

Chapter 210. Zoning

[HISTORY: Adopted by the Town Board of the Town of Stillwater 12-20-2001 by L.L. No. 1-2001.
Amendments noted where applicable.]

GENERAL REFERENCES

Planning Board and Zoning Board of Appeals — See Ch. 26.

Unsafe buildings — See Ch. 69.

Uniform construction codes — See Ch. 81.

Fair housing — See Ch. 93.

Farming — See Ch. 98.

Flood damage prevention — See Ch. 103.

Freshwater wetlands — See Ch. 108.

Mobile homes, mobile home parks and travel trailers — See Ch. 134.

Noise — See Ch. 141.

Subdivision of land — See Ch. 176.

Planned development districts — See Ch. 211.

Attachment 1 - Appendix A, Schedule of Regulations, Table of Contents 

Commented [KE1]: Changes from the last public draft, dated November 2016, are noted with track changes.

Comment boxes note changes from the current ordinance that were made in previous draft(s).

Changes made since the December Public Workshop are shown in track changes.

Article I. General Provisions

§ 210-1. Title; statutory authority.

A.

This chapter may be known as the "Town of Stillwater Zoning Law."

B.

Enactment of this chapter is pursuant to Article 16 of the Town Law of the State of New York and Article 27 of the Executive Law of the State of New York.

§ 210-2. Purpose and objectives.

A.

The purpose of this chapter is to promote in all possible ways the health, safety and general welfare of the community and to provide for variety of housing opportunities and densities and to protect the property values and aesthetics of the community by channeling and directing growth and by regulating and restricting the height, appearance, number of stories and size of buildings and other structures, the percentage of a lot that may be occupied, the size of the yards, courts and other open spaces, and the density and the location and use of buildings, structures and land for trade, industry, residence and other purposes, to the maximum extent permissible within the proper exercise of the police power as delegated by the Town Law.

B.

It is the further purpose and objective of this chapter to ensure optimum overall conservation, protection, development and use of the unique scenic, aesthetic, wildlife, recreational, open space, historic, ecological and natural resources of the Town.

§ 210-3. Interpretation.

A.

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

(1)

Words used in the present tense include the future.

(2)

The plural includes the singular.

(3)

The word "plot" includes the word "lot."

(4)

The word "building" includes the word "structure."

(5)

The word "occupied" includes the words "designed, intended or arranged for occupancy."

(6)

The word "person" may include more than one, an association, a partnership or a corporation.

B.

The headings appearing in this chapter are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of any particular section nor in any way affect interpretation of this chapter.

§ 210-4. Planning Board.

Pursuant to § 271 of the Town Law, the Town of Stillwater has created a Planning Board. Said Board consists of seven members appointed by the Town Board in such manner and for such terms as provided in the Town Law. The Stillwater Town Board shall appoint the Chairperson of the Planning Board. The Planning Board shall have all the powers and perform all the duties prescribed by statute and by this chapter. The Planning Board shall have original jurisdiction for all matters pertaining to this chapter for which such jurisdiction is granted.

§ 210-5. Zoning Board of Appeals.

Pursuant to § 267 of the Town Law, the Town of Stillwater has created a Zoning Board of Appeals consisting of five members appointed by the Town Board in such manner and for such terms as provided in the Town Law. The Stillwater Town Board shall appoint the Chairperson of the Zoning Board of Appeals. The Zoning Board of Appeals shall have all the powers and perform all the duties prescribed by statute and by this chapter. The Zoning Board of Appeals shall have appellate jurisdiction for all matters pertaining to this chapter. The Zoning Board shall have the authority to interpret all matters related to this chapter.

§ 210-6. Compliance required; more restrictive provisions to prevail.

A.

No land use or development shall be undertaken or maintained except in conformity with all provisions contained in this chapter relating to both the zoning district and the land use area in which the land, water, site, structure or use is located or is proposed to be located and in conformity with the permit requirements of this chapter.

B.

Where this chapter is more restrictive than covenants or agreements between parties or other plans or other rules or regulations or local laws, the provisions of this chapter shall control.

Article II. Terminology

§ 210-7. Definitions.

A.

Words not defined by this chapter shall have their customary meanings.

B.

As used in this chapter, unless the context otherwise requires, the following terms shall have the meanings indicated:

ABANDONMENT

An intent to abandon or to relinquish and some overt act, or some failure to act, which carries the implication that the owner neither claims nor retains any interest in the building or use that is the subject matter of the abandonment. A nonconforming use that is abandoned for more than 12 months shall be required to conform to the requirements of this chapter.

ACCESSORY STRUCTURE

A building subordinate and clearly incidental to the principal building on the same lot and used for a purpose customarily incidental to those of the principal building.

ACCESSORY USE

A use customarily incidental and subordinate to the principal use and located on the same lot with the principal use. In no case shall the accessory use dominate, in area, extent or purpose, the principal use or structure.

ADULT-USE ESTABLISHMENT

(1)

Any establishment, business enterprise or adult-entertainment establishment having, as part of its operations, depiction or presentation of "specified sexual activities" or "specified anatomical areas" (as defined below) for observation by patrons therein.

(a)

Specified sexual activities:

[1]

Human genitals in a state of sexual stimulation or arousal.

[2]

Acts of human masturbation, sexual intercourse or sodomy.

[3]

Fondling or other erotic touching of human genitals, pubic region, buttocks or female breast.

(b)

Specified anatomical areas:

[1]

Less than completely and opaquely covered human genitals, pubic region, buttocks or female breast below a point immediately above the top of the areola.

[2]

Human male genitals in a discernibly turgid state, whether or not covered.

(2)

A substantial or significant portion of its stock-in-trade shall be determined to exist if either more than 20% of its gross sales receipts comprise items described in Subsection A(1) or (2) hereof or more than 20% of the net square footage of the establishment is dedicated to the display or advertising of items described in Subsection A(1) or (2) hereof.

AGRICULTURAL PROCESSING

Any processing plant, feed storage supply facility, farm machinery or equipment sales and service facility, storage and processing facility for fruits, vegetables, milk, meat, eggs and/or other agricultural products or a similar use directly and customarily related to the supply and service of an agricultural use. This definition shall not include the on-farm processing of agricultural products produced on that farm.

AGRICULTURAL SALES AND SERVICE

A use primarily engaged in the sale or rental of farm tools and implements, feed, grain, tack, animal care products and farm supplies. This definition includes the sale of large implements, such as tractors and combines, and farm machinery, as well as repair services that are accessory to the principal use.

[Added 11-17-2011 by L.L. No. 5-2011]

AGRICULTURE-RELATED PRODUCTS

Items sold at a Farmers Market or Produce Stand to attract customers and promote the sale of agricultural products. Such items include, but are not limited to all agricultural and horticultural products, animal feed, baked goods, ice cream, beverages, clothing and other items promoting agriculture or the farm or entities operating the Farmers Market or Produce Stand.

AGRICULTURAL TOURISM

Agricultural related tours, events and activities, as well as nonagricultural related activities used to attract people and promote the sales of farm produce and agricultural products. These tours, events and activities include, but are not limited to pick-your-own, petting zoos, school tours, outdoor trails, corn mazes, hayrides, pony rides, group

Commented [KE2]: New Definition

Commented [KE3]: New Definition

picnics, on- and offsite food catering services, musical events, craft shows, outdoor recreation. To be a permitted use, the farm must be actively producing agricultural products for sale.

AGRICULTURAL USE

Any management of any land for agriculture, including but not limited to the raising and keeping of cows, horses, pigs, poultry and/or other livestock; truck gardens; horticulture, including greenhouses; and orchards; including the sale of products grown or raised directly on such land and including the construction, alteration or maintenance of fences, agricultural roads, agricultural drainage systems and farm ponds. This definition shall also include the on-farm processing of agricultural products produced on that farm.

AGRICULTURAL USE STRUCTURE

Any building or structure directly and customarily associated with agricultural use, such as a barn or shed.

ALTERATION

As applied to a building or structure, a change or rearrangement in the structural parts or in the existing facilities, including an enlargement, whether by extending on a side or by increasing in height, or the moving from one location or position to another, so as to be attached to a building and having a common wall with the building it is attached to.

AMENDMENT

A change in the text or the map of any portion of this chapter.

AMUSEMENT CENTER

An indoor or outdoor facility, which may include structures and buildings, where there are devices for entertainment, including rides and booths for the conduct of games and buildings for shows and entertainment.

AREA REGULATIONS

The regulation of building or lot size, setbacks or yards, frontage, parking and loading requirements and similar regulations, but not including performance or environmental regulations.

ARTICULATION

The elements in the massing of a building, which establish character and visual interest.

ASPHALT PLANT

A facility where oil products, stone and/or sand are assembled to produce asphalt, which is then consumed or used at another location.

ASSEMBLY USE

A facility where products or articles are assembled for consumption or use at another location.

AUTOMOTIVE SALES AND SERVICE

Any area of land, including the structures thereon, that is used for the retail sale of motor vehicles and accessories and which may or may not include auto repair shop and/or auto body shop services.

BASEMENT

That space of a building that is partly below grade which has more than half of its height, measured from floor to ceiling, below the average established curb level or finished grade of the ground adjoining the building. This definition includes the term "cellar."

BAY WINDOW

A window that projects outward from a structure that does not rest on the foundation or on the ground.

Commented [KE4]: New Definition

Commented [KE5]: Deleted: Auto Body Shop – see Vehicle Repair Shop

Commented [KE6]: New Definition

BED-AND-BREAKFAST

A bed-and-breakfast facility is not a hotel or motel but rather a use having a resident host in a single-family dwelling in which accommodations and a morning meal are provided for up to 10 transient lodgers, with a maximum stay of one week, and having no more than five guest bedrooms. Such use shall be secondary to the occupancy of the building by the family.

BELT COURSE

A design element aligned horizontally along a building wall, typically a continuous row or layer of stones, tiles, bricks, shingles, or similar materials. Also, called a string course or band course.

Commented [KE7]: New Definition

BILLBOARD SIGN

A sign that exceeds three times the maximum allowed sign area and that advertises a business, commodity, service or entertainment at a location other than the premises on which the sign is located.

BLOCK

All contiguous lots, passages, and alleys, bounded by thoroughfares, railroad rights-of-way, water bodies, or public parks.

Commented [KE8]: New Definition

BLUE ROOF

A non-vegetated roof design that is intended to slow rainfall or snowmelt, typically to manage stormwater or store and reuse water.

Commented [KE9]: New Definition

BOATHOUSE

A structure which has direct access to a navigable body of water and is used for the storage of vessels and associated equipment and does not have a bathroom or kitchen facilities and is not designed or used for lodging or residency.

BOAT STORAGE, SALES AND REPAIR

A use in which boats or marine craft are stored, sold or repaired for commercial gain.

BOND or LETTER OF CREDIT

A written agreement issued by a qualified agent or banking organization which guarantees the performance of a certain agreed-upon activity by requiring the payment of an equivalent consideration if the activity is not completed as required.

BUFFER ZONE

A strip of land covered with sufficient permanent planting to provide a continuous physical screen in order to mitigate the conflicts between two or more different land uses. No parking or storage of vehicles or materials of any kind is allowed within a buffer zone.

BUILDING

Any structure which is permanently affixed to the land and is covered by a roof supported by columns or by walls and intended for shelter, housing or enclosure of persons, animals or chattel.

BUILDING HEIGHT

The height of structure measured in stories. Building height is the vertical distance of a structure measured from the top of the parapet for a flat roof; the peak of a gambrel or mansard roof; or the midpoint between the eave and ridge of a pitched roof. The following are exceptions and do not count toward the maximum story height requirements:

Commented [KE10]: Revised Definition

(1)

A half story such as an attic

(2)

Cupolas, domes, bell towers, spires, steeples, and ornamental towers provided they are not intended for occupancy

(3)

Chimneys and fire escapes

(4)

Elevators and stairways

(5)

Antennas, satellite dishes, solar panels

(6)

Barns and silos associated with agricultural use

BUILDING LINE

The line of the exterior face of a building facing a lot line. The face shall include bay windows, covered porches, whether or not enclosed, and any projections, excepting, however, open steps that provide access to the ground floor or basement of a building and eaves, which may project 18 inches into the required setback. (See "setback.")

BUILDING, PRINCIPAL

A building in which the principal use of the lot on which it is located is conducted.

BUILD-TO-LINE

A line extending through the lot, which is generally parallel to the frontage line intended to create an even building façade line along a street.

BULK FUEL STORAGE

An establishment in which fuel is stored prior to transfer in trucks, trains or by pipeline for wholesale or retail distribution.

BUSINESS USES

Each of the uses listed under the title "Commercial Uses" in the Town of Stillwater Summary of Allowed Uses contained in 210 Attachment 1:3 to the Zoning Code dated Aug 1, 2012, as amended.

[Added 7-17-2014 by L.L. No. 2-2014]

CALIPER

The diameter of a tree trunk as measured six inches above the root collar, which is at the base of the tree where the tree's roots join the trunk.

CAMPGROUND

An area designated for transient occupancy by camping in tents, camp-trailers, motor homes, truck-cap campers or pickup campers or similar facilities designed for temporary shelter. An individual may not occupy a campground for more than 180 days in any calendar year.

CANOPY

A roofed structure.

CAR WASH

A service business where motor vehicles are cleaned and in which accessory products may be sold.

[Amended 11-17-2011 by L.L. No. 5-2011]

Commented [KE11]: New Definition

Commented [KE12]: New Definition

Commented [KE13]: New Definition

CEMETERY

A burial place or ground operated and maintained by a religious organization, private entity or a government agency, which may include a crematorium and aboveground burial vaults. A cemetery is a semipublic use.

CENTRAL PRIVATE UTILITY

A sewage or water system which serves a development project and which is paid for by nonpublic funds and without special district taxation.

CHAMFERED CORNER

A building corner which is cut back to a diagonal in order to create a location for the door of a commercial establishment.

Commented [KE14]: New Definition

CISTERN

A large-scale storage tank designed to catch runoff from a roof.

Commented [KE15]: New Definition

CIVIC

The term defining not-for-profit organizations dedicated to arts, religion, culture, education, recreation, government, and transit.

Commented [KE16]: New Definition

CLEAR-CUTTING

The cutting of more than 50% of trees over six inches in diameter four feet above ground level over a substantial area of the cutting.

CLEARANCE

The minimum vertical clearance from the lowest point of the sidewalk or grade.

Commented [KE17]: New Definition

CLUB

A building and/or related facilities owned or operated by a corporation, association, or group of individuals established for the fraternal, social, education, recreational, or cultural enrichment of its members and not primarily for profit and whose members typically pay dues and/or meet certain prescribed qualifications for membership.

Commented [KE18]: New Definition

CLUSTER DEVELOPMENT

A planned development in which the lots are plotted with less than the minimum lot size and dimensional requirements but which have access to common open space which is a part of the overall development plan.

CODE ENFORCEMENT OFFICER

The individual responsible for overseeing and coordinating the administration of this chapter and Chapter **176**, Subdivision of Land.

COMMERCIAL

The term collectively defining workplace, office, retail, and lodging functions.

COMMERCIAL RIDING STABLE

An establishment where horses are kept for riding, driving or stabling, for compensation.

COMMON FACILITIES

Complementary structures and/or improvements located on a common open space appropriate for the benefit and enjoyment of the space by the public or members of the controlling association or condominium.

COMMON OPEN SPACE

A parcel or parcels of land or an area of water, or a combination of land and water, designated and intended for the private or public use or enjoyment of the space, and which may include such appurtenant structures that are necessary to enhance the enjoyment of the space.

COMMON YARD

A planted private frontage, visually continuous with adjacent yards, wherein the façade is set back from the frontage line.

Commented [KE19]: New Definition

COMPREHENSIVE PLAN

The adopted Comprehensive Plan of the Town of Stillwater.

CONDOMINIUM DEVELOPMENT

A project of individual single-family dwelling units, which may consist of one, a part of one or more than one structure, wherein the dwelling units are individually owned, each owner holding a title thereto, while retaining, together with all the other owners of units in the project, an undivided interest in the common facilities and areas of the buildings and grounds, which are used by all the residents, through an offering prospectus. All condominium developments shall be reviewed as a subdivision.

CONDOMINIUM UNIT

An individual single-family dwelling unit, or a commercial or industrial unit, within a condominium development.

CORNICE

A projection aligned horizontally along and crowning a building wall, door, window, or other opening in the building wall.

CONSERVATION SUBDIVISION

An alternative to a conventional subdivision that incorporates an approach to land conservation and development planning and design that emphasizes the protection of important natural and cultural resources as a way to preserve these resources to the maximum extent practicable as land becomes developed.

CONSTRAINED LAND

The total area of a parcel or lot that contains one or more of the following:

(1)

Slopes in excess of 20%;

(2)

Lakes, ponds, and wetlands. These shall include field delineation and survey of both NYS Department of Environmental Conservation freshwater wetlands and their associated one-hundred-foot adjacent areas, and federal jurisdictional wetlands as regulated by the U.S. Army Corps of Engineers, as well as non-regulated wetlands.

(3)

Streams (regulated and unregulated) including a 50-foot buffer from mean high water mark of streams. These shall include but are not limited to watercourses, streams and other drainage corridors as classified pursuant to the New York State Department of Environmental Conservation Stream Classification System.

CONSTRUCTION EQUIPMENT SALES ESTABLISHMENT

Retail establishments selling or renting heavy construction equipment, including cranes, earthmoving equipment, heavy trucks, etc.

[Added 11-17-2011 by L.L. No. 5-2011]

CONTRACTOR'S YARD

An area of land on which machinery and equipment used in the construction trades is stored.

CONVENIENCE STORE

A retail establishment offering any of the following for sale: prepackaged food products, household items, newspapers and magazines, sandwiches and other prepared foods, generally for off-site consumption, but which may offer limited seating without wait service.

CONVENTION CENTER

A facility offering meeting rooms and providing support activities, such as food preparation or service, but not including lodging.

Commented [KE20]: New Definition

Commented [KE21]: New Definition

Commented [KE22]: New Definition

CRAFT PRODUCTION

The process of manufacturing by hand (with or without the use of tools) which may be displayed and sold on the premises.

DISTRIBUTION FACILITY

A facility used to disperse products or articles to another location.

DOCK

Any structure, whether affixed or floating, placed in or upon a lake, pond, river, stream or brook and which provides a berth for watercraft and/or a means of pedestrian access to and from the shoreline. This shall include boathouses, piers, wharfs, crib docks, stake docks, floating docks and all such similar structures.

DRIVE-THROUGH WINDOW

A service window in which customers of a facility can access goods or services from within a vehicle. A drive-through window must be accessory to a permitted principal use, and may include restaurants including fast-food operations, banks, and pharmacies.

DRIVEWAY

A vehicular lane within a lot or shared between two or more lots providing access to a street, garage, parking area, or parking lot.

DWELLING, MULTIFAMILY

Any building used or designed as a residence for five or more families living independently of each other and doing their own cooking therein, including but not limited to apartments, certain condominium developments and the conversion of existing single-family dwellings.

DWELLING, SEASONAL

One dwelling unit not used for permanent residence and not occupied for more than six months in each year.

DWELLING, SINGLE-FAMILY

A detached building designed for or occupied exclusively by one family, erected on a permanent foundation, with/without basement and equipped for year-round occupancy.

DWELLING, THREE- and FOUR- FAMILY

A building designed as a single structure typically with a shared entry, containing three or four units, each designed to be occupied as a separate permanent resident for one family.

DWELLING, TOWNHOUSE

A single-family dwelling in a row of at least three such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more vertical common fire-resistance walls.

DWELLING, TWO-FAMILY OR DUPLEX

A detached building containing two dwelling units that are attached by a common wall.

DWELLING UNIT

A building, or portion thereof, providing complete housekeeping facilities for one family.

EASEMENT

Deeded authorization by a property owner for the use or nonuse of any part of his property.

EAVE

The junction of a building wall and an overhanging roof.

Commented [KE23]: All dwelling definitions moved i.e. Dwelling, Two-Family

Commented [KE24]: Definition revised

Commented [KE25]: New Definition

ENCLOSED

With respect to a building, being completely surrounded on four sides by walls and covered with a roof. An enclosed structure will have doors of various kinds, which may or may not be open when the use or activity is occurring.

ENCROACHMENT

Any structure or structural element which intrudes into an easement, setback or dedicated right-of-way or property line.

EQUIPMENT STORAGE, SALES AND SERVICES

A lot utilized for purposes such as storage, rental, sales and service of equipment and machinery, including tractor-trailers and related transportation equipment, such as bulldozers, backhoes, engines, compressors, trucks over 2 1/2 tons, tractors, construction equipment and other machinery, vehicles or motors, and also including boats.

ESSENTIAL PUBLIC SERVICES

Underground or overhead gas, electrical or water transmission or distribution systems or sewer systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants, manholes and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of adequate service by public utilities or the Town or other governmental agencies for the public health or safety or the general welfare.

EXPANSION

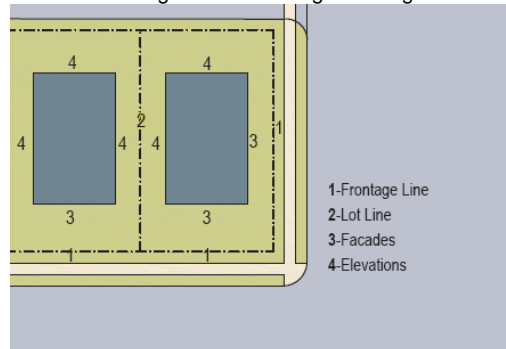
Any growth of activity which requires the enlargement of facilities, including buildings, parking spaces, storage yards or any other facilities which are required to accommodate such growth.

EXPRESSION LINE

An architectural feature consisting of a decorative, three-dimensional, linear element either horizontal or vertical.

FAÇADE

The exterior wall of a building that is set along a frontage line.



FAÇADE, CORNER

The exterior wall of a building that faces the corner side lot line.

FAÇADE, FRONT

The exterior wall facing the principal frontage of a building.

FAÇADE, WATERFRONT

An exterior wall of a building that faces a water body.

Commented [KE26]: New Definition

Commented [KE27]: New Definition and illustration

Commented [KE28]: New Definition

Commented [KE29]: New Definition

Commented [KE30]: New Definition

FAMILY

One or more persons occupying the premises and living as a single housekeeping unit, as distinguished from a group occupying a boardinghouse, lodging house, club, fraternity or hotel.

FARM

Any parcel of land used for agricultural, horticultural or silvicultural use, including any structure, building or residence which is incidental to the permitted use.

FARMERS MARKET

A permanent, semi-permanent structure, or temporary structure (or stalls or tents), operated on a seasonal or year-round basis, that allows for agricultural producers to sell their products and agriculture-related items directly to consumers.

Commented [KE31]: New Definition

FARM WORKER HOUSING

One or more structures, including mobile homes, used to house farm workers and their families who are directly employed on the farm on which the housing is located.

FAST-FOOD RESTAURANT

A place where food or nonalcoholic beverages are served or sold for consumption outdoors or in vehicles or a place where food is purchased at a counter for consumption indoors. A restaurant equipped with a window to allow purchases of food by driving up to the same by vehicle and leaving, commonly referred to as a "drive-through window," shall be deemed a fast-food restaurant.

FENCE

A barrier consisting of material(s) assembled, constructed or erected at a fixed location on the ground or attached to the ground. Fence does not include a hedge or similar barrier composed of growing vegetation or a man-made berm.

FILTER STRIP

An area with vegetation that removes contaminants.

Commented [KE32]: New Definition

FLOOR AREA or GROSS FLOOR AREA

(1)

Residential: the area, in square feet, within the exterior walls of a dwelling unit, not including attached garages, porches, decks, etc.

(2)

Commercial or industrial: the total area, in square feet, within the exterior walls of a building or structure and, when applicable, the sum total of all floor areas of the principal and accessory buildings or structures under single ownership or business.

FLOOR AREA RATIO (FAR)

The relationship of building size to lot size, derived by dividing the total building square footage (see "building square footage") by the lot size in square feet, yielding a percentage.

FORECOURT

An open area in front of a building.

Commented [KE33]: New Definition

FREIGHT

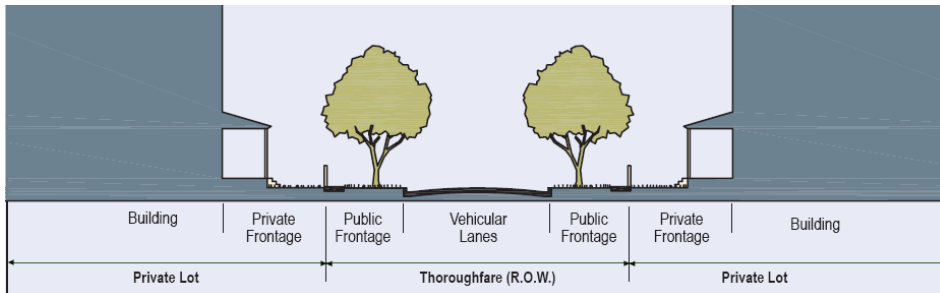
Goods, merchandise, substances, materials, and commodities of any kind that may be transported or transferred from one place to another by air, rail, or motor carrier.
[Added 11-17-2011 by L.L. No. 5-2011]

FREIGHT OR TRUCK TERMINAL

Any premises, which may include structures and buildings used by a motor freight company as a carrier of goods, which is the origin or destination point of goods being transported for the purpose of storing, transfer, loading, and unloading goods; may include intermodal distribution facilities for truck, rail or shipping transport.
[Added 11-17-2011 by L.L. No. 5-2011]

FRONTAGE

An area of a lot between a building façade and a right-of-way line of a public street or road. Frontage is divided into private frontage and public frontage.



Commented [KE34]: New Definition and Illustration

FRONTAGE, LINE

A lot line bordering a public frontage.

Commented [KE35]: New Definition

FRONTAGE, PRINCIPAL

The primary frontage area of a building with a main entrance.

Commented [KE36]: New Definition

FRONTAGE, SECONDARY

The frontage that is not the primary frontage and that is associated with a side entrance.

Commented [KE37]: New Definition

FUEL SUPPLY DEPOT

A facility which stores gasoline products for distribution to off-site locations.

FUNERAL HOME

A building used for the preparation of the deceased for burial and the display of the deceased and ceremonies connected therewith before burial or cremation.

GALLERY

A private frontage wherein the façade is aligned close to the frontage line with an attached cantilevered shed or lightweight colonnade overlapping the sidewalk.

Commented [KE38]: New Definition

GARAGE, COMMERCIAL

Any garage, other than a private garage, available to the public, operated for gain, and which is used for storage, repair, sale, greasing, washing, servicing, adjusting, or equipping of motor vehicles and/or for the retail sale of fuel for motor vehicles.

GARAGE, PRIVATE

An enclosed space for the storage of one or more motor vehicles and within which space no business activity or industry connected directly or indirectly with motor vehicles is conducted.

GASOLINE STATION

A lot occupied or used for the sale of oil or other motor fuel, lubricants, tires and accessories for motor vehicles, including facilities for greasing, washing, cleaning, polishing or otherwise servicing vehicles, but not including painting or major repairing thereof.

GOLF COURSE

A tract of land for playing golf, improved with tees, greens, fairways, and hazards, and may include clubhouses, shelters, bathrooms, and restaurant and tavern facilities.

GRADING

The physical alteration of the contours of land in connection with a development project. Minor alteration for landscaping purposes or to improve drainage on individual residential properties does not constitute grading.

GREENHOUSE, COMMERCIAL

A building in excess of 300 square feet whose roof and sides are made largely of glass or other transparent or translucent material and in which the temperature and humidity can be regulated for the cultivation of delicate or out-of-season plants for subsequent sale or personal enjoyment.

GREENHOUSE, PRIVATE

A structure whose roof and sides are made largely of glass or other transparent or translucent material and in which the temperature and humidity can be regulated for the cultivation of delicate or out-of-season plants for personal enjoyment and whose area is 300 square feet or less.

GREEN INFRASTRUCTURE

The multifunctional, interconnected network of open space and natural features such as greenways, wetlands, parks, forest preserves, and areas of native plant vegetation, that naturally manages stormwater, reduces flooding risk, and improves water quality.

GREEN ROOF

A vegetated roof design that is designed to absorb rainfall or snowmelt, typically to manage stormwater, mitigate the heat island effect, or offer recreational space for building occupants.

GROUND FLOOR

The story of a building closest to the curb level.

GROUP CAMP

Any land or facility for housing and recreational, educational or business-related uses by private groups or semipublic groups, such as boy or girl scout camps, fraternal lodges or university or college conference centers. The definition includes the terms "camp" and "day camp."

HEALTH-RELATED FACILITY

A building or site used for the treatment of illness, disease, injury, deformity and other abnormal physical or mental conditions, including rehabilitation activities, and which is operated by individuals in the health industry licensed by the State of New York. All hospitals and institutions specializing in medical treatment, physical and mental therapy (including alcohol and drug treatment), and assisted living for all ages are considered to be health-related facilities.

HEAVY INDUSTRY

Manufacturing operations that may involve the exterior storage of goods and materials as well as of finished products.

HIGHWAY RIGHT-OF-WAY

That line which measures the right-of-way of any road and which is established by the Town, County or State having jurisdiction over the road.¹¹

HOME OCCUPATION

A profession or trade conducted entirely within a dwelling and/or a detached garage and/or allowed accessory structure(s) and carried on by the dwelling inhabitants thereof, which use is clearly incidental and secondary to the use of the residence for residential purposes and does not change the character thereof. A home occupation

Commented [KE39]: New Definition

Commented [KE40]: New Definition

Commented [KE41]: New Definition

may employ up to three persons. There may be a sign advertising the presence of the home occupation in accordance with Article XI of this chapter. Site plan review is required for a home occupation as described in Article VI of this chapter. The sale of stock-in-trade or the entertainment of clients may be allowed. A produce stand is not a home occupation.

[Amended 1-19-2012 by L.L. No. 2-2012]

HOMEOWNERS' ASSOCIATION

A contract agreed to by owners of homes in an area that provides regulations for the operation and maintenance of individual properties and/or commonly owned facilities and/or open space.

HOSPITAL

An institution, licensed by the State of New York, providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, deformity and other abnormal physical or mental conditions, and including, as an integral part of the institution, related facilities, such as laboratories, outpatient facilities or training facilities.

HOTEL

A building in which lodging is provided in guest units and offered to the public for compensation and in which ingress and egress to and from all rooms are made through an inside lobby or office, supervised by a person in charge at all hours. The guest unit must consist of a room arranged or designed to be available for use as sleeping quarters for transient guests on a daily or weekly basis.

Commented [KE42]: Revised Definition

ILLUMINATION, EXTERNAL

Use of artificial light reflecting off a sign surface.

Commented [KE43]: New Definition

ILLUMINATION, INTERNAL

Use of artificial light projecting through a sign surface. Only back-lit, halo-lit, or reverse channel letters with halo-lit illuminations is permitted except for neon or LED lighting which is permitted for window signs.

Commented [KE44]: New Definition

INN

A single multiple-dwelling structure with no more than 10 guest rooms providing overnight accommodations, food and entertainment.

Commented [KE45]: New Definition

JUNK VEHICLE

Any unregistered, used motor vehicle or vessel, no longer in condition for legal use on public highways or waterways.

JUNKYARD

Any area of land, including the buildings thereon, which is used primarily for the collecting, storage or sale of wastepaper, rags, scrap metal or discarded material or for the collecting, storage, dismantling or salvaging of machinery or vehicles not in running condition and the sale of parts therefrom. The deposit of two or more junk vehicles or the major parts thereof for more than three months will be deemed to make the lot a junkyard.

KENNEL

An establishment to house dogs, cats, and other household pets where grooming, breeding, boarding, training or selling of animals is conducted for commercial purposes. The occasional sale of puppies, kittens or other offspring from household pets shall not be considered a kennel. The harboring of more than four dogs aged six months or older shall be presumptively considered use as a kennel.

LABORATORY

A building in which chemical, mechanical, physical, electrical or other research, production, design or development of materials or processes is conducted.

LAND CLEARING

The excavation, cutting, removal, alteration, destruction or clearing of perennial or annual vegetation, including trees, or the disturbance of soil.

LANDSCAPING

The act of changing or enhancing the natural features of a plot of ground, usually around a building, generally by adding lawns, shrubs, trees, bushes and the like.

LAUNDROMAT

A business equipped with individual clothes-washing and -drying machines for the use of retail customers.

LIGHT INDUSTRY

Low-intensity manufacturing uses that are conducted indoors and which do not involve exterior storage of raw materials or finished products. Such uses may include showrooms for the sale of finished products.

[Amended 11-17-2011 by L.L. No. 5-2011]

LIGHT INDUSTRIAL USE

A manufacturing or maintenance facility where any process is used to alter the nature, size or shape of articles or raw materials or where articles are assembled and where said goods or services are consumed or used at another location. The term does not include mineral extractions, private and commercial sand and gravel extractions, including screening or crushing operations, sawmills, chipping mills, pallet mills and similar wood-using facilities.

[Added 11-17-2011 by L.L. No. 5-2011]

LIVESTOCK

The keeping of cows, horses, pigs, poultry and/or other livestock for commercial or non-commercial use.

Commented [KE46]: New Definition

LIVE-WORK

An attached or detached structure with one dwelling unit above or behind a ground floor space that can be used for service or retail uses.

Commented [KE47]: New Definition

LOADING SPACE

An off-street space, area or berth, with an appropriate means of access to a street or way, intended for the temporary parking of a vehicle while loading or unloading merchandise or materials.

Commented [KE48]: Deleted: Lodge Definition

LOT

A parcel or portion of land separated from other parcels or portions by description, as on a subdivision map, survey map or by metes and bounds, for the purpose of sale, lease or separate use.

LOT, CORNER

A lot situated at the intersection of two or more streets or highways.

LOT COVERAGE

All areas covered by buildings, pavement or other permanent impermeable surfaces, but not including stored merchandise such as cars and manufactured housing. The definition includes the term "impervious area."

LOT, DEPTH

The mean horizontal distance between the front and rear lot lines, measured along the median between the two side lot lines.

LOT LINE

The established division line between different parcels of property.

LOT LINE, FRONT

The lot line which abuts a street or highway right-of-way boundary.

LOT LINE, INTERIOR SIDE

A lot line that connects a front lot line and rear lot line, and does not abut a thoroughfare.

LOT LINE, REAR

The lot line opposite and most distant from the front lot line.

LOT, THROUGH

An interior lot having frontage on two parallel or approximately parallel streets. For the purpose of determining setbacks, the owner of such a lot may designate one line as the front lot line and the other as the rear lot line.

LOT WIDTH

The mean horizontal distance of a lot, measured at right angles to its depth at the building line, which building line shall be in compliance with the minimum setback requirements of this chapter.

MANUFACTURED HOME

A factory-manufactured dwelling unit built on or after June 15, 1976, and conforming to the requirements of the Department of Housing and Urban Development (HUD) Manufactured Home Construction and Safety Standards, 24 CFR Part 3280, 4/1/93, transportable in one or more sections, which, in traveling mode, is eight feet or more in width or 40 feet or more in length or, when erected on site, is 320 square feet minimum, constructed on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning and electrical systems contained therein. The term "manufactured home" shall also include any structure that meets all the requirements of this definition, except the size requirements, and with respect to which the manufacturer voluntarily files a certification required by the Federal Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Act of 1974, as amended.^[2] The term "manufactured home" shall not include any self-propelled recreational vehicle. All manufactured homes shall have a minimum roof pitch of four on 12.
[Added 1-19-2012 by L.L. No. 2-2012]

MASSING

The three-dimensional shape of a building(s) height, width, and depth.

Commented [KE49]: New Definition

MARINA/WATERFRONT-RELATED USE

An activity which can only be conducted on, in, over, or adjacent to a water body because such activity requires direct access to that water body and involves, as an integral part of such activity, the use of the water, including a marina, yacht club, boat launch, fishing piers, tour boat and charter facilities, research and educational facilities requiring access to waterways. Such activities may include the storing, servicing, fueling, berthing, and securing of boats and may also include eating, sleeping, and retail uses that are accessory to marina/waterfront-related facilities for owners, crews, and guests.

Commented [KE50]: New Definition

MIXED USE

The presence of multiple uses within the same complex, building, parcel, district or zone.

MOBILE HOME

A factory-manufactured dwelling unit built prior to June 15, 1976, with or without a label certifying compliance with NFPA, ANSI or a specific state standard, transportable in one or more sections, which, in traveling mode, is eight feet or more in width or 40 feet or more in length or, when erected on site, is 320 square feet minimum, constructed on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-

conditioning and electrical systems contained therein. The term "mobile home" shall not include travel trailers or any self-propelled recreational vehicle.

[Amended 1-19-2012 by L.L. No. 2-2012^(a)]

MOBILE HOME PARK

A parcel or parcels of land which are designed and improved for the placement of two or more mobile home units thereon, designed and constructed to the same standards as subdivisions.

[Amended 1-19-2012 by L.L. No. 2-2012^(a)]

MODULAR HOME

Any building comprised of two or more sections, without their own chassis, capable of being transported to their building site and permanently joined into one integral unit which is indistinguishable in appearance from a conventionally built home, including but not limited to a sloped roof and permanent foundation.

[Amended 1-19-2012 by L.L. No. 2-2012]

MOTEL

A building or group of buildings, whether detached or in connected units, containing living and sleeping accommodations used for transient occupancy and which has individual entrances from outside the building to serve each guest unit. A motel may also provide additional services such as restaurants, meeting rooms and recreation facilities.

Commented [KE51]: Revised Definition

MOTOR VEHICLE REPAIR SHOP

Any building, premises and/or land in which or upon which the primary use is a business which involves the service, maintenance or repair of automobiles, trucks, buses and other light vehicles, except for auto body repair, which is carried out within an enclosed structure and in which the sale of materials is clearly incidental to the primary use.

MOVIE THEATER

A place where motion pictures are shown to the public for a fee.

NONCONFORMING LOT

Any lot lawfully on record on the effective date of this chapter which does not meet the minimum lot area and/or lot frontage or width or depth requirements of this chapter for the zoning district in which such lot is situated.

NONCONFORMING STRUCTURE

Any structure which is lawfully in existence within a given zoning district on the effective date of this chapter but which is not in conformance with the dimensional regulations for that zoning district.

NONCONFORMING USE

Any use which is in existence within a given zoning district on the effective date of this chapter but which is not a permitted, accessory, site plan or special use for that zoning district, as listed in the Schedule of Regulations^(a) in Article III hereof, or a use for which a use variance had previously been granted.

NURSERY

Land or greenhouses used to raise flowers, shrubs and plants for sale, as well as other goods customarily sold with plants, such as soil, compost, pots, etc. (See "greenhouse, commercial.")

NURSING HOME

Any building, other than a hospital, where persons are housed or lodged and furnished with meals and nursing care for hire.

OFFICE

A building that has been planned, developed and operated as a facility to accommodate one or more separate offices as its primary use and where other uses, such as restaurants, taverns or health clubs, are secondary or accessory.

OPEN SPACE

Land not covered by buildings, pavement, open storage, mining operations or any other use that visually obscures the natural or improved landscape, except for recreation facilities.

OVERLAY DISTRICT

A set of regulations which adds a layer of guidelines or provisions to the underlying regulating district. An overlay district may cover more than one zoning district.

PARAPET

The portion of a wall which extends above the roofline.

PARKING LOT

Any place, lot, parcel or yard used, in whole or in part, for storing or parking three or more motor vehicles under the provisions of this chapter.

PARKING SPACE

For the purpose of this chapter, one "parking space" shall constitute an area of not less than 162 square feet, of such shape and vertical clearance so as to accommodate one vehicle having a maximum width of nine feet and a maximum length of 18 feet.

PARKING SPACE, HANDICAPPED

An oversized parking space designed to accommodate the handicapped. Such space shall constitute an area of 260 square feet, with a minimum width of 13 feet and having an overall length of 20 feet.

PERFORMANCE STANDARD

A criteria, established in Article VIII of this chapter, established to control noise, odor, dust, dirt, vibration, noxious gases, glare, smoke, water pollution and explosive hazards, or visual pollution generated by or inherent in the use of land or buildings.

PERMEABILITY, PERCENT OF

The area of the lot which is not covered by buildings, structures or nonpermeable surfaces divided by the total area of the lot and multiplied by 100.

PERMEABLE

Ground surface through which water can percolate in a natural manner. Said ground surface could be undisturbed natural terrain or a landscaped area with generally unpaved surfaces.

PERMITTED USE

Any use requiring no special action by the Zoning Board of Appeals nor site plan nor special permit review by the Planning Board before a building permit is granted by the Code Enforcement Officer, subject to all other applicable provisions of this chapter.

PERSON

Any individual, corporation, limited liability corporation, partnership, association, trustee, or other entity authorized to exist in New York State and all political subdivisions of the State or any agency or instrumentality thereof.

PERSONAL-SERVICE BUSINESS

Establishments primarily engaged in providing services involving the care of a person or his or her apparel.

PLACE OF WORSHIP

A building or place used for religious activities, including a church, synagogue, temple or mosque, which is used for the purpose of worship and activities customarily associated therewith.

Commented [KE52]: New Definition

PLACES OF PUBLIC ASSEMBLY

Public buildings, schools, halls, convention centers and other spaces and buildings where the general public may congregate, not including social clubs, sportsmen's clubs or other private clubs.

PLANNED DEVELOPMENT DISTRICT

An area of land in which a variety of housing types and/or related commercial and industrial facilities are accommodated in a preplanned environment under more flexible standards than would normally apply under the regulations of the individual zoning categories of this chapter, the approval of which involves requirements other than those of the standard subdivision, such as building design, landscaping, open spaces, etc.

PLANNING BOARD or BOARD

The Planning Board of the Town of Stillwater.

PLAZA

A civic space type designed for civic purposes and commercial activities, generally paved and spatially defined by building frontages.

Commented [KE53]: New Definition

PORCH

A covered shelter projecting in front of an entrance of a building.

Commented [KE54]: New Definition

PRINCIPAL BUILDING

The building in which the principal use is conducted.

PRINCIPAL USE

The main or primary purpose for which land or a building is used or occupied or maintained. When more than one use is on a lot, the most-intense use shall be considered the main or primary use.

PRODUCE STAND

A structure designed for the sale of farm products, such as fruits, vegetables, flowers and honey and products that are agriculture-related.

Commented [KE55]: Revised Definition

PRODUCE STAND FOR ON-FARM PRODUCTS

A structure designed for the sale of farm products produced on the farm on which the stand is located. There is no size restriction on such structures.

PROFESSIONAL OCCUPATION

One who is engaged in professional services, including but not limited to all members of the field of medicine, a lawyer, architect, engineer, surveyor, real estate broker or accountant.

PROFESSIONAL OFFICE

An office used to conduct a professional occupation.

PUBLIC OR SEMIPUBLIC BUILDING OR USE

Any structure associated with a college, school, hospital, library, place of worship, cemetery, museum, firehouse, or a municipal building or use. However, this definition shall not include a landfill, waste storage or processing facility, sludge dewatering facility or other facility used to process or store hazardous materials or materials dredged from any river or water body.

RAIN BARREL

A storage tank designed to catch runoff typically from a roof.

Commented [KE56]: New Definition

RAIN GARDEN

A garden designed to collect stormwater runoff from impervious surfaces such as roofs, walkways, and parking lots, allowing water to infiltrate the ground.

Commented [KE57]: New Definition

RECREATIONAL FACILITIES, COMMERCIAL

Recreational facilities open to the general public for private gain.

RECREATIONAL FACILITIES, PRIVATE

Recreational facilities supplemental to a principal use, for the utilization of proprietors and guests, and excluding any use which is open to the public for a charge.

RESIDENTIAL USES

Each of the uses listed under the title "Residential Uses" in the Town of Stillwater Summary of Allowed Uses contained in 210 Attachment 1:3 to the Zoning Code dated Aug 1, 2012, as amended.

[Added 7-17-2014 by L.L. No. 2-2014]

RESTAURANT

A place for the preparation, serving and consuming of food and beverages, other than a tavern.

RESTAURANT, FAST-FOOD

An establishment whose principal business is the sale of pre-prepared or rapidly prepared food/meals directly to the customer in a ready-to-consume state for consumption either within the restaurant or off the premises.

RETAIL

The offering, for a fee, of goods, services or merchandise to the general public, excluding restaurants, taverns, motor vehicle sales and services, boat sales, recreational vehicle sales and services, mobile and modular home sales and services, farm and construction equipment sales and services, and logging equipment sales and services.

Commented [KE58]: Revised title of definition

RIGHT-OF-WAY, PUBLIC

A parcel of land in public ownership or use open to the public for vehicular or pedestrian access. (See "street.")

ROAD, ARTERIAL

A street or road officially designed for the high-speed movement of large volumes of traffic between major points of activity.

ROAD, COLLECTOR

A street or road officially designated for the movement of traffic between arterial streets and local roads, as well as for servicing adjacent land uses.

ROAD, LOCAL

A street or road officially designated to provide access to abutting property, not intended primarily for the movement of through traffic.

SAND, GRAVEL OR TOPSOIL PROCESSING

The screening, sorting, reduction or transformation of sand, gravel or topsoil, but not including the production of asphalt or cement.

SAND, GRAVEL OR TOPSOIL REMOVAL

Any extraction from the land of more than 50 cubic yards in any two-year period of sand, gravel or topsoil for the purpose of sale or use by persons or entities other than the owner of the land, but not including the processing thereof.

[6]

SAWMILL

Any building, site or place used for the cutting or milling of raw timber into dimensional lumber, except that a sawmill located on a property for less than 60 days in any one-year period shall not be regulated by this chapter. For the purpose of this definition, a property shall be considered all of the contiguous parcels owned or under the control of a landowner.

SCHOOL

Any place offering instruction in any branch of knowledge under the supervision of the State of New York or a lawfully constituted ecclesiastical governing body, person,

partnership, or corporation meeting the requirements of the State Education Department.

SCREENING

Foliage, berms, trees, shrubs or landscaped natural materials and plants which obscure the visual character and suppress the noise of any given building or use of land. Where natural plant material is not practical, fences and/or other artificial material may be partially or totally substituted, according to individual site conditions.

SELF-STORAGE FACILITY

A structure containing separate, individual and private storage spaces of varying sizes, licensed, leased or rented to individuals for varying periods of time.

SETBACK

The established line beyond which no part of a building shall extend, except for the building eaves, which may extend 18 inches into the setback. (See "building line.")

SHOPFRONT

A private frontage conventional for retail use with substantial windows (glazing) where the facade is aligned close to the frontage line with the building entrance at sidewalk grade.

Commented [KE59]: New Definition

SHORELINE

The high-water mark at which land adjoins the waters of lakes, ponds, wetlands, rivers and streams within the Town.

Commented [KE60]: Removed Shopping Mall/Plaza Definition

SHORELINE BUILDING SETBACK

The shortest distance, measured horizontally, between any point of a principal building or accessory structure in excess of 100 square feet in size (except docks and boathouses) and the shoreline of any lake, pond, river, New York State Department of Environmental Conservation classified wetland or stream.

SIDEWALK

The paved section of the public frontage dedicated exclusively to pedestrian activity.

SIGN

Any display of lettering, numbering, logos, designs, colors, lights or illumination, visible to the public from outside of a building or from a public right-of-way, which either conveys a message to the public or intends to advertise, direct, invite, announce or draw attention to, directly or indirectly, a use conducted or events, goods, products, services or facilities available.

Commented [KE61]: Revised Definition

(1)

AWNING SIGN: A sign painted on or applied to a structure made of cloth, canvas, or similar material which is affixed to and projects from a building.

(2)

FREESTANDING SIGN: Any sign not attached or part of any building but separate and permanently anchored in the ground.

(3)

ICONIC SIGN: A sculptural, typically three-dimensional sign whose form suggests its meaning and which is building-mounted.

(4)

ILLUMINATED SIGN: Any sign designed to give forth or reflect any artificial light, such light deriving from any source which is intended to cause such light or reflection.

(5)

MONUMENT SIGN: A sign attached to a brick, stone, or masonry wall or structure that forms a supporting base for the sign display.

(6)

NONCONFORMING SIGN: A sign lawfully erected and maintained prior to the adoption of the current Code that does not conform with the requirements of the current Chapter.

(7)

PROJECTING SIGN: A sign that attached to the façade of the structure and projects out from the wall.

(8)

SIDEWALK SIGN: An A-frame sign that is not permanently attached to the ground or other permanent structure.

(9)

TEMPORARY SIGN: A sign or advertising display constructed of cloth, canvas, fabric, plywood, or other light material and designed or intended to be displayed for a short period of time.

(10)

WALL SIGN: A sign that is affixed to a building's wall.

(11)

WINDOW SIGN: A sign that is either painted or attached to the inside surface of a window.

SIDELIGHT

A narrow window or pane of glass alongside a door.

SITE PLAN

A diagram, drawn to scale, showing the development plans for a lot, as outlined in this chapter.

SLOPE

The degree of deviation of a surface from the horizontal, usually expressed in percent of degrees.

SPECIAL USE

A use that requires and must comply with the standards of a special use permit pursuant to this chapter.

STAGING

The requirement that development be constructed in phases consisting of a limited number of units at any one time.

Commented [KE62]: New Definition

STACKING SPACE

A queuing space designated as a waiting area for vehicles patronizing a drive-through window.

STORAGE SHED

An accessory building used to store materials or small equipment, not including trucks, automobiles or recreational vehicles, which supports the principal use of the site.

STORMWATER PLANTER

A specialized planter installed in the sidewalk area that is designed to manage street and sidewalk stormwater runoff.

Commented [KE63]: New Definition

STORY

A level within a building, constructed and designed to support occupancy as defined by the New York State Uniform Fire Prevention and Building Code.

Commented [KE64]: New Definition

STREET

A way for vehicular traffic, whether designated as a "street," "highway," "thoroughfare," "parkway," "throughway," "road," "avenue," "boulevard," "lane," "cul-de-sac," "place" or however otherwise designated, and includes the entire area within the right-of-way. (See "right-of-way, public.")

STREET CENTER LINE

The line determined by connecting the midpoints of the surfaced portion of any street, road or highway.

STREET LINE

The limit of the street or highway right-of-way line. For the purposes of measuring setbacks, the street line shall be considered the highway right-of-way line.

STREET OR ROAD GRADE

The grade of the street upon which a lot fronts.

STRUCTURE

Any object constructed, installed or permanently placed on land to facilitate land use and development or subdivision of land, including but not limited to buildings, sheds, single-family dwellings, mobile homes, signs, service station pumps, drive-in or drive-through islands, with or without canopies, amusement park rides, all aboveground tanks and any fixtures, additions and alterations thereto, but excluding animal shelters less than 100 square feet and children's tree houses and playhouses less than 100 square feet. (See "building.")

SWALE, VEGETATED

Broad, shallow channels designed to convey and infiltrate stormwater runoff planted with trees, shrubs, and/or grasses.

Commented [KE65]: New Definition

SWIMMING POOL

A receptacle for water, having a depth at any point greater than two feet and holding more than 100 gallons of water, designed to be used for swimming and constructed, installed and maintained above or below the ground. A swimming pool is a structure for the purposes of this chapter.

TAVERN

A place in which the principal income is derived from the sale or serving of alcoholic beverages for consumption on the premises, with or without live entertainment.

TELECOMMUNICATIONS TOWER

Any structure greater than 35 feet in height which is capable of receiving and/or transmitting signals (for the purpose of communication).

TERRACE

An elevated area supported by masonry walls next to a building.

Commented [KE66]: New Definition

THEATER

A building or part of a building used to show motion pictures or for drama, dance, musical, or other live performances.

Commented [KE67]: New Definition

TIMBER HARVESTING

The cutting of trees over six inches in diameter at four feet above ground level over an area of more than one acre for commercial purposes. Timber harvesting shall not be construed to include the clearing of land prior to development.

TRANSOM

The window or fanlight above the beam or bar in a doorframe.

Commented [KE68]: New Definition

TRAVEL TRAILER CAMP

A parcel of land which is occupied or used for the placement of two or more travel trailers, motor homes or similar temporary living quarters.

Deleted: **TOWNHOUSE**

A dwelling unit which is one of a series of units, having a common party wall between each adjacent unit, each with a private outside entrance, each with its own separate lot of record, and in which no unit is located over another unit.¶

TRAVEL TRAILER or TRAVEL VEHICLE

Any portable vehicle, including a tent camper or motor home, which is designed to be transported on its own wheels, which is designed and intended to be used for temporary living quarters for travel, recreational or vacation purposes, and which may or may not include one or all of the accommodations and facilities customarily included in a mobile home.

VARIANCE

A modification of the regulations of this chapter, granted on grounds as set forth in applicable regulations of this chapter.

VETERINARY HOSPITAL

A facility providing health services and medical or surgical care to animals suffering from illness, disease, injury, deformity and other abnormal conditions, including related facilities, such as laboratories and boarding facilities. The definition includes the term "veterinary clinic."

WALKUP WINDOW

A service window such as for restaurants in which customers can access goods or services by walking or bicycling.

Commented [KE69]: New Definition

WAREHOUSE

A building used to temporarily store or hold products or articles for use in assembly or manufacturing or for future transmission of said products or articles to another location.

WINDOW SILL

A ledge forming the bottom part of a window.

Commented [KE70]: New Definition

WINDOW TRANSPARENCY

The percentage of a façade made up of windows or glass.

Commented [KE71]: New Definition

YARD

An open unoccupied space on the same lot with a building or structure.

YARD, FRONT

A yard that extends the full width of the lot and is situated between the adjacent highway right-of-way or shoreline and the front line of the building, projected to the side lines of the lot. The depth of the front yard shall be measured between the front line of the building and the highway right-of-way line or shoreline. Covered porches or canopies and decks, whether or not enclosed, shall be considered as part of the main building and shall not project into a required front yard except as permitted in the Route 4 Form-Based Code. (See also § **210-100**, Lots bounded by two streets.)

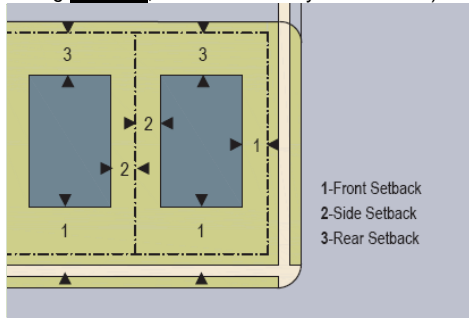
YARD, REAR

A yard that extends the full width of the lot and is situated between the rear line of the lot and the rear line of the building, projected to the side lines of the lot. The depth of

the rear yard shall be measured between the rear line of the lot and the rear line of the building, including any covered porches or canopies and decks, whether or not enclosed. (See also § **210-100**, Lots bounded by two streets.)

YARD, SIDE

A yard that is situated between the side line of the building and the adjacent side line of the lot and extending from the rear line of the front yard to the front line of the rear yard, including any covered porches or canopies and decks, whether or not enclosed. (See also § **210-100**, Lots bounded by two streets.)



Commented [KE72]: New Illustration

[1]

Editor's Note: The former definition of "home occupation, type 1," which immediately followed this definition, was repealed 1-19-2012 by L.L. No. 2-2012.

[2]

Editor's Note: See 42 U.S.C. § 5401 et seq.

[3]

Editor's Note: This local law also repealed the former definition of "mobile home court," which immediately followed this definition.

[4]

Editor's Note: This local law also repealed the former definition of "mobile home, transient," which immediately followed this definition.

[5]

Editor's Note: The Schedule of Regulations is included at the end of this chapter.

[6]

Editor's Note: The former definition of "satellite receiving antenna," which immediately followed this definition, was repealed 1-19-2012 by L.L. No. 2-2012.

Article III. Zoning Maps and Districts

§ 210-8. Establishment and purpose of districts; Zoning Map.

A.

For the purposes of this chapter, the Town of Stillwater is hereby divided into the following districts: [Amended 5-7-2009 by L.L. No. 6-2009; 11-17-2011 by L.L. No. 5-2011; 5-17-2012 by L.L. No. 4-2012]

B-1	Neighborhood Business District
BP	Business Park District
ID	Industrial District
LDR	Low-Density Residential District
R-R	Rural Residential District
RRD	Residential Resort District
R67	Route 67 Overlay District
R67 West	Route 67 West Business District
T2	T2 Rural Conservation
T3N	T3 Neighborhood
T3G	T3 Gateway
T4	T4 Riverfront Corridor
T5	T5 Gateway

Commented [KE73]: Deleted: B-2 General Business District

Commented [KE74]: Deleted: RM Moderate-Density Residential District

Commented [KE75]: Deleted: MUD Mixed-Use District

Commented [KE76]: Added these districts

B.
Additional planned development districts may be adopted by the Town Board from time to time pursuant to Article IV of this chapter.^[1]

[1]
Editor's Note: See also Ch. 211, Zoning: Planned Development Districts.

C.
The locations of these districts are shown on the map entitled "Town of Stillwater Zoning Map," adopted by the Stillwater Town Board on XXX, and as may be subsequently amended.^[2]

[2]
Editor's Note: A copy of the current Zoning Map is on file in the Town offices.

D.
The purposes of the districts are as follows:

Commented [KE77]: Deleted purposes for districts that have been deleted

(1)
B-1 Neighborhood Business District. The purpose of this district is to provide for commercial and business development at a scale compatible with serving the needs of neighborhoods and rural residential areas of the Town.

(2)
BP Business Park District. The purpose of this district is to provide an area for planned office, light industrial and warehouse development.

(3)
ID Industrial District. The purpose of this district is to provide an area in which industrial uses may be located in an environment designed for them. By locating in such an area, these uses are protected from conflicts with neighboring uses. Residential Uses and Business Uses are uses allowable by Site Plan Review ("SPR") in the Industrial District(s) ("IR") within the Town of Stillwater. [Amended 7-17-2014 by L.L. No. 2-2014]

(4)

LDR Low-Density Residential District. The purpose of this district is to protect low-density single- and two-family residential uses while allowing compatible agricultural uses.

(5)

RR Rural Residential District. The purpose of this district is to protect and promote agriculture and related uses while allowing compatible low-density residential development.

(6)

RRD Residential Resort District. The purpose of this district is to encourage the development of seasonal and year-round waterfront development in a manner that protects water quality and minimizes congestion and adverse impacts on water bodies.

(7)

R67 Overlay Route 67 Overlay District. The purpose of this district is to provide opportunity for commercial, light industrial and mixed-use development along a portion of Route 67 where adequate infrastructure exists and development is complementary to establishing a gateway to the Town. [Added 11-17-2011 by L.L. No. 5-2011]

(8)

R67 West Route 67 West Business District. The purpose of this district is to provide opportunity for commercial, light industrial and mixed-use development along western portions of Route 67 where adequate land use and infrastructure exist and development is complementary to the Town's economic development interests. [Added 5-17-2012 by L.L. No. 4-2012]

(9)

T2 Rural Conservation. Preserve, protect, and promote the rural agricultural heritage of the area while allowing compatible low-density residential development and agricultural supportive uses and protecting important viewsheds in relation to the Saratoga National Historical Park.

(10)

T3N Neighborhood. Promote a range of housing types and opportunities in keeping with the surrounding neighborhood and encourage connectivity to surrounding neighborhoods, the Town's mixed use areas, and the Trail.

(11)

T3G Gateway. Promote commercial opportunities and residential development in keeping with the rural character of the area and encourage connectivity to and from commercial establishments, the surrounding neighborhoods, and the Trail.

(12)

T4 Riverfront Corridor. Promote and enhance the Town's identity by encouraging mixed use development, street level activity, walkability to surrounding neighborhoods, and additional public access to the Hudson River.

(13)

T5 Gateway. Maximize economic development potential by encouraging infill, reuse, and expansion of businesses while promoting and enhancing the Town's identity by encouraging mixed use development, street level activity, and walkability to connect to surrounding neighborhoods.

Commented [KE78]: New Districts

§ 210-9. Interpretation of district boundaries.

Where uncertainty exists with respect to the boundary of any district shown on the Town of Stillwater Zoning Map, the following rules shall apply.

A.

Where district boundaries are indicated as approximately following the center lines or right-of-way lines of streets, highways, railroads or public utility easements, said boundaries shall be construed to be coincident with such lines.

B.

Where district boundaries are so indicated that they are approximately parallel to the center lines or right-of-way lines of streets, highways, railroads or public utility easements, said boundaries shall be construed as being parallel thereto and at such distances therefrom as indicated on the Town of Stillwater Zoning Map or as shall be determined using the scale on the Town of Stillwater Zoning Map.

C.

Where district boundaries are indicated as approximately following the Town boundary line, property lines, lot lines, or projections thereof, said boundaries shall be construed to be coincident with such lines or projections thereof.

D.

Where district boundaries are so indicated that they are approximately parallel to the Town boundary line, property lines, lot lines, or projections thereof, said boundaries shall be construed as being parallel thereto and at such distances therefrom as are indicated on the Town of Stillwater Zoning Map or as shall be determined using the scale on the Town of Stillwater Zoning Map.

E.

Where a street, highway, railroad or public utility easement, center line or right-of-way line is coincident with a zoning boundary line and varies from the actual on-the-ground physical monument or mark, then such on-the-ground physical monument or mark shall determine said zoning boundary.

F.

Where uncertainty exists in determining the precise location of any district boundary line, the Zoning Board of Appeals shall interpret the intent and purpose of the Zoning Map. The Zoning Board of Appeals shall render such interpretation within 30 days of receipt of all information it deems necessary to make its interpretation. A public hearing is not required for an interpretation.

§ 210-10. Lots in more than one district.

Where a district boundary line divides a lot, the regulations for either portion may be extended not more than 30 feet into the other portion.

§ 210-11. Floodplain boundaries.

Where the position of a floodplain boundary is not clear, an elevation shall be taken from an agreed-upon benchmark to the elevation of the lowest finished floor of the building. If the elevation of the lowest finished floor is found to be below the elevation of the one-hundred-year floodplain as shown on the appropriate Flood Insurance Rate Map published by the Federal Emergency Management Agency, such property shall be construed to be within the floodplain.

§ 210-12. Use and area regulations.

A.

The restrictions and controls intended to regulate development in each district are set forth in this section and are supplemented in other sections of this chapter.

B.

Except as hereinafter provided:

[Amended 5-20-2010 by L.L. No. 4-2010; 1-19-2012 by L.L. No. 2-2012]

(1)

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

(2)

No new building or structure that is allowed for the district in which such building or structure is located shall be erected to exceed the height or bulk, occupy a greater percentage of lot area, or have narrower or smaller lot size, front yards, rear yards or side yards than is allowed in the particular district.

C.

Use regulations.

(1)

Principal permitted uses. A use shall be permitted in a given zoning district if it is listed in the Schedule of Regulations hereof as a principal permitted use for that district, provided that all other requirements of this chapter are met.¹¹

[1]

Editor's Note: The Schedule of Regulations is included at the end of this chapter.

(2)

Site plan review uses. A use listed in the Schedule of Regulations hereof¹² as a site plan review use for a given zoning district shall be permitted in that district when approved in accordance with Article VII hereof, provided that all other requirements of this chapter are met.

[2]

Editor's Note: The Schedule of Regulations is included at the end of this chapter.

(3)

Special permit uses. A use listed in the Schedule of Regulations¹³ as a special permit use shall be permitted in that district when approved in accordance with Article VII hereof, provided that all other requirements of this chapter are met.

[3]

Editor's Note: The Schedule of Regulations is included at the end of this chapter.

(4)

Nonpermissible uses. Any use which is not a permissible use by right, site plan review, or special use permit in a given zoning district or which is not an accessory use to such a permissible use, site plan review use, or special permit use shall be a nonpermissible use and shall be deemed prohibited in that zoning district.

(5)

Accessory use or accessory structure. An accessory use or accessory structure shall be permitted if the use to which it is accessory is a lawful use pursuant to the terms of this chapter and for which a

permit has been issued if required pursuant to the terms of Article XVII hereof, so long as said accessory use or structure does not result in or increase any violation of the provisions of this chapter. Accessory structures shall be located in the side or rear yards of a principal structure. The structures may be located no closer than 25% of the setback requirement but in no case less than 5 feet from the side or rear property line. An accessory structure shall not be used for commercial purposes by residents of residential structures, except as permitted by § 210-95, Home occupations, nor shall it include a sign, except as permitted by Article XI, Signs.

(6)
Principal buildings in residential zones. In areas zoned for single-family dwellings, a maximum of one single-family dwelling may be constructed per lot, regardless of lot size. Construction of additional single-family dwellings shall require subdivision approval and shall be in conformance with the requirements of this chapter.

(7)
The following uses shall be expressly prohibited in the Town of Stillwater: any landfill, waste-storage or -processing facility, sludge dewatering facility or other facility used to process or store hazardous materials or materials dredged from any river or water body.

D.
Schedule of Regulations. The Schedule of Regulations for the zoning districts is found in the table at the end of this chapter in Appendix A.

§ 210-13. Watershed protection overlay districts.

A.
Purpose. The Town of Stillwater recognizes the importance of the Plum Brook and Village of Stillwater watersheds as a source of water supply to the City of Mechanicville and the Village of Stillwater, as well as to the surrounding region. The Town therefore determines that it is in the interest of the Town to designate the Plum Brook Watershed Protection Overlay District and the Village of Stillwater Watershed Protection Overlay District, within which certain regulations intended to protect the watersheds shall apply.

B.
Designated areas. The locations of the watershed protection overlay districts are shown on the Town of Stillwater Zoning Map.^[1]

[1]
Editor's Note: A copy of the current Zoning Map is on file in the Town offices.

C.
Regulations. Within the watershed protection overlay districts, the following activities shall be prohibited:
[Amended 1-19-2012 by L.L. No. 2-2012]

(1)
Disposal of any solid waste, petroleum, radioactive material, brine, solvents, hazardous material, or nonresidential wastewater into or onto land or a surface water body (except for the underground injection activities specifically and directly related to the development or maintenance of water supply wells and except for the operation of existing on-site disposal systems for sewage). This section shall not be construed to prohibit or otherwise regulate manure storage or processing or spreading or other agricultural use of recognizable and nonrecognizable food waste, sewage sludge,

septage and composted sludge, including the land application or storage of such materials for agricultural purposes.

(2)

Commercial use, storage and/or application of pesticides without applicable permits/certification from the New York State Department of Environmental Conservation.

(3)

Open storage of agricultural chemicals or fertilizer within 100 feet of any water body.

(4)

Introduction into an existing on-site disposal system of any material that is potentially hazardous to groundwater quality, including but not limited to petroleum, radioactive material, brine, solvents and hazardous material.

(5)

Establishment and/or operation of any solid waste management or waste management facility or hazardous waste treatment, storage, or disposal facility, including but not limited to: solid waste storage area or facility; transfer station; rail-haul or barge-haul facility; landfill of any kind; disposal facility; solid waste or animal incinerator; recycling facility; land application facility; composting facility; surface impoundment; used oil storage; reprocessing and re-refining facility; waste tire storage facility; junkyard; salvage yard; impoundment yard; dump; radioactive waste facility; pathological or medical waste facility; or hazardous waste treatment, storage, or disposal facility.

(6)

Installation or operation of any underground petroleum product or chemical storage facility in excess of 1,100 gallons.

(7)

Cemetery.

(8)

Dumping or disposing of snow or ice collected off-site from streets, roads or parking areas within 100 feet of any water body.

(9)

Wholesale storage of fertilizers.

(10)

Bulk storage of coal or chloride salts.

(11)

Construction of commercial pipelines or piping systems that carry petroleum or any other liquid hazardous material.

(12)

Construction of public or private sewage treatment facilities.

(13)

Discharge, land application or disposal of any septage, sewage sludge, animal wastes, animal remains or human excreta within 100 feet of any water body, except that such prohibition shall not apply to manure storage or processing or spreading or other agricultural use of recognizable and nonrecognizable food waste, sewage sludge, septage and composted sludge.

D.

Nonconforming activities.

(1)

A lawful activity which exists at the time of the effective date of this chapter that does not conform with the requirements of this section is not subject to the restrictions and requirements of this section.

(2)

No nonconforming activity shall be expanded, enlarged or modified in any way that is deemed by the Code Enforcement Officer to pose a greater threat to groundwater and otherwise contravene the intent and purpose of this section.

(3)

In the event that an allowed nonconforming activity is stopped, suspended or abandoned for a period of 12 months or longer, the activity shall permanently desist and shall be subject to the requirements of this chapter.

E.

Imminent hazard.

(1)

If any allowed nonconforming activity is found by the Code Enforcement Officer to pose a potential or imminent health hazard or threat to a public water supply, it shall be deemed a violation of this chapter. The Code Enforcement Officer shall take whatever actions are necessary to remedy an imminent threat to a public water supply.

Article IV. Planned Development Districts

[1]

*Editor's Note: See also Ch. **211**, Zoning: Planned Development Districts.*

§ 210-14. Purpose and intent.

A.

It is the intent of this Planned Development District (PDD) Article to provide flexible land use and design regulations to provide for the rezoning of land so that small- to large-scale neighborhoods or portions thereof may be developed in the Town. Provision is included for planned development districts to permit establishment of areas in which diverse uses may be brought together in a compatible and unified plan of development which shall be in the interest of the general welfare of the public. This article specifically encourages innovation in residential development so that the growing demand for housing at all economic levels may be met by greater variety in type, design and siting of dwellings and by the conservation and more-efficient use of land in such developments.

B.

This article recognizes that, while the standard zoning function and the subdivision function are appropriate for the regulation of the land use in areas of neighborhoods which are already substantially developed, these controls represent a type of preregulation, regulatory right, and uniformity which may not be in harmony with the techniques of land development contained in the planned development concept. Further, this section recognizes that a rigid set of space requirements, along with bulk and use specifications, would frustrate the application of this concept. Thus, where planned development techniques are deemed appropriate through the rezoning of land

to a planned development district by the Town Board, the set of use and dimensional specifications elsewhere in this chapter is herein replaced with an approval process in which an approved plan becomes the basis for continuing land use controls.

C.

In no case shall the regulations of this article be so interpreted as to circumvent the benefits of this chapter to the residents or occupants of adjoining properties.

§ 210-15. Objectives.

In order to carry out the intent of this article, the Town Board shall consider the following objectives:

A.

Whether the project provides a choice in the types of environment, occupancy tenure (e.g., individual ownership, condominium leasing), types of housing and sizes and community facilities available to existing and potential residents at all economic levels.

B.

Whether the project provides more usable open space and recreation areas, including the linkage of open space areas.

C.

Whether the project provides more convenience in location of industrial, commercial and service areas, if applicable.

D.

Whether the project provides for the preservation of trees and outstanding natural topographic and geologic features and prevention of soil erosion.

E.

Whether the project provides for a creative use of land and related physical development which allows an orderly transition of land.

F.

Whether the project provides for an efficient use of land resulting in smaller networks of utilities and services, thereby lowering housing costs.

G.

Whether the project provides a development pattern in harmony with the objectives of the Comprehensive Plan.

H.

Whether the project provides a more-desirable environment than would be possible through the strict application of other articles of this chapter.

§ 210-16. General requirements.

A.

Ownership. The tract of land for a project may be owned, leased or controlled either by a single person or entity or by a group of individuals or entities. An application must be filed by the owner or jointly by the owners of all property included in a project. In the case of multiple ownership, the approved plan shall be binding on all owners.

B.

Minimum area. The minimum area for a PDD shall be 30 contiguous acres of land. The Town Board may consider projects of lesser acreage where the applicant can demonstrate that the characteristics of his holdings meet the purposes and objectives of this article.

C.

Residential density. Residential density in a PDD shall not exceed 120% of the base residential density in the district or districts in which the PDD is located.

D.

Base nonresidential density. Base nonresidential densities shall not exceed 20% of the total residential square footage in a PDD.

E.

Allowed use. Any type of use is permitted within a PDD, subject to the base density provisions in Subsection C above.

F.

Drainage districts. The Town may, at its discretion, require the formation of a drainage district in connection with a PDD, which district shall be dedicated to the Town and subject to taxation.

§ 210-17. Considerations.

In determining whether a planned development district should be allowed, particularly as regards the intensity of land use, the Town Board shall consider the following factors:

A.

The need for the proposed land use in the proposed location.

B.

The availability and adequacy of water service.

C.

The availability and adequacy of sanitary waste disposal facilities.

D.

The availability and adequacy of transportation systems, including the impact on the road network.

E.

The pedestrian circulation and open space in relation to structures.

F.

The character of the neighborhood in which the PDD is being proposed, including the safeguards provided to minimize possible detrimental effects of the proposed use on adjacent properties and the neighborhood in general.

G.

The height and mass of buildings and their relation to other structures in the vicinity.

H.

Potential impacts on local government services.

I.

Potential impacts on environmental resources, including wetlands, surface water, floodplains, and plant and wildlife communities.

J.

The general ability of the land to support the development, including such factors as slope, depth to bedrock, depth to water table, and soil type.

K.

Other factors as may be deemed appropriate by the Town Board.

§ 210-18. Common property.

Common property in a planned development district is a parcel or parcels of land, together with the improvements thereon, the use and enjoyment of which are shared by the owners and occupants of the individual building sites. Common property shall be allowed within a PDD. The ownership of such common property may be public or private. When common property exists in private ownership, satisfactory arrangements must be made for the improvement, operation and maintenance of such common property and facilities, including private streets, drives, services, and parking areas and recreational and open space areas.

§ 210-19. Application and approval process.

Whenever any planned development district is proposed, before any permit for the erection of a permanent building in such planned unit development shall be granted and before any subdivision plat of any part thereof may be filed in the office of the Saratoga County Clerk, the developer or his authorized agent shall apply for and secure approval of such planned development district in accordance with the following procedures:

A.

Application for approval.

(1)

In order to allow the Town Board and the developer to reach an understanding on basic design requirements prior to detailed design investment, the developer shall submit an application of his proposal to the Town Board. The Town Board, at its next regularly scheduled meeting, may, if it determines that the proposal merits review, refer the application to the Planning Board for review and recommendation. The date of Planning Board receipt of the application shall be the next regular meeting of the Planning Board. If the Town Board determines that the proposal does not merit review because it does not meet the objectives of this article, it shall not refer the application to the Planning Board, and no further action on the application shall be taken. The application shall include a sketch plan, drawn to scale, though it need not be to the precision of a finished engineering drawing, and it shall clearly show the following information:

(a)

The location of the various uses and their areas.

(b)

The general outlines of the interior roadway system and all existing rights-of-way and easements, whether public or private.

(c)

Delineation of the various residential areas, indicating for each such area its general extent, size and composition in terms of total number of dwelling units, approximate percentage allocation by dwelling unit type (i.e., single-family detached, duplex, townhouse, garden apartments, high-rise), and a general description of the intended market structure (i.e., luxury, middle-income, moderate-income, elderly units, family units, etc.), plus a calculation of the residential density in dwelling units per gross acre (total area, including interior roadways) for such area, and a calculation of total permeable area.

(d)

The interior open space system. Only usable land shall be considered for such purposes.

(e)

The overall drainage system.

(f)

If grades exceed 3% or portions of the site have a moderate to high susceptibility to erosion or a moderate to high susceptibility to flooding and ponding, a topographic map showing contour intervals of not more than five feet of elevation, along with an overlay outlining the above susceptible soil areas, if any. If grades are less than 3%, the topographic map may be at ten-foot contour intervals.

(g)

Principal ties to the community at large with respect to transportation, water supply and sewage disposal.

(h)

A general description of the provisions of other community facilities, such as schools, fire-protection services and cultural facilities, if any, and some indication of how these needs are proposed to be accommodated.

(i)

A location map showing uses and ownership of abutting lands.

(j)

A long-form environmental assessment form.

(2)

In addition, the following documentation shall accompany the sketch plan:

(a)

Evidence of how the developer's particular mix of land uses meets existing community demands.

(b)

A general statement as to how common open space is to be owned and maintained.

(c)

If the development is to be staged, a general indication of how the staging is to proceed. Whether or not the development is to be staged, the sketch plan of this section shall show the intended total project.

(d)

How the plan is in conformance with the Town's Comprehensive Plan.

(e)

Evidence of the applicant's physical and financial competence to carry out the plan and his awareness of the scope of such a project.

(f)

A draft Zoning Law amendment applicable to the project for review by the Town Board. The draft shall identify all amendments to this chapter required by the PDD.

(g)

A fiscal impact analysis identifying projected short- and long-term impacts on municipal and school district budgets.

(h)

Such other information as determined necessary by the Planning Board to evaluate the proposal.

B.

After receipt of all required information, as determined by the Planning Board, the Planning Board shall hold a public hearing in accordance with the hearing requirements of § ~~210-138~~ of this chapter and shall render either a favorable or an unfavorable report to the Town Board within 60 days of the closing of the public hearing.

C.

In reviewing the sketch plan, the Planning Board may call upon the County Planning Department and any other public or private agencies or consultants that the Board feels are necessary to provide a sound review of the proposal.

D.

A favorable report shall include a recommendation to the Town Board that a public hearing be held for the purpose of considering planned unit development districting. It shall be based on the following findings, which shall be included as part of this report:

(1)

That the proposal meets the intent and objectives of planned development districting as expressed in this article.

(2)

That the proposal meets all the general requirements in this article.

(3)

That the proposal is conceptually sound in that it meets a community need and it conforms to accepted design principals in the proposed functional roadway system, land use configuration, open space system, drainage system and scale of the elements, both absolutely and to one another.

(4)

That there are adequate services and utilities available or proposed to be made available in the construction of the development.

E.

An unfavorable report shall state clearly the reasons therefor and, if appropriate, point out to the applicant what might be necessary in order to receive a favorable report. The applicant may, within 10 days after receiving an unfavorable report, file an application for planned development districting with the Town Board. The Town Board may then determine, on its own initiative, whether or not it wishes to call a public hearing. If the Town Board determines not to hold a hearing, no further action shall be taken, and the application shall be considered denied.

F.

The Chairman of the Planning Board shall certify when all of the necessary application materials have been presented, and the Planning Board shall submit its report within 60 days of such certification. If no report has been rendered after 60 days, the applicant may proceed as if an unfavorable report were given to him.

G.

Application for planned development districting.

(1)

Upon receipt of a favorable report from the Planning Board or upon its own determination subsequent to an appeal from an unfavorable report, the Town Board shall set a date for and conduct a public hearing for the purpose of considering planned development districting for the applicant's plan, in accordance with the procedures established by the Town Board for holding meetings, said public hearing to be conducted within 45 days of the receipt of the favorable report or the decision on appeal from an unfavorable report.

(2)

The Town Board shall refer the application to the Saratoga County Planning Board for its analysis and recommendations, and the Town Board shall also refer the application to such other agencies or consultants it deems appropriate.

(3)

Within 30 days following receipt of the report from the County Planning Board, the Town Board shall render its decision on the application.

H.

Zoning for planned development districts. If the Town Board grants the planned development districting, the Zoning Map shall be so noted. The Town Board may, if it feels it necessary in order to fully protect the public health, safety and welfare of the community, attach to its zoning resolution any additional conditions or requirements for the applicant to meet. Such requirements may include but are not confined to visual and acoustical screening, land use mixes, order of construction and/or occupancy, circulation systems, both vehicular and pedestrian, availability of sites within the area for necessary public services such as schools, fire houses, and libraries, protection of natural and/or historic sites and other physical or social demands.

I.

Site plan and subdivision approvals. Subsequent to obtaining any rezoning under this article, individual project elements shall be subject to site plan or subdivision approvals, as applicable. The procedure for such approvals shall be as specified in Article VI of this chapter for site plan approvals and in Chapter 176, Subdivision of Land, for subdivision approvals.

§ 210-20. Changes in plan.

If, in the site plan review process, it becomes apparent that certain elements of the sketch plan, as it has been approved by the Town Board, are unfeasible and in need of significant modification, the applicant shall then present solutions to the Planning Board site plan in accordance with the above procedures. The Planning Board shall then determine whether or not the modified plan is still in keeping with the intent of the local law creating the PDD. If a negative decision is reached, the site plan shall be considered disapproved. The applicant may then produce another site plan in accordance with the approved PDD plan. If an affirmative decision is reached, the Planning Board shall so notify the Town Board, stating all of the particulars of the matter and its reason for feeling

the project should be continued as modified. Preliminary site plan approval may then be given only with the consent of the Town Board.

§ 210-21. Staging.

If the applicant wishes to stage his development, or if the Town Board wishes to require that development be staged, the applicant may then submit only those stages for site plan review and/or subdivision approval per the approved staging plan. Any plan anticipated to require more than 24 months to be completed shall be required to be staged, and a staging plan must be developed. The Code Enforcement Officer may withhold the issuance of building permits if the approved staging plan is not being followed.

§ 210-22. Requirements prior to start of construction.

No building permits shall be issued for construction within a planned development district until improvements are installed or financial security is posted in accordance with § 210-23 of this chapter and/or Chapter 176, Subdivision of Land. Construction may also not occur until such other requirements and conditions as established by the Town Board and Planning Board have been met.

§ 210-23. Financial security.

The Planning Board or Town Board may require the posting of financial security in the form of a bond, letter of credit or other instrument in order to ensure that improvements are carried out as specified in the plans and approvals.

§ 210-24. Expiration of approval.

If no evidence of progressive activity has occurred within one year of the date of the adoption of the PDD or upon expiration of any extension of time for starting development granted by the Town Board, the approved plan shall become null and void, and the zoning shall revert to its designation prior to approval of the PDD.

§ 210-25. Filing of decisions.

All Planning Board decisions shall be filed with the Town Board, and vice versa.

Article V. Reserved.

§ 210-26. Reserved.

§ 210-27. Reserved.

§ 210-28. Reserved.

Commented [KE79]: Article V. Clustering was moved and is now incorporated into Article XX. Cluster and Conservation Subdivision. This Article is reserved for future use.

§ 210-29. Reserved.

§ 210-30. Reserved.

§ 210-31. Reserved.

§ 210-32. Reserved.

§ 210-33. Reserved.

Article VI. Site Plan Review

§ 210-34. Purpose.

The purpose of this article is to allow the proper integration in the community of uses and actions listed in Articles III and IV of this chapter. Because of their characteristics or the special characteristics of the area in which they are to be located, these uses and actions require special consideration so that they may be properly located and planned with respect to:

A.

The objectives of this chapter.

B.

Their effect on surrounding properties.

C.

The ability of the Town to accommodate the growth resulting from the proposed use without undue adverse affect on the Town and its citizens and taxpayers and the protection of the health, safety and welfare of the Town and its citizens.

D.

The objectives of the Comprehensive Plan.

§ 210-35. Applicability.

A land use or development involving a use or expansion of a use listed as a site plan review use in Articles III and IV hereof shall not be undertaken unless and until the Planning Board has approved, with conditions as may be applicable, such use and the Code Enforcement Officer has issued a permit for such land use or development pursuant to the terms of Article XVII hereof. No building permit for a use requiring site plan review shall be valid without site plan approval. When a site plan review is triggered, the Planning Board is empowered to apply all of the requirements of this chapter to its review of the site plan. Any project requiring a building permit and that is listed as a site plan review use in Article III requires site plan review. Any change in use for a use that requires site plan review, whether or not it triggers a change in site requirements, shall be subject to site plan review.

§ 210-36. Authorization to approve and disapprove.

In accordance with § 274-a of the Town Law, the Planning Board is authorized to review and approve, approve with modifications or disapprove site plans, prepared to specifications set forth in this chapter and in regulations of the Planning Board, showing the arrangement, layout and design of the proposed use of the land shown on such plan. When the Planning Board disapproves a site plan, it may make recommendations for changes that will result in approval of a revised plan.

§ 210-37. Application for site plan review.

Application for project approval shall be made to the Planning Board using forms supplied by the Board. Applications shall include reasonably sufficient information for the Board to make its findings under § ~~210-40~~ below. In determining the content of these application forms, the Planning Board may provide for different informational requirements for different classes or types of projects; but with each certain class or type of project, the same information required by these various application forms may include any or all of the following:

A.

A detailed description of the natural features of the project and its components, including all proposed roads and accesses, water supply and sewage disposal systems, and their relationship to natural features.

B.

An analysis, with supporting data, on the impact of the project on the environment, both during construction and thereafter.

C.

An analysis, and supporting data, of any benefits that might derive from the project.

§ 210-38. Fees.

In addition to the fee listed on the Schedule of Fees, the Planning Board may charge a fee to developers of projects requiring legal and technical review, provided that the fee charged reflects the actual cost of legal and technical assistance to the Planning Board. This fee is not to exceed \$1,000 without notice to the applicant.

§ 210-39. Procedure.

A.

For applications within 500 feet of the Town boundary or a proposed or existing State or County park or recreation area, right-of-way, parkway, thoroughway, road or highway, stream drainage channel or easement, public building or institution, not later than 10 days following receipt of a complete application for said project, the Code Enforcement Officer shall notify and furnish the Saratoga County Planning Board, in accordance with General Municipal Law §§ 239-l and 239-m, with such pertinent information as the Saratoga County Planning Board may deem necessary for review and comment.

B.

The Planning Board shall fix a time, within 31 days from the day an application for site plan approval is made, for the hearing of any matter referred to it under this section if a public hearing is deemed

necessary by the Planning Board. No site plan review project may be disapproved unless a hearing shall have first been held on the project application. The Planning Board shall give public notice thereof by the publication in the official newspaper of such hearing at least five days prior to the date thereof.

C.

The Planning Board shall decide on the application within 31 days after such a hearing or after the application is filed if no hearing has been held; provided, however, that the time within which the Planning Board must render its decision may be extended by mutual consent of the applicant and the Planning Board.

D.

The decision of the Planning Board shall promptly be filed in the office of the Town Clerk and a copy thereof mailed to the applicant. The decision shall contain such findings of fact as are required by § 210-40 hereof. The Planning Board, in conjunction with its approval of any site plan review project, may impose such requirements and conditions as are allowable within the proper exercise of the police power, including the restriction of land against further development of principal buildings (whether by deed restriction, restrictive covenant or other similar appropriate means to ensure that guidelines as to intensity or development as provided in this chapter shall be respected) and the imposition of reasonable conditions to ensure that the project will be adequately supported by services and improvements made necessary by the project and to ensure that the project will be completed in accordance with the terms of the application and any permit. In addition, the Planning Board may require that the Code Enforcement Officer incorporate any such requirements and conditions in any permit issued with regard to such site plan review project.

E.

Unless otherwise specified or extended by the Planning Board, a decision on any site plan review shall expire if the applicant fails to undertake the proposed action or project, to obtain any necessary building permits, to construct any proposed new building(s) or change any existing building(s) or to comply with the conditions of said authorization within one year from the filing date of such decision thereof.

§ 210-40. Requirements for approval.

The Planning Board shall not approve a use unless it first determines that such site plan review use meets the requirements of Article III and that such site plan review use meets any additional standards and requirements of the environmental and performance standards applicable to that use. In order to approve any site plan review use, the Planning Board shall find that:

A.

The use complies with all other requirements of this chapter, including the dimensional regulations of the zoning district in which it is proposed to be located.

B.

The use would be in harmony with the general purpose or intent of this chapter, specifically taking into account the location, character and size of the proposed use and the description and purpose of the district in which such use is proposed, the nature and intensity of the activities to be involved in or conducted in connection with the proposed use and the nature and rate of any increase in the burden on supporting public services and facilities which will follow the approval of the proposed use.

C.

The establishment, maintenance or operation of the proposed use would not create public hazards from traffic, traffic congestion or the parking of vehicles and/or equipment or be otherwise detrimental to the health, safety or general welfare of persons residing or working in the neighborhood or to the general welfare of the Town. In the review of commercial and industrial development, where internal roadways are not provided, the Planning Board shall determine if it is feasible to link parking areas to allow for an internal flow of traffic. Where it is feasible, a twenty-foot connection way must be provided. If the adjacent property is undeveloped, then a connection way shall be identified on the site plan for future linkage. The Planning Board shall also consider interconnection of retail areas to allow for pedestrian access and circulation.

D.

The project would not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the Town or upon the ability of the public to provide supporting facilities and services made necessary by the project, taking into account the commercial, industrial, residential, recreational or other benefits that might be derived from the project.

§ 210-41. Review considerations.

The Planning Board review of the site plan shall include, as appropriate, but not be limited to the following general standards:

A.

The location, arrangement, size, design and general site compatibility of buildings, lighting and signs.

B.

The adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls.

C.

The location, arrangement, appearance and sufficiency of off-street parking and loading.

D.

The adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.

E.

The adequacy of stormwater drainage facilities, including conformance with the drainage standards of Chapter 176, Subdivision of Land.

F.

The adequacy of water supply and sewage disposal facilities.

G.

The adequacy, type and arrangement of trees, shrubs and other suitable plantings, landscaping and screening constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum retention of existing vegetation and maintenance, including replacement of dead or diseased plants.

H.

The adequacy of fire lanes and other emergency zones and the provision of fire hydrants.

I.

The adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.

J.

Conformance with the design guidelines, landscaping standards and performance standards of this chapter.

§ 210-42. Financial security.

The Planning Board or Town Board may require the posting of financial security, in the form of bond, letter of credit or other instrument, in order to ensure that improvements are carried out as specified in the plans and approvals.

Article VII. Special Use Permits

[Amended 11-17-2011 by L.L. No. 5-2011]

§ 210-43. Intent.

A.

The intent of this article is to set forth requirements which shall apply to certain land uses and activities which, due to their characteristics or the special characteristics of the area in which they are to be located, require special consideration so that they may be properly located and planned with respect to the objectives of this chapter, their effect on the surrounding properties and community character. The primary purpose of special use permit review is to ensure compatibility with the surrounding neighborhood and to ensure the long-term benefit of the use to the Town.

B.

While recognizing that certain types of uses may be desirable or necessary in the Town, their nature can cause certain problems or difficulties. Consequently, particular uses are controlled by a special use permit procedure which requires additional regulations designed for each use in order to mitigate such problems or difficulties and to minimize the impact of these upon the zoning district in which such use is located.

§ 210-44. Authorization to administer special use permit review.

A.

The Planning Board is hereby authorized to administer and carry out the intent established in this article. The Planning Board shall conduct special use permit review in accordance with the procedures of this article for any use identified as requiring such review in Article III.

B.

Site plan review in accordance with the requirements and procedures of Article VI is required for all uses that receive a special use permit. Such review may occur concurrent with or subsequent to special use permit review, at the applicant's discretion. Regardless of whether the reviews occur separately or at the same meeting, separate applications and application fees are required for each review.

§ 210-45. Application and review procedures.

A.

It shall be the duty of the Code Enforcement Officer to refer to the Planning Board all uses identified in Article III which require special use permits.

(1)

Upon receipt of an application for a special use permit, the Planning Board shall initiate an environmental review pursuant to the applicable provisions of SEQRA, 6 NYCRR Part 617.

(2)

The Planning Board shall determine what items from the site plan submittal requirements in Article VI shall be submitted for the special use permit application. The Planning Board may empower the Code Enforcement Officer to make a preliminary determination of submittal requirements in order to place the matter on the Board's agenda.

(3)

An eligible applicant for a special use permit must be the owner, lessee or purchaser under contract for the involved parcel. A lessee and purchaser under contract must have the permission of the current property owners to submit an application for a special use permit. The applicant, or his duly authorized representative, shall attend the meeting of the Planning Board to discuss the application.

(4)

The official time of submission of the special use permit application shall be considered to be the date of the first meeting of the Board for which the application is scheduled for discussion.

(5)

For applications within 500 feet of the Town boundary or a proposed or existing state or county park or recreation area, right-of-way, parkway, throughway, road or highway, stream drainage channel or easement, public building or institution, not later than 10 days following receipt of a complete application for said project, the Code Enforcement Officer shall notify and furnish the Saratoga County Planning Board, in accordance with General Municipal Law §§ 239-l and 239-m, with such pertinent information as the Saratoga County Planning Board may deem necessary for review and comment.

(6)

The Planning Board shall fix a time, within 31 days from the day a complete application for special use permit approval is made, for the hearing of any matter referred to under this section. The Planning Board shall give public notice thereof by the publication in the official newspaper of such hearing at least five days prior to the date thereof.

(7)

The Planning Board shall decide on the application within 31 days after such a hearing; however, the time within which the Planning Board must render its decision may be extended by mutual consent of the applicant and the Planning Board.

(8)

The decision of the Planning Board shall promptly be filed in the office of the Town Clerk and a copy thereof mailed to the applicant. The decision shall contain such findings of fact as are required by §§ 210-47 and 210-48. The Planning Board, in conjunction with its approval of any special use permit, may impose such requirements and conditions as are allowable within the proper exercise of the police power, including limitations on the hours of use, the intensity of the use, the number of employees or vehicles, the number of structures, the use of structures and land, and any other

condition it deems necessary to further the interest of this chapter. In addition, the Planning Board may require that the Code Enforcement Officer incorporate any such requirements and conditions in any permit issued with regard to such site plan review project.

(9)

As a condition of approval of a special use permit, the Planning Board may require a performance bond or letter of credit to guarantee satisfactory performance of the required improvements. Such performance bond or letter of credit shall be part of or in addition to any required by the Planning Board as part of a site plan review application.

(10)

The Planning Board, as a condition of granting any special permit, may specify its term of validity. There are three types of permits which may be granted by the Planning Board, described as follows:

(a)

Permanent: permits a specific use to continue indefinitely until the specific use ceases for any reason for a period of six consecutive months.

(b)

Temporary: permits a specific use to continue until a specific date, at which time the special use permit shall automatically terminate and the use shall be permanently discontinued. This type shall not be extendable.

(c)

Renewable: permits a specific use to continue until a specific date, unless renewed or extended by the Planning Board for an additional period of time. If not extended, the use shall be permanently discontinued. It is the responsibility of the applicant, and not the Town of Stillwater, or any board, officer, or employee thereof, to initiate the request for the renewal or extension prior to the expiration of the original term of such renewable special use permit. If not extended or renewed prior to the date set for expiration, the right to continue such special use shall terminate on such expiration date, subject to the right of the applicant to seek an extension or renewal. Applications for permit extensions or renewals shall follow the same process as for new permits.

B.

Any applicant who receives a temporary or renewable special use permit and who decides to proceed with the special use does so realizing that the temporary special use permit has a fixed duration, and that all rights to continue that use terminate upon the expiration of the specified time, and that the renewable special use permit may not be extended beyond its original term without approval pursuant to this section. The applicant, in accepting a temporary or renewable special use permit, acknowledges and agrees that such special use permit confers no rights or privileges other than those specifically contained therein.

§ 210-46. Fees.

In addition to the fee listed on the schedule of fees, the Planning Board may charge a fee to developers of projects requiring legal and technical review, provided that the fee charged reflects the actual cost of legal and technical assistance to the Planning Board. This fee is not to exceed \$1,500 without notice to the applicant.

§ 210-47. General standards for special use permits.

A use requiring the issuance of a special use permit is not granted as of right and is therefore subject to the discretion of the Planning Board. Before granting approval to any special use, the Planning Board shall consider the positive and negative impact of the use on the following characteristics:

A.

The extent to which the use is in harmony with and promotes the general purposes and intent of the Comprehensive Plan and this chapter and its effect on the health, welfare and safety of the Town and its residents.

B.

The overall compatibility of the use with the neighborhood and the positive and negative impacts on community character, including the character of adjoining properties, districts and uses, and the positive and negative impacts on density, including the density of adjoining properties, districts and uses.

C.

The positive and negative impacts of the use on vehicular congestion and parking, including the provision of adequate parking and the absence of hazardous parking or traffic conditions, including ingress and egress.

D.

The positive and negative impacts on infrastructure and services, including utilities, public facilities and services, including the extent to which the project extends or provides infrastructure and services to areas in need of such infrastructure and services.

E.

The positive and negative impacts on environmental and natural resources, including the environmental and physical suitability of the site for development, the risk of fire, flood or erosion and impacts such as emissions of electrical charges, dust, light, vibration or noise detrimental to the public health, safety and welfare.

F.

The extent to which the use provides positive or negative effects on the long-term economic stability and community character of the Town and surrounding properties, districts and uses.

§ 210-48. Specific standards for selected special use permits.

A.

Junkyards.

(1)

Intent. The Town Board hereby declares that junkyards, by their very nature, constitute a hazard to property and persons and are a public nuisance. Materials in junkyards may be highly flammable and sometimes explosive. Junkyards can constitute attractive nuisances to children and certain adults. The presence of junkyards is unsightly and tends to detract from the value of surrounding land and property unless such areas are properly maintained and operated.

(2)

Standards and requirements.

(a)

The person requesting the special use permit to operate the junkyard must personally manage or be responsible for the activity or business for which the permit is issued.

(b)

A junkyard shall be enclosed by a six-foot-tall opaque fence of wood or other material adequate to prohibit the entrance of children and others into the area of activity or business and to contain within such fence the materials dealt in by the business. If the property abuts a residential use or district, or a public street or highway, the fence shall be at least 25 feet from the boundary line of the property or street. All materials dealt in by the business shall be kept within the area enclosed by the fence at all times.

(c)

Where topography, natural growth of timber or other considerations accomplish the purposes of this chapter in whole or in part, the fencing requirements hereunder may be reduced by the Planning Board, provided that such natural barrier conforms with the purposes hereof.

(d)

When the area is not supervised, the fence shall be locked at a secure gate in a secure manner.

(e)

In considering the application, the Planning Board shall take into account the nature and development of the property surrounding the land described in the application, such as the proximity of places of worship, schools, public buildings or other places of public gathering, and whether or not the proposed location can be reasonably protected from affecting the public health and safety by reason of odors, smoke or other causes. The Planning Board may also consider the type of road servicing the proposed location, the natural or artificial barriers protecting it from view, and its proximity to established residential and recreational areas.

(f)

Special use permits for junkyards are issued for a one-year period and must be renewed annually. Junkyards in existence at the date of enactment of this chapter shall apply for a special use permit within six months of enactment of this chapter. Junkyards which are nonconforming with respect to location at the time of enactment of this chapter may be considered as nonconforming uses pursuant to Article XIII of this chapter; however, such nonconforming junkyards shall also be required to obtain a special use permit pursuant to this section.

B.

Kennels. Kennels shall be located on parcels of at least five acres. All dog runs or other areas in which dogs are kept must be located at least 200 feet from any property line.

C.

Adult use establishments.

(1)

Intent. In the development and execution of this chapter, it is recognized that adult use establishments, because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances and in close proximity to one another, thereby having a deleterious effect upon the adjacent area. Special regulation of such uses is necessary to insure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood, thereby have a direct deleterious affect on the health, safety and general welfare of the Town and its inhabitants.

The primary control or regulation is for the purpose of preventing a concentration of this use in any one area.

(2)

Location. No adult use establishment shall hereafter be located within 2,500 feet from the nearest property line of any public, private or parochial school, municipal building, library, park or playground, church, convent, monastery, synagogue or other place of worship. No adult use establishment shall hereafter be located within 2,500 feet from the nearest property line of an adult entertainment establishment. No adult use establishment shall be located within 500 feet of the boundary of any residential zoning district.

(3)

Hours of operation. No adult use establishment shall operate between the hours of 12:00 midnight and 9:00 a.m.

(4)

Penalties. In addition to the penalties specified by Article XVIII of this chapter, violation of this section is punishable by a fine not exceeding \$1,000 or by imprisonment not exceeding six months, or by both fine and imprisonment. Each day or any portion thereof in which any violation of this section is committed, permitted or continued shall constitute a separate offense. In addition to these penalties, the Town may institute any appropriate action or proceedings to enjoin the establishment or continuance of such use in violation of the provisions hereof, or take such other legal or administrative action deemed necessary or desirable to correct or abate such violation.

D.

Gasoline stations. The Town of Stillwater finds that, although vehicle refueling stations are a necessary part of everyday life in this day of the internal combustion engine, they also present a considerable potential for risk to the public health, welfare and safety of the Town and the inhabitants thereof. Accordingly, in order to provide for the safe and proper coexistence of vehicle refueling stations and other land uses permitted within the Town, the following additional regulations are adopted which all vehicle refueling stations are hereby made subject to:

(1)

The area for use by motor vehicles, except access drives thereto, as well as any structures, shall not encroach on any applicable required yard area requirements contained in this chapter.

(2)

No fuel pump shall be located closer than 20 feet from any street line, measured from the outside edge of the fuel island and the closest edge of the public right-of-way.

(3)

No vehicle refueling station property line shall be within 500 feet of a school, public library, theater, place of worship or other place of public assembly, as defined by the New York State Uniform Fire Prevention and Building Code, park, playground or fire station, nor within 250 feet of ingress or egress ramps to limited-access highways, nor within 250 feet of an abutting residential zone as measured linearly along the fronting street or streets.

(4)

All major repair work and servicing shall be done within a completely enclosed building. Such repair work shall not include body repair work nor spray painting, which shall only be allowed within an auto body repair shop, as that term is defined by this chapter.

(5)

No new or used cars, travel trailers or other trailers, or motorized mobile homes shall be sold or rented at a vehicle refueling station.

(6).

A copy of all other permits pertaining to the project, including tank permits, and inspection reports shall be submitted to the Code Enforcement Officer on an annual basis.

§ 210-49. Expiration of approval.

Unless otherwise specified or extended by the Planning Board, decision on any request for a special use permit granted after the effective date of this chapter shall expire if the applicant fails to obtain the necessary building permit to construct any existing building(s) and begin actual construction or to comply with the conditions of said authorization within one year from the filing date of such decision thereof. Unless otherwise specified or extended by the Planning Board, all special use permits granted prior to the effective date of this chapter shall expire if the applicant fails to obtain the necessary building permit and begin actual construction or comply with the conditions of said authorization within one year from the effective date of this chapter.

§ 210-50. Revocation of permit.

A use authorized by special permit may be revoked by the Planning Board if it is found and determined that there has been a material failure of compliance with any one of the terms, conditions, limitations or requirements imposed by said permit.

§ 210-51. Enforcement.

All special use permits shall be subject to the provisions of Article XVIII of this chapter.

Article VIII. Environmental and Performance Standards

§ 210-52. Clearing and grading.

A.

Purpose and intent. It is the purpose of this section to prevent the clear-cutting and grading of lots except in association with an approved site plan.

B.

Application. No person may clear-cut or grade more than one acre within a five-year time period in any business or industrial district, nor may a person clear-cut or grade more than two acres within a five-year time period in any residential district, except for the RR and LDR Districts, without an approved site plan. No person may clear-cut or grade more than five acres in the RR and LDR Districts without an approved site plan. These regulations do not apply to timber harvesting.

C.

Any person proposing to clear-cut or grade more than these totals must follow the procedures for and obtain site plan approval in accordance with Article VI of this chapter. This requirement applies to timber harvesting involving clear-cutting land areas greater than specified above.

D.

Any graded or cleared area shall be seeded within 45 days of being cleared or graded.

E.

The requirements of this section shall not apply to agricultural uses and associated activities.

§ 210-53. Lighting.

A.

Purpose. It is the intent of this chapter to minimize glare and to provide the minimum amount of lighting on commercial sites necessary to provide for safe use of the property.

B.

Application. These regulations shall apply to all commercial, industrial, multifamily, office and recreation uses in the Town of Stillwater. These requirements shall not apply to agricultural uses, including the operation of any greenhouse within the Rural Residential District. These requirements shall apply to the operation of a greenhouse within the Low-Density Residential District.

C.

Standards. All exterior lights and illuminated signs shall be designed and located in such a manner as to prevent objectionable light and glare from spilling across property lines. The following horizontal illumination levels shall be observed. For uses not listed here, the Planning Board may determine the appropriate horizontal illumination level, referencing the values found in the most current edition of the reference entitled "The IESNA Lighting Handbook," published by the Illuminating Engineering Society of North America. The Planning Board may vary these standards, making them more or less restrictive, where it finds it to be in the interests of this chapter and the Town to do so. In particular, the Town may vary the standards with reference to the brightness and use of the surrounding environment.

Use	Horizontal Illumination (footcandles)
Commercial parking lot	2.5
Industrial parking lot	1.0
Office parking lot	1.0
Recreation parking lot	2.5
Multifamily parking lot	2.5
Church/education lots	1.0
Building entrances	5.0
Building exteriors	1.0
Loading/unloading areas	20.0
Gas station approach/driveway	2.0
Gas station pump island	20.0
Gas station service areas	3.0
Seasonal stands	25.0
Automobile lots	25.0
Driveways and road approaches	2.0

D.

Fixtures. All lighting fixtures shall be architecturally compatible with the primary building. Fixtures shall be shielded and have cutoffs to direct light directly to the ground. Fixtures shall generally be of dark colors. Pole-mounted fixtures shall not exceed 20 feet in height. High-pressure sodium lights are preferred. Lexan lenses or similar low-glare materials are preferred.

E.

All lighting shall maintain a uniformity ratio of 4:1.

F.

Procedure. Any use subject to site plan review shall submit a lighting plan describing the lighting component specifications, such as lamps, poles, reflectors and bulbs. The lighting plan shall show the illumination levels over the project site.

§ 210-54. Stormwater drainage plans.

A.

Stormwater drainage plans shall be required as part of the site plan approval process, unless waived by the Planning Board.

B.

The stormwater drainage plan shall analyze the impacts of the project using a twenty-five-year return interval storm for residential projects and a fifty-year return interval storm for commercial projects and using the analysis procedures in Chapter **176**, Subdivision of Land. Impacts on downstream properties shall be analyzed as part of the plan.

C.

All stormwater management plans shall be designed so that post-development runoff is equal to or less than predevelopment runoff, unless this requirement is waived by the Planning Board.

D.

Stormwater design criteria shall follow the criteria in Chapter **176**, Subdivision of Land.

E.

The Planning Board may refer stormwater drainage plans to the Town Engineer, the Town Highway Superintendent or such other persons or agencies it deems appropriate.

§ 210-55. Soil and erosion control.

A.

Construction on slopes.

(1)

Except for approved existing subdivisions, site plan review shall be required for the following:

(a)

Any detached structure proposed to be constructed on any lot, parcel or site having a slope of 15% or more within a fifty-foot radius of the proposed location of said structure; removal or excavation of 100 cubic yards or more of rock, soil or vegetation from such site.

(b)

Proposed construction of a privately owned driveway, road or right-of-way on a slope of 10% or more.

B.

Guidelines. Unless the standards in Subsection C below are more restrictive, the applicant shall conform to the published Guidelines for Erosion and Sediment Control in Urban Areas of New York State, by the United States Department of Agriculture Soil Conservation Service, copies of which are maintained at each Soil and Water Conservation District Office.

C.

Standards.

(1)

When land is exposed during development, the exposure should be kept to the shortest practicable period of time and the smallest amount of land possible.

(2)

Grading and development shall preserve salient natural features, such as trees, groves, natural terrain, waterways and other similar resources, and shall conform substantially with the natural boundaries and alignment of watercourses.

(3)

Provision shall be made prior to, during and after construction to dispose of increased runoff caused by changed surface conditions, in a manner which minimizes danger of flooding, erosion and pollutants from urban runoff entering lakes, streams or rivers.

(4)

Temporary vegetation and mulching shall be used to protect critical areas during development.

(5)

Permanent vegetation shall be successfully established and erosion control structures shall be installed as soon as practical on development. Wherever feasible, natural vegetation shall be retained and protected.

(6)

Topsoil removed from areas for structures shall be redistributed within the boundaries of the lands in question so as to provide a suitable base for seeding and planting.

(7)

The development shall be fitted to the topography and soils to create the least erosion potential. Cut-and-fill operations shall be kept to a minimum and shall transition smoothly into existing topography so as to create the least erosion potential and adequately accommodate the volume and rate of velocity of surface runoff.

(8)

Cuts and fills shall not endanger adjoining property nor divert water onto the property of others.

(9)

Provisions shall be made to effectively accommodate the increased runoff caused by changed soil and surface conditions during and after development.

(10)

Disturbed soils shall be stabilized as soon as possible. Temporary vegetation and/or mulching shall be used to protect exposed land areas during construction.

(11)

Sediment basins (debris basins, desilting basins or silt traps) shall be installed and maintained to remove sediment runoff waters from land undergoing development. Provisions shall be made to prevent surface water from damaging the cut face of excavations, fills or sloping surfaces.

(12)

The control of erosion and sediment shall be a continuous process, undertaken as necessary prior to, during and after site preparations and construction. Sedimentation control measures shall be installed as part of site preparation prior to beginning any construction.

(13)

Permanent vegetation shall be successfully established and erosion control structures shall be installed within a time specified on the building permit. Wherever feasible, natural vegetation shall be retained and protected.

(14)

All fill material shall be of a composition suitable for the ultimate use of the fill, free of rubbish and carefully restricted in its content of brush, stumps, tree debris, rocks, frozen material and soft or easily compressible material. Fill material shall be compacted sufficiently to prevent problems of erosion.

(15)

Grades of at least 1/2% and drainage facilities shall be provided to prevent the ponding of water, unless such ponding is proposed within site plans, in which event there shall be sufficient water flow to maintain proposed water levels and avoid stagnation.

(16)

Provisions shall be made that there will be no detrimental effect on water quality of the watercourses. There will be no discharge of sediment or other material into the watercourses.

(17)

Fills shall not encroach on natural watercourses, constructed channels or floodway areas. Fills placed adjacent to or having impact on natural watercourses, constructed channels or floodplains shall have suitable protection against erosion during periods of flooding.

(18)

No development shall be permitted in a floodway if such development shall raise the water surface elevation of the base flood at any point in the community.

(19)

The rate of surface runoff shall not be increased by new construction. Whenever possible, drainage shall be sheet-drained into earthen swales and collected in a detention or retention basin. Where soils permit, the water shall be allowed to percolate into soils. Where clay soils occur, water shall be collected during storm periods and released slowly into existing streams and drainage channels.

(20)

During grading operations, appropriate measures shall be taken for dust control.

(21)

Grading equipment shall not be allowed to enter into or cross any watercourse, except in accordance with the best management practices as defined in the building permit.

(22)

Whenever lawns are established, areas of natural vegetation shall be maintained to filter fertilizers, pesticides or other chemicals before the runoff enters natural streams or drainage channels. Property owners shall be encouraged to leave natural vegetation rather than develop lawns alongside of drainage channels and streams.

(23)

Any fill that is imported to a property shall consist of clean earth, rocks and vegetative material. The importation of man-made materials, such as rubble, concrete, bricks, metal, garbage, offal or other solid or hazardous waste or construction debris, to a property for use as fill shall be prohibited.

D.

Exemptions. The requirements of this section shall not apply to agricultural uses or activities.

§ 210-56. Commercial landscaping.

A.

Applicability. These standards shall apply to all commercial, industrial, and multifamily zoning districts and uses. These standards may be met by saving existing trees on the site or by planting new trees from the recommended species list below. The Planning Board may vary the species on this list at its discretion.

B.

Landscaped strips along streets.

(1)

A landscaped strip shall be provided adjacent to all public and private streets. The landscaped strip shall be a minimum of 10 feet, exclusive of the street right-of-way. Within the landscaped strip, one shade tree (three-inch caliper minimum) shall be provided per every 250 square feet, or any portion thereof, of landscaped strip. Required shrubbery shall be no higher than four feet above existing street grades, nor shall any tree with foliage extending below 10 feet above the established street grades be maintained, within 20 feet of any street intersection or 10 feet of driveway/street intersections. This restriction is for purposes of maintaining visibility at all times.

(2)

Where parking lots and drives abut the landscaped strip along the street right-of-way, evergreen shrubs selected from the list below must be provided for screening. The screening must be a minimum of three feet high and extend along the entire street frontage of the parking lot, exclusive of driveways and visibility clips. A landscaped berm may be provided in lieu of required shrubs. The berm must be 18 to 40 inches above the average grade of the street and parking lot curbs, with a slope not to exceed 3:1. If a parking lot is located 50 feet or more from the street right-of-way line, no screening shrubs or berm will be required.

Evergreen Low Screening Shrubs

Common Name	Scientific Name
Euonymous	Euonymous fortunei
Oregon grape	Mahonia aquifolium
Rhododendron	Rhododendron ('compacta' varieties)
Holly	Ilex ('compacta' varieties)
Dwarf hinoki false cypress	Chamaecyparis obtuse 'Nana Gracilis'

Evergreen Low Screening Shrubs

Common Name	Scientific Name
Spruce	Picea (varieties)
Juniper	Juniperus (varieties)
Yew	Taxus (varieties)
The blue hollies	Ilex meservae
Mountain laurel	Kalmia latifolia
Fire thorn	Pyracantha
Rhododendron	Rhododendron
Leatherleaf viburnum	Viburnum rhytide phyllum

C.
Visibility. Street-level landscaping shall not interfere with visibility.

D.
Interior parking lot landscaping. Interior parking areas shall be landscaped in addition to the required landscaped strip. Trees must be provided in each parking lot at a minimum average density of one shade tree (three-inch caliper) for each 15 parking spaces, or any fraction thereof. Additionally, interior parking lot landscaping shall be provided in accordance with the following table:

Total Parking Area	Interior Landscaped Area
Less than 24,999 square feet	5%
25,000 — 49,999 square feet	8%
50,000 square feet or larger	10%

E.
Exterior parking lot landscaping. A landscaped strip shall be provided around the perimeter of the site, exclusive of driveways. The landscaped strip shall be a minimum of five feet wide for sites 10,000 square feet or greater and three feet wide for sites less than 10,000 square feet, except for any area abutting a public street, in which case the requirements of Subsection B. above shall apply. Within the perimeter landscaped strip, one shade tree (three-inch caliper minimum) shall be provided per every 250 square feet, or any portion thereof, of landscaped strip.

F.
General parking lot landscaping.

(1)
Parking lot landscaping shall be met for all customer and employee parking. Parking lot landscaping requirements shall apply to storage and standing parking spaces incidental to uses, such as sales and rental of motor vehicles, mobile homes, boats, trailers, or other similar uses, if such storage is visible from any public rights-of-way.

(2)
To calculate the total parking area and the subsequent percentage of required interior lot landscaping, total the square footage of parking spaces, planting islands, curbed areas, and all interior driveways and aisles, except those with no parking spaces located on either side. Landscaped areas located outside the parking lot may not be used to meet the interior landscape requirement.

(3)

The required landscaping for parking lots shall be more or less evenly distributed throughout the parking lot, although adjustments may be approved by the Planning Board reviewing the landscape plan where the shape or size of the parking lot, the location of existing trees or other natural constraints reasonably prevent such distribution.

(4)

All landscaped areas, including permeable areas and drip lines around trees, and planting beds used for visual screening which abut any parking lot or vehicular travel area shall be protected with curbs, parking blocks, or similar barriers sufficient to protect them from vehicular intrusion. Such areas shall have a minimum pervious area of 60 feet if they are for the purpose of housing landscaping including trees and 25 feet if they house landscaping other than trees. Landscaped islands will be a minimum of five feet in dimension and must be a minimum of nine feet wide when adjacent to parking spaces where a car door would open into the island.

§ 210-57. Buffer zones between uses.

A.

Purpose. The purpose of buffer zones is to separate land uses and offer visual screening between uses that may not be compatible. The level of general compatibility dictates the level of screening. Three different types of buffers are specified. The buffer types are designated as Type A, Type B and Type C buffers. The following table illustrates the types of buffers required between adjacent uses.

Buffer Requirements Between Adjacent Uses

Land Uses	Single-Family Residential	Multifamily Residential	Office	Retail	Commercial/Recreational	Industrial
Single-family residential	None	B	A	B	C	C
Multifamily residential	B	None	A	A	B	C
Office	A	A	None	A	B	C
Retail	B	A	A	None	B	C
Commercial/ recreational	C	B	B	B	None	B
Industrial	C	C	C	C	B	None

NOTE: Any use not specified above is considered a commercial use, unless otherwise determined by the Planning Board.

B.

Description of buffer types. Each buffer type contains certain minimum requirements, which are outlined in the table below. Trees and shrubs are to be from the recommended lists in this section. An opaque fence may be substituted for trees or shrubs of the minimum specified height, at the discretion of the Planning Board.

Buffer Yard Type	Buffer Types		
	Minimum Landscaped Yard (feet)	Number of Trees Required per 100 Linear Feet of Buffer	Minimum Height of Required Trees (feet)
A	10	1	NA
B	20	3	6
C	50	5	10

C.

Parking. Parking or storage of vehicles of any kind or objects associated with the use of the property is not permitted within the buffer yards. When not inhabited with natural woody plants (i.e., trees and shrubs) sufficient to visually screen adjoining uses or zones, such buffer area shall be planted, regraded and/or fenced.

D.

Additional requirements. Buffer yards are in addition to landscape requirements outlined in this section and may not be used as a substitution for any part of the required landscaping. Where the use and area tables of this chapter specify a fifty-foot buffer, the requirements of a Type C buffer in the table above shall apply.

E.

Exemptions. The requirements of this section shall not apply to agricultural uses or activities.

§ 210-58. Particulates and smoke.

No use shall emit particulates and/or smoke that is detrimental to the public health, welfare and safety. No use, other than an agricultural use, shall emit particulates or smoke that exceeds an opacity of 2 on the Ringlemann Chart.

§ 210-59. Vibration.

No use shall regularly emit vibration that is perceptible at the property line of an adjoining use. This section shall not apply to temporary construction activities.

§ 210-60. Odor.

No use, other than an agricultural use, shall regularly emit offensive odors perceptible at the property line of an adjoining use. Restaurants, bakeries, taverns and other uses where food is cooked or prepared shall be required to take all measures deemed appropriate by the Planning Board to minimize odors emanating from neighboring properties.

§ 210-61. Radiation.

No use shall emit radiation that is above State or Federal limits at the property line.

Article IX. Parking and Loading Regulations

§ 210-62. Applicability; size of spaces.

A.

Off-street parking spaces shall be required for all buildings constructed, extended or enlarged in use after the effective date of this chapter.

B.

Each off-street space shall consist of 162 square feet in a space nine feet wide by 18 feet wide. Each parking space shall be reached by an access driveway at least 24 feet in width. In addition, space necessary for aisles, maneuvering, safe pedestrian walkways and drives shall be provided. Handicapped parking spaces shall be supplied in accordance with the requirements of the Americans With Disabilities Act

§ 210-63. Buildings or parcels with more than one use.

For any building or parcel having more than one use, cumulative parking space shall be required as provided for each use, except as follows:

A.

In general, parking shall be provided on the same lot as the principal use. However, parking may be provided on a separate lot or tax parcel that is within 300 feet of the principal use, provided that the two lots are under the same ownership and there are covenants which tie the two lots together.

B.

In any district, the Planning Board may, at its sole discretion, approve the joint use of a parking facility and a reduction in the parking requirement of up to 30% by two or more principal buildings or uses, either on the same, adjacent or nearby parcels, where it is clearly demonstrated that the reduction in spaces and shared use of the parking facility will substantially meet the intent of the parking requirements by reason of variation in time of use by patrons or employees among such establishments. There shall be a covenant on the separate parcel or lot guaranteeing the maintenance of the required off-street parking facilities during the existence of the principal use. Such covenant shall:

(1)

Be executed by the owner of said lot or parcel of land and the parties having beneficial use thereof;

(2)

Be enforceable by either of the parties having beneficial use thereof as both; and

(3)

Be enforceable against the owner, the parties having beneficial use, and their heirs, successors and assigns.

C.

Floor areas, for the purposes of computing parking requirements, shall be the sum of the horizontal area within the exterior walls of the several floors of a building, excluding basement, cellar and attic areas used primarily for storage or service.

D.

All parking shall be lighted in accordance with the standards in § 210-53.

E.

The Planning Board shall, however, have the authority to require or permit fewer than the required parking spaces for any use, provided that an amount of open space equal to that amount of space that would have been used for the required number of parking spaces is left available for parking in the event that it is needed at some time in the future. Open space used for this purpose shall not be used to meet any other requirements of this chapter, including lot coverage requirements.

F.

When a change in the intensity of use of any building or structure would increase the required parking by 10 or more spaces, cumulatively from the date of enactment of this section, through an addition or change in the number of dwelling units, gross floor area, gross leasable area, seating capacity, or other units of measurement specified herein, the increment of additional required parking shall be provided in accordance with this section, unless a waiver is granted by the Planning Board. If fewer than 10 spaces are required by a change or a series of changes in use, the requirement for such space shall be waived.

G.

No use may provide parking in excess of 20% over the amount specified in this section.

§ 210-64. Off-Street Parking Schedule.

The following schedule sets forth off-street parking requirements. For uses not listed, the Planning Board shall have the discretion to determine the parking requirement.

**Table 1
Parking Requirements**

Use	Parking Requirement
Adult-use establishment	1 per 4 seats, plus 1 per 2 employees, whichever is greater; or if a tavern is also present, the requirement shall be the greater of the 2 uses
Agricultural processing	1 per 2 employees, plus 1 per company vehicle
Agricultural uses	None
Amusement use	1 per 200 square feet within enclosed buildings, plus 1 for every 3 persons the facility is designed to accommodate at maximum occupancy
Auto body shop/gasoline station/motor vehicle repair shop	2, plus 2 per repair bay
Auto sales and service/boat storage, sales and service/farm and construction sales and service	1 per 200 square feet of floor sales area, plus 1 per 600 square feet of service area
Bank	1 per 200 square feet of floor area
Bed-and-breakfast	1 per guest room, plus 2 spaces
Bulk fuel storage	1 per 2 employees, plus 1 per company vehicle
Business incubator	1 per 200 square feet of floor area
Campground	1 per campsite, plus 1 per 200 square feet of building area
Car wash	1 per bay, plus 1 per 2 employees on the maximum working shift

Town of Stillwater Draft February 17, 2017

Cemetery	1 per 5 acres
Commercial greenhouse or nursery	1 per 300 square feet of sales area, plus 1 per 2 employees
Commercial riding stable	1 per 2 horse stalls
Contractor's yard	1 per 2 employees, plus 1 per company vehicle
Convenience store	1 per 150 square feet of floor area
Day-care center	1 per 2 employees on the maximum working shift
Dwelling unit	2 per dwelling unit, except in the RM, B-1 and B-2 Districts, where the requirement is 1.5 per dwelling unit
Fast-food restaurant	1 for each 25 square feet of gross leasable floor area, plus 1 for each 4 seats, plus 1 per 2 employees on the maximum working shift
Freight or trucking terminal/heavy industry/light industry/research and development/warehouse	1 per 2 employees on the maximum working shift, plus 1 per company vehicle
Funeral home	1 per 400 square feet of floor area
Gallery	1 per 300 square feet of floor area
Golf course	1 per 200 square feet of floor area within enclosed buildings, plus 1 for every 3 persons the course is designed to accommodate at maximum occupancy, plus 1 per driving range tee
Group camp	1 per 2 employees on the maximum working shift
Health-related facility	1 per 2 bedrooms, plus 1 per 2 employees on the maximum working shift
Junkyard	1 per 2 employees, plus 1 per company vehicle
Kennel	1 per 600 square feet of area devoted to the use
Motel, hotel, inn or lodge	1 per guest room
Movie theater	1 per 4 seats
Office/professional office	1 per 300 square feet of gross leasable floor area
Personal-service establishment	1 per 300 square feet of gross leasable floor area
Place of worship	1 per 5 seating spaces in the main assembly area
Produce stand	2 per 100 square feet of area devoted to the use
Public or semipublic use	To be determined by the Planning Board
Recreation use	1 per 200 square feet within enclosed buildings, plus 1 for every 3 persons the facility is designed to accommodate at maximum occupancy
Restaurant/social club or fraternal organization	1 per 4 seats, plus 1 per 2 employees, whichever is greater; or if a tavern is also present, the requirement shall be the greater of the 2 uses
Retail store	1 per 200 square feet of gross leasable floor area (glfa)
Sand and gravel extraction and processing	1 per 2 employees on the maximum working shift
Sawmill, chipping or pallet mill	1 per 2 employees on the maximum working shift
Self-storage facility	1 per 5 storage units

Shopping plaza	5 per 1,000 square feet of gross leasable floor area up to 150,000 square feet; 4.5 per 1,000 square feet of glfa from 150,000 to 500,000 square feet; 4 per 1,000 square feet of glfa over 500,000 square feet
Tavern	1 per 100 square feet of glfa, plus 1 for each linear foot of bar, plus 1 for each 2 employees on the maximum working shift; except that if a restaurant is also present, the requirement shall be the greater of the 2 uses
Type 1 or 2 home occupation	To be determined by the Planning Board
Temporary accessory residence	1 per dwelling unit
Veterinary clinic	1 per 400 square feet of floor area, plus 1 per 2 employees

§ 210-65. Off-street loading.

A.

At least one off-street loading space shall be provided for each commercial or industrial establishment hereafter erected or substantially altered to have a gross floor area in excess of 5,000 square feet, computed as described below. Off-street loading spaces shall be in addition to those required for off-street parking.

B.

Each off-street loading space shall be no less than 12 feet wide, 40 feet long and 14 feet in height when covered.

§ 210-66. Bicycle facilities.

Commented [KE80]: Revised

Bicycle facilities should be provided at all commercial development and multifamily residential development. Any use required to have 15 or more parking spaces shall supply one bicycle rack per 15 spaces. This requirement may be modified by the Planning Board at its discretion.

Article X. Telecommunications Towers

§ 210-67. Purpose.

[Amended 12-19-2013 by L.L. No. 5-2013]

A.

The purpose of this article is to promote the health, safety, and general welfare of the residents of the Town of Stillwater; to provide standards for the safe provision of telecommunications consistent with applicable federal and state regulations; to minimize the total number of telecommunications towers in the community by encouraging shared use of existing and future towers and the use of existing tall buildings and other high structures; and to minimize adverse visual effects from telecommunications towers by requiring careful siting, visual impact assessment, and appropriate landscaping.

B.

Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 in effect mandates that, notwithstanding Section 704 of the Telecommunications Act of 1996 or any provision of law, a state

or local government may not deny, and shall approve, any request relating to an eligible facility for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station. A request relating to an eligible facility, in accordance with the Middle Class Tax Relief and Job Creation Act of 2012, means any request for modification of an existing wireless tower or base station that involves:

(1)

Co-location of new transmission equipment;

(2)

Removal of transmission equipment; or

(3)

Replacement of transmission equipment.

C.

Any request made pursuant to § 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 shall follow the application process of the Stillwater Town Code § 210-69, Shared use of existing tall structures.

D.

Pursuant to FCC Declaratory Ruling WT Docket No. 08-165, November 18, 2009, the "reasonable period of time" for state and local zoning authorities to act on a request for expansion of wireless networks is 90 days for processing a co-location application and 150 days for processing applications other than co-locations.

§ 210-68. Compliance required; applicable regulations.

A.

No telecommunications tower, except those approved prior to the effective date of this article, shall be used unless in conformity with this article. No telecommunications tower shall hereafter be erected, moved, reconstructed, changed or altered unless in conformity with this article. No existing structure shall be modified to serve as a telecommunications tower unless in conformity with this article.

B.

Applicants proposing to co-locate on a previously approved telecommunications tower do not require a special permit. They are, however, subject to site plan review in accordance with Article VI. The Planning Board may require the applicant to submit any of the items under § 210-74 below as part of the site plan review process.

C.

These regulations shall apply to all property within the Industrial ID District. Telecommunications towers shall be specifically excluded from all other zones.

D.

Applications for construction of new telecommunications towers shall comply with the Code of Federal Regulations pertaining to objects affecting navigable airspace, as delineated within Federal Aviation Regulations (FAR), Part 77. Additionally, no application for construction of a new telecommunications tower will be approved if the proposed tower violates the criteria for obstructions to air navigation as established by FAR Part 77, Subpart C, Obstruction Standards.

§ 210-69. Shared use of existing tall structures.

At all times, shared use of existing tall structures (for example municipal water towers, multistory buildings, church steeples, farm silos, etc.) and existing or approved towers (see § 210-68B above) shall be preferred to the construction of new towers.

A.

An applicant proposing to share use of an existing tall structure shall be required to submit:

(1)

A completed application for a special permit.

(2)

Documentation of intent from the owner of the existing facility to allow shared use.

(3)

A site plan. The site plan shall show all existing and proposed structures and improvements, including antennas, roads, buildings, guy wires and anchors, parking and landscaping, and shall include grading plans for new facilities and roads. Any methods used to conceal the modification of the existing facility shall be indicated on the site plan.

(4)

An engineer's report certifying that the proposed shared use will not diminish the structural integrity and safety of the existing tall structure and explaining what modifications, if any, will be required in order to certify to the above.

(5)

A completed short EAF and a completed visual EAF addendum.

(6)

A copy of its Federal Communications Commission (FCC) license.

B.

If an applicant proposing to share use of an existing tall structure submits complete and satisfactory documentation in accordance with Subsection A above, and if modifications indicated according to Subsection A are deemed insignificant by the Planning Board, and after the Planning Board conducts a public hearing and complies with all SEQRA provisions, the Planning Board shall grant a special permit without further review under this article. If the Planning Board determines that any modifications indicated according to Subsection A are significant, it may require further review according to §§ 210-74 through 210-83 below.

§ 210-70. New telecommunications towers.

The Board may consider a new telecommunications tower when the applicant demonstrates that shared use of existing tall structures and existing or approved towers is impractical. An applicant shall be required to present an adequate report inventorying all existing tall structures and existing or approved towers within a reasonable distance of the proposed site. This distance shall be determined by the Planning Board in consultation with the applicant. The report shall outline opportunities for shared use of these existing facilities as an alternative to a proposed new tower. The report shall demonstrate good-faith efforts to secure shared use from the owner of each existing tall structure and existing or approved tower as well as documentation of the physical, technical

and/or financial reasons why shared usage is not practical in each case. Written requests and responses for shared use shall be provided.

§ 210-71. Shared use of existing tower sites for placement of new towers.

Where shared use of existing tall structures and existing or approved towers is found to be impractical, the applicant shall investigate shared usage of an existing tower site for its ability to accommodate a new tower and accessory uses. Documentation and conditions shall be in accordance with § **210-70** above. Any proposals for a new telecommunications tower on an existing tower site shall also be subject to the requirements of §§ **210-74** through **210-83** below.

§ 210-72. New towers at new locations.

The Planning Board may consider a new telecommunications tower on a site not previously developed with an existing tower when the applicant demonstrates that shared use of existing tall structures and existing or approved towers is impractical, and submits a report as described in § **210-70** above, and when the Planning Board determines that shared use of an existing tower site for a new tower is undesirable based upon the applicant's investigation in accordance with § **210-71**. Any proposal for a new telecommunications tower shall also be subject to the requirements of §§ **210-74** through **210-83** below.

§ 210-73. Future shared use of new towers.

The applicant shall design a proposed new telecommunications tower to accommodate future demand for reception and transmitting facilities. The applicant shall submit to the Board a letter of intent committing the owner of the proposed new tower, and his/her successors in interest, to negotiate in good faith for shared use of the proposed tower by other telecommunications providers in the future. This letter shall be filed with the Building Inspector prior to issuance of a building permit. Failure to abide by the conditions outlined in the letter may be grounds for revocation of the special permit. The letter shall commit the new tower owner and his/her successors in interest to:

A.

Respond within 90 days to a request for information from a potential shared-use applicant.

B.

Negotiate in good faith concerning future requests for shared use of a new tower by other telecommunications providers.

C.

Allow shared use of the new tower if another telecommunications provider agrees, in writing, to pay reasonable charges. The charge may include but is not limited to a prorated share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, and depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.

§ 210-74. Site plan review submission requirements.

A.

An applicant shall be required to submit a site plan in accordance with Article **VI**. The site plan shall show all existing and proposed structures and improvements, including roads, buildings, tower(s), guy wire and anchors, antennas, parking and landscaping, and shall include grading plans for new facilities and roads.

B.

Supporting documentation. The applicant shall submit a complete short EAF, a complete visual environmental assessment form (visual EAF addendum), and documentation on the proposed intent and capacity of use as well as a justification for the height of any tower and justification for any clearing required. The applicant shall also submit a copy of its Federal Communications Commission (FCC) license.

C.

Lot size and setbacks. All proposed telecommunications towers and accessory structures shall be located on a single parcel and shall be set back from abutting parcels and street lines a distance sufficient to substantially contain on site all icefall or debris from tower failure and to preserve the privacy of any adjoining residential properties.

(1)

The lot size of parcels containing a tower shall be determined by the amount of land required to meet the setback requirements. If the land is to be leased, the entire area required shall be leased from a single parcel, unless the Board determines that this provision may be waived.

(2)

Telecommunications towers shall comply with all existing setback requirements of the underlying zoning district or shall be located with a minimum setback from any property line equal to 1/2 of the height of the tower, whichever is greater. Accessory structures shall comply with the minimum setback requirements in the underlying zoning district.

D.

Visual impact assessment. The Planning Board may require the applicant to undertake a visual impact assessment, which may include:

(1)

A Zone of Visibility Map shall be provided in order to determine locations where the tower may be seen.

(2)

Pictorial representations of "before" and "after" views from key viewpoints, both inside and outside of the Town, including but not limited to: State highways and other major roads, State and local parks, other public lands, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers. The Planning Board shall determine the appropriate key sites at a presubmission conference with the applicant.

(3)

Assessment of alternative tower designs and color schemes, as described in § **210-75** below.

(4)

Assessment of the visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.

§ 210-75. New tower design.

Alternative designs shall be considered for new towers, including lattice and single-pole structures. The design of a proposed new tower shall comply with the following:

A.

Any new tower shall be designed to accommodate future shared use by other telecommunications providers.

B.

Unless specifically required by other regulations, a tower shall have a finish (either painted or unpainted) that minimizes its degree of visual impact.

C.

The maximum height of any new tower shall not exceed that which shall permit operation without artificial lighting of any kind or nature, in accordance with municipal, State and/or Federal law and/or regulation. The Planning Board, at its discretion, may modify this requirement if the applicant can justify the need to exceed this height limitation.

D.

The Planning Board may request a review of the application by a qualified engineer in order to evaluate the need for, and the design of, any new tower. The cost of this review shall be borne by the applicant.

E.

Accessory structures shall maximize the use of building materials, colors and textures designed to blend with the natural surroundings.

F.

No portion of any tower or accessory structure shall be used for a sign or other advertising purpose, including but not limited to company name, phone numbers, banners, and streamers.

§ 210-76. Existing vegetation.

Existing on-site vegetation shall be preserved to the maximum extent possible. No cutting of trees exceeding four inches in diameter (measured at a height of four feet off the ground) shall take place prior to the approval of the special permit.

§ 210-77. Screening.

Deciduous or evergreen tree plantings may be required to screen portions of the tower and accessory structures from nearby residential property as well as from public sites known to include important views or vistas. Where a site abuts a residential property or public property, including streets, screening shall be required.

§ 210-78. Access.

Adequate emergency and service access shall be provided. Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize ground disturbance and vegetation cutting to within the toe of fill, the top of cuts, or no more than 10 feet beyond the edge of

any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

§ 210-79. Parking.

Parking shall be provided to assure adequate emergency and service access. The Planning Board shall determine the number of required spaces based upon a recommendation from the applicant. No parking spaces shall be located in any required yard.

§ 210-80. Fencing.

The tower and any accessory structures shall be adequately enclosed by a fence, the design of which shall be approved by the Board. This requirement may be waived by the Planning Board if the applicant demonstrates that such measures are unnecessary to ensure the security of the facility.

§ 210-81. Action upon discontinuance of use; removal.

The applicant shall submit to the Board a letter of intent committing the tower owner, and his/her successors in interest, to notify the Building Inspector within 30 days of the discontinuance of use of the tower. This letter shall be filed with the Building Inspector prior to issuance of a building permit (assuming the telecommunications tower is approved according to this article). Obsolete or unused towers and accessory structures shall be removed from any site within four months of such notification. Failure to notify and/or to remove the obsolete or unused tower in accordance with these regulations shall be a violation of this chapter and shall be punishable according to Article **XVIII**. The Planning Board may, at its discretion, also require the submission of a letter of credit guaranteeing the removal.

§ 210-82. Intermunicipal notification for new towers.

In order to keep neighboring municipalities informed, and to facilitate the possibility of directing that an existing tall structure or existing telecommunications tower in a neighboring municipality be considered for shared use, and to assist in the continued development of County 911 services, the Planning Board shall require that:

A.

An applicant who proposes a new telecommunications tower shall notify, in writing, the legislative body of each municipality that borders Stillwater, the Saratoga County Planning Board, and the Director of Saratoga County Emergency Services. Notification shall include the exact location of the proposed tower and a general description of the project, including but not limited to the height of the tower and its capacity for future shared use.

B.

Documentation of this notification shall be submitted to the Board at the time of application.

§ 210-83. Notification of nearby landowners.

The applicant shall be required to mail notice of the public hearing directly to all landowners whose property is located within 500 feet of the property line of the parcel on which a new tower is

proposed. Notice shall also be mailed to the administrator of any State or Federal parklands from which the proposed tower would be visible if constructed. Notification, in all cases, shall be made by certified mail. Documentation of this notification shall be submitted to the Planning Board prior to the public hearing.

Article XI. Signs

§ 210-84. Compliance required.

Signs may be erected and maintained in the Town of Stillwater only when in compliance with the following, except as provided for in the Route 4 Form-Based Code.

§ 210-85. Intent.

The Town of Stillwater finds that signs are a necessary means of communication that can benefit and detract from the community and neighborhood character and should conform with the following provisions. At no time shall these provisions be interpreted to regulate any aspect of the content of the sign.

§ 210-86. Exceptions.

The following types of signs are allowable without any municipal approval, except that the sign shall not exceed the maximum dimensional, height or area requirements of this article.

A.

Election signs. All signs advertising a candidate for public office or any other public ballot initiative are exempt from these regulations. Such signs must be displayed only on private property and may be displayed no sooner than 30 days prior to the relevant election and no later than 10 days after said election.

B.

Temporary or on-premises signs. Any property owner is permitted to erect a single, temporary, nonilluminated sign on said property advertising the sale or lease of merchandise or a special event. Such sign shall be removed within three days after the sale, lease or event.

C.

Locational, street address and public safety signs. Any property owner is permitted to erect one nonilluminated sign identifying the property name or residents of the property and the official street address. Other signs offering information necessary for public safety, including, by example, customary posted or no-trespassing signs, private drive, parking, or exit/entrance signs, along with other signs required pursuant to any government function, law or regulation, are also exempt.

D.

Other. When not associated with a commercial activity, all historical or memorial markers, as well as flags, insignia or emblems of any government or religious organization and any religious holiday, are also exempt.

E.

Landmark signs. Any older sign of artistic or historic merit or of uniqueness to the Town, each of which must be recognized by the Stillwater Town Board, is entirely exempt from this article, including all dimensional, height and area requirements.

F.

Nonconforming signs. A nonconforming sign lawfully existing at the effective date of this article may continue, with the exception of signs exceeding three times the allowable sign area. Such signs, commonly referred to as "billboards," must conform to this article within 10 years of the effective date of this article.

G.

Government or school signs. Any sign erected by the federal, state, county, school, or municipal government or any department or agency thereof are exempt from this article, including all dimensional, height and area requirements.

Commented [KE81]: New

§ 210-87. Measurement of sign area.

Sign measurement shall be based upon the entire area of the sign, with a single continuous perimeter enclosing the extreme limits of the sign surface. For a sign painted or applied on a building, the area shall be considered to include the smallest rectangle or other shape which encompasses all lettering, numbering, designs, logos or lights, together with any background of a different color than the finish material of the building. The area of supporting framework, such as brackets or posts, shall not be included in the area if such framework is incidental to the display. When a sign has two or more faces or is composed of multiple signs each with a face, the sum of the areas of all the faces shall be included in determining the area, except where two faces are placed back-to-back and are at no point more than two feet from each other. In this latter case, the sign area shall be taken as the area of either face; and if the faces are unequal, the larger shall determine the area.

§ 210-88. Measurement of height.

The height of any sign shall be measured from the highest point of the sign to the surface of the ground prior to construction of the sign or to the surface of the nearest public road, whichever is lower.

§ 210-89. Off-premises signs.

Signs displaying information on uses, events, goods, products, services or facilities offered at locations other than the tax lot where the sign is located are prohibited, with the exception of general directory or directional signs. General directory or directional signs shall be no larger in area than 24 square feet and shall include only the name(s) of the establishment and basic directional information, in lettering no more than five inches high. No more than one directional sign shall be allowed at an intersection or along a roadway between any two intersections.

§ 210-90. Home occupation signs.

[Amended 1-19-2012 by L.L. No. 2-2012]

One nonilluminated sign per home occupation, no larger in area than two square feet, indicating the name, address, phone number or principal purpose of the home occupation, is permitted. Such sign should be placed out of the road right-of-way and as close as possible to the intersection of the driveway and the public road.

§ 210-91. For-sale and for-rent signs.

No more than two nonilluminated signs advertising the sale or rental of a property may be erected and maintained on said property by the owner or broker or any person with legal interest in the sale or rental of such property, provided that:

A.

The size of any such sign shall be no more than six square feet; and

B.

Up to two additional nonilluminated signs may be erected or maintained if said property abuts more than one public right-of-way.

§ 210-92. General provisions for all signs.

A.

All signs, except landmark signs, general directory and directional signs, home occupation signs, and for sale/for rent signs, as provided for in §§ 210-86, 210-89, 210-90 and 210-91 of this article, shall conform to the following standards:

[Amended 1-19-2012 by L.L. No. 2-2012]

	Speed Limit on Road Nearest Sign		
	45+ mph	35-45 mph	Less Than 35 mph
Maximum sign height, in feet	20	16	12
Total maximum sign area, in square feet	40	32	24

B.

Construction and maintenance. Any sign must be constructed of durable materials, maintained in good condition and not allowed to become dilapidated. Signs painted or attached to buildings are preferred to freestanding signs.

C.

Obstruction of public right-of way. Signs attached to a structure shall not project more than three feet from the structure. No sign shall extend over a public right-of-way or public sidewalk, and no sign shall obstruct views from any public right-of-way to another public right-of way.

D.

Illumination. Signs designed with internal illumination are discouraged. Internally illuminated signs with moveable letters are strictly prohibited. Sign illumination shall be only with a steady, stationary, shielded light source directed onto the sign without causing glare onto adjoining properties or onto any public right-of-way. Flashing signs or signs with moving lights are prohibited. No sign shall be illuminated between the hours of 11:00 p.m. and 6:00 a.m., unless the premises are open for general business during such hours.

§ 210-93. Site plan review.

Site plan review in accordance with Article **VI** shall be required for all signs except those described in § **210-86** of this article. Any building permit shall conform to the requirements of this article.

§ 210-94. Commercial business signs.

A commercial business shall be limited to one freestanding sign and one wall-mounted sign, except that the signs listed in § **210-86** shall not be counted against this limit.

Article XII. Supplementary Regulations

§ 210-95. Home occupations.

A.

Purpose. It is the purpose of this section to regulate the operation of home occupations to ensure that the home occupation remains secondary or incidental to the residential use. The right of property owners to be free of nuisances caused by certain home occupations is recognized. Only those uses will be allowed which:

(1)

Ensure compatibility of home occupations with other uses permitted in residential districts.

(2)

Maintain and preserve the character of residential neighborhoods.

(3)

Are incidental to the use of the premises as a residence.

B.

Home occupation characteristics. Home occupations that will have no impact on the surrounding neighborhood are characterized by the following criteria:

[Amended 1-19-2012 by L.L. No. 2-2012]

(1)

There is minimal exterior evidence of the occupation.

(2)

The business may have up to three employees. The business may have additional employees who do not work on premises and only occasionally visit the premises.

(3)

The business may have customer traffic normal and consistent to the type of occupation.

(4)

There may be occasional deliveries to or from the home occupation in addition to routine mail and incidental package delivery.

(5)

Equipment, other than normally used in household, domestic, or general office use, may be used within the home and within accessory buildings.

C.

Standards. Home occupations shall meet the following criteria:

[Amended 1-19-2012 by L.L. No. 2-2012]

(1)

Floor area. The home occupation shall not occupy more than 30% of the gross floor area of the combined total of the dwelling unit and all accessory buildings on the parcel.

(2)

Number of occupations per dwelling. No more than one home occupation shall be permitted within any single dwelling unit, including accessory buildings.

(3)

Limitations on nonresidents. The individual primarily responsible for the home occupation shall reside in the dwelling unit.

(4)

Hours of operation. In no case shall a home occupation be open to the public at times earlier than 8:00 a.m. or later than 9:00 p.m.

(5)

Storage. There shall be no storage of equipment and supplies or parking of more than one business vehicle associated with the home occupation unless stored within allowed accessory building(s) which are, individually or in total, subservient to the scale of the dwelling unit.

(6)

Signage. A home occupation may have a sign in compliance with Article XI of this chapter.

(7)

Prohibited uses. Automotive sales and service, automobile body shops, automotive repair, and small engine repair are all considered to be detrimental to a residential neighborhood and are not allowed as home occupations.

(8)

Whenever the scale and scope of a home occupation exceed the requirements for a home occupation as defined in the Residential Code of New York State, the requirements of the Building Code of New York State will apply.

D.

Procedures.

[Amended 1-19-2012 by L.L. No. 2-2012]

(1)

Site plan review. Every home occupation shall be required to make application for project approval in accordance with the procedures for site plan review as outlined in Article VI. Any site plan approvals granted to a home occupation shall not be transferable from person to person or from address to address.

(2)

Preexisting home occupations. A home occupation in existence on or before the date of adoption of the Town's initial Zoning Ordinance shall be considered grandfathered and allowed to continue. Any expansion of a preexisting grandfathered home occupation shall be subject to review in accordance with the provisions of this section.^u

[1]

Editor's Note: Former Subsection E, Enforcement; voiding of permit, which immediately followed this subsection, was repealed 1-19-2012 by L.L. No. 2-2012. This local law also provided for the redesignation of former Subsection F as Subsection E.

E.

Inspections. The Code Enforcement Officer shall have the right at any time, upon reasonable request, to enter and inspect the premises of the home occupation for safety and compliance purposes.

§ 210-96. Public utilities.

Public utility uses shall be subject to site plan review by the Planning Board. The Planning Board shall have the power to modify the site plan in order to protect the residential character of adjoining properties. Underground utilities, including gas and electric utilities, are encouraged. Public utility uses shall not be construed to include the installation of standard electric and telephone poles and lines, cable television lines, or connections related thereto.

§ 210-97. Floodplain regulations.

[Amended 2-20-2014 by L.L. No. 3-2014]

All proposed residential uses in any district which would occur within a designated one-hundred-year floodplain or floodway, as designated by the Federal Emergency Management Agency, shall be reviewed by the Building Inspector. All proposed nonresidential uses in any district which would occur within a designated one-hundred-year floodplain or floodway, as designated by the Federal Emergency Management Agency, shall be subject to site plan review by the Planning Board in accordance with the provisions of Article VI.

§ 210-98. Number of principal buildings per lot.

[Amended 1-19-2012 by L.L. No. 2-2012]

With the exception of agricultural uses and unless otherwise specified, there shall be only one principal building per lot in the R-R, LDR, RM, B-1, B-2 and RRD Districts. In the BP, R67 Overlay and ID Districts, there may be more than one principal building per lot, subject to site plan review.

§ 210-99. Height exceptions.

[Amended 1-19-2012 by L.L. No. 2-2012]

Height limitations shall not apply to chimneys, silos, elevators, water tanks, ventilators, skylights, tanks, wind generators, television or private radio antennas and church spires, except that the height of such structures may be reviewed as part of a site plan review when the use is subject to such review pursuant to Article VI.

§ 210-100. Lots bounded by two streets.

For any lot fronting on parallel or abutting streets, both frontages shall comply with the front yard requirements of the district in which it is located. For such lots, the rear yard shall be considered the yard opposite the architectural front of the house.

§ 210-101. Storage and dumping.

A.

On any lot or plot, junked or abandoned vehicles, equipment and materials shall not be stored in the open areas of any premises.

B.

All spaces between buildings shall be kept sufficiently free and clear of materials of every nature for the purpose of providing adequate light, air and protection against fire.

C.

Dumping of refuse or waste materials at places other than a designated Town refuse facility is prohibited in all districts within the Town, except for the purpose of filling to establish grades. In such case, the material must be approved by the Code Enforcement Officer prior to placement.

§ 210-102. Obstructions at street intersections.

On a corner lot in any district, any tree, shrub, fence or wall planted or built within 50 feet of the intersecting street lines shall provide a clear site distance or be of open construction, such as wire, wood, picket, or iron, and shall not exceed four feet in height, except for such fences as may be installed as required by the New York State Uniform Fire Prevention and Building Code surrounding swimming pools.

§ 210-103. Fences.

A.

Residential districts.

(1)

No fence over four feet in height shall be erected or maintained in the architectural front yard. The "architectural front yard" shall be defined as the yard facing the side of the building containing the architectural main entrance to the house.

(2)

No fence over six feet in height shall be erected or maintained in any rear yard or side yard; no fence over five feet in height shall be erected or maintained in the front yard not considered to be the architectural front yard.

(3)

No stockade-type fence shall be allowed in any front yard.

B.

Industrial or business districts.

(1)

A fence eight feet high with a barbed-wire top or an electric-shock fence which would not be detrimental to the health, safety or welfare of any person coming into contact with it may be permitted, provided that said fence meets one of the following requirements:

(a)

The fence is needed to prevent entry to an area that could be hazardous to the health, safety or welfare of a person or persons;

(b)

The fence is needed to secure an area where materials and/or equipment are stored;

(c)

The fence is needed to keep animals other than common household pets, except in a kennel situation, from leaving the site; or

(d)

Where the general community interest or interests of national safety justify the need for such a fence.

(2)

Where a fence is electrified, signs at intervals of not more than 50 feet shall be erected on the fence to clearly indicate the fence is electrified.

(3)

Fencing for commercial and industrial districts and utility facilities shall be approved by the Planning Board under site review.

C.

Exemptions. Agricultural uses and activities shall be exempt from the requirements of this section.

§ 210-104. Swimming pools.

[Amended 4-6-2006 by L.L. No. 3-2006]

No swimming pool shall be constructed, installed, used or maintained in any district except in accordance with the following provisions:

A.

Definitions.

(1)

For the purposes of this section, the word "shall" is always mandatory and not merely directory.

(2)

The following terms, phrases, words and their derivations shall have the meanings given herein:

ABOVEGROUND SWIMMING POOL

Any swimming pool located in or upon the ground which at no point is more than 18 inches below grade. An aboveground swimming pool is not a structure for purposes of this chapter.

IN-GROUND SWIMMING POOL

Any swimming pool located in or upon the ground which extends more than 18 inches below grade. An in-ground swimming pool is a structure for purposes of this chapter.

PRIVATE SWIMMING POOL

Any swimming pool constructed, installed or maintained as an accessory use on the same lot with a one- or two-family dwelling, intended solely for the private use of any occupant of such dwelling and such occupant's family and guests.

PUBLIC SWIMMING POOL

Any swimming pool which is not a private swimming pool, as defined herein.

SWIMMING POOL

Any body of water in an artificial or semi-artificial receptacle or other container, whether located indoors or outdoors, used or designed, arranged or intended to be

used for public, semipublic or private swimming by adults or children, or both adults and children, whether or not any charge or fee is imposed upon such adults or children, and shall include all buildings, structures, appurtenances, equipment, appliances and other facilities appurtenant to and intended for the operation and maintenance of a swimming pool.

TOWN OF STILLWATER ZONING CODE

Those provisions of law enacted by the Town of Stillwater as Local law No. 1-2002, and any subsequent amendments thereto.

B.

Fencing or covering.

(1)

No water shall be put or caused to be put in any swimming pool unless a wall, fence or barrier, as required by this section, shall have first been erected.

(a)

Any ladder or other means of access to such swimming pool shall be completely enclosed by a durable wall, fence or barrier; and such wall, fence or barrier and gate therein contained shall meet all other requirements set forth herein.

(b)

The wall, fence or barrier shall be so affixed to the swimming pool or so constructed that the only access to the swimming pool is through its gate.

(c)

There shall be no accessory equipment, devices, structures or debris so located as to present a substantial danger or risk of unauthorized access to the swimming pool.

(2)

Any outdoor swimming pool having a depth of 18 inches or more and an area of 100 square feet or more shall be enclosed by a durable wall, barrier or fence, unless such outdoor swimming pool is covered with a suitable, strong, protective covering fastened or locked in place when not in use or unattended. A cover shall be considered to be of sufficient strength and securely fastened or locked in place if, when fastened or locked in place, it will support a minimum dead weight of 200 pounds.

(3)

Every outdoor swimming pool having a depth of more than 18 inches or an area of more than 100 square feet, now existing or hereafter constructed, installed, established or maintained, shall be completely and continuously surrounded by a permanent durable wall, fence or barrier which shall be located not less than four feet from the furthest outside projection of the swimming pool and which shall be no more than six feet nor less than four feet in height above grade and shall be so constructed as to have no opening, mesh, hole or gap larger than two inches in any dimension; provided, however, that if a picket fence is erected or maintained, the horizontal dimension of any gap or opening shall not exceed 2 1/2 inches.

(4)

All, walls, fences or barriers shall be constructed in accordance with requirements of the New York State Uniform Fire Prevention and Building Code and in conformity with all sections of this chapter and other applicable local laws.

(5)

No wall, fence or barrier of any kind shall be constructed or maintained which shall contain projections at any point on its outer surface which present a substantial opportunity or risk of

unauthorized access to the swimming pool. Stockade-type fences may be erected with either side facing out.

(6)

A dwelling house or accessory building may be used as part of any wall, fence or barrier.

(7)

All gates used in conjunction with such wall, fence or barrier shall conform to the above requirements as to height and dimensions of openings, mesh, holes or gaps; and all gates and doors shall be equipped with self-closing and self-latching devices for keeping the gate or door securely closed at all times. Gates and doors shall be locked when the pool is not in use or is unguarded or unattended; provided, however, that the door of any dwelling which forms a part of the wall, fence or barrier need not be so equipped or locked.

(8)

In the event that the swimming pool is of the aboveground type and is so constructed that it contains a wall, fence or barrier of not less than two feet in height, measured from the top lip, ledge or deck of such swimming pool, which wall, fence or barrier completely surrounds such swimming pool and is otherwise constructed in conformity with the provisions of this subsection and the top lip, ledge or deck of such swimming pool is not less than four feet above grade, a separate wall, fence or barrier as described hereinabove shall not be required, provided that the following provisions are met.

C.

Location. No outdoor swimming pool shall be situated in the front yard of any residence. No outdoor swimming pool shall be located less than 10 feet from any side or rear lot line. With respect to aboveground swimming pools, said distance shall be measured from the outer edge of any deck or platform attached to the wall of the pool.

D.

Electrical protection.

(1)

Every aboveground swimming pool which employs the use of any electrical device in connection therewith shall be equipped with a ground-fault interrupter approved by Underwriters' Laboratories, Inc.

(2)

All electrical devices used in connection with any swimming pool must be approved by Underwriters' Laboratories, Inc., prior to issuance of a certificate of compliance or subsequent use of the pool.

(3)

No swimming pool shall be erected or located within 25 feet of those points on the ground which are directly beneath any overhead electrical transmission lines.

E.

New York State Sanitary Code. Any private swimming pool with a water depth of more than 18 inches shall be used and maintained in accordance with the provisions of the New York State Sanitary Code and all other applicable rules and regulations.

F.

Public swimming pools.

(1)

No work shall be commenced on the construction or installation of any public swimming pool, including excavating or removing of sand, gravel, topsoil or other materials, until the plans and

specifications therefor have been approved by the Director of Planning, Building and Development and the Town Engineer. The plans and specifications shall contain a certificate by a professional engineer licensed by the State of New York that the drainage of such swimming pool is adequate and will not interfere with the public or private water supply system, with existing sanitary facilities or with the public highways.

(2)

Every public swimming pool shall be used and maintained in accordance with the provisions of the New York State Sanitary Code and all other applicable rules and regulations.

G.

Construction.

(1)

Construction may not commence on any in-ground swimming pool until a building permit has been obtained from the Building Department. An in-ground swimming pool shall not be used until a certificate of compliance has been issued by the Building Department.

(2)

During the course of construction of an in-ground swimming pool, a temporary fence shall be erected in accordance with specifications established by the Director of Planning, Building and Development.

H.

Abandonment. In the event that an owner shall abandon any swimming pool, the owner shall forthwith fill all voids and depressions and restore the premises to the same grade and condition as before the swimming pool was constructed. The owner shall notify the Director of Planning, Building and Development when the required restoration has been completed. Should the owner fail to make the necessary restoration, the Director may proceed pursuant to Article XVIII of this chapter.

I.

Modifications. The Zoning Board of Appeals may make modifications in individual cases, upon a showing of good cause, with respect to the requirements herein set forth, provided that the protection as sought hereunder is not reduced by any such modification.

§ 210-105. Mining and excavation.

A.

Excavation.

(1)

Slopes caused by the excavation shall, upon completion, not exceed 30%.

(2)

The depth of excavation shall approach no closer than five feet to the average high point of the groundwater table, measured annually, except upon a showing satisfactory to the Planning Board during site plan review under Article VI that the site plans contain mitigative measures adequate to assure that the proposed use of the land will not cause any undue, adverse impacts either to such groundwater table or to any surface waters into which such lands drain.

(3)

Stockpiled material shall not exceed 35 feet in height.

B.

Buffer zones.

(1)

An undisturbed buffer of 50 feet shall surround the excavation within the limits of the property.

(2)

The entry into the excavated area shall be curved so as to prevent a direct view from the public right-of-way.

§ 210-106. Frontage on public streets.

Every principal building shall be built upon a lot with frontage on a public street improved to meet the standards of the Town of Stillwater. The required frontage for one principal building shall be 50 feet, and such frontage shall provide actual physical access to and from the lot to be built upon, for purposes of ingress and egress to the lot by emergency vehicles, such as fire trucks or ambulances.

§ 210-107. Temporary occupancy of mobile homes.

[Amended 1-19-2012 by L.L. No. 2-2012]

When a residential structure is destroyed by a catastrophic event or act of God, such as a fire, tornado or hurricane, the owner may occupy a mobile home, travel trailer or travel vehicle that contains complete living unit facilities on the property for a period of up to six months while the home is being reconstructed. A special use permit obtained in accordance with the procedures in Article VII of this chapter shall be required for such temporary occupancy. The special use permit may be extended for no more than two six-month periods. The mobile home must be removed prior to the issuance of a certificate of occupancy for a reconstructed structure.

§ 210-108. Sand, gravel and topsoil processing.

The regulations of this chapter do not apply to the extraction of sand, gravel or topsoil for the purpose of private use of less than 750 cubic yards in any two-year period.

§ 210-109. Farm worker housing.

Farm worker housing shall be allowed to house workers who are directly employed on the farm on which the housing is located, and their families. Such housing shall comply with all of the requirements of the New York State Sanitary Code. The Planning Board shall refer to the New York State Health Department for review of the sanitary plans for the fifth and every subsequent unit of farm worker housing and for any multifamily structure used for farm worker housing. Such housing shall also comply with all of the requirements of the New York uniform Fire Prevention and Building Code and current HUD standards with respect to mobile homes. Such housing must comply with the setback restrictions of this chapter as though they were principal uses; however, lot area requirements do not apply to this use. In issuing a special use permit for this use, the Planning Board shall set forth terms for removal of the structures in the event the use ceases.

§ 210-110. Livestock, noncommercial.

A.

Livestock may also be kept for non-commercial purposes in certain zoning districts provided

Commented [KE82]: New Section

(1)

No more than six (6) hens may be kept and no rooster may be kept on the property.

(2)

The use shall be confined to a fenced enclosure of no more than 200 square feet in area, located in a rear yard. The fenced enclosure shall be at least 25 feet from any street line, at least 15 feet from any residential dwelling and at least five feet from any property line. In the instance that more than one distance requirement shall apply, the greater distance requirements shall apply.

(3)

Any portion of the enclosure located closer than ten feet to a property boundary or directly visible from a street line at any distance shall be screened by either a fence or a landscaped buffer of at least four feet in height.

(4)

A building shall be required for the hens. Any building used for this purpose shall be located at least ten feet from any lot line. All such buildings shall be constructed and all food products kept so as to prevent offensive odors and the presence of pests and predators.

Article XIII. Nonconforming Uses, Structures and Lots

[Amended 5-20-2010 by L.L. No. 4-2010]

§ 210-111. Preexisting nonconforming structures and uses.

Subject to the provisions of this article, a nonconforming structure or use or a structure containing a nonconforming use may be continued and maintained in reasonable repair but may not be enlarged or extended as of the date of enactment of this chapter. This article shall not be construed to permit any unsafe use or structure or to affect all proper procedures to regulate or prohibit the unsafe use or structure.

§ 210-112. Extension, enlargement, alteration or other change into another nonconforming use.

Commented [KE83]: Revised section.

A nonconforming use may not be extended, altered, or otherwise changed into another nonconforming use, except upon approval of a Special Use Permit. In addition to the criteria for such special use, the Planning Board shall also make the following factual determinations before granting any special use permit to alter, extend or change a nonconforming use:

- A. The new use, alteration, or extension is more in conformance with the applicable zoning than the former, pre-existing use; and
- B. The change in use, alteration or extension will not cause an undesirable change in the character of the neighborhood within which it is proposed; and
- C. The change in use, alteration or extension will not have an adverse impact upon the physical or environmental characteristics of the neighborhood or district; and
- D. If the Planning Board shall determine that the application for change, alteration or extension of a nonconforming use meets the requirements of this section then the Planning Board is authorized to further consider the application for Special Use Permit upon such terms and conditions as determined necessary to reduce both the degree of non-conformity and in mitigation of any substantial impacts to the immediate neighborhood.

§ 210-113. Discontinuance.

If a nonconforming use is discontinued for a period of 12 consecutive months, further use of the property shall conform to this chapter or be subject to review by the Zoning Board of Appeals.

§ 210-114. Change in use.

A nonconforming use may be changed into a conforming use in accordance with this chapter.

§ 210-115. Completion of structures.

Nothing contained in this chapter shall require any change in plans, construction, alteration or designated use of a structure for which all preconstruction approvals have been given prior to the adoption of this chapter.

§ 210-116. Destruction.

A.

Area nonconformity. Any structure which is nonconforming due to a setback violation or, in the case of multifamily housing, due to greater intensity than would be allowed by this chapter, which is destroyed wholly or in part by fire, flood, wind, hurricane, tornado or other act beyond the control of man shall be allowed to reconstruct according to its original dimension and intensity within 24 months of said destruction.

B.

Use nonconformity. Any structure which is a nonconforming use according to the provisions of this chapter which is destroyed by fire, flood, wind, hurricane, tornado or other act beyond the control of man, to the extent of 50% of the assessed value of the structure or more, must be replaced within 24 months of the destructive incident. If, within the twenty-four-month period, the structure containing the nonconforming use is not rebuilt, the nonconforming use shall not be reestablished, and the property shall only be used for a conforming use.

§ 210-116.1. Regulation of nonconforming unimproved lots and structures.

[Amended 1-19-2012 by L.L. No. 2-2012]

A.

Notwithstanding anything to the contrary contained in Article III and/or Article XIII of this chapter, a variance will not be required for the construction of structures and improvements to a nonconforming lot that has an existing structure or structures on it, provided that the new structure or improvement does not create greater nonconformity with this chapter.

B.

Single unimproved lots. No building permit shall be issued, except following application for an area variance pursuant to Article XV of this chapter, for a single, unimproved, lawfully preexisting nonconforming lot held in single ownership as of the date of adoption of this chapter.

C.

Multiple unimproved lots and lots within previously approved undeveloped subdivisions. No building permit shall be issued, except following application for an area variance pursuant to Article XV of this chapter when relief is being sought, for two or more contiguous, unimproved nonconforming lots held in the same ownership of record as of the date of adoption of this chapter. In such instances, the Zoning Board of Appeals may request that said lots be combined to the extent necessary to comply with the space and bulk regulations of the district in which they are located. This shall include unimproved nonconforming lots contiguous to improved nonconforming lots held in the same ownership of record.

Article XIV. Zoning Board of Appeals

§ 210-117. Creation, appointment and organization.

A.

The Town of Stillwater has created a Zoning Board of Appeals pursuant to § 267 of the Town Law. Such Board shall consist of five members, to serve for overlapping five-year terms. The Chairman of the Board shall be one of the five members and shall be designated as such by the Town Board. The Town Board shall appoint the members and the Chairperson of the Zoning Board of Appeals. The Zoning Board of Appeals shall elect a Vice-Chairman from its membership and shall establish rules for the conduct of its offices.

B.

The Zoning Board of Appeals shall have the power to make, adopt and promulgate such written rules of procedure, bylaws and forms as may be provided for in § 267 of the Town Law for the proper execution of its duties and to secure the intent of this chapter. Such rules, bylaws and forms shall not be in conflict with, or have the effect of waiving, any provisions of this chapter or any other ordinance, law or regulation of the Town of Stillwater. Such rules, bylaws and forms, and any subsequent amendments or supplements thereto, shall be submitted to the Town Board by the Board of Appeals for approval and filing for public view. The Town Board may approve, reject or modify such rules or bylaws within 60 days of submission. If modified by the Town Board, such modified rules or bylaws shall be in effect. If rejected, it shall be the Zoning Board of Appeals' responsibility to submit new or revised rules and bylaws for approval.

C.

The Zoning Board of Appeals shall have the duties, rights powers and functions conferred upon it by § 267 of the Town Law and any other provisions of law applicable thereto, including the following.

§ 210-118. Procedures.

A.

The Zoning Board of Appeals shall act in strict accordance with the procedures specified in this chapter and the Town Law. All appeals and applications made to the Zoning Board of Appeals shall be in writing, on forms prescribed by the Board. Every appeal or application shall refer to the specific

provision of the law involved and shall exactly set forth the interpretation that is claimed, the grounds for extension of a nonconforming use, or the grounds for a use or area variance, as the case may be. Each application for a use or area variance or extension of a nonconforming use shall be accompanied by a proposed site plan, at an appropriate scale, meeting the requirements for a site plan submission in Article VI of this chapter. The Zoning Board of Appeals may waive or vary submission requirements as it sees fit.

B.

Each application to the Zoning Board of Appeals for a variance or extension of a nonconforming use shall be accompanied by a fee as set by the Town Board. Applications for interpretations shall not require a fee.

C.

Every decision by the Zoning Board of Appeals shall be by resolution, each of which shall contain a full record of the findings of the Zoning Board of Appeals in the particular case. Each such resolution, together with all documents pertaining thereto, shall be filed promptly in the office of the Town Clerk by the Secretary of the Zoning Board of Appeals, by case number, under one of the following headings: use variance, area variance, extension of nonconforming use, or interpretation.

D.

Prior to making a final decision on a variance, interpretation or extension of a nonconforming use, the Zoning Board of Appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it and give public notice thereof by publication in the official paper of a notice of such hearing, at least 10 days prior to the date thereof, and shall, at least five days before such hearing, mail or hand-deliver, at the discretion of the Code Enforcement Officer, notice thereof to the parties, and shall decide the same within 60 days after the final hearing. Upon the hearing, any party may appear in person or by agent or by attorney. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from as, in its opinion, ought to be made in the premises and to that end shall have all powers of the officer from whom the appeal is taken.

E.

At least 30 days before the date of public hearing held in connection with any application for a variance or the extension of a nonconforming use, the Zoning Board of Appeals may, at its discretion, transmit to the Planning Board a copy of said application and by such transmittal request that the Planning Board submit to the Zoning Board of Appeals its advisory opinion on said application. The Planning Board shall submit a report of such advisory opinion prior to the date of said public hearing. The failure of the Planning Board to submit such report shall be interpreted as a "no recommendation" opinion by the Planning Board.

F.

The Zoning Board of Appeals shall notify the Town Board, Code Enforcement Officer and Planning Board of each variance, extension of a nonconforming use and interpretation granted under the provisions of this chapter.

§ 210-119. Powers and duties.

The Zoning Board of Appeals shall exercise all the powers and duties in a manner now and hereafter prescribed by law, including the following.

A.

Interpretation. On direct appeal from a determination of the Code Enforcement Officer, the Zoning Board of Appeals may hear and decide questions where it is alleged there is an error in any order, requirement, decision or determination made by the Code Enforcement Officer involving the interpretation of any provision of this chapter. Prior to taking final action, the Zoning Board of Appeals may, at its discretion, submit an application for interpretation to the Planning Board for its recommendation. Failure of the Planning Board to reply within 30 days after receipt of the application will be construed as its having no recommendation to submit in regard to the interpretation.

B.

Use and area variances. The Zoning Board of Appeals, on appeal from the decision or determination of the Code Enforcement Officer, shall have the power to grant use and area variances. The procedure and criteria for review of use and area variances are found in Article XV of this chapter.

C.

Extension of a nonconforming use. On direct application, or supplementing an application to the Code Enforcement Officer for a building permit, certificate of occupancy or zoning permit, the Zoning Board of Appeals may grant a permit for the expansion or extension of a nonconforming use.

Article XV. Variances

§ 210-120. Purpose.

The purpose of this article is to provide for variances from this chapter in cases where the strict application thereof would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and objectives of this chapter.

§ 210-121. Authorization to grant or deny.

Any variance to this chapter shall be granted by the Zoning Board of Appeals in accordance with the standards and procedures set forth in this article. In granting a variance, the Zoning Board of Appeals may impose conditions to protect the best interests of the surrounding property, the neighborhood and the Town as a whole.

§ 210-122. Application for variance.

Variances may be instituted by filing an application with the Zoning Board of Appeals, using forms supplied by the Board, which shall include all information reasonably considered by the Board as necessary to make its findings under § 210-126 below. Such material shall include a legal description of the property, a map showing the property and all properties within a radius of 500 feet of the exterior boundaries thereof, plans and elevations necessary to show the proposed variance and other drawings or information reasonably considered necessary by the Board of Appeals to an understanding of the proposed use and its relationship to surrounding properties.

§ 210-123. Requirements for granting variances.

The Zoning Board of Appeals shall have the powers and authority to modify any order, requirement, decision, interpretation or determination of the Code Enforcement Officer and grant use or area

variances in accordance with the provisions and requirements of §§ 267-a and 267-b of the Town Law of the State of New York.

§ 210-124. Referrals.

A.

The Zoning Board of Appeals, at its discretion, may refer any completed variance application to the Planning Board for its report and recommendation when it is determined that further planning concept review is needed regarding said application and, where required by § 239-m of the General Municipal Law, to the Saratoga County Planning Board for its report and recommendation. In no case shall final action be taken until said Planning Board, when requested, and County planning agency, if appropriate, have submitted their reports or until 30 days have passed since the date of the referral, whichever occurs first.

B.

Within 30 days after receipt of a full statement of such referred matter, the Saratoga County Planning Board shall report its recommendations to the referring Town body. If the County fails to report within 30 days, the Zoning Board of Appeals may act without such report. If the County disapproves the proposal or recommends modification thereof, the Zoning Board of Appeals shall not act contrary to such disapproval of recommendation, except by a vote of a majority plus one of all members thereof and after the adoption of a resolution fully setting forth the reasons of such contrary action.

C.

Within 30 days after final action by the Town body, a report of said final action shall be filed with the Saratoga County Planning Board.

§ 210-125. Zoning Board of Appeals hearings and decisions.

A.

The Zoning Board of Appeals shall give such notice of hearings, hold hearings, and decide applications presented to it, as may be required or allowed by Town Law §§ 267-a and 267-b.

B.

Appeals from a Zoning Board of Appeals decision may be taken as allowed by Town Law § 267-c.

§ 210-126. Variance criteria.

A.

Area variances. In making its determination whether to grant an area variance, the Zoning Board of Appeals 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 neighborhood or community by such grant. In making such determination, the Board shall also consider:

(1)

Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

(2)

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

(3)

Whether the requested area variance is substantial.

(4)

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

(5)

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

B.

Use variances.

(1)

No such use variance shall be granted by the Zoning Board of Appeals 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 Zoning Board of Appeals that for each and every permitted use under this chapter for the particular district where the property is located:

(a)

The applicant cannot realize a reasonable return, provided that the 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 neighborhood; and

(d)

That the alleged hardship has not been self-created.

(2)

The Zoning Board of Appeals, in the granting of use variances, 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 neighborhood and the health, safety and welfare of the community.

§ 210-127. Expiration upon failure to act.

Unless otherwise specified or extended by the Zoning Board of Appeals, a decision on any request for a variance shall expire if the applicant fails to undertake the proposed action or project, to obtain any necessary building permit to construct any proposed new building(s) or change any existing building(s), or to comply with the conditions of said authorization within one year from the filing date of such decision thereof.

Article XVI. Amendments

§ 210-128. Purpose.

The purpose of this article is to allow for amendments to this chapter, whenever the public necessity and convenience and the general welfare require such amendment, by following the procedures of this article.

§ 210-129. Referrals.

The Town Clerk shall submit a copy of the proposed amendment to the Planning Board and, where required by § 239-m of the General Municipal Law, to the Saratoga County Planning Board for review and comment.

§ 210-130. Public hearings.

The procedure as to notice of public hearing, public hearing on and enactment of a proposed amendment shall follow and be governed by § 265 of the Town Law and § 239-m of the General Municipal Law, including all subsequent amendments thereto.

§ 210-131. Records of amendments.

The Code Enforcement Officer and the Town Clerk shall each maintain records of amendments to the text of this chapter and of the Official Zoning Map and Park Plan Map.

§ 210-132. Notice of amendments.

Copies of amendments shall be provided to the Planning Board and Zoning Board members and Town departments affected by the amendments. Amendments shall be published in the newspaper of record within five days of approval of any amendments.

Article XVII. Administration

§ 210-133. Code Enforcement Officer.

The Code Enforcement Officer shall have the power and duty to administer and enforce the provisions of this chapter. The Code Enforcement Officer shall be appointed and may be removed at the pleasure of the Town Board. An appeal from an action, omission, decision or rule by him regarding a requirement of this chapter may be made only to the Zoning Board of Appeals within 60 days of such decision or action.

§ 210-134. Required records.

The original or a certified copy of all decisions, approvals, rulings and findings of any Board under this chapter, and of all permits and certificates issued under this chapter, shall be promptly furnished by the Code Enforcement Officer to the Town Clerk and retained as a permanent Town public record. Tape recordings of any Board proceedings shall be kept by the Town Clerk for a period of not less than three years from the date of such meeting.

§ 210-135. Appeals.

An action, decision or ruling of the Planning Board or Zoning Board of Appeals pursuant to this chapter may be reviewed at the instance of any aggrieved person in accordance with Article 78 of the Civil Practice Law and Rules, but application for such review must be made not later than 30 days from the effective date of the decision or ruling or the date when the action or omission occurred, whichever comes later.

§ 210-136. Petition, application and appeal forms.

Unless otherwise stated, all petitions, applications and appeals provided for in this chapter shall be made on forms prescribed by the Planning Board or Zoning Board of Appeals. Completed forms shall be accompanied by whatever further information, plans or specifications may be required by such forms.

§ 210-137. Fees.

A.
Fees provided for by this chapter shall be paid upon the submission of petitions, applications and appeals, in such amount or amounts as shall be established by the Town Board from time to time. Said fees will be posted in the Building Department on the Official Schedule of Fees for the Town of Stillwater. The following actions will require fees, and this list is not necessarily all-inclusive:

(1)

Building permit.

(2)

Certificate of occupancy.

(3)

Site plan review.

(4)

Special use permit.

(5)

PUD application.

(6)

Zoning variance application.

(7)

Sign permit.

B.

Payment of fees.

(1)

All fees shall be paid, at the time of application, to a representative or department designated by the Town Board.

(2)

No fee shall be allowed to be substituted for any other required fee.

§ 210-138. Notice of public hearing.

Each notice of hearing upon an application for site plan or special use permit review or for PDD districting or for the review of a variance application, or upon an appeal to the Zoning Board of Appeals from an action of the Code Enforcement Officer, shall be published once in the official newspaper of the Town at least five days prior to the date of the hearing. In addition, at least five days prior to the date of the hearing, notices shall be mailed or hand delivered, at the discretion of the Code Enforcement Officer, to all owners of the property within 500 feet of the exterior boundary of the property for which the application is made, as may be determined by the latest assessment records of the Town.

§ 210-139. Zoning permits.

A.

Permit required. No building, structure or sign shall be erected, added to or structurally altered until a permit therefor has been issued by the Code Enforcement Officer. No new use of a building or structure shall be undertaken, nor shall the use of a building or structure be changed, until a permit therefor has been issued by the Code Enforcement Officer.

B.

Submittal requirements. Separate applications for zoning permits shall not be necessary if a building permit is applied for. The Code Enforcement Officer shall review the Building Department applications for purposes of Zoning Law compliance and shall issue permits by indicating review and compliance or noncompliance with the Zoning Law thereon. In the event that a building permit is not needed, the forms for use of the Code Enforcement Officer shall be approved by Town Board resolution.

§ 210-140. Criteria for issuance of zoning permits; expiration.

A.

Criteria for issuance of zoning permit. The Code Enforcement Officer shall issue a zoning permit only if he determines the following:

(1)

The new land use or development complies with any applicable sanitary codes.

(2)

The new land use or development meets the area, setback from property lines, bulk and height controls and the special shoreline restrictions of this chapter, unless an area variance has been granted pursuant to Article XV hereof.

(3).

The new land use or development has received site plan or special use permit approval, if applicable; and, if such approval is subject to conditions to be met prior to the granting of a permit, that all such conditions have been met.

(4).

If it is a nonpermissible use, a use variance has been granted pursuant to the terms of Article XV hereof; and, if such grant was subject to conditions to be met prior to the granting of a permit, all such conditions have been met.

(5).

If it is a sign, such sign complies with the provisions of Article XI, Signs.

(6).

If it is a home occupation, it complies with the provisions of § 210-95.

B.

Expiration of zoning permits. If a project for which a permit has been issued is not under construction within 270 days after the issuance of such permit, said permit shall expire, and the project may not thereafter be undertaken or continued unless said permit has been renewed for 180 days (allowed once) or unless a new permit has been applied for and issued in the same manner and subject to all provisions governing the initial application for the issuance of a permit.

C.

Change in use. When a structure, building or parcel changes in use, the owner shall be responsible for applying for a new zoning permit. The Code Enforcement Officer shall review any change in use to ensure that the requirements of this chapter are met. See Article IX for provisions affecting the parking requirements for changes in use.

§ 210-141. Site inspections.

The filing of an application for a variance under Article XV hereof and an application for site plan or special use permit approval under Articles VI and VII hereof or an application for a building permit under Article XVII hereof by a person shall be deemed a granting of approval by such person to the Planning Board, the Zoning Board of Appeals and the Code Enforcement Officer, and to such persons as they may designate, to conduct such examinations, tests and other inspections of the sites which are the subjects of such applications as the body or officer having jurisdiction deems necessary and appropriate for the purposes of this chapter.

Article XVIII. Review and Enforcement Procedures

§ 210-142. General procedures.

A.

Rules, regulations and forms. The Zoning Board of Appeals shall have the authority to adopt and promulgate such written rules, regulations and forms as it deems necessary for the proper administration of this chapter. Such rules, regulations and forms shall not be in conflict with the provisions of this chapter or any other local law or ordinance of the Town of Stillwater, nor shall they have the effect of waiving any provisions of this chapter or ordinance of the Town of Stillwater. Such rules, regulations and forms shall be filed with the Town Clerk and available as public records.

B.

Right to inspect. The Code Enforcement Officer shall have the right to enter upon, examine and inspect, or cause to be entered upon, examined, and inspected, any building or property for the purpose of carrying out the provisions of this chapter. The Code Enforcement Officer shall give reasonable written notice to the owner of his intent to examine or inspect any building or property and shall enter only with permission of the owner. If such permission is denied, the Code Enforcement Officer shall refer the matter to the Town Attorney for appropriate legal action to gain entry for the purposes of examination and inspection of the building or property in question.

C.

Notice of violations. Whenever, in the opinion of the Code Enforcement Officer, after proper examination and inspection, there appears to exist a violation of any provision of this chapter, or any rule or regulation adopted pursuant thereto, the Code Enforcement Officer shall serve a written notice of violation upon the owner or occupant of the premises.

(1)

Notice of violation. The notice of violation shall inform the recipient of:

(a)

The nature and details of such violation.

(b)

The remedial action which will effect compliance with provisions of this chapter and with rules and regulations adopted pursuant thereto.

(c)

The date of compliance by which the violation must be remedied or removed.

(d)

The right to request a hearing before the Zoning Board of Appeals.

(2)

Extension. The Code Enforcement Officer may extend the date of compliance in a notice of violation after written application if, in the officer's opinion, there is reasonable evidence of intent to comply and that reasonable conditions exist which prevent compliance by the specified date.

(3)

Request for hearing. Any person served with a notice of violation who denies the violation or is allegedly aggrieved by the required action necessary for compliance may, within 10 days after service of notice, make a request, in writing, for a hearing before the Zoning Board of Appeals, stating the reasons why such a hearing is requested.

(4)

Abeyance. Compliance with a notice of violation shall not be required while a hearing is pending.

§ 210-143. Hearing procedures.

A.

Hearing. Within 10 days after receipt of a request for a hearing, the Zoning Board of Appeals shall acknowledge receipt, in writing, and set a time and place for such hearing, not later than 30 days after date request was received. Hearings may be postponed beyond 30 days by the Zoning Board of Appeals for just cause, and notice of postponement shall be served. The person requesting the hearing shall be required to show cause or give evidence why he should not be required to remedy

the violation or why he is unable to comply with the remedial action outlined in the notice of violation. The Zoning Board of Appeals may take testimony and waive the formal rules of evidence.

B.

Findings. After consideration of all testimony given at the hearing held in accordance with this section, the Zoning Board of Appeals shall sustain, withdraw, or modify the notice of violation as originally served. If such notice is sustained or modified, the Zoning Board of Appeals shall set a new compliance date by which the violation shall be remedied or removed in accordance with the original notice of violation or modified remedial action specified at the hearing.

C.

Certificate of zoning compliance. On reinspection following the expiration of the date of compliance as specified for remedial action and there is no longer a violation of any provision of this chapter, then a certificate of zoning compliance shall be issued by the Code Enforcement Officer.

§ 210-144. Enforcement procedures; penalties for offenses.

A.

Action for noncompliance. On reinspection following the expiration of the date of compliance as specified in the notice of violation, or as extended in accordance with this section, if the remedial action specified has not been carried out and there is still in existence, in the opinion of the Code Enforcement Officer, a violation of a provision of this chapter, then the Code Enforcement Officer may undertake, or request the services of the Town Attorney to undertake, legal remedies as authorized by any local law, ordinance or State law, or as recognized by the courts.

B.

Appearance ticket. The Code Enforcement Officer, or any official of the Town authorized or deputized to enforce the New York State Uniform Fire Protection and Building Code within the Town of Stillwater, or the Town of Stillwater Emergency Management Director, acting pursuant to the Town of Stillwater Emergency Management Plan, may issue appearance tickets, answerable in the Town of Stillwater Justice Court, for any violation of this chapter. Appearance tickets may seek to restrain, prevent, enjoin, abate, remedy, or remove such violation and to take whatever other legal action is necessary to compel compliance with this chapter.

C.

Accelerated legal proceedings. Notwithstanding the review procedures provided for herein, where the Code Enforcement Officer, with the concurrence of the Town Board, deems any action, intended action or condition to be an imminent threat to the general health, safety or welfare, the Town Attorney may institute appropriate legal action or proceedings to prevent, restrain or abate such action, intended action or condition.

D.

Penalties. Any person owning, controlling or managing any building, structure, land or premises wherein or whereon there shall be placed on or there exists or is practiced or maintained anything or any use in violation of any of the provisions of this chapter shall be guilty of an offense and subject to fines or imprisonment as follows: for the first offense, a fine not exceeding \$250 or six months' imprisonment, or both; for the second offense if within five years of the first offense, a fine not less than \$250 nor more than \$700 or up to six months' imprisonment, or both; for the third offense or subsequent offense if within five years of the first and second offenses, a fine not less than \$700 nor more than \$1,000 dollars or up to six months' imprisonment, or both. In addition to the foregoing, each such violation shall be subject to a civil penalty not exceeding \$250 for each offense, to be

recovered in an action or proceeding brought by the Attorney for the Town in a court of competent jurisdiction. Every such person shall be deemed guilty of a separate offense for each week that such violation, disobedience, omission, neglect or refusal shall continue. Where the person committing such violation is a partnership, association or corporation, the principal executive officer, partner, agent or manager may be considered to be the "person" for the purpose of this article.

§ 210-145. Stop-work orders.

A.

The Town Board for the Town of Stillwater herein grants the Code Enforcement Officer the administrative responsibility of immediately terminating any actions according to § **210-143** by posting a stop-work order on the premises wherein the violation has occurred.

B.

The stop-work order shall serve notice to the owner, builder, developer, agent and/or any other individual or business on the premises that all such actions specified on the stop-work order must be terminated immediately.

C.

Relief from the stop-work order can be realized as follows:

(1)

If all provisions of this chapter, together with other conditions specified by the Code Enforcement Officer, are met, then the Town Board may authorize the termination of the stop-work order.

(2)

Except for cases involving site plan review, if a variance is granted by the Zoning Board of Appeals permitting the violations specified on the stop-work order to continue henceforth as allowable, said administrative decision shall also specify the conditions for the termination of the stop-work order.

§ 210-146. Misrepresentation.

Any permit or approval granted under this chapter that is based upon or is granted in reliance upon any material misrepresentation, or failure to make a material fact or circumstance known, by or on behalf of an applicant shall be void. This section shall not be construed to affect the remedies available to the Town under §§ **210-142** and **210-143** above.

§ 210-147. Complaints.

Whenever a violation of this chapter occurs, any person may file a complaint in regard thereto. All such complaints shall be filed with the Code Enforcement Officer, who may require such complaint to be in writing. The Code Enforcement Officer shall have the complaint properly investigated and report thereon to the governing body.

Article XIX. Repealer

§ 210-148. Repeal of former provisions.

The Town of Stillwater Zoning Ordinance adopted April 1974, as subsequently revised, is hereby repealed. The Town of Stillwater Ordinance Licensing and Regulating Dealers in Secondhand, Junk and Auto Parts Activities and Businesses adopted in 1965 is hereby repealed.

Article XX. Cluster and Conservation Subdivision

Commented [KE84]: New Article incorporating some of the former Article V. Clustering provisions.

§ 210-149. Purpose.

The purpose of this section is to encourage in select locations the use of cluster and conservation development design principles to preserve open space and viable agricultural lands. Cluster and conservation subdivision are intended to protect the Town's natural environment, provide for a balance between developed and undeveloped land, protect air quality, provide adequate open areas for recreation and conservation, and protect the community and the historic and visual character of Stillwater and Saratoga National Historical Park. Cluster and conservation subdivision development will preserve tracts of agriculturally, environmentally, scenically and recreationally significant undeveloped land and preserve contiguous open spaces and important scenic and environmental resources.

§ 210-150. Applicability.

The applicant is encouraged to consider the use of this procedure for minor and major subdivisions of property within the T2 Rural Conservation Transect Zone pursuant to Chapter 176, Subdivision of Lands. In all other districts, this procedure may be considered for minor and major subdivisions. Special consideration should be given to subdivisions within the Saratoga National Historical Park Viewshed Protection area (see Chapter 210, Section 166, Development Regulations).

§ 210-151. Standards for Cluster and Conservation Subdivision.

A.

Density calculation.

(1)

In determining, the amount of land which can be used to achieve a development plan, undeveloped land must first be subtracted. The number of units permitted on a lot is calculated following the steps below:

- (a) Determine the acreage of unconstrained land on the lot. Unconstrained land is the total acreage of the proposed subdivision parcel excluding constrained land.
- (b) Determine the number of permitted residential units on the lot. Multiply the acres of unconstrained land by the district's base, as set forth in the Summary of Dimensional Area Requirements included in Chapter 210 Attachment 1 Appendix A, Schedule of

Regulations. Round down fractional units of 0.5 or less and round up fractional units greater than 0.5. The resulting number is the base residential density.

B.

Density Bonus. Reserved.

§ 210-152. Constrained Land Analysis.

A.

The following resources must be mapped and illustrated for calculating the acreage of constrained land and cluster and conservation subdivision density calculation.

(1)

All contiguous land owned or under option by the owner and/or applicant.

(2)

Slopes in excess of 20%. Contour lines shall be a minimum of two-foot intervals to United States Geological Survey datum within the parcel.

(3)

Lakes, ponds, and wetlands. These shall include field delineation and survey of both NYS Department of Environmental Conservation freshwater wetlands and their associated one-hundred-foot adjacent areas, and federal jurisdictional wetlands as regulated by the U.S. Army Corps of Engineers, as well as non-regulated wetlands.

(4)

Streams (regulated and unregulated) including a 50-foot buffer from mean high water mark of streams. These shall include but are not limited to watercourses, streams and other drainage corridors as classified pursuant to the New York State Department of Environmental Conservation Stream Classification System.

B.

The combined area of these resources in 210-152-4.A(2) through (4) shall constitute the total constrained land area.

§ 210-153. Conservation Resource Mapping.

A.

As part of the cluster and conservation subdivision review, an applicant shall prepare a conservation resource map, consisting of constrained lands as noted above as well as the following:

(1)

Vegetative cover conditions on the property according to general cover type, including cultivated land, permanent grassland, old field, hedgerow, significant forest areas, woodlands, wetlands, isolated trees or small groups of trees with a caliper in excess of 12 inches, and the actual canopy line of existing trees and woodlands. Vegetative types shall be described by plant community, age and condition.

(2)

Active farmland within a New York State certified agricultural district in Saratoga County, lands within 500 feet of a New York State certified agricultural district, or soils classified as soils of statewide significance and prime farm soils as mapped by the U.S. Department of Agriculture, Natural Resources Conservation Service in the Saratoga County Soil Survey.

(3)

Flood hazard areas [from a Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map], or site-specific flood elevation determination data if none is available otherwise through FEMA.

(4)

Ridgelines, hills, and geologic formations, including but not limited to rock outcrops and other important land features based on available published information or more detailed data obtained by the applicant

(6)

Designated Critical Environmental Areas, and other important unique environmental areas.

(7)

Habitat areas of rare, threatened, or endangered species and significant natural communities or other ecological resource value.

(8)

As located on the site, the location and dimensions of all existing utilities and utility rights-of-way, existing streets, paved and unpaved roads and paths, buildings, agricultural barns, silos and any other agricultural structures, remains of buildings and structures, stonewalls, fences, and other man-made improvements.

(9)

Land exhibiting present or potential historic, archeological, or other cultural resource values.

Locations of all historically significant sites or structures on the site and on any abutting site within 500 feet of the site's property boundary, including but not limited to those sites and parcels identified as locally important historic resources according to the New York State Office of Parks, Recreation and Historic Resources, State Historic Preservation Office, that tracks sites, buildings and parcels identified with the state register or the federal register historic designation.

(10)

Existing and potential trails, bikeways and pedestrian trails that are in public use or are proposed conceptually by the Town of Stillwater, Saratoga County, or New York State.

(11)

Lakes, ponds, active public parks, Town park district lands, or other Town, county, and state recreational areas, or opportunities or sites.

(12)

All other boundaries of environmental or other areas to be left undisturbed for buffering or screening and/or protected through deed restrictions, conservation easements or other agreements and encumbrances of property which are or have been filed of record with the Saratoga County Clerk's office shall be shown on the plan.

§ 210-154.Cluster and Conservation Design Layout

A.

Once the conservation resource map has been prepared and reviewed with the Planning Board, the applicant may develop concepts for prioritizing which of the existing resources should be conserved and for what proposed future conservation use. Only after this step has been taken may the concepts for development be factored into the site layout.

B.

Below are the key conservation principles for the cluster and conservation subdivision site layout:

(1)

Conserve the scenic, rural landscape character: the unique setting of this parcel as it contributes to the unique setting of Stillwater, Saratoga National Historical Park, and the Hudson River waterfront.

(2)

Conduct creative site planning that maintains residential and pastures and rural character allowing for direct visual access to open land, woodlots, farms, scenic views, etc.

(3)

Protect farms and agricultural lands and uses; protect the core agricultural areas of Western Stillwater; protect prime farm soils; consistent with the Saratoga County Green Infrastructure Plan.

(4)

Permanent protection of larger contiguous areas of significant open space resources which are visible to the general public, including farmlands, woodlands, and other ecological and natural wildlife habitats and corridors.

(5)

Buffer and protect existing protected open space resources: design that respects and buffers existing term conservation easements, permanent conservation easements and other permanently protected lands and resources.

(6)

Conserve and protect the Town-identified open space, natural and cultural resources that are priorities for future conservation, as may be identified in the Saratoga County Green Infrastructure Plan and/or the Town of Stillwater Farmland and Open Space Protection Plan.

(7)

Conserve and design with respect to the existing settlement patterns, existing neighborhoods and existing residences; buffer existing residences and public views from new development.

(8)

Preserve natural water features and watersheds and provide for connected water habitats.

(9)

Protect natural landforms and conserve open lands habitat.

(10)

Conserve woodland areas and connected woodlands habitats.

(11)

Support the restoration and adaptive reuse of previously developed landscapes, including the adaptive reuse of farm structures that preserves the agricultural setting and uses such as the farmstead and barns and surrounding fields.

(12)

Connect people to the special resources; provide trail connections within neighborhoods and link to regional paths.

(13)

Protect dark, nighttime skies for the whole community.

C.

Once the conservation lands have been identified and prioritized by the Planning Board, the applicant shall prepare a design layout for areas of development. In addition to conservation resources, the Planning Board and the Applicant shall take into careful consideration buffering between existing adjoining residential housing. This may include the establishment of a no cut or planted buffer zone between existing and proposed developments.

D.

Lots, site access, streets, and roads shall be arranged in a manner that protects land identified by the conservation resource map (Section 210-153). Permitted building locations or areas ("building envelopes") shall be shown on the final subdivision plan.

E.

The proposed cluster and conservation subdivision design layout must follow applicable subdivision regulations as outlined in Chapter 176 of the Town Code, Subdivision of Land, regarding the submission, timing, review process, and other applicable requirements. This step involves

formalizing the lot lines and the preparation of a plan meeting requirements for the preliminary submission and layout review pursuant to Chapter 176 of the Town Code.

Pre-Development Example



Traditional Development Example



Cluster and Conservation Subdivision Example. This image illustrates how clustering or distributing home sites where appropriate can preserve agricultural, cultural, and open space resources.



§ 210-155.Lot sizes in Cluster and Conservation Subdivisions.

A.

After the final residential density is determined, there shall be a minimum lot size of 20,000 sq. ft. in a cluster or conservation subdivision. The Planning Board shall determine appropriate lot sizes during its review. When determining appropriate lot sizes, the Planning Board shall consider required utility separations, including on lot wastewater treatment and water wells.

§ 210-156.Other area and dimensional requirements.

A.

The applicant shall specify dimensional requirements for a proposed cluster or conservation subdivision by identifying setbacks and other lot dimensions to be incorporated into the final subdivision plan, subject to review and approval by the Planning Board.

§ 210-157.Special standards for areas within the Saratoga National Historic Park viewshed.

A.

As specified in Section 210-66.S, projects within the Saratoga National Historic Park viewshed are subject to additional visual impact analysis. When reviewing projects, the Planning Board shall include this additional analysis and refer to recommendations described in the Battles of Saratoga Preservation and Viewshed Protection Plan dated December 2007.

§ 210-158.Road standards.

Notwithstanding any other road construction requirements promulgated by the Town of Stillwater, the highway design standards within cluster and conservation subdivisions may be modified at the discretion of the Planning Board and with approval of the Superintendent of Highways and in consultation with the Arvin Hart Fire Company.

§ 210-159.Permanent open space.

Open space set aside in a cluster and conservation subdivision shall be permanently preserved. The open space protected pursuant to this article must have conservation value, which shall be determined in the course of the constrained land analysis and conservation resource mapping described above.

§ 210-160. Preservation by permanent easement or deed restriction.

A.

Where acceptable to the Town, a perpetual easement restricting development of the open space land and allowing use only for agriculture, forestry, passive recreation, protection of natural resources or similar conservation purposes shall be granted to the Town, with the approval of the Town Board, and/or to a qualified not-for-profit conservation organization acceptable to the Planning Board. Such easement shall be approved by the Planning Board and required as a condition of final approval. The Planning Board shall require that the easement be enforceable by the Town if the Town is not the holder of the easement. The easement shall be recorded in the County Clerk's Office.

B.

Where a perpetual easement is not acceptable to the Town, deed restrictions restricting development of the open space land and allowing use only for agriculture, forestry, passive recreation, protection of natural resources or similar conservation purposes will be required as a condition of final approval. All deeds containing such restrictions shall be recorded in the County Clerk's Office.

C.

The easement or restriction shall prohibit residential, industrial or commercial use of open space land (except in connection with agriculture, forestry, and passive recreation) and shall not be amendable to permit such use. Driveways, local utility distribution lines, stormwater management facilities, trails and agricultural structures shall be permitted on nonresidential lots with Planning Board approval, provided that they do not impair constrained lands or conservation resources. Forestry shall be conducted in conformity with applicable best management practices as described by the New York State Department of Environmental Conservation's Division of Lands and Forests.

D.

A land management plan, approved by the Planning Board, may be required. The easement or restriction shall provide that if the Town Board finds that the management plan has been violated in a manner that renders the condition of the land a public nuisance, the Town may, upon 30 days' written notice to the owner, enter the premises for necessary maintenance and that the cost of such maintenance by the Town shall be assessed against the landowner or, in the case of a homeowners' association (HOA), the owners of properties within the development and shall, if unpaid, become a tax lien on such property or properties.

E.
Preserved open space may be included as a portion of one or more large lots or may be contained in a separate open space lot. ▼

Deleted: The easement or restriction may allow dwellings to be constructed on portions of lots that include preserved open space land, provided that the total number of dwellings permitted by the easement or restriction in the entire subdivision is consistent with applicable density limitations.

§ 210-161. Ownership of open space land.

A.
Open space land may be owned by an HOA, offered for dedication to Town, county or state governments, or transferred to a not-for-profit organization acceptable to the Planning Board, to properly manage the open space land and to protect its conservation value.

B.
If the land is owned by an HOA, such HOA shall be established in accordance with the following:

(1)
The HOA application must be submitted to the New York State Attorney General's Office before the approved subdivision final plan is signed and must comply with all applicable provisions of New York State law. The HOA must be approved by the New York State Attorney General's Office prior to issuance of the first building permit.

(2)
Membership must be mandatory for each lot owner, who must be required by recorded covenants and restrictions to pay fees to the HOA for taxes, insurance, and maintenance of common open space, private roads, and other common facilities.

(3)
The HOA must be responsible for liability insurance and property taxes for common lands, and the maintenance of recreational facilities, private roads, driveways and parking areas, and other common facilities.

(4)
Property owners must be required to pay their prorated share of the costs, and the assessment levied by the HOA must be able to become a lien on the individual homeowners' properties.

(5)
The HOA must be able to adjust the assessment to meet changed needs.

(6)
The applicant shall make a conditional offer of dedication to the Town binding upon the HOA for all open space intended to be conveyed to the HOA. The filing in the County Clerk's Office of a subdivision map depicting such open space shall be considered an offer of dedication. Such offer may be accepted by the Town, at the discretion of the Town Board, upon the failure of the HOA to take title to the open space from the applicant or other current owner, upon dissolution of the association at any future time or upon failure of the HOA to fulfill its maintenance obligations hereunder or to pay its real property taxes.

(7)
Ownership shall be structured in such a manner that real property taxing authorities can satisfy property tax claims against the open space lands by proceeding against individual owners in the HOA and the dwelling units each owns.

(8)
The Town Attorney's Office shall find that the HOA documents presented satisfy the conditions above and such other conditions as the Planning Board shall deem necessary.

§ 210-162. Cluster and Conservation Subdivision procedure.

The cluster and conservation subdivision shall follow the subdivision process contained in Chapter 176, subject to the additional provisions contained herein.

Article XXI. Route 4 Corridor Form-Based Code

Commented [KE85]: New Article

§ 210-163 - 166.

To be inserted in the final document following review of provisions (see attached document).