Chapter 190

ZONING

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Zoning Map

[HISTORY: Adopted by the Town Board of the Town of New Scotland 5-10-2000 by L.L. No. 3-2000; amended and readopted at time of adoption of Code (see Ch. 1, General Provisions, Art. I). Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Dumps — See Ch. 89.
Junkyards — See Ch. 116.
Subdivision of land — See Ch. 164.

ARTICLE I
Title and Purpose

§ 190-1. Short title.

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

§ 190-2. Purpose.

This chapter 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 general 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. In the event of inconsistencies between the New Scotland Zoning Law (this chapter) and the Comprehensive Land Use Plan, the provisions of the New Scotland Zoning Law (this chapter) shall be controlling.

§ 190-3. Interpretation of provisions.

In the interpretation and the application of the provisions of this chapter, all officials and boards shall be held to 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 chapter 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 chapter shall control.

§ 190-4. Severability.

If any section, subsection, sentence, clause or phrase of this chapter 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 chapter.

§ 190-5. Greater restrictions to prevail.

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 this chapter, the provisions of such statute, other law or regulation shall be controlling.

ARTICLE II
Establishment and Designation of Districts

§ 190-6. Zoning Map and districts.

The Zoning Map officially entitled "Town of New Scotland Zoning Map" dated 1995 is hereby adopted as part of this chapter. The Town of New Scotland Zoning Map shows a division of the Town into the following districts:

RF - Residential Forestry
RA - Residential Agricultural
MDR- Medium Density Residential
R2 - Residential Conservation
RH - Residential Hamlet
CH - Commercial Hamlet
COM- Commercial
IND- Industrial

§ 190-7. 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.[1]

§ 190-8. 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:

A. 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.

B. 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.

C. 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.

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

E. 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.

F. In all cases where district boundary divides a lot in single or joint ownership and where 50% or more of the area of such lot lies in the less restricted district, the regulations described by this chapter for the less restricted district shall apply to the first 30 feet of the more restrictive lot area adjacent to the common boundary as measured perpendicular to the said common boundary. For purposes of this subsection, 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.

§ 190-9. Lots.

A. Minimum lot size.

(1) Except as explicitly defined in this chapter, 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) Exceptions may be:

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1. **Editor's Note: A copy of the Zoning Map is included at the end of this chapter.**

(a) Lots to be under municipal and/or homeowner ownership; or

(b) Lots for green spaces; or

(c) Lots for stormwater management; or

(d) Lots for sports uses; or

(e) Lots required for any use, and under any ownership, as determined by the Planning or Zoning Board in their respective reviews.

B. 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 chapter.

C. Building location. All structures, except unattached accessory structures as regulated in § 190-29D of this chapter, 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.

D. Preexisting lots. Any lot in existence prior to the effective date of this chapter, single and separate in ownership from that of any adjacent land, which does not meet the description of § 190-30F, 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.

E. Number of buildings. There shall be not more than one dwelling structure on each zone lot, or parcel of land, intended or used for residential purposes except as allowed by special use for hotels or motels, cluster development and planned unit development or similar projects.

§ 190-10. 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.

§ 190-11. RF Residential Forestry.

A. Statement of purpose. The forestry area contains soils and slopes that are generally not desirable for agricultural use. It contains less desirable soils for urban development than the Residential Agricultural 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 nonintensive 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. The Residential Forestry Zone includes lands that are critical environmental areas.

B. Bulk regulations.

Minimum Lot Area (acres)*	Minimum Lot Size Width (feet)	Minimum Lot Area Per Family (square feet)	Minimum Yard Setbacks (feet)		
			Front	Side	Rear
3	200	125,000	50	50	50
1**	140	40,000	50	20	30

NOTES:

* In calculating the minimum acreage required of building lots, lands within the boundary of federal- or state-designated wetlands shall not be included.

** Homestead allowance: One, one-acre lot for each 10 acres in a parcel with the remainder of the parcel to be divided into three-acre, or larger, lots.

(1) 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 traveled way.

C. Uses allowed by permit:

(1) Forest management.

(2) Agriculture: farms and nurseries (more than five acres), including display and sale of products raised, except hogs and pigs.

(3) Single-family dwelling.

(4) Private nonprofit and/or public.

(5) Accessory uses.

(6) Home occupation.

(7) Day care.

(8) Amateur radio towers.

D. Special uses:

(1) Two-family dwelling.

(2) Removal of fill, gravel or loam.

(3) Temporary sawmill.

(4) Water impoundment for recreation and storage outdoor recreational uses.

(5) Summer camps and retreats.

(6) Churches and cemeteries.

(7) Private nonprofit and public recreational buildings.

(8) Essential service structures.

(9) Boarding and riding stable and/or arena.

(10) Animal hospital, clinic and /or kennel.

(11) Hogs and pigs.

(12) Commercial radio or transmission towers.

(13) Restaurants and taverns.

(14) Day-care center.

(15) Farming activity, personal.

(16) Horses, less than five acres.

§ 190-12. RA Residential Agricultural.

A. Statement of purpose. The Residential Agricultural district generally has soils suitable for development. For reasons of access, slopes, agricultural land preservation, present and future 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.

B. Bulk regulations.

				Minimum Yard Setbacks (feet)		
Class*	Minimum Lot Area (square feet)	Minimum Lot Size Width (feet)	Minimum Lot Area Per Family (square feet)	Front	Side	Rear
1	33,000**	100	30,000	40	25	30
2	44,000**	140	40,000	40	25	30

NOTES:

* Type of utility:

Class 1 - Public water and sewer.

Class 2 - On-site water and/or sewage disposal.

** In calculating the minimum acreage required of building lots, lands within the boundary of federal- or state-designated wetlands, and lands with a slope greater than 17% shall not be included.

(1) 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 traveled way.

C. Uses allowed by permit:

(1) Forest management.

(2) Agriculture: farms and nurseries (more than five acres), including display and sale of products raised, except hogs and pigs.

(3) Single-family dwelling.

(4) Private nonprofit or public outdoor recreational uses.

(5) Accessory uses.

(6) Home occupation.

(7) Day care.

(8) Amateur radio towers.

D. Special uses:

(1) Cemeteries.

(2) Water impoundment for recreation and storage.

(3) Churches.

(4) Essential service structures.

(5) Farming activity, personal.

(6) Boarding and riding stables and arenas.

(7) Hogs and pigs.

(8) Two-family dwellings.

(9) Multifamily dwellings.

(10) Private airports.

(11) Mobile home park.

(12) Animal hospital, clinic and/or kennels.

(13) Private nonprofit and public recreational buildings.

(14) Hospitals and clinics.

(15) Nursing and convalescent homes.

(16) Hotels/motels.

(17) Restaurants and taverns.

(18) Horses, less than five acres.

(19) Day-care center.

§ 190-13. MDR Medium Density Residential.

A. Statement of purpose. The Medium Density Residential areas generally have suitable soils and slopes for urban development, are accessible to other population centers, can feasiblely be 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.

B. Bulk regulations.

				Minimum Yard Setbacks (feet)		
Class*	Minimum Lot Area (square feet)	Minimum Lot Size Width (feet)	Minimum Lot Area Per Family (square feet)	Front	Side	Rear
1	22,000**	120	15,000	40	25	30
2	30,000**	130	15,000	40	25	30
3	44,000**	150	15,000	40	25	30

NOTES:

Type of utility:

Class 1 - Public water and sewer.

Class 2 - On-lot water or sewage disposal.

Class 3 - On-lot water and sewage disposal

** In calculating the minimum area of building lots, lands of the following characteristics shall not be included:

a) Lands with a slope greater than 17%.

b) Lands within conservation easement areas.

c) Lands within stormwater management areas.

d) Lands within parklands.

e) Lands within federal- or state-designated wetlands.

(1) 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 traveled way.

C. Uses allowed by permit:

(1) Agriculture: farms and nurseries (more than five acres), including display and sale of products raised, except hogs and pigs.

(2) Single-family dwelling.

(3) Private nonprofit or public outdoor recreational uses.

(4) Accessory uses.

(5) Day care.

(6) Home occupation.

(7) Forest management.

(8) Amateur radio towers.

D. Special uses:

(1) Two-family dwellings.

(2) Multifamily dwellings.

(3) Essential service structures.

(4) Hospitals and clinics.

(5) Nursing and convalescent homes.

(6) Hotels/motels.

(7) Restaurants and taverns.

(8) Planned unit developments.

(9) Horses, less than five acres.

(10) Day-care centers.

(11) Water impoundment for recreation.

(12) Private nonprofit and public recreational buildings.

(13) Churches.

(14) Boarding and riding stables and/or arenas.

(15) Cemeteries.

(16) Animal hospital, clinic and/or kennels.

(17) Farming activity, personal.

§ 190-14. R2 Residential Conservation.

A. Statement of purpose. The Residential Conservation areas generally have soils and slopes unsuitable for urban development, are accessible to other population centers and are generally outside the prime agricultural area. The purpose of this district is to discourage growth on unsuitable lands and encourage development of natural areas suitable for passive recreation.

B. Bulk regulations.

Minimum Lot Area (acres)*	Minimum Lot Size Width (feet)	Minimum Lot Area Per Family (square feet)	Minimum Yard Setbacks (feet)		
			Front	Side	Rear
2	175	86,000	50	25	50
1**	145	43,000	50	25	30

NOTES:

* In calculating the minimum acreage required of building lots, lands within the boundary of federal- or state-designated wetlands and lands with a slope greater than 17% shall not be included.

** Homestead allowance: One, one-acre single family building lot for each 11 acres in the parcel of land, with the remainder of the parcel to be divided into two-acre, or larger, lots.

(1) Add 30 feet to 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, a line 25 feet from and parallel to the center line of the traveled way.

C. Uses allowed by permit:

(1) Forest management.

(2) Agriculture: farms and nurseries (more than five acres), including display and sale of products raised, except hogs and pigs.

(3) Single-family dwelling.

(4) Private nonprofit and public outdoor recreational uses.

(5) Accessory uses.

(6) Home occupation.

(7) Day care.

(8) Amateur radio towers.

D. Special uses:

(1) Cemeteries.

(2) Water impoundment for recreation and storage.

(3) Churches.

(4) Essential service structures.

(5) Boarding and riding stables and/or arenas.

(6) Two-family dwellings.

(7) Private nonprofit and public recreational buildings.

(8) Animal hospital, clinic and/or kennel.

(9) Day-care center.

(10) Farming activity, personal.

(11) Horses, less than five acres.

(12) Amateur radio towers.

§ 190-15. RH Residential Hamlet.

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

B. Bulk regulations.

Class*	Minimum Lot Area (square feet)	Minimum Lot Size Width (feet)	Minimum Lot Area Per Family (square feet)	Minimum Yard Setbacks (feet) Front	Side	Rear
1	10,000**	100	7,500	30	15	30
2	20,000**	100	10,000	30	15	30

NOTES:

* Type of utility:

Class 1 - Public water and sewer.

** In calculating the minimum acreage required of building lots, lands within the boundary of federal- or state-designated wetlands, and lands with a slope greater than 17% shall not be included.

Class 2 - On-site water and/or sewage disposal.

C. Uses allowed by permit:

(1) Agriculture: farms and nurseries (more than five acres), including display and sale of products raised, except hogs and pigs.

(2) Single-family dwelling.

(3) Accessory uses.

(4) Day care.

(5) Private nonprofit or public outdoor recreation uses.

(6) Home occupation.

(7) Amateur radio towers.

D. Special uses:

(1) Two-family dwellings.

(2) Multifamily dwellings.

(3) Essential service structures.

(4) Hospitals and clinics.

(5) Nursing and convalescent homes.

(6) Private nonprofit and public recreational buildings.

(7) Water impoundment for recreation and storage.

(8) Churches.

(9) Cemeteries.

(10) Public or private schools.

(11) Semipublic uses.

(12) Professional buildings.

(13) Rooming house.

(14) Agricultural uses, less than five acres.

(15) Horses, less than five acres.

(16) Nonprofit lodges and social halls.

(17) Day-care center.

(18) Animal clinic.

§ 190-16. CH Commercial Hamlet.

A. 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.

B. Commercial bulk regulations.

		Yard Dimensions Minimum Lot Size (feet)			Minimum Yard Setbacks (feet)		
Class	Minimum Lot Size (square feet)	Width	Depth	Maximum Building Area for Each Store (square feet)	Front	Side	Rear
1	10,000**	100	100	4,000	30	15	30
2	20,000**	100	100	4,000	30	15	30

NOTES:

* Type of utility:

Class 1 - Public water and sewer.

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

** In calculating the minimum acreage required of building lots, lands within the boundary of federal- or state-designated wetlands, and lands with a slope greater than 17% shall not be included.

C. Residential bulk regulations.

Class*	Minimum Lot Size (square feet)	Minimum Lot Width (feet)	Minimum Lot Area Per Family (square feet)	Minimum Yard Setbacks (feet)		
				Front	Side	Rear
1	10,000**	100	7,500	30	15	30
2	20,000**	100	10,000	30	15	30

NOTES:

* Type of utility:

Class 1 - Public water and sewer.

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

** In calculating the minimum acreage required of building lots, lands within the boundary of federal- or state-designated wetlands, and lands with a slope greater than 17% shall not be included.

D. Uses allowed by permit:

(1) Retail businesses.

(2) Business office.

(3) Banks.

(4) Accessory uses.

(5) Personal service outlets.

(6) Mortuary funeral home.

(7) Restaurants and taverns.

(8) Home occupation.

(9) Professional service outlets.

(10) Clinics.

(11) Day care.

(12) Amateur radio tower.

E. Special uses:

(1) Automobile service or filling station.

(2) Dry cleaning.

(3) Religious institution.

(4) Community center.

(5) Private nonprofit and public recreation.

(6) Private club.

(7) Parking area.

(8) Auto sales and service.

(9) Day-care center.

(10) Self-storage buildings.

(11) Single-family dwelling.

(12) Two-family dwelling.

(13) Multifamily dwelling.

(14) Animal clinic.

(15) Essential service structures.

§ 190-17. COM Commercial.

A. 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.

B. Commercial bulk regulations.

	Minimum Lot Size		Minimum Yard Setbacks (feet)		
Class*	Area (square feet)	Width (feet)	Front	Side	Rear
1	33,000**	120	50	15	15
2	44,000**	140	50	15	15

NOTES:

* Type of utility:

Class 1- Public water and sewer.

Class 2 - On-lot water and/or sewage disposal.
** In calculating the minimum acreage required of building lots lands within the boundary of federal- or state-designated wetlands and lands with a slope greater than 17% shall not be included.

C. Residential bulk regulations:

	Minimum Lot Size			Minimum Yard Setbacks (feet)		
Class*	Area (square feet)	Width (feet)	Minimum Lot Area Per Family (square feet)	Front	Side	Rear
1	33,000**	120	30,000	30	15	30
2	44,000**	140	40,000	30	15	30

NOTES:

* Type of utility:

Class 1- Public water and sewer.

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

** In calculating the minimum acreage required of building lots lands within the boundary of federal- or state-designated wetlands and lands with a slope greater than 17% shall not be included.

D. Uses allowed by permit:

(1) Agriculture: farms and nurseries (more than five acres), including display and sale of products raised, except hogs and pigs.

(2) Accessory uses.

(3) Essential services.

(4) Banks.

(5) Restaurants and taverns.

(6) Motels, hotels, and/or inn.

(7) Theaters.

(8) Clinics.

(9) Commercial recreation.

(10) Office, private or public.

(11) Parking areas.

(12) Retail business.

(13) Professional services.

(14) Day care.

(15) Municipal buildings and facilities.

(16) Home occupation.

(17) Building supply facility.

(18) Educational uses.

(19) Amateur radio tower.

E. Special uses:

(1) Single-family dwelling.

(2) Two-family dwelling.

(3) Multifamily dwelling.

(4) Essential service structures.

(5) Cemeteries.

(6) Churches.

(7) Automobile service or filling station.

(8) Auto sales and service.

(9) Shopping facilities consisting of more than one store.

(10) Car washes.

(11) Illuminated signs.

(12) Self-storage buildings.

(13) Animal hospital, clinic and/or kennel.

(14) Day-care center.

(15) Farming activity, personal.

(16) Horses, less than five acres.

§ 190-18. IND Industrial.

A. Statement of purpose. This area provides for the establishment of industrial facilities, warehousing and related activities. A variety of types of manufacturing and offices are permitted, provided they are in keeping with the goals of the community.

B. Industrial bulk regulations.

	Minimum Lot Size		Minimum Yard Setbacks (feet)		
Class*	Area (square feet)	Width (feet)	Front	Side	Rear
1	40,000**	160	40	25	50
2	50,000**	200	40	25	50

NOTES:

* Type of utility:

Class 1 - Public water and sewer.

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

** In calculating the minimum acreage required of building lots, lands within the boundary of federal- or state-designated wetlands, and lands with a slope greater than 17% shall not be included.

C. Residential bulk regulations.

	Minimum Lot Size			Minimum Yard Setbacks (feet)		
Class*	Area (square feet)	Width (feet)	Minimum Lot Area Per Family (square feet)	Front	Side	Rear
1	33,000**	130	30,000	30	25	30
2	44,000**	140	40,000	30	25	30

NOTES:

* Type of utility:

Class 1 - Public water and sewer.

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

** In calculating the minimum acreage required of building lots, lands within the boundary of federal- or state-designated wetlands, and lands with a slope greater than 17% shall not be included.

D. Uses allowed by permit:

(1) Agricultural: farms and nurseries (more than five acres), including display and sale of products raised, except hogs and pigs.

(2) Accessory uses.

(3) Public facilities.

(4) Offices, private or public.

(5) Wholesale businesses.

(6) Home occupations.

(7) Public buildings.

(8) Warehousing and distribution.

(9) Self-service storage facilities.

(10) Any manufacture, compounding, processing, packing, treatment, warehousing or storage of goods and products, provided the use meets the standards of the State of New York.

E. Special uses:

(1) Commercial and retail uses servicing the industrial area.

(2) Research and testing laboratories.

(3) Industrial parks.

(4) Animal hospital, clinic and/or kennel.

(5) Single-family dwelling.

(6) Public garages.

(7) Trucking terminal.

(8) Essential service structures.

(9) Horses, less than five acres.

(10) Illuminated signs.

(11) Auto wrecking facilities.

(12) Municipal facilities.

(13) Building or construction business.

(14) Building supply facility.

(15) Boarding and riding stables and/or arenas.

(16) Composting of sludge, yard waste and other solid waste.

(17) Agribusiness, including composting of cow, sheep and/or horse manure and associated bedding materials.

(18) Industrial lot.

(19) Farming activity, personal.

§ 190-19. Additional requirements and standards.

The following additional requirements and standards shall apply to all commercial and industrial uses, except in the Commercial Hamlet Zones.

A. Additional requirements:

(1) Maximum building coverage ratio: 0.50.

(2) Maximum impervious surface ratio: 0.75.

(3) Maximum building height: 35 feet.

(4) Minimum usable open space ratio: 0.25.

(5) Minimum distance between principal buildings on the same site: 15 feet.

B. 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) 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.

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

(4) Parking is not allowed in the area between the principal building front face and the pavement edge of any street or road unless a fifty-five-foot setback is provided for any structure, and a five-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.

(5) Front, side and rear setbacks are to be landscaped as may be required by the Planning board.

(6) A minimum buffer area of 30 feet in width is to be maintained between any commercial structure and a residential district or an existing dwelling in use.

(7) Parking lots and service areas are to be paved in accordance with the pavement requirements of this chapter.

(8) Existing lots of record having 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.

(9) Existing lots of record having more than 180 feet but less than 500 feet of frontage on a street will be limited to two points of vehicular access to the street to service all development on the lot.

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

(11) Prior to the division of all or any portion of any existing lot of record having a gross lot area of five acres or more or 500 or more feet 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 Article V of this chapter.

(b) A plan should be conceptual in nature. It must identify major development opportunities and constraints associated with the site.

(c) In addition to the requirements contained in Article V of this chapter, 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 Standards and Regulations

§ 190-20. Applicability.

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

§ 190-21. Open space requirement.

Open space shall be required for any subdivision in compliance with Chapter 164, Subdivision of Land, of the Code of the Town of New Scotland . At least 10% of the area of any commercial or industrial development in either the COM or IND Zone 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.

§ 190-22. Cluster development. [2]

Cluster development serves the purpose of enabling and encouraging the flexible design and development of land in a manner that promotes the appropriate use of land, controlled development, and preservation of the rural character of the Town. Such types of development facilitate the adequate and economic provision of streets and utilities and preserve the natural and scenic qualities of open lands consistent with the goals and objectives of the Comprehensive Land Use Plan.

§ 190-23. Off-street 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.

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 square feet of gross leasable area
Retail business and personal service establishments	1 for each 180 square feet of gross leasable area
Restaurants and taverns	1 for every 3 seats and 1 for each 2 employees
Industrial	1 for each 400 square feet of gross leasable area
Funeral homes	1 for each 75 square feet of floor space in slumber rooms, parlors and individual service rooms
Multifamily dwelling	1 1/2 per unit plus 1 additional space for each 10 units

§ 190-24. Use of parking areas.

A. Parking areas are to 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.

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2. **Editor's Note: See also Article VI, Cluster Development, of this chapter, and Article VI, Cluster Development, of Ch. 164, Subdivision of Land.**

B. Public, off-street parking in lieu of on-site parking may be utilized to fulfill parking requirements as approved by the Planning Board.

C. Handicap parking spaces are to be supplied in accordance with the Building Code of New York State.

§ 190-25. Design of off-street parking facilities.

The following parking area design standards shall apply to all uses except one- and two-family structures:

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

Parking Lot Sizes and Dimensions

Angle	Stall Width (feet)	Stall to Curb (19-foot stall) (feet)	Aisle Width (feet)	Curb Length Per Car (feet)
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

NOTES:

* Two-way circulation.

** One-way circulation.

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 10 feet in width for one-way traffic and 20 feet in width for two-way traffic, except that eighteen-foot-wide driveways are permissible for two-way traffic when the driveway is not longer than 50 feet 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 parking space for every 40 parking spaces which is to be located to allow for no more than 20 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 1 1/2 inches caliper with branches no lower than seven feet. A minimum of one 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 chapter.

E. A screen planting of appropriate plant material 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 50 feet.

§ 190-26. Off-street loading for all commercial and industrial uses.

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.

§ 190-27. Off-street loading design standards.

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

Square Feet	No. of Spaces
5,000 to 79,999	1
80,000 to 127,999	2
128,000 to 191,999	3
192,000 to 255,999	4
256,000 to 319,999	5
320,000 to 391,999	6

Plus one space for each additional 72,000 square feet or fraction thereof

NOTES:

* A minimum distance of 12 feet by 55 feet and overhead clearance of 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 there exists a lot with one or more structures on it constructed before the effective date of this chapter, and a change in use not involving any enlargement of a structure is proposed for such lot, and 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 as determined by the Planning Board.

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.

§ 190-28. Pavement requirements.

The following pavement design standards shall apply. 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:

A. 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 not less than six inches of suitable subbase material in compliance with NYSDOT Standard Specification Type 4 equivalent gravel.

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

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

B. Parking stall areas likely to experience similar light traffic are to be paved not less than six inches of NYSDOT Type 4 equivalent gravel.

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

C. All parking areas, regardless of size and location, shall be suitably drained and maintained with slopes on paved surfaces established between 2% and 8% in parking stall areas and with driveway grades no greater than 12% grade.

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

E. Granite, concrete and/or precast concrete curbing is to be installed, as required, to adequately control stormwater 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.

(1) All concrete curbing will have a twenty-eight-day compressive strength of 4,000 psi. Expansion joints are to be provided at intervals not to exceed 20 feet are and to be sealed. Curb vertical face exposure is to be at least six inches above the pavement surface.

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

§ 190-29. Yard and height regulations.

A. Coverage. In all districts, structures may not cover more than 30% of the lot except in COM or CH Districts, where commercial uses shall not cover more than 50% of the lot. In planned development projects and projects where clustering is applied, although individual lots may exceed this requirement, the overall project may not.

B. Height regulations.

(1) In the case of single-family dwelling, no building shall exceed two stories, with a maximum height of 35 feet.

(2) In the case of a building other than a single-family dwelling, including commercial and industrial buildings, and/or structures, no part thereof shall exceed three stories with a maximum height of 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.

C. Front yard setback. Notwithstanding provisions for front yards elsewhere in these regulations, on streets with less than fifty-foot right-of-way or where the right-of-way

line is not known, the front yard requirement shall be measured from a point 25 feet from the center line of the existing roadway.

D. Accessory structures. Maximum permitted height for unattached structure shall be 20 feet, except that the maximum permitted height may be increased up to 35 feet if lot size is three or more acres and front, side and rear setbacks are each at least 50 feet.

(1) Maximum yard regulations.

(a) 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 feet of any other property line.

(b) 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 chapter applicable to the principal building.

(c) Nonresidential accessory structures. Nonresidential 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 10 feet.

§ 190-30. Nonconformance.

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

B. Maintenance and enlargement of nonconforming structures. A structure in lawful existence prior to the adoption or subsequent amendment of this chapter 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 chapter, and does not increase the degree of any nonconformity.

C. Regulation of nonconforming uses.

(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 chapter.

(2) Repairs, maintenance or structural additions to a nonconforming 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 authorization from the Planning Board, the Inspector may allow up to a 25% expansion of a nonconforming use. A larger expansion would require an area variance from the ZBA. The applicant shall submit 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 owner's name and address. If the applicant is not the owner, the applicant's name, address and interest in the property, if different than the subject property address; the current zoning district classification and present use of the subject property.

[2] If represented by others, a statement of consent by the property owner allowing for the representation.

[3] A written general description of the proposed project.

[4] A copy of the deed of record documenting ownership of the subject property.

[5] A minimum of 12 copies of a site plan, at a scale of one inch to 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, stormwater facilities, building elevations, site contours and general building layout or floor plan and any other planned improvements.

D. Termination of a nonconforming use.

(1) Abandonment. The discontinuance of a nonconforming use for a period of one 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-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.

(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.

E. Damage or destruction.

(1) Partial damage.

(a) Where any structure containing a nonconforming use is partially damaged or destroyed by any means to the extent of 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 year to apply for a building permit. In the event the building remains vacant for one year without application for a building permit, it shall constitute an abandonment and such nonconforming use shall not be revived.

(2) Substantial damage or destruction of a nonconforming 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 50% of the cost of replacement of such structure new, such structure and use shall not be restored unless the structure and use thereof shall conform to all current regulations of this chapter.

(3) Substantial damage or destruction of a nonconforming structure. In the event that any nonconforming structure is substantially damaged or destroyed, by any means, to the extent of more than 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 chapter.

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

(1) The proposed use is allowed within the district under the provisions of this chapter.

(2) 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-foot minimum frontage is required on a public road.

(3) The use conforms to all other applicable local, county, state and federal land use regulations including New York State SEQRA requirements.[3]

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

§ 190-31. Temporary construction 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.

§ 190-32. Signs.

Signs may be erected and maintained only when in compliance with the provisions of this § 190-32 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.

A. Signs in residential districts:

(1) Residential and accessory home occupations, professions and trades. One sign attached flat against a wall of the building, not to exceed two square feet, and one detached sign, not to exceed six square feet, for each dwelling unit providing the occupation or service on the premises.

(2) Other permitted uses.

(a) In RH Districts, not more than two signs pertaining to a permitted use with a total area of not more than 10 square feet each.

(b) In RA and MDR Districts, not more than two signs pertaining to a permitted use with a total area of not more than 12 square feet each.

(c) In RF and R2 Districts, not more than two signs pertaining to a permitted use with a total area of not more than 16 square feet each.

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

B. Signs in Industrial, Commercial and Commercial Hamlet Districts:

(1) Attached business sign (including temporary signs). Not more than three signs, not to exceed a total combined area of 50 square feet, attached flat against the wall of

3. **Editor's Note: See Environmental Conservation Law § 8-0101 et seq.**

the building, advertising the name of the firm or the goods or services available or produced on the premises.

(2) Detached business signs (including temporary signs). One 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 25 square feet in area including the area of both sides if both are exposed to view.

(3) Total sign area. The total sign area of all permitted signs for one permitted use under Subsection B(1) and (2) shall not exceed 75 square feet.

(4) Attached home occupations professions and trades signs (including temporary signs). Not more than two signs, not to exceed a total combined area of 20 square feet, attached flat against the wall of the building advertising the name of the home occupation, profession or trade for each dwelling unit providing the occupation or service on the premises.

(5) Detached home occupation professions and trades signs (including temporary signs). One sign, not exceeding 15 square feet, detached from the building advertising the name of the home occupation, profession or trade for each dwelling unit providing the occupation or service on the premises, not to exceed six feet in height.

C. General sign regulations, permanent and temporary.

(1) Location. Signs may be erected only on the premises of the involved business, trade, profession, sale or home occupation.

(2) Sign area. The maximum areas for signs set forth in this § 190-32 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 sign so long as the interior angle formed by the two display surfaces shall not exceed 15°.

(3) Height of detached signs. No sign, not attached to a building, shall exceed 25 feet in height.

(4) Attached signs. No sign attached to a building shall project above the peak of a roofline or parapet wall, whichever is the higher.

(5) Detached sign setback. The setback for a sign not attached against a building shall be not less than 1/2 of the front building setback for the district involved.

(6) Existing signs. Any existing sign, where the alteration, repair, or change to the advertisement (relating to use, occupant or occupancy) is not in kind, is subject to the provisions of this § 190-32.

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

§ 190-33. Exterior lighting.

Exterior lighting of buildings or grounds is permitted in all 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 public highway.

§ 190-34. Home occupations.

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

A. 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.

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

C. Exterior displays or signs, other than those permitted under § 190-32, 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.

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

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

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

§ 190-35. 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.

§ 190-36. Storage of motor homes, boats and trailers.

No motor home, boat or trailer 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 unsightly.

ARTICLE IV
Special Use Permits

§ 190-37. Purpose.

The purpose of special use permits is to provide for evaluation and approval of uses, beneficial and allowable, as a special use, 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 chapter, but rather assurance of compliance with provisions stated, which make special use permits compatible with other allowed uses within the zoning district.

§ 190-38. 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 article.

§ 190-39. Optional preapplication procedure.

Prior to filing a special use permit application as per § 190-40 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 chapter and the Town Comprehensive Land Use Plan.

A. Optional preapplication submission requirements.

(1) An acceptable preapplication shall include the following:

(a) 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 50 feet of the property line of the site.

(b) A narrative explaining the nature of the proposed special use to the Inspector.

(c) The owner's name and address, zoning district classification and present use of the subject property. If the applicant is not the owner, the applicant's name, address and interest in the subject property.

(d) If represented by others, a statement of consent by the property owner allowing for the representation.

(e) A copy of the deed of record documenting ownership of the property.

(2) 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 15 days, no more than 45 days from the date a complete sketch site plan is received by the Inspector. The applicant shall be provided at least five days' notice of the meeting by the Inspector.

(3) The owner, or an agent authorized by the owner, 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 rescheduled exceeding the time limits established in Subsection A(2).

B. Preapplication review.

(1) Upon review of a sketch site plan, the Planning Board may determine to waive or modify any of the application requirements of § 190-40, 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.

(2) A record of the preapplication 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 chapter and other applicable county, state and federal laws and requirements.

§ 190-40. Special use permit application procedure.

A special use 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 nonrefundable special use permit application fee, as set forth by the Town Board, shall accompany each application. A special use permit application shall contain the following to be deemed complete:

A. A completed application form, containing the owner's name, and address. If the applicant is not the owner, the applicant's name, address and interest in the property; the subject property address; the current zoning district classification and present use of the subject property.

B. If represented by others, a statement of consent by the property owner allowing for the representation.

C. A copy of the deed of record documenting ownership of the property.

D. 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, etc.) of occupants anticipated to be accommodated by the project after completion.

E. A minimum of 12 copies of a site plan, at a scale of one inch to 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 200 feet of the property boundaries and an indication of any water bodies or other sensitive environmental features lying within 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, draining, signs, stormwater 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, NY 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.

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

(1) Location of any water bodies, floodplains, wetlands or other potentially sensitive environmental features.

(2) Location of topographic slopes in excess of 15% grade.

(3) Location of exposed bedrock and other significant geological features.

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

H. Copies of any applications or reports as required to comply with the State Environmental Quality Review Act.[4]

I. Other elements integral to the proposed development necessary as determined by the Planning Board to carry out the intent of this chapter, including, but not limited to, environmental testing.

J. The names and mailing addresses of all owners within 500 feet of the property boundary to which the application applies.

K. A copy of the deed of record documenting ownership of the subject parcel.

§ 190-41. Application hearing.

A. Within 62 days of receipt of a complete special use 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-b of New York State Town Law and any amendments thereof.

B. In scheduling public hearings and review time frames, the Planning Board shall comply with the provisions of the State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations, as set forth in Town Law § 274-b.

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4. **Editor's Note: See Environmental Conservation Law § 8-0101 et seq.**

§ 190-42. 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.

§ 190-43. Determination standards.

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, as determined by the following standards:

A. 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 this chapter, 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 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 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 with this chapter.

(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.[5]

(14) Proper facilities are to be installed in compliance with any applicable stormwater management plan or stormwater management requirements.

B. 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.

§ 190-44. Determination.

The Planning Board shall render its decision within 62 days after the close of the public hearing. The time in which the Planning Board must render its decision may be extended by mutual consent of the applicant and the Board. In its determination on the special use application the Planning Board may issue any one of the following decisions:

A. Denial. If the Planning Board determines that the proposed use would not comply with the requirements of this chapter and in particular with the standards stated in § 190-43, it shall deny the application.

B. Approval. If the Planning Board determines that the proposed use will comply with this chapter and in particular with the standards stated in § 190-43, the Board shall grant a special use permit for the proposed use.

C. 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 § 190-43. Such conditions shall only go as far as to minimize or

5. Editor's Note: See Environmental Conservation Law § 8-0101 et seq.

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.

§ 190-45. Action on 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.

§ 190-46. 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 § 190-52, Site plan review.

§ 190-47. 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.

§ 190-48. 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.

§ 190-49. 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 year.

B. Where a building permit is required in connection with a special use permit, it must be applied for and obtained within one 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 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.

§ 190-50. Exceptions.

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

§ 190-51. Existing violations.

No special use permit shall be issued for a property whereon there exists a violation of this chapter, or upon which a violation would exist if a special use 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

§ 190-52. 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 parcels, property values, public facilities, infrastructure or the natural environment.

A. Applicability.

(1) 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.

(2) 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:

(a) All commercial, industrial, educational, municipal facility or institutional development.

(b) All new multiple dwellings.

(c) Any expansion, or successive expansions within a three-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 20%, provided such expansion involves at least 500 square feet.

(d) Any conversion of an existing residential structure to a nonresidential use.

(e) Conversion or modification of any existing structure into a structure containing three or more dwelling units.

(f) Any new development or expansion of a mobile home park.

(g) Any change of an existing nonresidential building from one type of use to another (example: conversion of a commercial structure to an industrial facility).

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

(4) Construction of a tower, as defined in this chapter, requires a special use permit, as outlined in Article IV of this chapter, and is subject to site plan review (this § 190-52), regardless of zoning district. A special use permit should only be granted when the tower coincides with the goals of the community/Town. Development of future towers should not sprawl along the Helderberg Mountains, but instead be contained in the area of existing towers.

B. Optional preapplication procedure. Prior to filing a site plan application as per Subsection E, 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 chapter and the Town's Comprehensive Land Use Plan.

C. Optional preapplication submission requirements.

(1) An acceptable preapplication shall include the following:

(a) 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 50 feet of the property line of the site.

(b) A narrative explaining the nature of the proposed special use to the Inspector.

(c) The owner's name and address, the current zoning district classification and present use of the property. If the applicant is not the owner, include the applicant's name, address and interest in the subject property.

(d) If represented by others, a statement of consent by the property owner allowing for the representation.

(e) A copy of the deed of record documenting ownership of the property.

(2) 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 15 days, nor more than 45 days from the date a complete sketch site plan is received by the Inspector. The applicant shall be provided at least five days' notice of the meeting by the Inspector.

(3) The owner, or an agent authorized by the owner, 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 rescheduled exceeding the time limits established in Subsection C(2).

D. Preapplication review.

(1) Upon review of a sketch site plan, the Planning Board may determine to waive or modify any of the application requirements of Subsection E, 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.

(2) A record of the preapplication 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 chapter and other applicable county, state and federal laws and requirements.

E. 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 nonrefundable site plan application fee, as set forth by the Town Board, shall accompany each application. In scheduling public hearings and review time frames, the Planning Board shall comply with the provisions of the State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations, as set forth in Town Law § 274-a. A site plan application shall contain the following to be deemed complete:

(1) The owner's name and address, the current zoning district classification and present use of the property. If the applicant is not the owner, include the applicant's name, address and interest in the subject property.

(2) If represented by others, a statement of consent allowing for the representation.

(3) A copy of the deed of record documenting ownership of the subject property.

(4) A minimum of 12 copies of a site plan, at a scale of one inch to 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) Existing structures within 200 feet of the property boundaries and an indication of any water bodies or other sensitive environmental features lying within 200 feet of the site.

(c) 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, stormwater facilities and any other planned improvements.

(d) Wells and effluent treatment systems serving the site and documentation of preliminary approval by the Albany County Department of Health, NY 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.

(6) A statement and documentation as may be required by the Planning Board or other section of this chapter or other relevant Town law describing intended method of ownership and maintenance of open space.

(7) Copies of any applications or reports as required to comply with the State Environmental Quality Review Act.[6]

(8) Other information determined by the Inspector or Planning Board as necessary to review the development for compliance with this chapter, including but not limited to building elevations, fences, plant materials, and elevations and front views of all signs to be employed at the project.

(9) A copy of the deed of record documenting ownership of the subject property.

F. 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 may schedule a public hearing to receive comments on the application. Should the Planning Board decide to hold a public hearing on the application it must be held within 62 days from the day the application is received by the Planning Board.

G. Determination standards. The Planning Board shall review the project to determine consistency with the following standards:

(1) Site design:

(a) 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.

(b) 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.

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6. **Editor's Note: See Environmental Conservation Law § 8-0101 et seq.**

(c) The proposed use, building design, and site layout complies with all applicable provisions of this chapter, as well as Town, state or federal laws or standards.

(d) 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.

(e) 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.

(f) 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.

(g) 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 500 feet of the site.

(h) 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 500 feet of the site from any adverse impacts that might result from the proposed use.

(i) 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.

(j) The existing landscape will be preserved in its natural state insofar 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.

(k) As appropriate, recreation areas and open space sufficient to meet the needs of users and residents will be provided, owned and managed in accordance with this chapter.

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

(m) The proposed use will comply with the requirements of the State Environmental Quality Review Act.[7]

(n) Proper facilities are to be installed in compliance with any applicable stormwater management plan or stormwater management requirements.

(2) 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.

H. Determination. The Planning Board shall render its decision within 62 days after the close of the public hearing. Should a public hearing not be held the Planning Board shall render its decision within 62 days of receiving the application. The time in which the Planning Board must render its decision may be extended by mutual consent of the applicant and the Board. In its determination on the site plan application the Planning Board may issue any one of the following decisions:

(1) Approval. Upon approval of the site plan, the Planning Board shall file its decision with the Town Clerk within five days. The Inspector shall notify the applicant of approval.

(2) 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 the required modifications have been incorporated into the site plan the Planning Board shall endorse its approval on a copy of the site plan and shall file its decision with the Town Clerk within five days. The applicant shall be transmitted a copy of the same.

(3) Disapproval. Upon disapproval of the site plan, the decision of the Planning Board shall be filed with the Town Clerk within 45 days, and a copy thereof mailed to the applicant.

I. Effect of issuance. A site plan approval 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.

J. Limitations on site plan permits. A site plan permit shall not be valid for a period longer than (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 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

7. **Editor's Note: See Environmental Conservation Law § 8-0101 et seq.**

carry out any administration or enforcement duties related to the expiration of a site plan permit.

K. 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 § 190-52.

L. 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.

§ 190-53. Planned unit development.

A. 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 chapter. In no case shall the regulations of this article be so interpreted as to circumvent the benefits of this chapter for the owners or residents of such development, or the owners or residents of adjacent properties.

B. The purpose of planned development shall be to encourage development which will result in:

(1) A choice in the types of environment and living units available to the public in residential land uses so that development will be a permanent and long-term asset to the Town.

(2) Open space and recreation areas.

(3) 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.

(4) An efficient use of land resulting in smaller networks of utilities and streets.

(5) An environment in harmony with surrounding development.

(6) A more desirable environment than would be possible through the strict application of other sections of the Law.

(7) Creation of new hamlets when needed to prevent the sprawl of the residential area.

(8) Encourage energy efficiency.

C. Establishment of a planned unit development district.

(1) Application for the establishment of a planned unit development district by amendment of the Town Zoning Law (this Chapter 190, Zoning) shall be made in writing to the Town Board.

(2) 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 chapter 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.

(3) 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.

(4) 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.

D. Planned unit development standards. In all planned unit development the following standards shall apply:

(1) The area of land to be developed shall not be less than 25 acres.

(2) 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.

(3) All planned unit developments shall have a gross maximum density of one family per 10,000 square feet of the area proposed for residential use.

(4) At least 10% of the area of the planned unit development shall be retained in usable open space for common usage.

E. Required data. The applicant shall furnish the Town Board with a petition for the desired zoning change and basic data, including:

(1) A map at a scale sufficient to show the boundaries of the proposed planned unit development district, existing zoning, topography, draining and soil conditions;

(2) Any preliminary plans as may be required for an understanding of the proposed development;

(3) A copy of the deed of record documenting ownership of the subject parcel;

(4) If the applicant is not the owner, the applicant's name, address and interest in the property;

(5) If represented by others, a statement of consent allowing for the representation;

(6) Any additional information as may be required by the Planning Board and/or Town Board.

F. 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 use permit as provided in this chapter under Article IV, Special Use Permits.

§ 190-54. Essential services.

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

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

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

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

§ 190-55. Mobile homes.

A. Mobile home parks.

(1) Application for a mobile home court or park 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 5,000 square feet in area and at least 50 feet in width and 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 500 feet to an RH District and 200 feet from any permanent residential building located outside the mobile home court.

(2) Site plan. A site plan at an appropriate scale as determined by the Planning Board shall be filed with the application for a permit and shall show compliance with the following:

(a) Each mobile home shall abut on a roadway of not less than 30 feet in width with a pavement of not less than 18 feet. Each mobile home shall have a minimum setback of 30 feet from any roadway center line.

(b) All access pavements and parking berths shall be provided with a dust-proof surface.

(c) Each mobile home space or berth shall have a potable water connection, a sewage disposal connection, and an electrical power source.

(d) All sewage shall be discharged into a public or private sewer system and/or disposal system approved by the Albany County Health Department.

(e) Roadway or area lighting shall be reflected away from adjoining property, streets and highways.

(3) Required permit. Any permit required for a mobile home park shall be renewable each year. A fee shall be imposed for a mobile home park permit but not for individual mobile homes within the park.

(4) Existing mobile home. A mobile home dwelling within a mobile home park in lawful existence prior to the adoption or subsequent amendment of this chapter 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.

(5) Termination. Section 190-30D and E governing termination, damage or destruction of a nonconforming use shall apply to mobile home dwellings.

B. Mobile homes outside of mobile home parks.

(1) The installation of a mobile home outside a specified mobile home park is prohibited.

(2) A mobile home dwelling located outside of a mobile home park in lawful existence prior to the adoption or subsequent amendment of this chapter 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.

(3) Mobile home expansion.

(a) 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.

(b) Authorization shall be solicited from the Planning Board 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 owner's name and address. If the applicant is not the owner, the applicant's name, address

and interest in the property; the subject property address; the current zoning district classification and present use of the subject property.

[2] If represented by others, a statement of consent allowing for the representation.

[3] A copy of the deed of record documenting ownership of the subject property.

[4] A written general description of the proposed project.

[5] A minimum of 12 copies of a site plan, at a scale of one inch to 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, stormwater facilities, typical building elevations, site contours and general building layout or floor plan and any other planned improvements.

(4) Termination. Section 190-30D and E governing termination, damage or destruction of a nonconforming use shall apply to mobile home dwellings.

§ 190-56. 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 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 15 feet to the rear property line, nor less than 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. Any electrical installations in connection with or in the vicinity of the pool shall be accomplished by an 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 homeowner.

D. The pool shall be constructed and operated consistent with the New York State Code governing swimming pools and methods of handling objectionable wastes. Any provisions in the New York State Code providing for more restrictive requirements for swimming pools will take precedence over these regulations.

§ 190-57. Commercial towers.

A. Where radio, microwave, electric and transmission towers or satellite dishes are permitted as a special use in zones, such towers or dishes shall first consider the following options.

(1) Options:

(a) Shared use of existing towers.

(b) Shared use of municipal facilities.

(c) Shared use of existing structures.

B. Reasons why shared use cannot be utilized as set forth above shall be documented in writing and submitted with the application for Planning Board determination.

ARTICLE VI
Cluster Development [8]

§ 190-58. Purpose.

A. The purposes of authorizing the use of cluster development is to enable and encourage the flexibility of design and development of land in such a manner as to promote the most appropriate use of land thereby protecting and preserving the natural and scenic qualities of such areas.

B. Specifically, the purposes of cluster development within the Town of New Scotland are to:

(1) Promote the most appropriate use of land;

(2) Facilitate the adequate and economical provision of streets and utilities;

(3) Result in improved living and working environments;

(4) Preserve open space and the natural and scenic qualities of open lands including environmentally sensitive features of development sites;

(5) Preserve significant tracts of forested lands;

(6) Preserve active agricultural lands;

(7) Protect floodplains, wetlands, lakes, ponds, streams, and other natural features;

(8) Promote development in harmony with the goals and objectives of the New Scotland Comprehensive Land Use Plan.

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8. **Editor's Note: See also § 190-22, Cluster development, of this chapter, and Article VI, Cluster Development, of Ch. 164, Subdivision of Land.**

§ 190-59. Authority.

Authorization is hereby granted to the Town of New Scotland Planning Board pursuant to § 278 of the Town Law to require an applicant to submit an alternate cluster development design. Any alternate cluster development design submission shall comply with the purpose, procedures, standards, and open space requirements set forth in this chapter and Chapter 164, Subdivision of Land, of the Code of the Town of New Scotland. Any applicant may, on the applicant's own initiative, submit a proposed cluster development for consideration by the Planning Board.

§ 190-60. Standards.

A. The Planning Board shall make the initial determination whether the utilization of an alternate cluster development design shall benefit the Town of New Scotland.

B. The application of this procedure shall result in a permitted number of building plots or dwelling units which shall in no case exceed the number which could be permitted in the Planning Board's judgment if the land were subdivided into lots conforming to the minimum lot size, density requirements and sliding-scale development requirements of this Chapter 190, Zoning, applicable to the district or districts in which such land is situated and conforming to all other applicable requirements.

C. The use of clustering shall be allowed in all zones located within the Town of New Scotland. The Planning Board in its discretion may specify the amount and types of the various housing units permitted providing that the total number of units does not exceed that permitted for the applicable residential zones in which the site is located.

D. All cluster housing units must be compatible with the existing neighborhood character and the community's setting.

E. Whenever possible, cluster applications should discourage the locating of structures upon active agricultural or scenic open space areas of these sites while encouraging the use of natural land contours, relief, and active vegetation in the selection of suitable cluster building locations upon the site.

F. The waiver of zoning requirements by the Planning Board for cluster applications include, but shall not be limited to, lot size, lot width, lot depth, and other various yard requirements. The Planning Board shall consider the availability of public sewer and water facilities at the proposed site as an important factor in determining the lot size and lot coverage requirements of any cluster subdivision. Lot sizes shall be determined, at the discretion of the Planning Board, on a case-by-case basis, dependent on the presence or absence of on-site water and/or sewer, soil slopes and conditions, and other factors which the Planning Board finds to be relevant. The design of any on-site sewage disposal system(s) to be utilized on any cluster site must meet the design and operation standards of the New York State Department of Health and the Albany County Health Department.

G. The Planning Board in its design review of large cluster subdivisions should consider requiring the applicant to examine the layout of small building clusters within the development, each having some open space immediately surrounding it, as a goal of proper site planning. This design technique will avoid a large, massive concentration of

building units, with little or no differentiation, and will more appropriately match the character of the neighborhood in which the cluster development is to be located.

H. A suitable one-hundred-foot vegetative buffer shall be required between cluster developments and neighboring land uses.

I. In unique circumstances, the Planning Board may vary the aforementioned numerical standards, providing such variance does not alter the established density and is not inconsistent with the stated purpose of this article.

J. All cluster applicants are required, prior to the granting of final subdivision approval by the Planning Board, to make legal provisions consistent with § 190-62 and approval of the Town of New Scotland Town Board for the future protection/management of the open space resulting from the utilization of cluster zoning.

§ 190-61. Cluster application procedure.

A. A cluster alternative design may be initiated by petition of the applicant or upon the direction of the Planning Board, if in said Board's judgment, its usage would benefit the Town. The Planning Board shall within 45 days of the receipt of the cluster information specified below, transmit a written request to the Town Board for authorization to utilize a cluster design alternative to conventional zoning. Such written request shall be accompanied by a sketch plan of the cluster alternative, including preliminary information concerning the ownership of the resultant open space. Contingent upon receiving the Town Board's authorization, the Planning Board may require any applicant to submit an alternative cluster design subdivision plan in any zone located within the Town of New Scotland.

B. The submission and review of all cluster development applications shall conform to Chapter 164, Subdivision of Land, of the Code of the Town of New Scotland.

C. Prior to the submission of any alternative cluster designed subdivision, all applicants shall submit to the Planning Board the following unless waived by the Planning Board:

(1) A conventional subdivision sketch plan which establishes, to the satisfaction of the Planning Board, the total acreage of the parcel in question.

(2) A recent aerial photograph of the proposed site.

(3) A copy of 7 1/2 USGS topographic map, which indicates NYS regulated wetlands, of the proposed site.

(4) A copy of a soils map of the proposed site.

(5) Information regarding the current land use of the proposed site and the surrounding area.

(6) Information regarding the availability of public sewer and water services to the proposed site.

D. The applicant shall provide the Planning Board with written information regarding the method which will be utilized for the ownership/management of any open space resulting from such application.

E. The Planning Board, in its deliberations on whether to approve or disapprove any cluster or alternative designed subdivision application, shall give great consideration to how closely such application conforms to the cluster standards set forth in § 190-60.

F. Prior to the Planning Board's granting of any final cluster subdivision approval, the Town Board's approval shall be required as to the method to its of ownership/management of the resultant open space. As a basis for determining this, the Town Board shall receive and forward to the Town Attorney copies of any required legal instruments, deeds, covenants, or conservation easements which relate to the final disposition and management of the open space prior to the approval of the Town Board.

G. Upon the filing of the final subdivision plat in the office of the County Clerk, a copy shall also be filed with the Town Clerk and the Building Inspector. The applicant shall provide the Town Assessor with copies of all legal instruments relating to any land use restrictions which may affect the use of any real property located within the filed subdivision plat.

H. All legal instruments, deeds, covenants, or conservation easements relating to the final disposition, ownership and management of any open space resulting from the Planning Board's approval of any cluster zoning application, shall be established and filed of record prior to the conveyance of any cluster subdivision lots.

§ 190-62. Ownership/management requirements for open space.

A. The setting aside of open space, forested land, or active agricultural land in a clustered subdivision shall in no case preclude the Planning Board from requiring the dedication of parks, playgrounds or recreation lands.

B. The amount of land to be set aside as open space shall be, at a minimum, no less than the percentage of the entire subdivision parcel which the lot sizes have been reduced via clustering.

C. Resubdivision and/or development of any open space resulting from the use of clustering shall be prohibited.

D. Open space lands set aside in a cluster subdivision for parks, playgrounds or recreation purposes shall be provided in such a manner that the lands are usable for recreation or other activities and are accessible to all residents of the subdivision or, where such lands have been conveyed to the Town, accessible to the public.

E. The Planning Board shall discuss with the applicant which of the following open space ownership and management options would be most suitable in fulfilling the purposes of this cluster regulation prior to the Planning Board granting a final approval of any cluster subdivision. The open space/management method selected must be approved by the Town Board. The applicant, as a condition of Town Board approval, shall provide a copy

of the legal instrument(s) which provide for the protection and management of the open space to the Town Board and Town Attorney for their review.

(1) Ownership/management by a single subdivision property owner.

(2) Open space ownership/management by several subdivision property owners.

(3) Open space ownership/management by a single, private nonsubdivision property owner.

(4) Open space ownership/management by a not-for-profit conservation organization.

(5) Open space ownership/management by a homeowners' association.

(6) Open space ownership/management by the developer.

(7) Open space ownership/management by a municipality.

F. The method of dedication of all open space land resulting from the use of clustering shall be referenced on the final subdivision plat. Such map notations shall also include specific references to any legal instruments utilized to effect such dedication.

G. The grant of a conservation easement to ensure the perpetual ownership and management of the open space resulting from clustering shall be required in all instances. All conservation easements shall be established and filed of record, prior to the conveyance of any cluster subdivision lots.

H. Wherever possible, active agricultural lands which are included in a proposed cluster design shall remain undeveloped and protected as an open space resource of the community. Continued use of such lands for agricultural purposes is encouraged.

I. Each deed to each lot sold by the original developer, its successors, and all subsequent owners, shall include by reference all recorded declarations, such as covenants, dedications, and other restrictions, including assessments and the provision for liens for nonpayment of such.

§ 190-63. Homeowners' associations.

The following conditions shall govern the utilization of a homeowners' association, if selected as the preferred open space ownership/management option for a cluster subdivision:

A. The homeowners' association shall be established as an incorporated, nonprofit organization operating under recorded land agreements through which each lot owner and any succeeding owner is automatically a member, and each lot is automatically subject to a charge for a proportionate share of the expenses of the organization's activities, said proportion to be determined by the tax assessments on the properties.

B. Title to all common property, exclusive of land set aside for public schools, if any, shall be placed in the homeowners' association, or definite and acceptable assurance shall be given that it automatically will be so placed within a reasonable period of time to be determined by the Planning Board.

C. Each lot owner shall have equal voting rights in the association and shall have the right to the use and enjoyment of the common property.

D. Once established, all responsibility for operation and maintenance of the common land facilities shall lie with the homeowners' association.

E. Dedication of all common land areas shall be recorded directly on the subdivision plat or be referenced on the plat to a dedication in a separately recorded document. Resubdivision of such areas is prohibited. The dedication shall:

(1) Save the title to the common property to the homeowners' association free of any cloud implying public dedication;

(2) Commit the developer to convey the areas to the homeowners' association at the approved time to be determined by the Planning Board;

(3) Grant easements of enjoyment over the area to the lot owner;

(4) Give the homeowners' association the right to borrow for improvements upon the security of the common areas; and

(5) Give the homeowners' association the right to suspend membership rights for nonpayment of assessment or infraction of published rules.

F. The life of the homeowners' association shall be perpetual; and it shall purchase insurance, shall pay taxes, shall specify in its charter and bylaws an annual homeowner's fee and provisions for assessments, and shall establish that all such charges become a lien on each property in favor of said association. The association shall have the right to proceed in accordance with all necessary legal action for the foreclosure and enforcement of liens, and it also shall have the right to commence action against any member for the collection of unpaid assessments in any court of competent jurisdiction.

G. In the event that the maintenance, preservation and/or use of the common land for open space or recreational use ceases to be in compliance with any of the above requirements specified by the Planning Board when approving cluster developments or the Town Board in approving open space proposals, the Town shall be granted the right to take all necessary action to assure such compliance and to assess against the association and/or each individual dwelling unit or lot owner within the development or subdivision all costs incurred by the Town for such purposes.

H. The establishment of any homeowners' associations pursuant to this regulation shall be completed prior to the sale of any dwelling unit and/or lots within the development or subdivision. However, the developer shall assume all responsibilities as previously outlined for the homeowners' association until a majority of the dwelling sites are sold, at which time the homeowners' association shall automatically assume the aforementioned responsibilities.

ARTICLE VII
Homestead Allowance

§ 190-64. Purpose.

It is the purpose of this article to provide for the necessary construction of dwellings in the RF and R2 areas of the Town of New Scotland in a manner consistent with maintaining the maximum amount of rural natural area. By so doing, this article provides for the reasonable protection of forested lands and lands generally unsuitable to residential development due to existing topography and/or soil conditions, and implements the purposes of the Town's 1994 revised Comprehensive Land Use Plan.

§ 190-65. Limitations on division of property.

A. Application. The provisions of this article shall apply to all parcels of land located in the Residential Forestry (RF) and the Residential Conservation (R2) Zones as of the effective date of this chapter.

B. For purposes of this article, the term "parcel" shall mean a lot of land identified by the Tax Map boundaries in existence as of the effective date of this chapter. Land divided by a road shall not be considered separate parcels for purposes of this article, unless identified as separate by the Tax Map.

C. Notwithstanding any other provision of law, no parcel of land to which this article applies may be divided or redivided into more total lots than allowed by application of the following scale:

(1) In the RF Zone: One, one-acre single-family building lot for each ten acres in a parcel. The remainder of the parcel could only be divided into three-acre or larger lots.

(2) In the R2 Zone: One, one-acre single family building lot for each 11 acres in a parcel. The remainder of the parcel could only be divided into two-acre or larger lots.

D. Each subdivision plat hereafter submitted for approval and hereafter filed shall state the number of remaining divisions available to parcels shown in such plat, which shall be binding on all subsequent purchasers of such parcels.

ARTICLE VIII
Planning Board Waivers and Modifications

§ 190-66. 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, or where the specific issues of health, safety, or welfare of the neighborhood outweigh the strict application of this chapter, and such strict application of this chapter would result in extreme practical difficulties upon the

owner(s) of such property(ies); 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.

§ 190-67. Modifications.

The standards and requirements of this chapter may be modified by the Planning Board in the case of subdivisions, complete communities, neighborhood units or other large scale developments which, in the judgment 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 must still comply with all applicable standards for cluster development as set forth in this chapter.

§ 190-68. Application procedure.

A. Applications for waivers and modifications shall be submitted in writing by the applicant at the time the application 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 applicant, not less than 14 calendar days in advance of a regularly scheduled Planning Board meeting at which reconsideration is desired.

ARTICLE IX
Zoning Board of Appeals

§ 190-69. 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 of New York State Town Law.

§ 190-70. Membership.

A. The ZBA shall consist of five 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 consecutive meetings.

C. Upon resignation or disability of the Chair, involving a long-term absence to exceed three consecutive meetings, the Town Board shall appoint an Acting Chair to preside over the ZBA.

§ 190-71. Organization and procedure.

A. Meetings.

(1) The ZBA shall adopt and publicize a meeting schedule.

(2) All hearings of the ZBA shall be public.

(3) 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.

(4) The Chair may administer oaths and compel the attendance of witnesses.

B. Voting.

(1) A quorum entitling the ZBA to take action shall be a majority of the entire membership of the ZBA.

(2) Each member present at a meeting shall be entitled to one vote on each matter before the ZBA.

(3) ZBA action may be taken only upon the concurring vote of a majority of the entire membership of the ZBA.

(4) 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.

(5) The Town Board may appoint alternate members to the Zoning Board of Appeals which will allow for the Chairperson of the ZBA to designate an alternate member to substitute for a member when such member is unable to participate because of a conflict of interest on a matter before the Board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the Board. Such designation shall be entered into the minutes of the initial Zoning Board meeting at which the substitution is made.

§ 190-72. Powers and duties.

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

A. 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 chapter.

B. Grant variances. To approve, approve with conditions, or disapprove appeals for variances from the strict enforcement of only the provisions of this chapter which relate to the use, space, area and size standards of the district regulations and performance standards.

C. Permit building in bed of mapped streets. The ZBA, after due notice and hearings required under § 280 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.

D. Interpret district boundaries and provisions of this chapter. Upon appeal from a decision by the Inspector to decide any question involving the interpretation of any provision of this chapter, 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.

E. 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 12 months and shall not be renewable more than once, and then for a period of not more than 12 months.

§ 190-73. Initiation of proceedings.

A. Procedure for appellant.

(1) An appeal to the ZBA pertaining to a ruling of any Town officer administering any portion of this chapter 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 the appeal specifying the grounds of the appeal, with the Inspector and officer whose action is the subject of the appeals.

(2) A notice of appeal shall be filed by the appellant within 60 days of notification of the decision to which an appeal applies.

(3) 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:

(a) The name, address and phone number of the applicant or appellant.

(b) The name and address of the owner of the lot to be affected by such proposed change or appeals.

(c) 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.

(d) Applicant's interest in the property.

(e) Sixteen complete copies of any application form and information prescribed by the ZBA.

(f) Additional information.

[1] If seeking an interpretation:

[a] A written description of the specific provision of the law in question and the interpretation claimed.

[b] A sketch plan of the real property to be affected, indicating the location and size of improvements proposed to be completed.

[2] If seeking a variance:

[a] A site plan as required by § 190-52E(4), 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.

[b] Name and mailing addresses of the owners of all property within 500 feet of the subject property.

B. Procedure for the Inspector.

(1) 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.

(2) 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.

C. 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.

D. Referral to the Planning Board.

(1) Upon receipt of any application to the ZBA, the Inspector shall transmit a copy of said application to the Planning Board and shall request that the Planning Board submit an advisory opinion to the ZBA within 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.

(2) 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 the public health, safety and welfare of the Town of New Scotland.

E. Public hearings and notice. The ZBA shall fix a reasonable time for, and fix a date in the reasonable future for, the required public hearing on an application. Public notice shall be given in compliance with § 267-a of New York State Town Law by publishing a notice of such hearing in the official paper at least five days prior to the date thereof, and, at least five days prior to the date of the hearing, mailing notices of the hearing to the following officials, persons and owners of property:

(1) 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 500 feet of the property affected by such appeal;

(2) In case of an appeal for a variance: all owners of the property within 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.

F. 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 notices as it deems proper to be served upon such other property owners as it decides may be interested in said application or appeal.

§ 190-74. Decision.

A. The ZBA shall decide each appeal within 62 days from the date of the final hearing, and notice shall be given to all parties in interest in accordance with § 267-a of New York 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 chapter, 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 thereof.

§ 190-75. Granting appeals.

When benefit to the applicant outweighs health, safety and welfare issues or when unnecessary hardships are encountered by the applicant in carrying out the strict letter of this chapter, 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 chapter and secures public safety, yet provides relief from or unnecessary hardship caused by this chapter. 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 its opinion, most closely effect the intent of this chapter.

§ 190-76. 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 chapter 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.

(1) 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.

(2) 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:

(a) 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;

(b) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;

(c) Whether the requested area variance is substantial;

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

(e) 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.

(3) 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.

(1) 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.

(2) 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:

(a) Under applicable zoning regulations the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;

(b) 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;

(c) That the requested use variance, if granted, will not alter the essential character of the district or neighborhood; and

(d) That the alleged hardship has not been self-created.

(3) 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.

§ 190-77. Imposition of conditions.

A. 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 this chapter, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the district, neighborhood or community.

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

(1) Vegetation, buffering, and screening;

(2) Increased setbacks, yards, and access restrictions;

(3) Hours of use and operation controls;

(4) Location and design of signs, parking, and lighting;

(5) Conservation easements and other deed restrictions;

(6) Professional maintenance and inspection of facilities or improvements necessary to ensure adequate maintenance and inspection;

(7) Any other standard or specification contained in this chapter.

§ 190-78. 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 year from the date of authorization.

§ 190-79. Required interval for hearings on applications and appeals after denial.

Whenever, after hearing all evidence presented upon an application or appeal under the provisions of this chapter, the ZBA denies the same, 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 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 X
Administration and Enforcement

§ 190-80. 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 chapter.

§ 190-81. Duties of administrative official.

A. General responsibility. Except as otherwise specifically provided by law, rule or regulation, or except as herein otherwise provided, the Inspector shall administer and enforce the provisions of laws, rules and regulations applicable to the plans, specifications or permit allocations 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, and, when appropriate, issue permits accordingly.

B. 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 chapter. 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 chapter and be subject to the same penalties for violation thereof.

C. 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 chapter.

D. Receipt of applications.

(1) The Inspector shall receive applications for the erection and alteration of buildings and structures or parts thereof.

(2) 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 such premises without a search warrant.

E. 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.

F. 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 § 190-86.

G. Information from other sources. Whenever the same may be appropriate to determine compliance with the provisions of applicable 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.

H. 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 this chapter and the laws of the Town of New Scotland, provisions of the Building Code of New York State and any other applicable laws or regulations.

I. 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 chapter and Chapter 164, Subdivision of Land, or as assigned by the Town Board.

§ 190-82. Building permit administrative procedure.

No person, firm or corporation shall commence with the erection, construction, alteration, enlargement, improvement, conversion or change to any building, structure, sign (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 extensions to plumbing, electrical or heating/ventilation systems; however, such work shall nevertheless be done in conformance with the Building Code of New York State and any other applicable laws and regulations.

A. Application.

(1) 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.

(2) 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:

(a) 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.

(b) A description of the land on which the proposed work is to be done.

(c) A statement of the use or occupancy of all parts of the land and the proposed building or structure.

(d) The valuation of the proposed work and of the existing buildings and structures.

(e) The signature of the applicant or agent.

(f) 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.

(g) A brief description of the nature of the work.

(h) 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.

B. 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 chapter, and that all other reviews and actions, if any, called for in this chapter 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 copy shall be kept conspicuously on the premises affected.

C. Duration of permits.

(1) A building permit issued pursuant to this section shall expire one 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 successive twelve-month periods provided that:

(a) The relevant information in the application is up to date; and

(b) The renewal fee, as established by the Town Board, is paid; and

(c) Should the permit have been revoked, the necessary surety, if required, has been provided to the Town of New Scotland.

(2) Thirty-six 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 require immediate removal of the construction, associated with the structure for which the permit was issued, completed prior to permit expiration.

D. 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, or where the application was reviewed and denied by the Planning Board, 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.

E. 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, zoning laws, code rules or regulations, or not in conformity with the provisions of an application, or is being conducted 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.

F. Revocation of permits.

(1) The Inspector may revoke a building permit in the following instances:

(a) 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.

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

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

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

(e) Where the building permit renewal was required to be reviewed by the Planning Board, or other authority, and was denied by the same.

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

(3) Building permit reissuance. After the revocation of a building permit, for any reason, and prior to the issuance of a new building permit, the cause for revocation must be remedied to the Building Inspector's satisfaction that all laws and codes are being complied with. Also any restrictions or requirements imposed upon the project by any authority reviewing the application must be complied with.

G. Appeal from denial, stop work or revocation. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, interpretation or determination as in its opinion ought to have been made by the administrative official(s) charged with the enforcement of such local law or ordinance and to that end shall have all the powers of the administrative official(s) from who the appeal is taken. Such appeal shall be filed with the Zoning Board of Appeals in accordance with § 190-73 of this chapter.

H. Construction inspections.

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

(2) 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 state 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, exiting 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 48 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.

(3) The Inspector is authorized to make the following additional inspections:

(a) 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.

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

(c) Fire safety inspections of all multiple dwellings and all nonresidential occupancies at least once per thirty-six-month period.

(d) Inspections in response to bona fide complaints regarding conditions or activities allegedly failing to comply with the Building Code of New York State, this chapter or any other applicable federal, state, county or municipal law.

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

(f) 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.

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

(4) 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.

(5) 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.

§ 190-83. Procedure for issuance of certificate of occupancy, use or compliance.

A. Applicability.

(1) 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.

(2) No building, nor part thereof, hereafter erected, enlarged, extended or altered by construction which required the issuance of a building permit shall be occupied or used for the purposes described in such permit until a certificate of occupancy, use or compliance has been issued for the purposes the permit was applied for.

(3) 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.

(4) No special use permit requiring a building permit shall be considered in effect until a certificate of occupancy, use or compliance has been issued.

B. Application for a certificate of occupancy, use or compliance. 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.

C. Action by the Inspector. When, after final inspection, it is found that the construction work has been completed in accordance with the applicable 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 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.

D. 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 months from its date of issuance. For good cause, the Inspector may allow a maximum of two extensions for periods not exceeding three months each.

E. 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 chapter is made effective, certifying the extent and kind of use and whether any such existing use conforms to the provisions of this chapter. A fee in accordance with the Town Fee Schedule will be applicable.

§ 190-84. Violations enumerated.

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 chapter, Chapter 164, Subdivision of Land, 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.

§ 190-85. Complaint of violations.

Whenever a violation of this chapter 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 investigate the complaint in a timely fashion, reporting thereon to the Town Board, and/or Planning Board.

§ 190-86. 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 chapter, Chapter 164, Subdivision of Land, or of any law or regulation made under authority conferred hereby, the Town Board, or, with its 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 chapter or of Chapter 164, Subdivision of Land, 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 in 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 chapter or Chapter 164, Subdivision of Land, and which shall direct that the violation be removed within 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 chapter and all other notices directing anything to be done required by this chapter 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 chapter to restrain or remove any violation or to enforce compliance with any provision or requirement of this chapter, 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 chapter, 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 the 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 $350 or imprisonment for a period not to exceed 15 days, or both, for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than $350 nor more than $700, or imprisonment for a period not to exceed 15 days, or both; and, upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine of not less than $700 nor more than $1,000 or imprisonment for a period not to exceed 15 day, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations shall be deemed misdemeanors and for such purposes only all provisions of law relating to misdemeanors shall apply to such violations. 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 XI
Planning Board

§ 190-87. Purpose.

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

§ 190-88. Authority.

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

§ 190-89. Membership.

A. The Town of New Scotland Planning Board shall consist of seven members. One 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 consecutive meetings.

C. Upon resignation or disability of the Chair, involving a long-term absence to exceed three consecutive meetings, the Town Board shall appoint an Acting Chair to preside over the Planning Board.

§ 190-90. 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 other members, provided that 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. Meeting 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 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 his/her discretion waive this requirement.

F. Seven 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.

§ 190-91. 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 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.

§ 190-92. Powers and duties.

A. The Planning board shall perform those duties prescribed by this chapter 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 chapter, 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 chapter 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 chapter, including recommendations as to the enactment of amendments, supplements or changes.

§ 190-93. 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 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 XII
Amendments

§ 190-94. Town Board's authority to 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 chapter, after public notice and hearing.

§ 190-95. 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 a report thereon before the public hearing hereinafter provided for. If the Planning Board shall fail to file a report within 60 days, it shall be conclusively presumed that the Planning Board has approved the proposed amendment, supplement or change.

§ 190-96. Public notice and hearing.

A. 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:

(1) Public notice. By publishing a notice at least 10 days in advance of such hearing in at least one 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.

(2) Personal notice. (See General Municipal Law §§ 239-l and 239-m.)

(3) Associations. 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.

(4) Property owners. 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 10 days prior to the date of such public hearing.

B. 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 XIII
Terminology

§ 190-97. Word usage.

For the purposes of this chapter, 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" is mandatory;

D. The word "may" is permissive;

E. The word "Town" shall be 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."

§ 190-98. Terms defined elsewhere.

When terms are not defined in this chapter and are defined in other codes, laws or ordinances of the Town of New Scotland, such terms shall have the meanings ascribed to them as in those codes, laws or ordinances. When terms are not described through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

§ 190-99. Definitions.

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

ACCESSORY STRUCTURE — A structure, the use of which is incidental to that of the main building, and which is not attached thereto, or is located on the same premises. Examples of accessory structures include storage sheds, private garages and screened trash disposal containment areas. Such structures shall not be located closer than 10 feet to the principal structure.

ACCESSORY USE — A use, occupancy or tenancy customarily incidental to the principal use or occupancy of a building.

AGENT OF OWNER (applicant) — Any person who can show written proof that he/she is acting for the property owner.

AGRIBUSINESS — Activities related to agricultural products and by-products, other than those described in the definition of "farming, agriculture or nursery" in this section, and:

A. Is conducted by a party on a parcel where the "raw product" is not produced or raised, or;

B. Where less than 50% of the product being produced or processed, for sale or distribution, is obtained from lands owned or controlled by said party, or;

C. Is being conducted on land not owned or controlled by said party.

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.

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. Also, a change in a mechanical system that involves an extension, addition or change to the arrangement, type or purpose of the original installation that requires a permit.

AMATEUR RADIO TOWERS — Radio towers owned and operated by an amateur radio operator, licensed by the Federal Communications Commission (FCC) and used solely for noncommercial purposes, without any financial compensation. The height of an amateur radio tower including antennas shall be governed by the provisions regulating accessory uses and structures of this chapter.

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.

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.

AUTO 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.

AUTO WRECKING — The dismantling, or disassembling, of 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.

BED-AND-BREAKFAST — Owner-occupied residence resulting from a conversion of a one-family dwelling, used for providing overnight accommodations and a morning meal to not

more than 10 transient lodgers, and containing at least three but not more than five bedrooms for such lodgers.

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.

BUILDING — A structure wholly or partially enclosed within exterior walls, or within exterior and party walls, and a roof, affording shelter to persons, animals, or property.

BUILDING CODE — The current Building Code of the State of New York.

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.

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.

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.

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 semienclosed structures. Limited lumber milling may be associated with such businesses under special use permit conditions.

CAMP — Any structure used on a temporary basis, such as a tent or a cabin used on an outing or on a vacation.

CERTIFICATE OF OCCUPANCY, USE OR COMPLIANCE — A document, signed by the Inspector, stating that a structure is in compliance with all provisions of this chapter, and other applicable laws, and/or a use is in compliance with this chapter and other applicable laws, and/or any proposed action complies with conditions for approval imposed by any board of the Town of New Scotland.

CHURCH — A structure, used by any denomination, whose primary purpose is for worship.

CLINICS — An institution providing health care services on an outpatient basis for medical care of the sick or injured including such related facilities as laboratories, central service, training and staff offices.

CLUB — A group of persons organized for a social, literary, athletic, political or some other purpose, and the building or room occupying such a group.

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 chapter.

CODE ENFORCEMENT OFFICIAL — The officer charged with enforcement of building, zoning or fire codes.

COMMUNITY CENTER — A building in which members of a community may gather for social, educational or cultural activities.

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.

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.

DAY CARE — Daytime care or instruction of not more than six children away from their own homes for more than three but less than 24 hours per day by an individual, association, corporation, institution or agency, whether or not for compensation or reward.

DAY-CARE CENTER — A center for more than six children, ages six weeks to 12 years of age (children may be more than 12 years of age if incapable of caring for themselves), for more than three hours a day and which has a license to operate as such as defined in § 390 of the Social Services Law.

DISTRIBUTION — The marketing, transporting, or delivery of merchandise, or the delivery or giving out of an item or items to the intended recipient.

DOUBLE-FRONTAGE LOT — A lot with rear and front lot lines which abut existing or proposed streets or right-of-ways.

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.

DWELLING (RESIDENCE) — Building occupied exclusively for residential uses, including modular, panelized or sectional housing, but not including inns, motels, hotels, boarding houses and bed-and-breakfasts.

DWELLING UNIT — One or more rooms, including a kitchen or kitchenette, and sanitary facilities in a dwelling structure, designed and arranged as a unit for occupancy by not more than one family for living purposes.

A. DWELLING, SINGLE-FAMILY — A structure designated for or occupied exclusively by one family and containing not more than one 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 dwelling units, such building being designed for residential use and occupancy by two families living independently of each other, each unit being separated by vertical walls and/or horizontal floors.

C. DWELLING, MULTIPLE — A building with three or more dwelling units designed for occupancy by three or more families, with the number of families in residence not exceeding the number of dwelling units provided, including senior citizen housing, life care facilities, community residences, and buildings with one or more sleeping rooms, other than a one- or two-family dwelling, used or occupied by permanent or transient paying guests or tenants.

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 housing including modular, panelized or sectional homes are not included in this definition.

EDUCATIONAL USES — Facilities and accessory grounds and structures that provide a curriculum of nursery, elementary, secondary academic and/or postsecondary 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.

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.

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.

FACILITY — Something designed, built, installed, etc., to serve a specific function affording a convenience or service.

FAMILY — A household constituting a single housekeeping unit occupied by one or more persons.

FARMING ACTIVITY, PERSONAL — A parcel of land less than five acres used for farming, agriculture and/or nursery activities. The display and sale of products grown on site for retail purposes and the raising of livestock, poultry or fowl (except hogs and pigs) shall be allowed only by special use permit. The provisions of this definition shall not apply to family garden produce grown on site.

FARMING, AGRICULTURE or NURSERY — A parcel of land of at least five acres, used for cultivation, pasture or other customary agricultural or nursery purpose(s), including the display and sale of products raised on land owned or controlled by said party, providing that 50% or more of the products sold by said party are produced by said party, and the raising of stock and poultry except hogs and pigs.

FLOOR AREA — The floor area within surrounding walls of a building, or portion thereof.

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 lot to the total lot area.

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.

FUNERAL HOME — A building, or part thereof, used for human funeral services. Such a building may contain space and facilities for embalming and performance of other services used in preparation of the dead for burial excluding cremation; the performance of autopsies and other surgical procedures; the storage of caskets, funeral urns, and other related funeral supplies; and the storage of funeral vehicles. Where a funeral home is permitted, a funeral chapel shall also be permitted.

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.

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.

HABITABLE SPACE — Space occupied by one or more persons for living, sleeping, eating or cooking.

HALL — A large room or building used for gatherings; auditoriums, convention halls, social halls, etc.

HISTORIC BUILDINGS — Buildings which have been specifically designated as historically significant by the state or local governing body, or listed in "The National Register of Historic Places" or which have been determined to be eligible for listing on the "National Register" by the Secretary of the Interior.

HOME OCCUPATION — Any activity customarily conducted entirely within a dwelling and carried on by the inhabitants thereof, which use is incidental and secondary to the use of the dwelling for dwelling purposes and does not change the residential character of the exterior thereof, and does not exceed the lesser of occupancy of less than 25% of the habitable space or 500 square feet 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.

HOMEOWNERS' ASSOCIATION — A contract agreed to by owners of homes and 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.

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.

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 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.

HOUSEHOLD PET — Animal 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.

INDUSTRIAL PARK — An area of land developed in an orderly planned way with transportation, utilities, etc., and leased or sold to industrial firms.

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, including basic industrial.

JUNK — Manufactured goods that are so worn, deteriorated or obsolete as to make then unusable in their existing condition, but could be subject to being dismantled, including, but not limited to, used paper, scrap metals and their alloys, rags, used cloth, used rubber, used rope, used bottles, batteries, old or used machinery, used tools, used boxes or crates, used pipe or pipe fittings, used tires, appliances, fixtures, utensils, etc., and also including any waste, junked, scrapped, ruined, dismantled or wrecked vehicle or construction parts or debris.

JUNK VEHICLE — Any vehicle which for any reason is incapable, without repair, of being moved or propelled by application of internal power, if it is a vehicle originally designed to be propelled by internal power or is incapable without repair of being drawn or towed in the manner originally intended, if it is a vehicle originally designed to be towed or drawn from behind an internally powered vehicle, and as adjudged by the standards of an ordinary reasonable man, is unsightly in appearance because of the existence of one or more conditions such as, but not limited to, the following: deterioration by rust of the body; deterioration of the exterior finish of the vehicle; broken windows; absence of component parts of the vehicle (such as fenders, panels, doors, bumpers, headlights, hood, trunk door, tires, wheels, grille, roof, tailgate); physical damage (such as dents, cracks, scrapes, holes); absence of interior components (such as seats, dashboard, interior door moldings, etc.).

KENNEL — An establishment to house dogs, cats or other household pets for commercial purposes, other than litters under six months of age. Where grooming, breeding, training or selling of dogs, cats, or other household pets is conducted as a commercial activity.

LARGE SCALE BUSINESS DEVELOPMENT — A large scale business or industrial development is a tract of land of not less than five acres for nonresidential development, and which is planned for development as units under single ownership or control and which includes two or more nonresidential principal buildings.

LODGE — The meeting place of a branch of a secret society.

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 chapter, and having not less than fifty-foot frontage on a public highway, road or street.

A. LOT, CORNER — A lot butting two 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 135°. The point of intersection of the street lot lines is the "corner."

B. LOT, DEPTH — The mean horizontal distance between the front and 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.

H. LOT, INDUSTRIAL — Lot or lots created, in single or separate ownership, by the subdivision of a conforming industrial-zoned lot whereby all minimum lot area and dimension requirements for the Industrial District are complied with, and the lot is occupied or intended to be occupied by a principal building, or group of buildings and accessory buildings, or utilized for a principal use and uses accessory or incidental to the operation thereof, with such open space as may be required by this chapter. These lots are relieved of the required 50 feet of frontage on a public street or highway. A fifty-foot

legal access to a public street or highway, by means of easement, right-of-way or other means, shall be required to be shown on the subdivision plat application submitted for approval.

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.

MOBILE HOME PARK or 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.

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 as an auto court, motor hotel, motor court, motor inn, motor lodge, tourist court, tourist cabin or roadside hotel.

MUNICIPAL BUILDINGS AND FACILITIES — Facilities owned and/or 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.

NONCONFORMING LOT — A lot, the area, dimensions, or location of which was lawful prior to the adoption, revision, or amendment of this chapter but that fails in terms of total area or dimensions to conform to the present requirements of the zoning district.

NONCONFORMING 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 this chapter but that fails to conform to the present requirements of the zoning district.

NONCONFORMING USE — A use or activity that was lawful prior the adoption, revision or amendment of this chapter but that fails to conform to the present use requirements of the zoning district in which it is located.

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 basis, nursing care and related medical services. This definition shall include skilled nursing facilities, intermediate care facilities and nursing facilities.

OFFICE BUILDING — A building that has been planned, developed and operated as a facility to accommodate one or more separate offices as its primary use, where other uses are secondary or accessory.

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.

OFF-SITE SEWER OR WATER — Those facilities provided for common usage in a private or public entity, and which shall meet the requirements standards of the Albany County Department of Health.

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.

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.

PERSONAL SERVICE OUTLET — An outlet where personal services are offered for profit, such as barbershops, shoeshine shops and beauty parlors.

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.

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.

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.

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.

PRIVATE — Belonging to some particular person or persons; private property not open or accessible to the general public.

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.

PUBLIC — Open to all people.

PUBLIC SERVICE — Business of supplying an essential service.

PUBLIC UTILITY — A business performing an essential public service.

QUALIFIED GEOLOGIST/HYDROGEOLOGIST — A qualified geologist/hydrogeologist (including geologists, hydrologists, geohyrologists or soil scientists) shall be defined as:

A. Graduated from an accredited college with a degree in hydrogeology, geohydrology or soil science; or

B. 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

C. Graduated from an accredited college with a degree in one of the natural physical sciences including and/or supplemented by 30 credit hours in geology of which three credit hours must be in hydrology and/or geohydrology; or

D. Graduated from an accredited college with a degree in one of the natural physical sciences including and/or supplemented by 30 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); or

E. Four years of appropriate professional experience.

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.

RECREATION — A pastime, diversion, exercise, or other resource affording relaxation and enjoyment.

RECREATION FACILITIES —

A. RECREATION, COMMERCIAL — Recreation facilities operated as a business and open to the general public for a fee, including golf courses, golf driving ranges, ice skating rinks, swimming pools, picnic groves, amusement parks and fairgrounds.

B. RECREATION, PRIVATE, NONPROFIT — Clubs or recreation facilities operated by a nonprofit organization and open only to bona fide members of such nonprofit organization.

C. RECREATION, PUBLIC — Recreation facilities operated as a nonprofit enterprise by the Town of New Scotland, and any other governmental entity, or any nonprofit organization, and open to the general public.

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.

REMOVAL OF FILL, GRAVEL OR LOAM — The extraction or movement of a portion of the earth's crust consisting of disintegrated rock and humus which involves an amount equal to or greater than 100 yards of material within any 12 successive months, whether for profit or not.

REPAIR — The reconstruction or renewal of any part of an existing building for the purpose of its maintenance. A repair may or may not require a building permit depending on the scope of the repair.

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.

RESTAURANT — Any establishment which serves prepared meals for consumption on the premises or for takeout. Does not include drive-in restaurants.

RETAIL BUSINESS — A business engaged in the sale of commodities to walk-in consumers for direct consumption and not for resale; including apparel stores, pharmacies, bookstores and other retail outlets.

ROOMING HOUSE — A building containing a single dwelling unit and rooms for the rooming and/or boarding of at least two persons, but not more than five persons, by prearrangement for definite periods of not less than one week.

RUBBISH — Combustible and noncombustible waste material, except garbage. The term shall include the residue from the burning of wood, coal, coke and other combustible materials; paper, rags, cartons, boxes, wood, excelsior, rubber, yard trimmings and waste, tree stumps, tin cans, metals, mineral matter, glass, crockery and dust and other similar materials. This term shall also include discarded, abandoned or stored refrigerators.

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.

SEMIPUBLIC — Partly or to some degree public.

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.")

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.

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.

SIGN — Any device used for conveying information or advertisement which is displayed for public view, and consists of letters or symbols which may be inscribed or mounted on wood, metal, plastic or other materials, designed to attract the attention of persons not on the premises.

SOCIAL HALL — Pertaining to, devoted to, or characterized by friendly companionship or recreations. A social club.

SOIL MINING — Any excavating or breaking of the surface soil which involves an amount equal to or greater than 100 yards of material movement within any 12 successive months, including, but not limited to, quarrying, the removal of gravel, and any subsoil or topsoil removal, whether for profit or not.

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.

STABLE, PRIVATE — An accessory building and arena in which horses are kept, exercised or trained for private use and not for remuneration, hire, or sale. For lots under five acres, the maximum number of horses that can be kept for private use is three. For lots over (five) acres, one additional horse may be kept for each additional two acres of land.

STABLE, PUBLIC — The building and arena in which horses are kept, exercised or trained for commercial use including boarding, hire and sale. A maximum animal density of one per two acres of land.

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.

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 STREETS (arterial street) — 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) — Streets which are used primarily for access to abutting residential, agricultural and forest management properties. Local streets include culs-de-sac, marginal access streets, and streets used for circulation within residential developments which do not provide for through traffic circulation.

D. MARGINAL ACCESS STREETS — 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.

STREET CENTER LINE — The line corresponding to the midpoint of the surfaced portion of any street.

STREET, PUBLIC — A street dedicated to public use.

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, signs, carports and retaining walls over five feet in cumulative height.

SUBDIVISION — The division of any parcel of land into two or more lots or the changing of any boundary line of existing lands.

SUBSTANTIAL IMPROVEMENT OR REHABILITATION — Any repair, reconstruction, or improvement of a structure, the value of which equals or exceeds 50% 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.

SUMMER CAMP — A camp providing facilities for sleeping and eating, and is usually for learning or participation in sports, outdoor games, handicrafts, etc. Such a camp is usually attended by children for several weeks during the summer.

SUPERMARKET — A retail business contained on one floor devoted to sale of food and related household items.

SWIMMING POOL — Any structure intended for swimming, recreational bathing or wading that contains water over 24 inches deep. This includes in-ground, aboveground and on-ground pools, hot tubs, spas and fixed-in-place wading pools.

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.

THEATER — A building, part of a building or outdoor area for housing dramatic presentations, stage entertainment or motion-picture shows.

TOWER — A structure for supporting any device for the commercial transmission or reception of various types of signals for purpose of communication through mediums, including, but not limited to antennas, television and radio devices, satellite dishes, microwave dishes and devices that send or receive electromagnetic waves or those types of signals.

TRUCKING TERMINAL — An assemblage area for trucks with or without facilities for maintenance or repair, or with or without structures to support the transfer (loading and unloading) of materials or goods for delivery to other sites or for customer pickup.

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.

VARIANCE, AREA — Permission by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of this chapter.

VARIANCE, USE — Permission by the Zoning Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by this chapter.

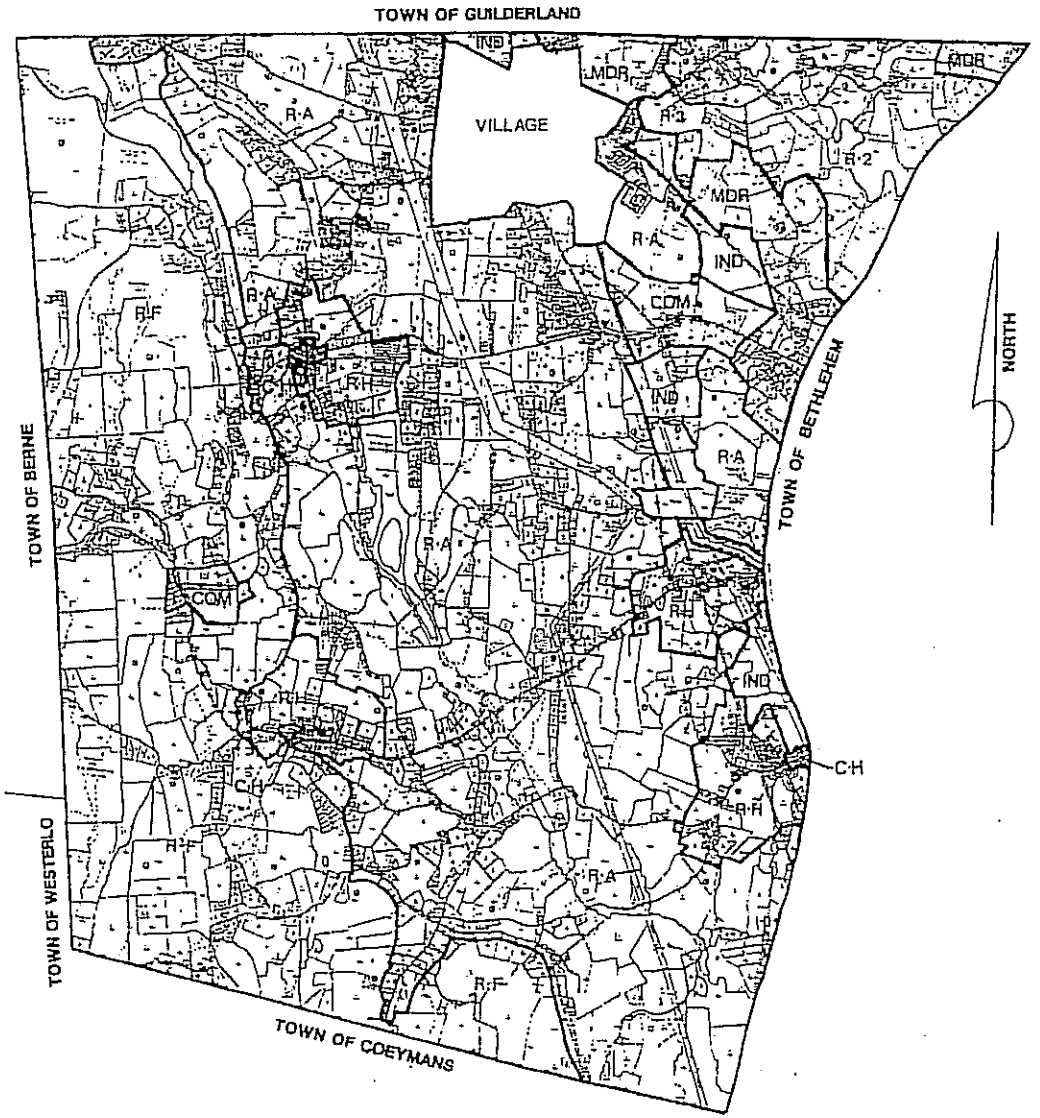
VETERINARY FACILITY or ANIMAL HOSPITAL — A structure for the health care and treatment of animals, not including kennels.

WAREHOUSE — A building or part of one for the storage of goods, merchandise, etc.

ARTICLE XIV
Fees

§ 190-100. Fee requirements.

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



TOWN OF
NEW SCOTLAND
ZONING MAP

ADOPTED JULY 10, 1995

DISTRICTS

RESIDENTIAL FORESTRY	R-F
RESIDENTIAL 2 ACRE	R-2
RESIDENTIAL HAMLET	R-H
COMMERCIAL HAMLET	C-H
COMMERCIAL	COM
INDUSTRIAL	IND
MEDIUM DENSITY RESIDENTIAL	MDR
RESIDENTIAL-AGRICULTURAL	R-A

APPROXIMATE SCALE: 1 IN = 2700 FT

ZONING DISTRICT BOUNDARIES GENERALLY FOLLOW ALONG THE REAR OF PROPERTIES AND OCCASIONALLY FOLLOW A DIRECTION THROUGH PARCELS FROM ADJOINING PROPERTY OWNER TO ADJOINING PROPERTY OWN

ZONING DISTRICT BOUNDARIES THAT FOLLOW ALONG PUBLIC ROAD ARE INTENDED TO FOLLOW THE RIGHT OF WAY LINE OF SAID PUBLIC ROAD AND NOT THE CENTERLINE OF PAVEMENT

DISPOSITION LIST

Chapter DL

DISPOSITION LIST

§ DL-1. Disposition of legislation.

The following is a chronological listing of certain legislation (regarding the following subjects only: Dumps and Dumping; Highway Specifications; Junk and Junk Vehicles; Sewers; Subdivision of Land; Water Use; and Zoning) of the Town of New Scotland adopted since the publication of the Code, indicating its inclusion in the Code or the reason for its exclusion. [Enabling legislation which is not general and permanent in nature is considered to be non-Code material (NCM).] Information regarding legislation which is not included in the Code nor on this list is available from the office of the Town Clerk. The last legislation of the subjects listed above which was included in the original publication of the Code was L.L. No. 8-2001, adopted 7-11-2001.

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§ DL-1. Disposition of legislation.

Enactment	Adoption Date	Subject	Disposition

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