with, such person or persons, or either of them, a copy of said notice or order, or if said person or persons cannot be found within said state after diligent search, then by posting a copy of the same in a conspicuous place upon the premises where said violation is alleged to have been placed or exist, or to which such notice or order may refer and mailing a copy thereof, enclosed in a sealed wrapper addressed to said person or persons at their last known place of residence, with the postage paid thereon. Said posting and mailing a copy of said notice or order shall be equivalent to personal service of said notice or order upon all parties for whom such search shall have been made.

E. Failure to Comply with Notice. Any person who shall fail to comply with a written notice from the Inspector, within the time fixed for compliance therewith, and any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents who shall fail to comply with any lawful order, notice, directive, permit or certificate of the Inspector made thereunder shall be guilty of an offense punishable by a fine not exceeding three hundred fifty dollars (\$350.00) or imprisonment for a period not to exceed six (6) months, or both for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five (5) years, punishable by a fine not less than three hundred fifty dollars (\$350.00) nor more than seven hundred dollars (\$700.00), or imprisonment for a period not to exceed six (6) months, or both; and, upon conviction for a third or subsequent offense all of which were committed within a period of five (5) years, punishable by a fine of not less than seven hundred dollars (\$700.00) nor more than one thousand dollars (\$1,000.00) or imprisonment for a period not to exceed six (6) months, or both. Each week's continued violation shall constitute a separate additional violation.

F. Enforcement Through Justice Court. Whenever the Inspector or an authorized employee of the Building Department determines that a violation exists, the Inspector or any authorized employee may issue, without further notice, to the person responsible for such violation, a summons or appearance ticket returnable in the Justice Court for the Town of New Scotland for the prosecution of

said offense, or take such other enforcement procedures as may be authorized by law.

Article IX. Planning Board

§9.000. Purpose

The purpose of this Article is to establish the organization, authority and responsibilities of the Town of New Scotland Planning Board.

§9.100. Authority

The Town of New Scotland Planning Board is established pursuant §271 New York State Town Law.

§9.200. Membership

- A. The Town of New Scotland Planning Board shall consist of seven (7) members. One (1) member shall be designated each year by the Town Board at its January meeting to serve as Chair.
- B. Upon temporary absence or disqualification of the Chair, members of the Planning Board will appoint a temporary Acting Chair to preside for up to three (3) consecutive meetings.
- C. Upon resignation or disability of the Chair, involving a long term absence to exceed three (3) consecutive meetings, the Town Board shall appoint an Acting Chair to preside over the Planning Board.

§9.300. Meetings

- A. The Planning Board shall adopt and publicize a meeting schedule.
- B. The regular January meeting shall be designated as the annual meeting of the Planning Board.
- C. A special meeting may be called by the Chair or upon the

request of four (4) other members, provided that forty-eight (48) hours notice is given each member, and provided also that, to the extent practicable, notice is given to the public by notifying the news media and by a conspicuous posting of notice at the Town Hall within a reasonable time prior to such special meeting.

- D. Meetings shall be conducted according to Robert's Rules of Order and shall be presided over by the Chair.
- E. Any application to be considered by the Planning Board must be filed with the Inspector not less than fourteen (14) days prior to the meeting at which it is to be considered. Failure to comply with this subsection will result in the application's being dropped from the meeting agenda. The Chair may in its discretion waive this requirement.
- F. Seven (7) days prior to each regular meeting, the Chair shall prepare an agenda of items to be considered at the regular meeting. All pertinent papers and plans shall be distributed by mail or otherwise to each of the members.

§9.400. Voting

- A. A quorum entitling the Planning Board to take action shall be a majority of the entire membership of the Planning Board.
- B. Each member present at a meeting shall be entitled to one (1) vote on each matter before the Planning Board.
- C. Planning Board action may be taken only upon the affirmative vote of the majority of the entire membership.

- D. Any member who has a personal interest in a matter pending before the Planning Board shall disclose that he has an interest and shall abstain from voting on the matter. A majority of the disinterested members will be sufficient for Planning Board action to be taken, provided a quorum exists.

§9.500. Powers and Duties

- A. The Planning Board shall perform those duties prescribed by this Law and statute including, but not limited to, approving, approving with conditions, or disapproving subdivision applications, making recommendations on amendments to, and administering and enforcing certain provisions of this Law, in accordance with its contents, including reviewing special permit and site plan applications.
- B. The Planning Board shall prepare and update as needed a Comprehensive Land Use Plan as defined in §272-a of New York State Town Law and shall review and make recommendations on all investigations, reports and plans relating to the Planning Board and development of the Town, or affecting the Comprehensive Land Use Plan.
- C. The Planning Board may adopt rules of procedure and statements of policy consistent with this Law and the contents of the Comprehensive Land Use Plan to assist in the performance of its functions.
- D. The Planning Board may, from time to time, prepare and file with the Town Board, a report on the operation of this Law, including recommendations as to the enactment of amendments, supplements or changes.

§9.600. Hearing Procedure

- A. At minimum, the Planning Board shall provide public notice of any public hearing by publishing a notice of such hearing in the official paper at least five (5) days prior to the date thereof.
- B. The Chair shall preside at any public hearing conducted by the Planning Board. The proponent of the matter, which is the subject of the hearing shall make a statement to the Planning Board. Any witnesses who support the proponents position shall then be heard, followed by opponents. The members of the Planning Board may question any witness after their statement to the Planning Board. The Chair may, for the purpose of expediting lengthy meetings, limit the time in which persons appearing before the Planning Board may speak. The Planning Board may also accept written submissions of any interested party at a public hearing.

Article X. Amendments

§10.000. Town Board May Amend

The Town Board may from time to time on its own motion, or on petition, or on recommendation of the Planning Board, amend, supplement, or repeal the regulations and provisions of this Law, after public notice and hearing.

§10.100. Review by Town Planning Board

Every such proposed amendment or change, whether initiated by the Town Board or by petition, shall be referred to the Planning Board for report thereon before the public hearing hereinafter provided for. If the Planning Board shall fail to file such a report within sixty (60) days, it shall be conclusively

presumed that the Planning Board has approved the proposed amendment, supplement or change.

§10.200. Public Notice and Hearing

The Town Board, by resolution adopted at a stated meeting, shall fix the time and place of a public hearing on the proposed amendments and cause notice to be given as follows:

10.201. Public Notice. By publishing a notice at least ten (10) days in advance of such hearing in at least one (1) newspaper of general circulation in New Scotland. Such notice shall state the general nature of the proposed amendment in such reasonable detail as will give adequate notice of its contents, and shall name the place or places where copies of the proposed amendment may be examined.

10.202. Personal Notice. (See General Municipal Law, Section 239 L and M.)

10.203. By mailing a copy of such notice to every association of residents of the Town which shall have registered its name and address for this purpose with the Town Clerk.

10.204. A written notice of any proposed change or amendment affecting property within 500 feet of the boundaries of any State Park or Parkway shall be given to the regional State Park Commission having jurisdiction over such State Park or Parkway at least ten (10) days prior to the date of such public hearing.

10.205. Opportunity to be Heard at Hearing. At the public hearing, full opportunity to be heard shall be given to any citizen and all parties in interest.

Article XL. Definitions

§11.000. Word Usage

For the purposes of this Law, certain terms and words shall be interpreted to have the following meanings:

- A. Words used in the present tense include the future;
- B. Words used in the plural include the singular;
- C. The word "shall" mandatory;
- D. The word "may" is permissive;
- E. The word "town" shall mean the Town of New Scotland, New York;
- F. The word "used" shall include arranged, designed, constructed, altered, converted, rented, leased, or intended to be used;
- G. The word "building" shall include the word "structure".

§11.100. Definitions

Certain words and terms used in this chapter are defined, for the purposes thereof, as follows:

11.101. Accessory Structure. Any building or device containing an accessory use which is subordinate to and incidental to the use of the principal building on the same lot or an adjoining lot under the same ownership. Examples of accessory structures include storage sheds, private garages and screened trash disposal containment areas.

11.102. Accessory Use. A use customarily incidental and subordinate to the principal use and located on the same lot with such principal use, or on an adjacent lot if in the same ownership and a part of the same establishment, and contributing to the comfort, convenience, or necessity of occupants of the principal use.

11.103. Agent of Owner. (Applicant) Any person who can show written proof that he/she is acting for the property owner.

11.104. Agriculture and Forest Management Structure. Any barn, stable, shed, silo, garage, permanent fruit or vegetable stand, observation tower or other structure directly and customarily associated with agriculture or forest management activities, but excluding lumber mills and lumber storage.

11.105. Alteration of a structure or building. A change or rearrangement, physical enlargement, or the movement of a building from one location or position to another, excluding normal maintenance or repairs.

11.106. Area of Special Flood Hazard. The land in the floodplain having a one percent (1%) or greater chance of flooding in any given year, as specified on the flood insurance rate maps covering the area contained within the limits of the Town of New Scotland.

11.107. Automobile Sales Area. An open area, other than a street, used for the display, sale or rental of new or used motor vehicles or trailers in operable condition and where no repair work is done.

11.108. Automobile Service, Gasoline or Filling Station. A building or place of business where gasoline, oil and greases, batteries, tires and automobile accessories are supplied and dispensed directly to the motor vehicle trade, at retail, and where minor automotive repairs may be made.

11.109. Auto (car) Wash 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 may employ some hand labor. Also

includes self service washing facilities.

11.110. Auto Wrecking. The dismantling, or disassembling, of used motor vehicles or the storage, sale or salvaging of dismantled, partially dismantled, obsolete or wrecked motor vehicles or their parts. As used herein, the term "vehicle" shall mean passenger type automobile, truck, tractor-truck, trailer, bus, motorcycle or other vehicle, however propelled, as well as tractors, bulldozers, machinery and other equipment.

11.111. Bed and Breakfast. A residential lodging facility in an owner occupied dwelling offering from one (1) to three (3) bedrooms without kitchen facilities, housing transient guests for a daily fee, for a period not to exceed fourteen (14) consecutive days. The facility may serve breakfast.

11.112. Buffer. A portion of land, normally lying adjacent to a lot line, which is used to mitigate any negative impacts a land use or activity may have on neighboring land. Within a buffer, improvements, consisting of landscaping, fencing, earth mounding or other similar devices are typically installed and maintained.

11.113. Building. Any structure having a roof supported by columns or walls, used or intended to be used for the shelter or enclosure of persons, animals or property.

11.114. Building Code. The current Uniform Fire Prevention and Building Code of the State of New York.

11.115. Building, Front Line of. The line of that face of a building nearest the front line of a lot. This face shall include porches, carports, balconies and platforms, whether enclosed or unenclosed.

11.116. Building Height. The height in feet of a building determined from the average elevation of finished grade

adjoining the exterior walls, to the highest level of a flat or mansard roof, or to the average height of a pitched, gabled, hip or gambrel roof, excluding bulkheads and other roof construction.

11.117. Building or Construction Business. A business or commercial enterprise involving the dispatching, temporary storage and normal maintenance of construction and excavation equipment, and, including the office, warehousing and equipment storage areas of a contracting firm.

11.118. Building Supply Facility. A commercial business involving the retail or wholesale sales of lumber, construction materials, hardware, paint and similar materials in which a portion of the inventory is stored outside or in semi-enclosed structures. Limited lumber milling may be associated which such businesses under special use permit conditions.

11.119. Campground. A plot of ground upon which two (2) or more campsites are located and maintained for occupancy by tents, camper trailers, or other recreational vehicles as temporary living quarters for recreation, education or vacation purposes.

11.120. Certificate of Occupancy, Use or Compliance. A document, signed by the Inspector stating that a structure, is in compliance with all provisions of this Law, and other applicable laws, and/or a use is in compliance with this Law and other applicable laws, and/or any proposed action complies with conditions for approval imposed by any Board of the Town of New Scotland.

11.121. Clear Cutting. The indiscriminate removal of trees, shrubs or undergrowth with the intention of preparing real property for nonagricultural development purposes. This definition shall not include the selective removal of nonnative trees and shrub species when the

soil is left relatively undisturbed, or the removal of dead trees.

11.122. Cluster Development or Average Density Development. A development design technique that concentrates buildings in specific areas on a site to allow the remaining land to be used for recreation, common open space, and preservation of environmentally sensitive areas, without exceeding the overall maximum density permitted by this Law.

11.123. Commercial Vending Machine. Any vending machine used for the dispersal of goods including ice, candy, and beverages often with automatic coin operated features

11.124. Comprehensive Land Use Plan. The long-range plan, drafted and maintained by the Planning Board, intended to guide growth and development of the Town by presenting broad policy about housing, public utilities, community facilities, transportation and land use distribution within the Town of New Scotland.

11.125. Conservation Easement. A legal agreement between a landowner and qualified land trust or government organization permanently granting a property right stipulating that the described land will remain in its natural state and precluding future or additional development.

11.126. Day Care. Daytime care or instruction of children away from their own homes for more than three (3), but less than twenty-four (24), hours per day by an individual, association, corporation, institution or agency, whether or not for compensation or reward.

11.127. Day Care Home. An owner occupied residence providing or designed to provide day care for more than three (3) but not more than six (6) children.

11.128. Day Care Center. A place other than an occupied residence, providing or designed to provide day care for any number of children, or an occupied residence providing or designed to provide day care for seven (7) or more children.

11.129. Department Store. A retail store of over five thousand (5,000) square feet that offers a variety of primarily non-food goods.

11.130. Double-Frontage Lot. A lot with rear and front lot lines which abut existing or proposed streets or right-of-ways.

11.131. Drive-In Establishment. A use, which by design of facilities or procedures, encourages or permits customers to receive service and obtain products including ready-made food items and banking services, while remaining in their vehicle.

11.132. Dwelling (Residence). Any stationary building or portion thereof designed or used exclusively as the residence or sleeping place of one or more persons, including modular, panelized or sectional housing, but not including inns, motels, hotels, boarding houses and bed and breakfasts.

11.133. Dwelling Unit. One (1) or more rooms, including a kitchen or kitchenette, and sanitary facilities in a dwelling structure, designed as a unit for occupancy by not more than one (1) family for living purposes.

A. Dwelling, Single Family. A structure designated for or occupied exclusively by one (1) family and containing not more than one (1) dwelling unit. This term shall not include mobile homes as defined herein, but shall include any other manufactured housing meeting these criteria.

B. *Dwelling, Two-Family.* A building containing two (2) dwelling units, such building being designed for residential use and occupancy by two (2) families living independently of each other, each unit being separated by vertical walls or horizontal floors.

C. *Dwelling, Multiple.* A building designed for occupancy by three (3) or more families, with the number of families in residence not exceeding the number of dwelling units provided.

D. *Dwelling, Mobile Home.* A mobile home is any portable vehicle which is designed to be transported on its own wheels or those of another vehicle, which is designed to be used as a year round detached residence; and which is a complete, independent unit to be occupied as permanent living quarters, containing sleeping accommodations, a flush toilet, a tub/shower, kitchen facilities and plumbing and electrical connections for attachment to outside systems, whether placed on a foundation or not. Any other manufactured housing including modular, panelized or sectional homes are not included in this definition.

11.134. *Educational Uses.* Facilities and accessory grounds and structures that provide a curriculum of nursery, elementary, secondary academic and or post secondary instruction including public or private nursery schools, kindergartens, elementary schools, high schools or trade schools or other institution engaged primarily in the activity of providing organized education.

11.135. *Engineer.* An individual duly qualified and licensed to perform engineering work in the State of New York. The term *Town Designated Engineer* shall refer to an engineer retained by the Town.

11.136. *Essential Services.* The erection, construction, alteration and/or maintenance by public utilities or town or other governmental agencies of underground or overhead gas, electrical or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of adequate service by such public utilities or town or other governmental agencies or for the public health or safety or general welfare.

11.137. *Family.* One (1) or more related persons, foster children or not more than three (3) unrelated individuals, occupying premises and living together as a single housekeeping unit.

11.138. *Farming, Agriculture or Nursery.* A parcel of land of at least five (5) acres, used for cultivation, pasture or other customary agricultural or nursery purpose(s), including the raising of livestock and poultry for sale or slaughter, except hog, pig and fur-bearing animals, and the display and sale of products raised on said parcel provided that fifty percent (50%) or more of the products sold are produced on-site.

11.139. *Farming Activity, Personal.* Use by the occupant of a parcel of land of less than five (5) acres for farming, agriculture and/or nursery activities. The temporary display and sale of products shall be allowed only by special use permit. The raising of livestock and poultry for sale or slaughter on said parcel shall be prohibited.

11.140. *Fast Food Restaurant.* An establishment that offers quick food service, which is accomplished through a limited menu of items often pre-prepared and held for service, or prepared, fried or grilled quickly, or heated

in a device such as a microwave oven. Orders are not generally taken at the customer's table, and food is generally served in disposable wrappings.

11.141. *Flag Lot Layout* A lot having access provided to the bulk of the lot by means of a narrow corridor, said corridor having a minimum fifty (50) foot width and the minimum allowable frontage on a public street. Flag lot layout can be used to provide access to larger parcels of land that would typically be land locked after subdivision of lots fronting on a public street. Flag lot layout proposals which, in effect, allow for residential home development while simultaneously avoiding adequate consideration and construction of a full street system shall not be considered appropriate design as defined under this definition.

11.142. *Floor Area Ratio.* The ratio of the sum of the floor area of all stories of a building or group of buildings (excluding basements) on one (1) lot to the total lot area.

11.143. *Food Market.* A retail business contained on one (1) story with a total area of not more than five thousand (5,000) square feet devoted to the retail sale of an assortment of fast moving packaged and perishable food and general household items.

11.144. *Forest Management* "The application of business methods and technical forestry principles to the operation of a forest property" (Society of American Foresters, 1958). Forest management may include timber production, harvesting (sustaining yields), insect and disease control, pruning and other stand improvement, regeneration of forest stands, and other similar associated activity. Reclamation, sedimentation and erosion control, watershed management, wildlife management and fire prevention are necessary associated activities for qualification as a forest management use under this term.

11.145. Funeral Home. A building, or part thereof, used for human funeral services. Such a building may contain space and facilities for: a) embalming and performance of other services used in preparation of the dead for burial excluding cremation; 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. Where a funeral home is permitted, a funeral chapel shall also be permitted.

11.146. Garage, Public. A building other than a private garage, one or more stories in height, used for housing, storage or repair of trucks, trailers or automobiles, whether or not accessory or incidental to another use.

11.147. Groundwater. All of the water found beneath the surface of the ground. For the purpose of aquifer protection, this term refers to the subsurface water present in aquifers and recharge areas.

11.148. Gross Leasable Area. The sum of the gross horizontal area of the several floors of a building and its accessory buildings on the same lot, excluding cellar and basement areas and roofed porches and roofed terraces not devoted to commercial use. All dimensions shall be measured between exterior faces of walls.

11.149. Home Occupation. Any activity customarily conducted entirely within a dwelling and carried on by the inhabitants thereof, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the residential character of the exterior thereof, nor occupy more than twenty-five percent (25%) of the habitable area of the dwelling and does not involve the manufacturing, production or display of articles or commodities for sale on the premises, nor the

rendering of any personal service except those normally performed on a consultation basis by clergymen, doctors, lawyers and similar professions.

11.150. Homeowners Association. A contract agreed to by owners of homes in any area that provides regulations for the operation and land maintenance of commonly owned facilities and open space, in accordance with New York State Law.

11.151. Hospital. An institution providing health services primarily for inpatients and medical or surgical care of the sick or injured, including, as an integral part of the institution, such related facilities as laboratories, outpatient departments, training facilities, central service facilities and staff offices.

11.152. Hotel or Inn. A facility offering transient lodging accommodations for a daily rate to the general public in which no provision is made for cooking in any individual room or suite. A bed and breakfast containing four (4) or more rooms shall be included under this definition. A hotel or inn may provide additional services, such as restaurants, meeting rooms, and recreation facilities.

11.153. Household Pets. Animals used by the residents of the premises only. Household pets shall not be construed to include farm animals such as horses, sheep, pigs, hogs, chicken and geese.

11.154. Impervious Surface Ratio. The ratio of the total area of a parcel covered by impervious surfaces to the total lot area. Impervious surfaces include buildings, parking lots, roads, drives, accessways, sidewalks, paved drainage-ways and any other surfaces covered by pavement or materials which substantially impede the percolation of rainwater into the soil.

11.155. Junk. Manufactured goods that are so worn, deteriorated or obsolete as to make them unusable in their existing condition, but are subject to being dismantled, including used paper, scrap metals and their alloys, rags, used cloth, used rubber, used rope, used bottles, old or used machinery, used tools, appliances, fixtures, utensils, used boxes or crates, used pipe or pipe fittings, used tires, etc.

11.156. Kennel. An establishment to house dogs, cats or other household pets more than six (6) months of age and where grooming, breeding, boarding, training or selling of animals is conducted as a business.

11.157. Large Scale Business Development. A large scale business or industrial development is a tract of land of not less than five (5) acres for nonresidential development, and which is planned for development as units under single ownership or control and which includes two (2) or more nonresidential principal buildings.

11.158. Life Care Facility. A facility for the transitional residency of elderly and/or disabled persons, progressing from independent living in single family units to congregate living where residents live in individual units, either with or without cooking facilities, and share common meals, health care, recreation facilities and nursing home services as the need arises.

11.159. Light Industry. The manufacture, predominantly from previously prepared materials, of finished products or parts including processing, fabrication, assembly, packaging, incidental storage, sales and distribution of such products, but excluding basic industrial processing. Light industrial uses do not include the processing of raw materials or salvaging operations.

11.160. Lot (Building Lot). A piece or parcel of land occupied or intended to be occupied by a principal building or a group of such buildings and accessory buildings, or utilized for a principal use and uses accessory or incidental to the operation thereof, together with such open spaces as required by this Law, and having not less than fifty (50) foot frontage on a public highway, road or street.

A. Lot, Corner. A lot abutting two (2) or more streets, roads, or highways at their intersection or upon two parts of the same street, road or highway, such streets, roads or highways, or parts of the same street, road, or highway forming an interior angle of less than one hundred thirty-five (135) degrees. The point of intersection of the street lot lines is the "corner".

B. Lot, Depth. The mean horizontal distance between the front and the rear lot lines.

C. Lot Lines. The property lines bounding the lot.

1. **Lot Line, Front.** The line separating the lot from a street, road, highway or right-of-way.

2. **Lot Line, Rear.** The lot line opposite and most distant from the front lot line.

3. **Lot Line, Side.** Any lot line other than a front or rear lot line.

D. Lot Width. The width of the lot at the building line measured at right angles to its depth.

E. Lot Area. The computed area contained within the lot lines.

F. Lot Coverage Ratio. The ratio of the area of a lot covered by buildings or structures, parking and all other paved surfaces to the total lot area

G. Lot of Record. A lot whose existence, location and dimensions have been legally recorded or registered in a deed or on a plat.

11.161. Mixed Use Structure. A building containing mixed occupancy, used in part for one use and in part for some other use not accessory thereto.

11.162. Mobile Home Lot. A parcel of land within a mobile home park for the placement of a single mobile home for the exclusive use of its occupants.

11.163. Mobile Home Park. (Trailer Court) A contiguous parcel of land plotted with mobile home lots which are to be rented or leased, but not sold. The management and maintenance of a mobile home park shall be deemed to be the responsibility of a single owner or operator, with improved lots and/or services being available under a leasing arrangement.

11.164. Motel. A building or group of buildings, whether attached or detached, containing for hire individual living and sleeping accommodations each of which is considered a unit, each of which is provided with a separate exterior entrance and a parking space, and is offered for rental and use principally by motor vehicle travelers. The term *motel* includes, but is not limited to, every type of similar establishment known variously as an auto court, motor hotel, motor court, motor inn, motor lodge, tourist court, tourist cabins, roadside hotel.

11.165. Municipal Buildings and Facilities. Facilities owned and operated by the Town of New Scotland for the conduct of the Town's business including, but not limited to, municipal office buildings, schools, police and fire stations, public works garages and facilities, public safety facilities, solid waste disposal facilities, sewerage systems, sewer facilities and similar uses.

11.166. Neighborhood Grocery/ Convenience Store. A retail store contained on one (1) floor with a total floor area of less than five

thousand (5,000) square feet intended to provide a variety of small goods needed immediately and often by consumers.

11.167. Non-Conforming Lot. A lot, the area, dimensions, or location of which was lawful prior to the adoption, revision, or amendment of the zoning law but that fails in terms of total area or dimensions to conform to the present requirements of the zoning district.

11.168. Non-Conforming Structure or Building. A structure or building, the size, dimensions, material construction or location of which was lawful prior to the adoption, revision, or amendment to the zoning law but that fails to conform to the present requirements of the zoning district.

11.169. Non-Conforming Use. A use or activity that was lawful prior to the adoption, revision or amendment of the zoning law but that fails to conform to the present use requirements of the zoning district in which it is located.

11.170. Nursing or Convalescent Home. A State licensed residential care facility in which nursing care and medical services are performed under the general direction of persons licensed to practice in the State of New York, for the accommodation of convalescent or other persons who are not in need of hospital care, but who do require on a twenty-four hour (24) basis, nursing care and related medical services. This definition shall include skilled nursing facilities, intermediate care facilities and nursing facilities.

11.171. Office Building A building that has been planned, developed and operated as a facility to accommodate one (1) or more separate offices as its primary use, where other uses are secondary or accessory.

11.172. Office Use. Any use of a primarily clerical or professional nature, such as, but not limited to, insurance, government, real estate, legal miscellaneous business or medical services.

11.173. Off-Site Sewer or Water. Those facilities provided for common usage in a private or public entity, and which shall meet the required standards of the Albany County Department of Health.

11.174. Open Space Ratio. The ratio of the total area of a parcel maintained in lawns, gardens, planters, or other natural vegetation to the total lot area.

11.175. Parking Area. An open area, other than a street, road or highway or other public way, used for the parking of automobiles and available to the public whether for a fee, free, or as an accommodation for clients or customers.

11.176. Personal Service Outlet. A business with the primary purpose of providing service to individual consumers, such as shoe repair, dry cleaning, laundromat, barber shop, beauty parlor or bank.

11.177. Places of Indoor Assembly and Cultural Entertainment. Indoor facilities designed to accommodate the public for entertainment or social activities including halls, auditoria, meeting rooms, theaters, museums, dance studios and similar facilities, but not including video arcades, amusement parks or outdoor movie theaters.

11.178. Planned Unit Development. A tract of land which is developed as a unit with a grouping of residential, commercial or industrial buildings, together with their accessory buildings and all appurtenant roadways, parking areas loading areas, open spaces and service buildings and facilities.

11.179. Preserve. A parcel of land set aside for the purpose of preserving its natural character for ecological and/or educational purposes. Includes game refuges, wildlife centers and forest preserves.

11.180. Private Club. A facility operated by a corporation, association or group of people for the social, educational or recreational intent of the dues paying members and their guests, but not primarily for profit nor to render a service which customarily is carried on as a business.

11.181. Principal Building A structure located on a parcel of land housing at least the principal use allowed for the parcel. When a garage is attached to the principal building in a substantial manner as by a roof or common wall, it shall be considered as a part of the principal building for the purpose of computing setback and density requirements.

11.182. Principal Use. Any use allowed as-of-right or by special use permit within a particular zoning district, and not specifically designated as an accessory use.

11.183. Qualified Geologist/Hydrologist. A qualified Geologist/Hydrogeologist (including geologists, hydrologists, geophysicists or soil scientists) shall be defined as:

- A. 1. Graduated from an accredited college with a degree in Hydrogeology, Geohydrology or Soil Science; or
2. Graduated from an accredited college with a degree in Geology including and/or supplemented by a minimum of three credit hours in hydrogeology or geohydrology; or
3. Graduated from an accredited college with a

degree in one of the natural physical sciences including and/or supplemented by thirty credit hours in geology of which three credit hours must be in hydrology and/or geohydrology; or

4. Graduated from an accredited college with a degree in one of the natural physical sciences including and/or supplemented by thirty credit hours in pedology or soil work and a minimum of six credit hours in geology (course work in paleontology or mining will not be considered acceptable.);

B. Four years of appropriate professional experience.

11.184. Recharge Area. An area composed of permeable materials which allows precipitation and surface water to filter into groundwater and replenish groundwater in aquifers, or to drain into, and replenish water storage in reservoirs located within the Town.

11.185. Recreation

A. **Non-Intensive Outdoor Recreation.** Outdoor recreational uses that involve minimal structural development or disturbance of the natural terrain. Non-intensive outdoor recreation including public, private or commercial parklands, golf courses, playing fields, natural ice skating facilities, hiking facilities, nature preserves, bike paths, nature walks, horseback riding, fishing, cross country skiing, sledding and sailing, but excluding hunting, motor boating, swimming, tennis court facilities, snowmobiling and other more intensive uses.

B. **Other Outdoor or Indoor Recreational Uses.** Indoor and outdoor uses and facilities which cannot be defined as

non-intensive outdoor recreational uses.

11.186. Religious Institution. An institution that people regularly attend to participate in or hold services, meetings and other activities. The term shall not carry a secular connotation and shall include buildings in which religious services of any denomination are held.

11.187. Research, Experimental or Testing Laboratory. A building or group of buildings where facilities for scientific research, investigations, testing, or experimentation are located. Facilities for the manufacture or sale of products, except as incidental to the main purpose of the laboratory are specifically excluded.

11.188. Restaurant. Any establishment which serves prepared meals for consumption on the premises or for take-out. Does not include drive-in restaurants (see *Drive-In Establishments*).

11.189. Retail Store. A business engaged in the sale of commodities to walk-in consumers for direct consumption and not for resale; including apparel stores, pharmacies, book stores and other retail outlets.

11.190. Rooming House. A building containing a single dwelling unit and rooms for the rooming and/or boarding of at least two (2) persons, but not more than five (5) persons, by pre-arrangement for definite periods of not less than one (1) week.

11.191. Self Service Storage Facility. A building consisting of individual, small self contained units that are leased or owned for the storage of business and household goods or contractor supplies.

11.192. Setback, Front. The required minimum distance between the front line of a building and the related front lot line. (See

Building, Front Line of and Lot Line, Front.)

11.193. Setback, Side. The required minimum distance between a side lot line and the closest side of a building. Building side shall be measured from any bay windows, covered porches, whether enclosed or unenclosed, or any projections thereof.

11.194. Setback, Rear. The required minimum distance between a rear lot line and the rear of a building. Building rear line shall be measured from any bay windows, covered porches, whether enclosed or unenclosed, or any projections thereof.

11.195. Sign. Any device visible to from outside of a building designed to inform or attract the attention of persons not on the premises on which the device is located.

11.196. Special Use. A use which because of its unique characteristics requires individual consideration in each case by the Planning Board before it may be permitted in a district.

11.197. Soil Mining. Commercial excavating for the purpose of removal of gravel, quarrying and any subsoil or topsoil removal.

11.198. Stable, Public. The building on which horses are kept for commercial use including boarding, hire and sale.

11.199. Stable, Private. An accessory building in which horses are kept for private use and not for remuneration, hire, or sale. For lots under five (5) acres, the maximum number of horses that can be kept for private use is three (3). For lots over five (5) acres, one (1) additional horse may be kept for each additional two (2) acres of land.

11.200. Street. Any public way used as a means for vehicular and pedestrian circulation, whether

designed as a street, highway, thoroughfare, parkway, road, avenue, boulevard, lane, cul-de-sac, place or otherwise designated. Classes of streets are as follows:

A. Primary Street. (Arterial Street) are streets which are used primarily for through traffic with limited access requirements.

B. Secondary Streets. (Collector Street) provide routes which connect Local streets (Minor streets) to community facilities, businesses, and commercial districts and to the Primary street system. Secondary streets include principal streets of residential developments.

C. Local Streets (Minor Street) are streets which are used primarily for access to abutting residential, agricultural and forest management properties. Local streets include cul-de-sacs, marginal access streets, and streets used for circulation within residential developments which do not provide for through traffic circulation.

D. Marginal Access Streets are forms of Local streets, generally parallel with and adjacent to Primary or Secondary streets, providing; access to abutting properties, protection against through traffic and control of the number of intersections with Primary and Secondary streets.

11.201. Street, Center Line. The line corresponding to the mid-point of the surfaced portion of any street.

11.202. Street, Public. A street dedicated to public use.

11.203. Story. That portion of a building, included between the surface of a floor and the surface of the floor above it, or, if there is no

floor above it, then the place between the floor and the ceiling above it.

11.204. Structure. Anything constructed or erected on the ground or which is attached to something located on the ground. Structures include buildings, radio and TV towers, sheds and carports.

11.205. Substantial Improvement or Rehabilitation. Any repair, reconstruction, or improvement of a structure, the value of which equals or exceeds fifty (50) percent of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred.

11.206. Supermarket. A retail business contained on one (1) floor devoted to sale of food and related household items.

11.207. Tavern. An establishment devoted to the primary use of selling alcoholic beverages for consumption on the premises; may serve food as an incidental use. Bar, grill, saloon, pub, or similar establishment shall be considered a tavern.

11.208. Tower. A structure situated on a nonresidential site that is intended for transmitting or receiving television, radio and/or telephone communications equipment.

11.209. Usable Open Space. Required open space which shall be entirely undeveloped, except for planting, landscaping and recreational equipment, and shall be available for the sole enjoyment of the public and shall not include any side yards, driveways and accessways.

11.210. Variance, Use. Permission by the ZBA for the use of land for a purpose which is otherwise not allowed or is prohibited by this Law.

11.211. Variance, Area. Permission by the ZBA for the use of land in a manner which is not allowed by the dimensional or physical requirements of this Law.

11.212. Veterinary Facility (Animal Hospital). A structure for the health care and treatment of animals, not including kennels.

11.213. Warehousing and Distribution. A use engaged in storage, wholesale, and distribution of manufactured products, supplies and equipment, but excluding bulk storage of materials that are flammable or explosive or that create hazardous or commonly recognized offensive conditions.

11.214. Wholesale Business. A business engaged in the sale of commodities for resale to other consumers.

Article XII. FEES

§12.000. Fee Requirements

Fees, as established by the Town Board by resolution, may be charged for processing of applications and permits issued under this Local Law