

**CONSOLIDATED TOWN-VILLAGE OF TUXEDO (“TOWN OF TUXEDO”)**

**CHAPTER 98: ZONING LOCAL LAW**

**Adopted December 13, 2021**

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**Attachments**

**Table I – General Use and Bulk Requirements**

**Consolidated Town-Village of Tuxedo ("Town of Tuxedo") Zoning Map**

## ARTICLE I. TITLE AND PURPOSES

### § 98-1. Title.

This local law shall be known and may be cited as the "Zoning Chapter of the Consolidated Town-Village of Tuxedo ("Town of Tuxedo"), New York", and is also referred to herein as the "Zoning Chapter".

### § 98-2. Purposes.

There is hereby established a set of comprehensive zoning regulations for the Town of Tuxedo, which regulations are set forth in the text and map that constitute this Zoning Chapter. These regulations are adopted for the enumerated purposes set forth in Article 16 of the New York State Town Law, which, in the interest of the protection and promotion of the public health, safety and welfare, shall be deemed to specifically include the following purposes, among others:

- A. To implement the Town of Tuxedo Comprehensive Plan,
- B. To guide and control growth in an orderly and efficient manner consistent with the ability of the Town to provide services and facilities necessary to accommodate residential and nonresidential uses allowed by these regulations.
- C. To facilitate the efficient and adequate provision of community facilities and services and ensure that the Town's current and future needs, including but not limited to emergency service protection, recreational, and educational facilities, are considered and addressed during review of development applications. This purpose includes directing community benefit facility uses to residential zones or open space zones where they may better serve the public.
- D. To protect properties and residents from nuisances such as noxious odors, noise, light, air and water pollution.
- E. To protect the Town's sensitive environmental features, including but not limited to steeply sloping topography, wetlands, streams, ponds, lakes and other surface water features, and the 100-year floodplain, from disturbances which would have a significant negative impact on the Town's population and environs.
- F. To protect the Ramapo River, Indian Kill Reservoir, Tuxedo Lake and other surface and groundwater resources within the Town that are used as drinking water supplies by ensuring that appropriate design measures are integrated into development decisions to mitigate against pollution and contamination.
- G. To protect the Town's historic structures, features, and character.
- H. To protect the Town's scenic qualities and promote architecturally and visually attractive development.
- I. To promote the Tuxedo hamlet as the Town's center for governmental, civic and commercial activities.

- J. To promote the revitalization and improvement of the Southfields hamlet.
- K. To promote and encourage economic development, including establishment of new nonresidential uses, and re-use of existing vacant and underutilized nonresidential buildings, in locations consistent with this Zoning Chapter. To also protect non-residential zone usage by directing community benefit facility uses to residential or open space zones where they may better serve the public.
- L. To ensure that development is served by adequate transportation facilities in order to prevent and reduce traffic congestion, and to encourage a circulation system that promotes pedestrian and bicycle use.
- M. To eliminate nonconforming uses.

## ARTICLE II. DEFINITIONS

### § 98-3. Word usage.

Words used in the present tense include the future; the singular number includes the plural and the plural, the singular; the word "person" includes a corporation as well as an individual; the word "lot" includes the word "plot." The term "occupied" or "used," as applied to any building, shall be construed as though followed by the words "or intended, arranged or designed to be occupied or used."

### § 98-4. Definitions.

A. Definitions. Unless otherwise expressly stated, the following terms shall, for the purposes of this Zoning Chapter, have the meanings herein indicated:

**ACCESSORY USE OR STRUCTURE/ CUSTOMARILY INCIDENTAL ACCESSORY USE OR STRUCTURE** - A use or structure that is subordinate to the principal use on the same lot and serving a purpose typically incidental and well established to the principal use. In order for a use or structure to be deemed an accessory use/customary incidental accessory use, it must be: (a) subordinate to the principal use on the same lot, (b) serving a purpose that is typically incidental and well established to the principal use, and (c) unity of ownership between the principal and accessory uses. In no case shall such accessory use dominate in land area, extent, surface area, gross floor area or purpose to the principal use but be minor in its association with the principal/primary use. Examples of customary residential accessory uses and structures are decks, satellite dish antennas, outdoor fireplaces, patios, garages, carports, domestic gardens, and sheds. Examples of customary commercial accessory uses and structures include parking, loading docks and areas, signs, and the like. Accessory parking only is permitted to exceed in size, the size of the principal use, and be deemed accessory.

**ACRE** - An area equivalent to 43,560 square feet.

**ADEQUATE COVERAGE** - For purposes of regulating wireless communication facilities, coverage is considered to be adequate within the service area of the Town of Tuxedo if the minimum standards set forth by the Federal Communications Commission to permit an applicant to operate a personal wireless communication services are met.

**ADULT DAY CARE** – A facility with a required number of medical professionals providing care for individuals with physical or mental impairments, in accordance with a strict staff/patient ratio, for more than five hours a day but less than 24 hours a day. Centers may be run by an individual, association, corporation, or institution licensed by the New York State Department of Social Services pursuant to 10 NYCRR 425.

**ADULT ENTERTAINMENT BUSINESSES** - Includes adult book stores, adult video stores, adult motion-picture theaters, adult mini-motion-picture theaters, adult cabarets, and adult drive-in theaters, which shall be defined as follows:

- (1) **ADULT BOOK STORE** - An establishment having a substantial or significant portion of its stock-in-trade books, magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specific sexual activities or specific

anatomical areas as defined herein.

- (2) **ADULT VIDEO STORE** - An establishment having as a substantial or significant portion of its stock-in-trade video films, videocassettes or other films for sale or rental which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specific sexual activities or specific anatomical areas as defined below.
- (3) **ADULT MOTION-PICTURE THEATER** - A building with a capacity of 50 persons or more used for presenting material distinguished or characterized by its emphasis on matter depicting, describing or relating to specific sexual activities or specific anatomical areas as defined below for the observation of patrons therein.
- (4) **ADULT MINI-MOTION PICTURE THEATER** - An enclosed building with a capacity of less than 50 used for presenting material distinguished or characterized by its emphasis on matter depicting, describing or relating to specific sexual activities or specific anatomical areas as defined below for the observation of patrons therein.
- (5) **ADULT CABARET** - An establishment which features live go-go dancers, exotic dancers, strippers, male or female, male or female impersonators or similar entertainers whose performances are characterized by partial or full nudity.
- (6) **ADULT DRIVE-IN THEATER** - A drive-in theater utilized for the presentation of materials distinguished or characterized by their emphasis on matter depicting, describing or relating to specific sexual activities or specific anatomical areas as defined below for the observation of patrons therein.

**ADULT PHYSICAL CONTACT ESTABLISHMENT** - Any establishment which offers or purports to offer massage or other physical contact to patrons. Medical offices, offices of persons licensed or authorized under the Education Law to practice massage therapy, offices of persons licensed or otherwise authorized by the Education Law as physical therapists or physical therapist assistants and electrolysis, martial art studios and dance studios are not to be considered adult physical contact establishments.

**ADULT USE BUSINESS** - Any business which:

- (1) Is the use of land, structure or location for an adult entertainment business or as an adult physical contact establishment as herein defined; or
- (2) Is any use of land, structure or location which, by the provisions of the Penal Law, is required to restrict the access thereto by minors; or
- (3) Is an establishment, location, building or structure which features topless dancers, nude dancers or strippers, male or female; or
- (4) Is a location, building or structure used for presenting, lending or selling motion-picture films, videocassettes, cable television or any other such visual media, or used for presenting, lending or selling books, magazines, publications, photographs or any other written materials distinguished or characterized by an emphasis on matter depicting, describing or relating to specific sexual activities or specific anatomical areas as defined herein.



**AGGREGATE MATERIALS PROCESSING** – Any use involving the processing of stone, soil, wood, metal, or other raw materials through crushing, sifting, sorting, material screening, splitting, blasting or other means.

**AGRICULTURE** - Land and on-farm buildings, equipment, uses, activities, and practices which contribute to the production, preparation, and sale of crops, livestock and livestock products as a commercial enterprise. Horse boarding operations are deemed agricultural uses. The term “agriculture” specifically excludes slaughterhouses and concentrated animal feeding operations (e.g., factory farms for high-density animal production). Timber operations are not permitted as an agricultural use. The production of compost, soil or other biomass products is not an agricultural use but is allowed solely where it is accessory to and a product of the operation of an agricultural use. The clearing of land for an agricultural use is permissible, provided an applicant has first obtained a clearing, filling and grading permit specifically for said purposes and any other permits and approvals from applicable agencies.

**AGRICULTURAL-RELATED INDUSTRY** - A use involved in the processing, warehousing, distribution, marketing and retailing of agricultural products and which is not otherwise defined in this Zoning chapter, including food preparation and packaging, farm equipment manufacturing and like industries. This definition shall not include slaughterhouses, animal rendering, high density animal farming, or vertical farming which demand high quantity of input such as water, or similar uses.

**AGRITOURISM USE** - Activities conducted in association with an agricultural use and offered to the public, including the sale of agricultural products, education, recreation or active involvement in the farm operation. An agritourism activity is secondary to the principal agriculture use. Agritourism activities may be conducted in an accessory building. Agritourism activities include, but are not limited to, “u-pick” operations.

**ALTERATION** - A change or rearrangement in the structural parts of a building including any enlargement.

**ALTERNATIVE WIRELESS TOWER STRUCTURE** – Wireless communication towers (as later defined in this section) that lessen the visual impact of such towers through the use of man-made trees, clock towers, bell steeples, light poles and similar alternative designs, including structures that camouflage or conceal the presence of antennae or towers. Structural designs intended to conceal antennae or towers is also referred to as “stealth” design.

**ANIMAL KENNEL** - Any building, structure or premises in which domesticated household pets, such as dogs and cats, are kept, boarded or trained.

**ANIMAL HOSPITAL** - An establishment accredited by the American Animal Hospital Association or similar national accreditation where animals are provided medical care by a NYS licensed veterinarian and where the boarding of animals is short-term and clearly incidental to its medical care.

**ANIMAL SANCTUARY** - Facilities and land used to house, protect and rehabilitate animal species. For purposes of this Zoning Chapter, permissible animals shall include those which are indigenous to the northeast, as well as any avian species, and those that do not to pose a health or safety concern to adjoining uses as may be determined by the Planning Board during review of an application. The animal sanctuary shall be accredited by the American Sanctuary Association.

**ANTENNA** - A system of electrical conductors that transmit or receive radio frequency waves. Such waves shall include but not be limited to radio navigation, radio, television, wireless and microwave communications.

**ANTIQUÉ SHOP** – A retail use involving the sale or trading of articles of which 80% or more are over 50 years old or have collectible value.

**APPLICANT** - A property owner, or a person authorized by the property owner to make an application, seeking a determination or decision from the Code Enforcement Officer, Planning Board, Town Board, ARB or Zoning Board of Appeals with regard to this Zoning Chapter.

**ARB** – Architectural Review Board of the Town of Tuxedo. In accordance with Article IV, the functions of the ARB are currently performed by the Planning Board.

**AREA VARIANCE** – The authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of this Zoning Chapter.

**ART GALLERY** – A retail use engaged in the sale, loan or display of art books, paintings, sculpture, or other works of art. This use does not include libraries and museums.

**AUTOMOTIVE GAS STATION** – A commercial use involving the sale of gasoline and any other motor vehicle fuel, oil and other lubricating substances, which may or may not include electric vehicle charging or the sale of minor motor vehicle accessories, and which may or may not include facilities for otherwise servicing motor vehicles, but not including the painting thereof by any means. This use also may include a convenience store for the sale of prepared foods, household goods and groceries.

**AUTOMOTIVE REPAIR FACILITY** – A commercial use wherein motor vehicles, including their mechanical systems and body structure, are repaired. This use also includes automotive painting conducted in conjunction with the repair work.

**BAR OR TAVERN** – A commercial use for the sale and consumption of alcoholic beverages primarily on site and for the purchase of prepared food such as sandwiches, soups, and similar items as an accessory use as may be required or permitted by applicable New York State licensing requirements.

**BASE ZONING DISTRICT** – A zoning district that establishes the regulations governing allowable land uses and bulk dimensional requirements for a specific geographic area of the Town of Tuxedo.

**BASEMENT** - The space of a building that is partly below grade which has more than half of its height measured from floor to ceiling above the average established curb level or finished grade of the ground adjoining the building.

**BED AND BREAKFAST** – Overnight accommodations in an owner-occupied single-family detached dwelling or on the same premises, involving the rental of guest sleeping rooms, with meal service served to guests but with no full-service restaurant facilities.

**BILLBOARD** - A sign which directs attention to a business, commodity, service, entertainment or

attraction sold, offered or existing elsewhere than upon the same lot where such sign is displayed or only incidentally upon such lot.

**BOARDER OR ROOMER, NONTRANSIENT** - A non-relative person that occupies a bedroom in a dwelling unit and who pays cash or offers a noncash service (e.g., the conducting of chores) as remuneration for occupying said room.

**BOARDING HOUSE** - An establishment containing sleeping rooms with or without kitchen facilities, together with bathrooms shared in common with other guests that are not a family and that are designed or intended to be occupied and rented.

**BUILDING** - Any combination of materials forming any construction, except where entirely underground so as to permit the use of the ground above same as if no building were present; the term "building" shall include the term "structure" as well as the following:

- (1) Fences.
- (2) Walls, other than retaining walls supporting a grade separation of four (4) feet or less.
- (3) Radio and television receiving and transmitting towers and antennae, except for such antennae installed on the roof of a "building" and extending not more than twenty (20) feet above the highest level of the roof of such "building."
- (4) Porches, outdoor bins and other similar roofed structures.

**BUILDING CONTRACTOR ESTABLISHMENT** - A facility or area of land for the storage of materials, equipment and/or commercial vehicles utilized by building and construction contractors, craftsmen and tradesmen, and may include offices related to such activities. Retail or wholesale trade of any contractor materials or supplies is not a permitted accessory use. Aggregate material processing of organic or inorganic materials including rock crushing, mulching, or soil screening is also not a permitted accessory use. The outdoor storage of materials and equipment shall require a special use permit from the Planning Board.

**BUILDING INSPECTOR** – The Code Enforcement Officer of the Town of Tuxedo.

**BUILDING LINE** - A line, parallel to the street line, that passes through the plane of the principal building nearest the front lot line.

**BUILDING, PRINCIPAL** - A building or buildings in which is conducted the principal use of the lot on which said building is located.

**BULK, NONCOMPLYING** - A use, building or structure which does not conform to the bulk requirements of this Zoning Chapter for the district in which it is situated.

**BUSINESS PARK** - An area of land in which office and other nonindustrial, commercial uses grouped together and constructed as part of a planned development sharing common utilities and roadways, and wherein said uses are designed in a park-like setting with common signage and architectural design. A business park may be in a single ownership but shall managed under unified control. The site may be

subdivided into individual parcels or may be maintained in single ownership, but it must be operated and managed under unified control. A Business Park allows nonindustrial, nonresidential uses that are otherwise allowed in the applicable zoning district. The uses in the business park shall otherwise meet any special use permit standards for individual uses.

**CARETAKER ACCESSORY DWELLING (COTTAGE)** - A dwelling occupied by a guard or caretaker who is responsible for managing or providing security to a residential or nonresidential use located on the same lot as such use. Only one accessory dwelling and only one caretaker, guard or watchman shall occupy the lot which they serve and the accessory dwelling shall comply with the bulk requirements applicable to the principal use and any specific bulk requirements established for this use.

**CAR WASH** - Mechanical facilities for the washing, waxing, and vacuuming of passenger vehicles, recreational vehicles, light duty trucks and vans, but not heavy-duty trucks or trailers.

**CELLAR** - That space of a building that is partially or entirely 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. A cellar shall not be considered in determining the permissible number of stories.

**CEMETERY** - Land and buildings, whether privately or publicly owned or operated, used for the disposal or burial of deceased human beings, by cremation or in a grave, mausoleum, vault, columbarium or other receptacle. Such term shall also include land and accessory buildings including but not limited to ground maintenance-related storage facilities, tools and equipment. A crematory is not deemed an accessory use or building to a cemetery.

**CENTRAL SEWER** — Facilities serving 10 or more dwellings on a lot or more than one lot with collection and treatment of wastewater prior to discharge to an approved disposal location or any centralized system requiring NYS Department of Health permits.

**CENTRAL WATER** - Facilities providing 10 or more dwellings on a lot or more than one lot with a common water supply or any centralized system requiring NYS Department of Health permits.

**CHAPTER 98** - The Zoning Chapter of the Town of Tuxedo.

**CHILD DAY CARE CENTER** - A program or facility caring for children for more than three (3) hours per day per child in which “child day care” is provided by a “child day care provider” except those programs operating as a “group family day care home”, a “family day care home”, and a “school-age child care program.” The quoted terms are as defined in Section 390 of the New York Social Services Law. A child day care center shall be registered or licensed with the New York State Office of Children and Family Services.

**CLEARCUTTING** - A method of harvesting where substantially all trees on a site are removed. This term shall include the topping of trees and tree cutting regardless of whether a tree stump and roots remain.

**CLEARING** – Any activity that removes the vegetative surface cover. This term shall include the topping of trees and tree cutting regardless of whether a tree stump and roots remain.

**CLUBHOUSE** – An accessory building or structure used as a private club or social organization center.

Examples include a golf clubhouse or a clubhouse for a homeowners' association within a multifamily residential development.

**CLUSTER DEVELOPMENT** - A subdivision plat or plats, approved pursuant to this Zoning Chapter, and consistent with the provisions of Section 278 of New York State Town Law, in which the Zoning Chapter is modified to provide an alternative permitted method for the layout, configuration and design of lots, buildings and structures, roads, utility lines and other infrastructure, parks and landscaping in order to preserve the natural and scenic qualities of open lands.

**CODE ENFORCEMENT OFFICER (CEO)** – An officer duly appointed by the Town Board, whose position is established by Chapter 37 of the Code of the Town of Tuxedo, NY, and responsible for the enforcement of the provisions of this Zoning Chapter. Also referred to herein as “CEO”.

**COMMERCIAL FORESTRY** - The cutting and removal (harvesting) of trees from a tract or tracts of land totaling twenty-five (25) or more acres in any one year pursuant a CFG permit, excluding, however, five (5) standard cords which may be cut annually by the owner for his own use. Selective cutting only is allowed. The clearing of lands for agricultural or building purposes or utility line rights-of-way shall be excluded from this definition.

**COMMERCIAL RECREATIONAL USE, INDOOR** - Recreational activities conducted entirely within a building, including team or individual sports and related health and exercise facilities operated on a commercial or fee basis. An indoor recreation use may include accessory uses, such as food service facilities, meeting rooms, video or computer game facilities, sales of sport- or exercise-related equipment or clothing, and other accessory uses clearly incidental to the recreational activity. Indoor commercial recreation uses include, but are not limited to: a gymnasium, fitness center, bowling alley, skating rink; tennis and other racquet courts, field house, indoor track, indoor basketball, indoor pool house, indoor shooting range.

**COMMERCIAL RECREATIONAL USE, OUTDOOR** - Recreational activities conducted outside of a building which include: ball fields for soccer, baseball, softball, and similar sports; tennis and racquet courts; swimming; non-motorized bike trails; hiking; miniature golf; and similar outdoor activities conducted on a commercial or fee basis. An outdoor recreational use may also include accessory uses and buildings, such as a clubhouse, food stand, offices, and other uses accessory and incidental to the outdoor commercial use. Outdoor recreation includes batting cages and driving ranges. Golf courses are regulated as a separate use.

**COMMERCIAL VEHICLE** - Any vehicle licensed and used in the operation or conduct of a business, whether or not said vehicle is situated on the lot on which said business operates.

**COMMON FACILITIES** - All areas of a property held in common ownership for common use. Common facilities may include but are not limited to: land on which common buildings are located; yards, gardens, recreational or community facilities, parking areas and storage spaces; all other parts of a development necessary or convenient to its existence, maintenance and safety, and in common use.

**COMPREHENSIVE PLAN** - The most recently adopted Town of Tuxedo Comprehensive Plan.

**CONFERENCE CENTER** - A building or buildings designed for conferences, seminars, meetings, and accessory uses used principally by conference center patrons, such as restaurants or recreation facilities.

**CONSERVATION EASEMENT** - An easement, covenant, restriction or other interest in real property which limits or restricts development, management or use of such real property for the purpose of preserving or maintaining the scenic, open, historic, archaeological, architectural, or natural condition, character, significance or amenities of the real property.

**CONVALESCENT HOME** – A type of medical care facility which may or may not be staffed by medical professionals providing short-term overnight care and recovery for persons after surgeries and illness. Also referred to an inpatient rehabilitation facilities or nursing facilities.

**CONVENIENCE STORE** – A retail business that may stock a variety of household and food items including groceries, alcoholic beverages such as beer, snacks, tobacco products, toiletries, magazines, newspapers, and sundries.

**COVERAGE, BUILDING** - The percentage of the area of a lot covered by all principal and accessory buildings.

**COVERAGE, DEVELOPMENT** - The percentage of the area of a lot covered by buildings, structures, parking areas, and other impervious surfaces on a lot.

**CRAFT WORKSHOP OR STUDIO** – A studio or other space used by an artist or artisan for the development, display, and sale of art or the instruction in a personal artistic skill such as fine arts, crafts, dance, martial arts, yoga, music, and similar uses.

**CULTURAL AND PERFORMING ARTS CENTER** - An indoor or outdoor facility for the live performance of dance, drama, music, or similar artistic performances, including but not limited to amphitheatres, pavilions, concert halls and other musical and performing arts performance areas together with administrative, food service, interpretive and learning centers and museums, parking, seating facilities together with various other accessory uses to accommodate performing arts patrons. Instructional courses in the performing arts are allowed accessory to an arts center. This definition does not include facilities principally used to display movies or other non-live performances. Nothing herein shall be construed to permit adult entertainment uses in conjunction with a cultural and performing arts center.

**CURB LEVEL** - The established elevation of the street grade at the point that is opposite the center of the wall nearest to and facing the street line.

**DAY SPA** - A commercial use where a combination of professionally administered personal care treatments such as massages, facials, body wraps, salt scrubs, and other body treatments are performed. Manicures, pedicures, and hair salon uses may also be conducted. The facility is only visited in connection with a treatment and only on a daily basis and the visitation does not involve an overnight stay or accommodation. If any such services are required to be licensed by the State of New York, then no such services may be conducted without a valid and current license.

**DEVELOPMENT COVERAGE** – See “Coverage, Development.”

**DIAMETER LIMIT CUTTING** – The practice of harvesting all of the trees on a parcel that are larger than a certain diameter.

**DRIVE-THROUGH** - An establishment with physical facilities, service or by packaging procedures, that allows customers to receive services and obtain goods while remaining in their motor vehicles. Where permitted, drive-through facilities are allowed accessory to a principal use only and shall require a special use permit.

**DRYCLEANING ESTABLISHMENT** - A commercial use for pick-up and delivery only of dry-cleaned garments or laundry. Tailoring services are allowed accessory to a dry-cleaning establishment.

**DUMP** - An area, lot or parcel where refuse is deposited, stored, or abandoned.

**DWELLINGS, MULTIFAMILY** - A building on a single lot consisting of three (3) or more dwelling units that share a common floor or ceiling.

**DWELLING, SINGLE-FAMILY ATTACHED** - A building containing three or more dwelling units in which each unit (1) extends from the foundation to the roof, (2) has open space on at least two sides, and (3) has a separate means of egress. Also commonly referred to as a "townhouse."

**DWELLING, SINGLE-FAMILY DETACHED** - A detached building on a single lot containing one dwelling unit only.

**DWELLING, SINGLE-FAMILY SEMI-ATTACHED** – A building consisting of two dwelling units, which do not share a common floor or ceiling but which share a party wall, each dwelling on its own individual lot.

**DWELLING, TWO-FAMILY** - A building on a single lot containing two dwelling units which share a common floor or ceiling.

**DWELLING UNIT** - A building or entirely self-contained portion thereof containing complete housekeeping facilities for one (1) family, having no enclosed space (other than vestibules, entrance or other hallways or porches) or cooking or sanitary facilities in common with any other dwelling unit. A house trailer, boarding house, convalescent home, fraternity or sorority house, hotel, lodging such as hotels, nursing or other similar home or other similar structure shall not be construed to be a dwelling unit.

**ENTERTAINMENT PRODUCTION STUDIO** – A facility in which activities studio associated within the development and production of sound, film, video and similar media take place. Nothing herein shall be construed to permit an adult use business in connection with an entertainment production studio.

**EXTERIOR ARCHITECTURAL FEATURE** - The architectural style and general arrangement of any portion of the exterior of a building visible from a road, sidewalk or other public way including kind, color and texture of building materials and type of all windows, doors, lights, signs, fixtures, or other accessory structures appurtenant thereto.

**FAMILY** - One person occupying a dwelling unit, or two or three persons occupying a dwelling unit who pay a single shared amount for rental or mortgage purposes, or four or more persons occupying a dwelling unit and living together as a traditional family or the functional equivalent of a traditional family. It shall be presumptive evidence, subject to rebuttable presumption, that four or more persons living in a single dwelling unit who are not related by blood, marriage or legal adoption do not constitute

the functional equivalent of a traditional family. In determining whether individuals are living together as the functional equivalent of a traditional family, the following criteria must be present:

- (1) The group is one which in theory, size, structure and function resembles a traditional family unit.
- (2) The occupants must share the entire dwelling unit and live and cook together as a single housekeeping unit. A unit in which the various occupants act as separate roomers may not be deemed to be occupied by the functional equivalent of a traditional family.
- (3) The group shares expenses for food, rent or ownership costs, utilities and other household expenses.
- (4) The group is permanent and stable. Evidence of such permanency and stability may include:
  - (a) The presence of minor dependent children regularly residing in the household who are enrolled in local schools;
  - (b) Members of the household have the same address for purposes of voter registration, driver's license, motor vehicle registration and filing of taxes;
  - (c) The household has been living together as a unit for a year or more whether in the current dwelling unit or other dwelling units;
  - (d) Common ownership of furniture and appliances among the members of the household; and
  - (e) The group is not transitory or temporary in nature.
- (5) Any other factor reasonably related to whether or not the group is the functional equivalent of a family.

**FAMILY DAYCARE HOME** - A family home which is a personal residence and occupied as a family residence which provides a child day care on a regular basis for more than three (3) hours per day per child for three (3) to six (6) children for compensation or otherwise, except as may be otherwise be regulated in accordance with 18 NYCRR Part 417, as may be amended from time to time, and registered by the New York State Office of Children and Family Services.

**FAMILY DAYCARE HOME GROUP** - A family home which is a personal residence and occupied as a family residence which provides child day care on a regular basis for more than three (3) hours per child for seven (7) to 12 children for compensation or otherwise, except as may be otherwise be regulated in accordance with 18NYCRR Part 416, as may be amended from time to time, and licensed by the New York State Office of Child and Family Services.

**FARM MARKET, SEASONAL** – A building and premises for the seasonal sale of agricultural products grown primarily within the Hudson Valley region.

**FARMSTAND** — A structure used for the seasonal display and sale of agricultural products grown on the premises on which the stand is located and which uses its proximity to a roadway to attract customers.

**FEMA** – Acronym for “Federal Emergency Management Agency”.



**FENCE** - An unroofed wall or barrier or construction of materials made from concrete, wood, plastic, wire, stone or other materials erected on premises for the purpose of enclosing an area of land, including berms and retaining walls if located beneath same.

**FILLING** - The placement of soil, rubble, spoils, rocks and/or any other appropriate fill on any property for the purpose of raising or elevating any portion of a property. "Filling" shall not include the burying of garbage, demolition or construction waste, trash or hazardous materials of any kind. The placement of fill containing garbage, demolition or construction waste, trash or hazardous materials is prohibited.

**FLOOR AREA, GROSS** - The sum of the gross horizontal areas of the several floors of the building or buildings on a lot, measured from the exterior faces of exterior walls or from the center line of party walls separating two (2) buildings. Cellar areas used for storage only or to house mechanical equipment for operation and maintenance of the building shall be excluded from the computation of gross floor area.

**FLOOR AREA, LIVABLE** - All spaces within the exterior walls of a dwelling unit, exclusive of garages, breezeways, unheated porches, cellars, heater rooms and basements having a window area of less than ten percent (10%) of the square-foot area of the room. Usable floor area shall include all spaces not otherwise excluded above, such as principal rooms, utility rooms, bathrooms, all closets and hallways opening directly into any rooms within the dwelling unit and all attic space having a clear height of six (6) feet from finished floor level to pitch of roof rafter, with a clear height of seven (7) feet six (6) inches from finished floor level to ceiling level over fifty percent (50%) of the area of such attic space.

**FLOOR AREA RATIO** - The gross floor area, in square feet, of all principal and accessory buildings on a lot divided by the area of such lot, in square feet.

**FOOTCANDLE (FC)** – A unit of illuminance amounting to one lumen per square foot as measured 36 inches above the ground at brightest point.

**FUEL STORAGE DEPOT** – A nonresidential commercial facility used for the bulk storage of fuel oil or petroleum products from which the product is transported to end users or other off-site storage facilities. A fuel storage depot has above ground storage tanks for the storage of fuel and may also include offices and accessory parking for employees and vehicles to distribute fuel to customers.

**FUNERAL ESTABLISHMENT** - A building used for the preparation of the deceased for burial and the display of the deceased and rituals connected therewith before burial or cremation.

**GARAGE, PRIVATE** - An enclosed space for the storage of one (1) or more motor vehicles, provided that no business, occupation or service is conducted for profit therein.

**GLARE** – The eye's line of sight contact with a direct light source that causes annoyance, discomfort, or loss in visual performance and ability.

**GOLF COURSE** – Premises having not fewer than six (6) holes improved with tees, greens, fairways, and hazards for playing the sport of golf, excluding miniature golf. Accessory structures and buildings may include but are not limited to a driving range, clubhouse, locker room, food stand, restaurant, banquet or conference rooms. Overnight accommodations are not permitted. A single dwelling for a

groundskeeper is permitted subject to the regulations set forth in this Zoning Chapter. Golf courses, whether private or public, shall be regulated as set forth herein.

**GUEST SLEEPING ROOM** - Any habitable room used as a sleeping accommodation for transient occupancy in a bed and breakfast, hotel, motel or resort lodge.

**GRADING** - Any act by which earth, sand, gravel, rock, or any other similar material is cut into, dug, uncovered, removed, displayed, or spread.

**GROCERY STORE** - a retail use that sells primarily food and miscellaneous other household goods and is usually operated on a self-service basis. A grocery store may also have a deli counter, butcher, florist, bakery, and other service counters associated with its operation.

**HAZARDOUS MATERIALS** - Material which is a present or potential hazard to human health or the environment including, without exception, all residual oil, hydrocarbon products, including but not limited to gasoline, oil, fuel, and diesel oil, and also any other toxic, caustic, or corrosive chemicals, radioactive materials or other substances listed in the Title 40 of the Code of Federal Regulations of the New York State Department of Environmental Conservation Rules and Regulations for Hazardous Material (6 N.Y.C.R.R. 597)

**HEALTH FITNESS FACILITY** - A building where active exercise and related activities are performed utilizing weight control or muscle-building equipment or apparatus for the purpose of physical fitness. A health fitness facility may also include, as accessory uses, services and activities provided in conjunction with a day spa, a daycare room, physical therapy activities, and refreshments.

**HEAVY ASSEMBLY** - Assembly or packaging of products from previously prepared components or materials, including but not limited to metal, wood, cloth, plastic, paper, leather, precious or semi-precious stones. No more than 35 percent of the gross floor area of an assembly use shall be used for distribution of assembled materials, which shall include any area dedicated to loading platforms and loading docks.

**HEIGHT, BUILDING** - The vertical distance, measured from the average elevation of the finished grade along the side of the structure fronting to the nearest street, to the highest point of such structure, excluding a chimney.

**HEIGHT OF THE LUMINAIRE** – The height of the luminaire shall be the vertical distance from the ground directly below the center line of the luminaire to the lowest direct light emitting part of the luminaire.

**HOTEL** - A commercial use consisting of overnight accommodations wherein in guest sleep rooms are accessed from a lobby location and shared interior hallways, within a building or group of buildings, regularly provided and offered to the public for a period of less than 30 consecutive days for compensation, and which is customarily open to transient guests. Accessory uses to a "hotel" may include a dining area, lounge, meeting rooms, swimming pool, office area for the conduct of business, indoor or outdoor fitness area, and other accessory uses determined accessory and appropriate during special use permit review.

**HOME OCCUPATION, MAJOR** – Any nonresidential use conducted wholly or partly in a dwelling unit or

accessory structure thereto by the owner of same, which is clearly incidental to the use of the dwelling for living purposes and does not change the residential character of the dwelling unit or vicinity or have any exterior evidence of such secondary use other than a sign and where customers, clients or sales representatives enter the premises and in which not more than three nonresidents are employed.

**HOME OCCUPATION, MINOR** – Any nonresidential use that is incidental and clearly subordinate to an existing residential use, conducted within a dwelling unit or in an existing accessory structure by the owner of same, which does not change the residential character of the dwelling unit or vicinity and where no non-resident employees, customers or clients enter the premises and where no signage, exterior storage of products or equipment are required.

**HOMEOWNER ASSOCIATION** - An association that is organized in a development to own, operate and maintain facilities for residents of the development.

**HORSE BOARDING OPERATION** – A horse boarding operation provides care, housing, health, related services and training to horses kept on the premises or on other properties owned or leased by the operator. Riding and training activities not open to the general public, that are directly related and incidental to the boarding and raising of horses, including riding lessons for persons who own or have a long-term lease from the operator for the horse that is boarded at the farm, are part of the operation. Riding academies and horse racing operations are not deemed to be a horse boarding operation.

**HOSPITAL** - A hospital is a facility established pursuant to Article 28 of the New York State Public Health Law as the same may be amended from time to time engaged in providing medical or medical and surgical services primarily to inpatients by or under the supervision of a physician on a twenty-four-hour basis with provisions for admission or treatment of persons in need of emergency care and with an organized medical staff and nursing service, including facilities providing services relating to particular diseases, injuries, conditions or deformities. The term 'hospital' shall include such other and related facilities which may or may not be established pursuant to Article 28 of the New York State Public Health Law, including but not limited to laboratories, out-patient, diagnostic and treatment facilities and pharmacy, together with the appropriate office and related support facilities. A hospital shall be deemed to include a sanitarium, clinic, convalescent home, nursing home, rest home, or other building with an equivalent appellation. The term 'general hospital' shall not include a residential health care facility, public health center, diagnostic center, treatment center, outpatient lodge, dispensary and laboratory or central service facility serving more than one institution.

**HOTEL** – A commercial use which offers transient lodging accommodations to the general public seven (7) days per week with separate guest sleeping rooms, none of which units have direct access to the outside except through a hallway used for both access and for emergency purposes.

**ILLUMINANCE** – Density of luminous flux incident on a surface. The unit is a foot candle or lux.

**ILLUMINATING ENGINEER SOCIETY OF NORTH AMERICA (IESNA)** - The Illuminating Engineering Society of North America is a nonprofit organization that develops and publishes standards regarding lighting. Headquartered in New York City, United States, IESNA standards are in effect throughout all of North America with its nearly 8,000 members. Internationally, IESNA collaborates with the International Commission on Illumination to promote uniformity with the rest of the world.

**IMPERVIOUS SURFACE** - Manmade surfaces, improvements and structures that cannot effectively

infiltrate rainfall, snowmelt and water. This includes paved, concrete and gravel surfaces (i.e., parking lots, driveways, roads, runways and sidewalks), building rooftops and miscellaneous impermeable structures such as patios, pools, and sheds.

**JUNKYARD** - Any area of land, including buildings thereon, which is used primarily for the collecting, storage and/or sale of waste paper, rags, scrap metal or discarded material or for the collecting, dismantling, storage or salvaging of machinery or vehicles not in running condition, and for the sale of parts thereof. Two (2) or more motor vehicles stored outside without current license plates for a period of thirty (30) days shall constitute a "junkyard."

**LABORATORY AND RESEARCH FACILITY** - A building for experimentation in pure or applied research, design, development and production of prototype machines or of new products, and uses accessory thereto, wherein products are not manufactured primarily for wholesale or retail sale, wherein commercial servicing or repair of commercial products is not performed and wherein there is no display of any material or products. A "laboratory" shall meet the performance standards set forth in this Zoning Chapter.

**LANDING** - An area for the collection, storage and loading of timber for transportation.

**LANDSCAPE LIGHTING** - Lighting, which is positioned and aimed to illuminate foliage, walkways, driveways, decks, patios, and other pedestrian areas whether or not mounted on a structure.

**LANDSCAPE MATERIALS, RETAIL AND WHOLESALE SALE OF** – The sale of landscape materials, including the sale of trees, shrubs, or plants. Sale and storage of garden supplies, including hand tools, mulch, soil, decorative rock, pavers, and similar non-vegetative materials shall be allowed only where clearly incidental to the principal use and said accessory materials shall not occupy more than 15 percent of the lot area. The materials aggregate processing of organic or inorganic materials including rock crushing, mulching, or soil screening are not permitted in conjunction with this use.

**LAUNDROMAT** - A commercial establishment equipped with individual clothes washing and/or drying machines that are operated by the retail customer.

**LIBRARY** –A room, building, or institution where a collection of books, newspapers, records, tapes, or other research materials are kept.

**LIGHT, FULLY SHIELDED** – Fully shielded luminaire light fixture which can control the glare in any direction.

**LIGHTING FIXTURE:**

- (1) **FULLY SHIELDED**– An outdoor lighting fixture that, by design of the housing, does not allow any light dispersion or direct glare to shine above a ninety degree, horizontal plane from the base of the fixture. Fully shielded fixtures must be installed in a horizontal position as designed, or the purpose of the design is defeated, and direct glare will result.
- (2) **OUTDOOR** - An electrically powered illuminating device or other outdoor lighting fixture, including all parts used to distribute the light and/or protect the lamp, permanently installed or portable, used for illumination or advertisement. Such devices shall include, but are not limited

to, search, spot, flood, and area lighting for buildings and structures; recreational areas; parking lot lighting; landscape lighting; signs (advertising and other); streetlighting; product display area lighting; building overhangs; and open canopies.

- (3) **PARTIALLY SHIELDED** - A light fixture that is not fully shielded but incorporates a partial shield around the lamp by opaque barrier(s) such as louvers, shields, and other means in order to prevent the light source from being visible from property lines, roadways, or into waterways.
- (4) **RECESSED CANOPY** - An outdoor lighting fixture recessed into a canopy ceiling so that the bottom of the fixture is flush with the ceiling.
- (5) **WALL PACK** - A lighting unit designed for direct mounting on building walls whose primary function is to light building exteriors.

**LIGHT ASSEMBLY** - Assembly or packaging of products from previously prepared components or materials, including but not limited to electrical parts, metal, cloth, plastic, paper, leather, precious or semi-precious stones, which is conducted on a small-scale, which does not involve the use of heavy-duty vehicles for delivery of materials or distribution, and which shall occupy no more than 5,000 square feet of gross floor area. Any use exceeding this gross floor area or which relies on heavy duty vehicles shall be deemed a "heavy assembly" use.

**LIGHT INDUSTRY** - A use engaged in the manufacture, predominately from previously prepared components or materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, and incidental storage, and distribution of such products, but excluding basic industrial processing. A "light industry" use shall be required to meet the performance standards set forth in this Zoning Chapter.

**LIQUID, CLASS I** - Gasoline and other petroleum products which have a flash point below one hundred degrees Fahrenheit (100°F) to be dispensed through fuel service facilities.

**LIVESTOCK** - Animals, including but not limited to domestic animals, such as pigs, sheep, horses, cattle, llamas and goats but excluding traditional household pets.

**LOT** - A parcel of land whose boundaries are established by legal instrument, such as a recorded deed or map, and which is recognized as a separate parcel for the purposes of transfer of title.

**LOT, CORNER** - A lot at the junction of and abutting on two (2) or more intersecting streets where the interior angle of intersection does not exceed one hundred thirty-five (135) degrees. A lot abutting a curved street shall be deemed a "corner lot" if the tangents to the curve at the points of intersection of the side lot lines with the street lines intersect at an interior angle of less than one hundred thirty-five (135) degrees.

**LOT DEPTH** - The distance between the front lot line of a lot to the rear lot line of such lot measured at any point perpendicular to the front lot line.

**LOT, FLAG** - A lot not meeting the minimum required lot width as measured at the required front yard line, but having the required lot width measured at a point somewhere in the interior of the lot. Flag lots are not permitted.

**LOT, THROUGH** – A lot, other than a corner lot, having lot frontage on two streets.

**LOT FRONTAGE** - The horizontal distance measured along the full frontage of the front lot line. For purposes of meeting minimum lot frontage requirements, the minimum lot frontage must be contiguous, i.e., minimum lot frontage shall not be met by the sum of multiple frontages.

**LOT LINE** – A boundary line of a lot.

**LOT LINE, FRONT** - The lot line abutting the street except that where a front lot line is located within a street (e.g., public user road), the front lot line shall be the line set back a minimum distance of 25 feet from the centerline of the street.

**LOT LINE, REAR** - The lot line generally opposite and parallel to the front lot line.

**LOT LINE, SIDE** – Any lot line other than a front lot line or rear lot line.

**LOT WIDTH** - The distance measured along a line drawn parallel to the front lot line at a distance equal to the minimum required front yard depth.

**LUMINAIRE** – A complete lighting system, including a light source component (lamp or lamps that produce the actual light) and a fixture.

**LUX** – One lumen per square meter; unit of illuminance.

**MULTIPLE USE NONRESIDENTIAL DEVELOPMENT** - A building or buildings with accessory parking and loading areas providing for a variety of retail, commercial and other nonresidential uses, as may be allowed in this Zoning Chapter, managed as a unit and which shall have the following characteristics:

- (1) Unified architectural treatment and signage and identifiable theme relating each of the commercial establishments within.
- (2) A common interrelated parking and site circulation system with consolidated vehicular access to a street.
- (3) Individual establishments oriented to pedestrian traffic by access signs and display, which are not generally visible or only incidentally visible to the parking areas.
- (4) Shared amenities provided to patrons, such as benches, site decoration and landscaping and park area, restrooms and the like.
- (5) Common spaces.

**MUNICIPAL USES AND FACILITIES** – Governmental buildings and uses that are owned or operated by the Town of Tuxedo, the Tuxedo Fire District, the Tuxedo Ambulance Corps, the Tuxedo Library, or public school district servicing the Town of Tuxedo, or other uses so determined by the Town Board.

**MUSEUM** - A place or building where objects of historical, artistic, or scientific interest are exhibited, preserved, or studied and open for viewing by the general public.

**NEW YORK TIMBER HARVESTING GUIDELINES** - Timber Harvesting Guidelines for New York, as published by the New York State Department of Environmental Conservation, as revised from time to time.

**NONCOMPLYING BULK** - See "BULK, NONCOMPLYING".

**NONCONFORMING USE** - Any use of a building, structure, lot or land, or part thereof, lawfully in existence, which use, owing to an amendment to the Zoning Chapter, no longer conforms to the use regulations of this Zoning Chapter for the district in which it is located.

**NURSERY SCHOOL** – A facility registered by the New York State Education Department and organized for the purpose of educating a group or groups of six (6) or more children less than seven (7) years of age, under the supervision of qualified teachers, providing an adequate program of learning activities and maintaining good standards of health and safety.

**NYSDEC** – New York State Department of Environmental Conservation.

**NYSDOT** – New York State Department of Transportation.

**NYSOPRHP** – New York State Office of Parks, Recreation, and Historic Preservation.

**OFFICE** – A use where services are performed involving predominately administrative or clerical operations for either business or professional purposes as follows:

- (1) Business: A place or establishment used for the organizational or administrative aspects of a trade or used in the conduct of a business and not involving the manufacture, storage, display or direct retail sale of goods. This may include, but is not limited to, offices of salesmen, sales representatives, insurance brokers, real estate brokers and persons with similar occupations.
- (2) Professional: An office devoted to a professional service occupation, in which knowledge in some department of science or learning is applied to the affairs of others, either advising or guiding them, or otherwise serving their interest or welfare through the practice of a profession founded on such knowledge. A professional office may include but not be limited to the office of an accountant, architect, consultant, engineer, or attorney.
- (3) Medical: An office devoted to medical or dental care dispensed to persons on an outpatient basis by physicians or other medical professionals licensed in the State of New York, either singly or as a group, which may also offer laboratory and diagnostic facilities to patients on an outpatient basis.

**OFFICIAL MAP** - The Official Map, adopted by the Town Board, of that part of the town outside of the limits of any incorporated village, showing the streets, highways, parks and drainage systems laid out on such map, including any references to more detailed maps and studies. The "Official Map" is final and conclusive with respect to the location and width of streets, highways, drainage systems and parks shown thereon; and the "Official Map" is hereby declared to be established to conserve and protect the

public health, safety and general welfare.

**OUTDOOR LIGHTING** – The nighttime illumination of an outside area or object by any man-made device located outdoors that produces light by any means.

**OVERLAY ZONING DISTRICT** – A zoning district that imposes additional regulations for a specific area in addition to the regulations that govern the base zoning district.

**PARKING AREA or LOT** – A portion of a lot used for the accessory storage or parking of motor vehicles, with or without the payment of rent or charges in money and/or other consideration, accessory to a principal use allowed within the district in which it is located.

**PARKING SPACE** - A stall or berth which is arranged and intended for the parking of one (1) motor vehicle.

**PARTY WALL** - A partition erected on a property boundary, partly on the land of one parcel and partly on the land of another, to provide common support to the structures on both sides of the boundary.

**PERSON** - Any individual, partnership, firm, company, association, society, corporation, group or similar entity.

**PERSONAL SERVICE USE** – Commercial use including but not limited to barber shops, hair, nail, and tanning salons, shoe repair shops, bicycle repair shop, appliance repair shop, tailor and seamstresses, financial services, in which the product offered is the work or action performed. Personal service uses shall not be deemed to permit adult use businesses.

**PET** – A domesticated animal kept by a household for companionship and enjoyment such as cats, dogs, birds, reptiles, aquarium fish, and hamsters, which are normally and conventionally boarded in a residential dwelling or on a residential lot.

**PLACE OF WORSHIP** – A building or location set aside in a certain area pursuant to a Community Benefit Facility special permit for any form of religious devotion, ritual, or service showing reverence, especially for a divine being or supernatural power.

**PLANNING BOARD** – The Planning Board of the Town of Tuxedo, New York.

**PRINCIPAL USE** - The primary purpose for which land or a building is designed, arranged or intended, or for which it is or may be occupied or maintained.

**PROFESSIONAL FORESTER** -A person who has graduated from a professional forestry degree program accredited by the Society of American Foresters, or who possesses qualifications for the practice of forestry essentially equivalent to same.

**PUBLIC UTILITY** - Any person, firm, corporation, or governmental agency, duly authorized to furnish to the public, under governmental regulation, electricity, gas, cable television, telephone, including transmission and distribution facilities and similar services. Also, a municipally owned wastewater



treatment or water supply system, or a water works corporation or sewage works corporation formed under the provisions of the New York State Transportation Corporations Law and approved by the Town Board are included in this definition.

**PUBLIC OUTDOOR AMUSEMENT OR ENTERTAINMENT** - A temporary, seasonal public outdoor gathering for amusement or entertainment purposes, including but not limited to circuses, outdoor concerts, carnivals, fairs, non-motorized sporting contests, or other similar events, allowed only upon special use permit approval by the Town Board and for a duration of time approved by the Town Board in conjunction with the issuance of a special use permit.

**PUBLIC PARKLAND** – Lands owned by the U.S. Government, State of New York, Orange County, Palisades Interstate Park Commission, Town of Tuxedo, Village of Tuxedo Park, or other governmental entity or agency used for recreational and open space purposes, which may include trails, parking areas, camps, and similar activities.

**RAILROAD LINES** - A system of railroad track, together with the land, stations, bridges, rolling stock, and other related accessory equipment.

**RESERVOIR** – A surface water impoundment designed to provide drinking water to the public.

**RESIDENTIAL DENSITY** – Where a maximum residential density is set forth in the Table of Use and Bulk Requirements for certain residential types, the dwelling unit count for a development shall be determined by multiplying the residential density by the lot area after exclusion of the features set forth in Section 98-12 of this Zoning Chapter.

**RESORT LODGE** – A commercial use consisting of overnight accommodations with guest sleeping rooms, within a building or group of buildings that incorporate indoor and/or outdoor recreational facilities as integral and accessory uses into the overall design of the resort. A resort lodge may also include meeting rooms or conference center, dining facilities, and other areas for social gathering.

**RESTAURANT ACCESSORY TO A PRINCIPAL USE**– A sit down restaurant which is located within the same building as a principal use. The restaurant shall represent no more than 35 percent of the total gross floor area of the building within which the principal use is conducted, or 3,500 square feet, whichever is less. Use of a carhop or parking lot to bring food service to a car or use of a drive through facility is not permitted.

**RESTAURANT, SIT DOWN** - Any establishment where food is commercially sold primarily for on-premise consumption to patrons seated at tables where food is served at the table. Any facility making use of a carhop or parking lot to serve food to customers in vehicles, or primarily for the consumption of food to be eaten off premises shall not be considered a restaurant for the purpose of this Zoning Chapter. A restaurant where less than 50 percent of the gross floor area of the restaurant is dedicated to a dining room equipped with tables and seats shall be deemed a “take out restaurant” and is not permitted under this definition. Use of a carhop or parking lot to bring food service to a car or use of a drive through facility is not permitted.

**RESTAURANT, TAKE OUT** - Any establishment whose principal business is the sale of foods, frozen desserts, or beverages in ready-to-consume individual servings, for consumption either within the restaurant building, or for carryout, and where either: 1) foods, frozen desserts, or beverages are

usually served in paper, plastic, or other disposable containers; or 2) where there is no table service. Use of a carhop or parking lot to bring food service to a car or use of a drive through facility is not permitted.

**RETAIL USE** – A commercial use where merchandise is sold to the general public for personal or household use or consumption, including but not limited to a florist, hardware store, pharmacy, convenience store, stationary store, bookstore, clothing store, shoe store, and jewelry store. The storage of merchandise on the premises shall be clearly incidental and accessory to the space dedicated to retail sale of products and shall not exceed 45 percent of the total gross floor area of the building within which the retail use is situated. Unless allowed elsewhere in this Zoning Chapter, outdoor storage is not permitted in association with a retail use.

**REVIEWING AGENCY** – The Town Board, the Planning Board, or the Zoning Board of Appeals, as the case may be, responsible for approving an action regulated by this Zoning Chapter.

**RIDGELINE** – The elongated crest or the apex or the uppermost point of intersection between two opposite slopes or sides of a mountain or hill.

**SCHOOL, PUBLIC ELEMENTARY OR SECONDARY** - An educational institution operated by a public school district, or combined school districts, under the laws of the State of New York.

**SCREEN, PROPERTY** – For purposes of this Zoning Chapter, “property screen” or “screen” shall refer to the placement of landscape materials, fencing, retention of natural vegetation, or a combination of the above to reduce the detrimental visual, noise, light or other environmental impacts emanating from a property or use from impacting an adjoining property.

**SELECTIVE CUTTING** - A method of harvesting where trees to be cut are selected and marked via some specified criteria before the harvesting begins.

**SENIOR CARE FACILITY** - A facility established and operated for the purpose of providing residential housing to residents ages 55 years and older in community-integrated settings with independent living facilities and supportive services, such as meals, housekeeping, social activities, transportation, emergency response and resident advisory services. The standards applicable to multifamily dwelling developments shall apply.

**SETBACK** - A required minimum distance measured perpendicular from a front, side, or rear property line beyond which a building or principal use may be located.

**SIGN** – Any temporary or permanent display of lettering, numbers, logos, designs, colors, lights, or illumination visible to the public from outside of a building or from a public right-of-way which conveys a message to the public or intends to advertise, direct, invite, announce or draw attention, directly or indirectly, to a use conducted, events, goods, products, services, or facilities available. A sign does not include the flag or pennant or insignia of any nation or association of nations or of any state, city, or of any charitable, educational, philanthropic, civic, or religious organization. A “sign” also does not include a governmental sign (see “sign, governmental”).

**SIGN AREA** - The entire area within a single continuous perimeter enclosing the extreme limits of

writing, representation, emblem or any figure, together with any frame or other material or color forming an integral part of the display or used to differentiate such sign from the background against which it is placed. Where the faces of a back-to-back sign are parallel or within and no more than thirty-five (35) degrees of parallel, only one sign face area shall be used in determining the sign area. If the sign faces are not within thirty-five (35) degrees of parallel, the sign face area shall be determined on the basis of the sum of the areas of each sign face.

**SIGN, ADVERTISING** – Any sign promoting products sold or services provided.

**SIGN, COMMERCIAL** – See “Sign, Advertising.”

**SIGN, BOX** – Any sign with a metal or wood frame which has plastic or glass panel sign faces and is internally lit.

**SIGN, FAÇADE** – Any sign attached to a wall of a building. A façade sign may be a wall sign, iconic sign or projecting sign.

**SIGN, GOVERNMENTAL** – A sign that is constructed, placed, or maintained by the federal, state, or local government or a sign that is required to be constructed, placed, or maintained by the federal, state, or local government either directly or to enforce a property owner’s rights.

**SIGN, MONUMENT** – A low-profile, freestanding sign supported by a structural base or other solid structural features other than support poles, which may contain a sign face on each of the two sides of the minimum sign.

**SIGN, NEON** - A sign illuminated by neon lamps or similar luminaires.

**SIGN, PERMANENT** - A sign permanently erected on a property or structure by fastenings intended to provide such permanence.

**SIGN, PORTABLE** - A sign that is designed to be movable and not structurally attached to the ground, a building, a structure or another sign. Portable signs include but are not limited to those that allow the creation of customized messages by way of inserting letters into a frame.

**SIGN STRUCTURE** - The supports, uprights, bracing and framework for the sign.

**SIGN, TEMPORARY** – Any sign, pennant, and/or banner or similar sign which is erected for a limited period of time and is not permanently affixed to the ground or structure.

**SOLAR ENERGY FACILITIES** – The following definitions shall apply to the regulation of solar facilities:

- (1) **GROUND-MOUNTED SOLAR ENERGY SYSTEM** - A Solar Energy System that is anchored to the ground or attached to a pole or other mounting system, detached from any other structure.
- (2) **KILOWATT (kW)** – A unit of electrical power equal to 1000 Watts, which constitutes the basic unit of electrical demand. A Watt is a metric measurement of power (not energy) and is the rate

(not the duration) at which electricity is used. 1000 kW is equal to one (1) megawatt (MW).

- (3) KILOWATT-HOUR (kWh) – A unit of energy equivalent to one Kilowatt (1 kW) of power expended for one (1) hour of time.
- (4) SMALL-SCALE SOLAR ENERGY SYSTEM - A Solar Energy System that does not produce more than 12kW per hour of energy and serves only the buildings or structures on the lot upon which the system is located. Nothing contained in this provision shall be construed to prohibit the sale of excess power through a “net billing” or “net metering” arrangement made in accordance with New York Public Service Law (Section 66-j) or similar state or federal statute.
- (5) SOLAR ACCESS - Space open to the sun and substantially clear of overhangs or shade, including the orientation of dwellings, buildings or lots to the sun so as to permit the use of Solar Energy System on individual properties.
- (6) SOLAR COLLECTOR - A solar photovoltaic cell, module, panel or array or a solar hot air or water collector device, which relies upon solar radiation as an energy source for the generation of electricity or transfer of stored heat.
- (7) SOLAR ENERGY SYSTEM - Solar collectors, controls, energy storage devices, heat pumps, heat exchangers and other materials, hardware or equipment necessary to the process by which solar radiation is collected, converted into another form of energy, stored, protected from unnecessary dissipation and distributed.
- (8) SOLAR PANEL - A device for the direct conversion of solar energy into electricity.
- (9) QUALIFIED SOLAR INSTALLER - A person who possesses skills and knowledge related to the construction and operation of Solar Energy Systems equipment and installations and has received safety training on the hazards involved. Persons or entities on the list of eligible solar installers maintained by the New York State Energy Research and Development Authority (NYSERDA) or are certified as a solar installer by the North American Board of Certified Energy Practitioners (NABCEP), shall be deemed to be Qualified Solar Installers for the purpose of this definition.

**SOLID WASTE** - Any garbage, refuse, abandoned or other discarded materials including solid, liquid, semi-solid, or contained gaseous material.

**SPECIAL USE PERMIT** - An authorization of a particular use of land or structure which is permitted in this Zoning Chapter, subject to any general or specific requirements imposed by this Law to assure that the proposed use is in harmony with the purposes of the Law and will not adversely affect the neighborhood if such requirements are met.

**SPECIFIED ANATOMICAL AREAS -**

- (1) Less than completely and opaquely covered human genitals, pubic region, buttock and female breast below a point immediately above the top of the areola; or
- (2) Human male genitals in a discernable turgid state, even if completely or opaquely covered.

**SPECIFIED SEXUAL ACTIVITIES -**

- (1) Human genitals in a state of sexual stimulation or arousal; or
- (2) Acts of human masturbation, sexual intercourse or sodomy; or
- (3) Fondling or other erotic touching of human genitals, pubic regions, buttocks or female breast.

**STABLE** - A building for the housing of horses.

**STABLE, PRIVATE** - A stable for housing horses on a single lot and accessory to a single family detached dwelling.

**STABLES, BOARDING AND RIDING ACADEMIES**- A facility where horses are boarded, cared for, and may be hired for riding. The facility may include the instruction of horse riding, jumping, and showing.

**STORY** - That part of any building, exclusive of cellars but inclusive of basements, comprised between the level of one finished floor and the level of the next higher finished floor, or if there be no higher finished floor, then that part of the building comprised between the level of the highest finished floor and the top of the roof beams.

**STREAM** - A continuous or intermittent flow of water through a defined channel.

**STREET** - A street is one (1) of the following:

- (1) An existing Town, county or state highway or street.
- (2) A street shown on an approved final subdivision plat meeting Town specifications.
- (3) A street shown on a map filed with the County Clerk, in accordance with § 280-A of the New York State Town Law, prior to Planning Board authorization to review subdivisions.
- (4) A street shown on the Official Map of the Town.

**STREET, COLLECTOR** - A street which carries traffic from minor streets to the system of highways, including the principal entrance streets of large residential developments.

**STREET LINE** - The line between the street and a lot or a line established by the Official Map as the street right-of-way, whether or not in public ownership.

**STREET, LOCAL** - A street serving primarily to provide frontage and access for local development rather than through traffic, as determined by the Planning Board or as designated as a "local street" on the Official Map of the Town of Tuxedo, if such exists.

**STRUCTURAL BUILDING ALTERATION** - Any change in the supporting members of a building, such as beams, columns or girders.

**STRUCTURE** - Anything constructed or built, any edifice or building of any kind, which requires location on or in the ground or is attached to something having a location on or in the ground, including, but without limitation, swimming pools, covered patios, fences, retaining and similar walls, towers, poles, sheds, signs, tanks, etc., excepting outdoor areas such as paved areas and walkways. The term structure shall include "building" as well as receiving and transmitting commercial, radio, television, cellular and

other utility communication towers.

**SUSTAINABLE BUSINESS PARK** - A property designed to allow multiple business tenants in multiple buildings, wherein the property and buildings are designed in a manner that incorporate sustainable or “green” technologies and measures as further set forth in this Zoning Chapter.

**SWIMMING POOL, PRIVATE** - A structure, whether above or below grade, designed to hold water and used or intended to be used for swimming or bathing by any family or persons residing on the premises or their guests. It shall not be operated for gain and shall be located on a lot only as an accessory use to a dwelling or dwellings, a membership club or a hotel.

**SWIMMING POOL, PUBLIC** - A structure, whether above or below grade, designed to hold water and used or intended to be used for swimming or bathing, and which is intended to be operated for financial gain on a daily, weekly seasonal, or other basis.

**THINNING** - A selective cutting or deadening of trees in a stand of trees for the purpose of upgrading the quality and/or growth of the trees remaining.

**TOPOGRAPHICAL ALTERATION** - Any change in the configuration of a surface area, including its relief, relative elevations and position of natural or man-made features, except those changes incidental to or normally part of agricultural operations or home gardening.

**TOURISM-RELATED RETAIL USES** - Retail sales or rental of merchandise used in tourism-related businesses. For purposes of this definition, tourism-related retail uses shall be limited to recreational equipment sales or rental of indoor or outdoor recreational equipment, recreation clothing outfitter, and guide services.

**TOURISM-RELATED WINERY, BREWERY, DISTILLERY OR SIMILAR FOOD PROCESSING USE** – Businesses involved in the small-scale production of food and/or crafting of beverages from vegetables, fruits, grains or dairy ingredients only, for final consumption, including a winery, brewery, ice cream, confectionary, bakery, and cheese shop, and where an essential and required element of the business is the operation of tours to display the production and/or crafting process to visitors. The retail sale of products made on the premises or to market on the premises, as well as a dining, tasting, or drinking area is allowed accessory to the principal use. Said retail sales and dining areas shall not exceed 40 percent of the gross floor area of the total area of buildings on the site. Food processing involving poultry, beef, fish, or similar meat products including slaughterhouses is prohibited.

**TOWN OF TUXEDO** - Consolidated Town-Village of Tuxedo. Also referred to herein as “Town of Tuxedo”.

**TOWN BOARD** – The Town-Village Board of the Town of Tuxedo, New York.

**TOWNHOUSE** - See definition for "single-family attached dwelling".

**TRAIL** – A marked or established path or route which may be established for use by pedestrians, bicycles, horses, or other non-motorized travel means.

**TRAILER** - Any vehicle mounted on or capable of being mounted on wheels, movable either by its own power or by being drawn by another vehicle, and including those vehicles capable of use for living,

sleeping quarters, or so as to permit cooking, or equipped to be used for offices, storage or other commercial use. The term "trailer" shall also include vehicles, if mounted on temporary or permanent foundations with the wheels removed.

**UNDERWATER LAND** - Any land which is inundated by water at least three (3) months out of the year.

**UPLIGHTING** – Any light source that distributes illumination above a ninety-degree horizontal plane.

**USABLE OPEN SPACE** - An unenclosed ground area to be used for active or passive recreation, which is not devoted to driveways or parking spaces. Up to a maximum of twenty five percent (25%) of usable open space may be roofed for shelter purposes such as a picnic pavilion or similar open air recreational building, provided the minimum linear dimension of such covered space is forty (40) feet. Such usable space shall be available and accessible to all occupants of the buildings within the development.

**USE** - The specific purpose for which land or a building is used, occupied or maintained.

**USE, NONCONFORMING** – See “NONCONFORMING USE”.

**USE, PRINCIPAL** - See “PRINCIPAL USE”.

**USE VARIANCE** – Authorization by the Zoning Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by this Zoning Chapter.

**VISITOR CENTER** - An arrangement of activities and areas for informal education and entertainment, consisting of permanent structures and facilities on landscaped grounds. Such centers may include museums, gardens, arboretums, conference and banquet halls, hiking and nature trails, ski runs, sports and recreational areas and facilities, picnicking grounds, zoos (other than open preserves or reservations), concert facilities and show stages of a permanent type. Specifically excluded are rides and games associated with amusement park uses, carnival shows, or roller coasters.

**WALL MURAL** – A graphic rendering painted on the façade of a building visible from a street right-of-way. A wall mural intended and perceived as artistic expression which does not identify a business or use conducted on the premises shall not be regulated as a sign but shall be approved by the Town Board. Nothing herein shall be construed to allow a billboard as a wall mural.

**WHOLESALE OR WAREHOUSE USE** - A use engaged principally in the indoor storage, wholesale, and distribution of manufactured products, supplies and equipment, excluding bulk storage of materials that are inflammable or explosive or that present hazardous conditions. Nothing herein shall be construed to permit retail sale of merchandise to the general public or by membership.

**YARD** - An open and unobstructed ground area of a lot, which area extends inward from the nearest lot line to a principal building or use and is unoccupied except for accessory uses or structures that may be permitted by this Chapter.

**YARD, REQUIRED** - A required yard is that portion of any yard extending inward from a lot line the minimum distance specified in the bulk requirements for the district in which the lot is located.

**YARD, REQUIRED FRONT** –The required yard measured between the front lot line and a line drawn

parallel thereto.

**YARD, REQUIRED REAR** – The required yard measured between the rear lot line and a line drawn parallel thereto.

**YARD, REQUIRED SIDE** – The required yard measured between a side lot line and a line drawn parallel thereto.

**ZBA** – The Zoning Board of Appeals of the Town of Tuxedo, NY.

**ZONING CHAPTER** – Zoning Local Law of the Town of Tuxedo, New York, as may be amended from time to time. Also referred to herein as the “Zoning Chapter” or “Chapter”.



**ARTICLE III. ESTABLISHMENT OF ZONING DISTRICTS**

**§ 98-5. Establishment; purpose.**

A. Zoning districts established. In order to fulfill the purposes of this Zoning Chapter, the Town of Tuxedo is hereby divided into the following zoning districts (sometimes referred to herein as “district”), as shown on the Zoning Map, for the purposes indicated below:

<b>District Type:</b>	<b>Symbol</b>	<b>Title</b>
Open Space Districts:	SR	Special Recreation
	C	Conservation
Residential Districts:	R-1	Low Density Residential
	R-2	Low-Medium Density Residential
	R-3	Medium Density Residential
	R-4	Medium-High Density Residential
	S-HR	Southfields-Hamlet Residential
Mixed Use Districts:	T-TC	Tuxedo - Town Center
	NB	Neighborhood Business
Nonresidential Districts:	S-HB	Southfields – Hamlet Business
	GB	General Business
	RO	Research Office
	LIO	Light Industry Office
	TB	Tourism Business
Overlay:	PID-O	Planned Integrated Development Overlay
Floating:	MU	Mixed Use

- (1) Special Recreation (SR). The Special Recreation zoning district encompasses primarily public parkland, trails, and recreational areas that are used for open space and passive recreational purposes. The zoning district allows uses that are consistent with open space and recreational lands.
- (2) Conservation (C). Consistent with the comprehensive plan, the Conservation District is limited primarily to very low-density open space-related nonresidential uses as the land is environmentally constrained and distant from Town community facilities and services. Said lands are not conducive to intense development. Adaptive reuse of existing historic structures is encouraged, and nonresidential uses are allowed that are consistent with the rural character of this area.
- (3) Low Density Residential (R-1). The Low Density Residential zoning district encompasses lands that are intended to remain primarily as open space or in low density single family detached residential use given its distance from community facilities and services, and the usual lack of public water or sewer services.

- (4) Low-Medium Density Residential (R-2). The Low-Medium Density Residential Zoning District is intended to be developed primarily with medium density single family detached residential dwellings, community facilities intended to serve these neighborhoods, and a limited range of nonresidential uses that are generally consistent with a residential neighborhood. The R-2 district may be served by public water and/or sewer services.
- (5) Medium Density Residential (R-3). The Medium Density Residential Zoning District encompasses smaller lot residential neighborhoods within the hamlet areas which are either served by public water and/or sewer or are intended to be served by public water and/or sewer. The R-3 district is primarily within or in close proximity to the Town's existing hamlets and accommodates a greater mix of housing types than other zoning districts in the Town.
- (6) Medium High Density Residential (R-4). The Medium-High Density Residential Zoning District encompasses the Town's residential neighborhoods that allow a mix of single-family detached, single-family attached, two-family and multifamily dwellings and are served primarily by public water and/or sewer or are planned to be served by public water and/or sewer.
- (7) Southfields-Hamlet Residential (S-HR). The Southfields-Hamlet Residential district encompasses pre-existing small lot, single family residential enclaves in the Southfields hamlet. The intent of the district is to protect the existing single family residential character of these enclaves, while not increasing the density of residential uses in these areas, where central sewer and water service is unavailable.
- (8) Tuxedo-Town Center (T-TC). The Tuxedo-Town Center district encompasses properties within the central business district of the Tuxedo hamlet. The district will allow a range of nonresidential and residential uses that serve the Town of Tuxedo population. The Town Center district is intended to effectuate, and is guided by, the Town Center study contained in the Town of Tuxedo Comprehensive Plan. Consistent with the Town Center Study, the Town Center is designed to encourage and accommodate a unified, compact, contiguous shopping and entertainment area focused around restaurants and retail shops. This area is intended for development that preserves and enhances the historically significant buildings that exist in the hamlet. These stores in combination with residential and public uses should provide daily and weekly convenience shopping for the area. The Town Center is designed to accommodate social and cultural events and gatherings.
- (9) Southfields-Hamlet Business (S-HB). The Southfields-Hamlet Business district encompasses properties within the Southfields hamlet. The intent of the district is to renew and revitalize the Southfields hamlet by allowing a variety of nonresidential uses that encourage revitalization of the hamlet.
- (10) Neighborhood Business (NB). The Neighborhood Business zoning district is intended to serve the limited local retail and service commercial needs of the residential neighborhoods in proximity to same.
- (11) General Business (GB). The General Business zoning district encompasses properties that are located with frontage on, or in close proximity to, Route 17. These properties are isolated and scattered along Route 17 and are intended to be developed for a range of nonresidential uses that benefit from their location on a major highway corridor.
- (12) Research Office (RO). The Research Office zoning district encompasses properties generally that have been developed with campus-like nonresidential uses or are vacant and intended to be developed with campus-like nonresidential settings. The intent of this district is to preserve

and protect the Town's taxable and employment base by allowing nonresidential uses exclusively.

- (13) Light Industry Office (LIO). Similar to the RO district, the Light Industry Office zoning district encompasses properties that have generally been developed with campus-like nonresidential uses or are vacant and intended to be developed with campus-like nonresidential settings. The intent of this district is to allow light industrial and other uses in a manner which still preserves and protects the Town's taxable and employment base by allowing nonresidential uses exclusively.
- (14) Tourism Business (TB). The Tourism Business zoning district encompasses properties primarily with frontage on Route 17A located centrally within the Town of Tuxedo and Sterling Forest State Park. The purpose of this zone is to promote economic development by allowing nonresidential uses, and to promote uses which reinforce and complement recreational activities conducted within the state park system.
- (15) Planned Integrated Development Overlay (PID-O): This overlay zone encompasses properties that are included in any Planned Integrated Development special use permit approved by the Town Board.
- (16) Mixed Use (MU) Floating Zone: This floating zone is intended to allow mixed use residential and nonresidential developments on parcels which are adequately serviced by transportation and utility infrastructure, and which can be designed as traditional small mixed-use neighborhoods where the Town Board, in its discretion, determines these uses are appropriate.

**§ 98-6. Zoning map.**

- A. Zoning Map. The boundaries of the zoning districts are hereby established as shown on the "Zoning Map of the Town of Tuxedo, Orange County, New York", dated June 2021, hereinafter referred to as "Zoning Map", certified by the Town Clerk as adopted by the Town Board of the Town of Tuxedo. The Zoning Map, together with all explanatory matter shown thereon and all amendments thereto, is hereby adopted and is declared to be an appurtenant part of this Zoning Chapter. A copy of the Zoning Map shall be kept in the offices of the Town Clerk and Code Enforcement Officer and shall be made available for review by the public.
- B. Base zoning districts. All zoning districts are deemed base zoning districts, except for the Planned Integrated Development Overlay, which is deemed an overlay district as per subsection C below, and the Mixed Use Floating Zone, which shall be applied to a property only upon the approval of a zoning map amendment by the Town Board.
- C. Planned Integrated Development Overlay (PID-O). This overlay zone includes those properties for which a Planned Integrated Development special use permit is approved. Any PID that obtains a special use permit shall be designated as being contained in the PID-O overlay district and allowed in accordance with the specific provisions set forth in the approved special use permit.

**§ 98-7. District boundaries.**

- A. In determining the boundaries of districts shown on the Zoning Map, the following rules shall apply:
  - (1) Where a district boundary is indicated as approximately following the center line of a street, highway, watercourse or railroad right-of-way, or such line extended, such center line shall be construed to be such boundary.

- (2) Where a district boundary is indicated as approximately following the Town of Tuxedo boundary line, a property line, or a lot line, the district boundary shall be construed to be coincident with such boundary, property or a lot line.
- (3) Where a district boundary is so indicated that it is approximately parallel to the Town of Tuxedo boundary line, a property line, a lot line, a right-of-way line or projections thereof, said boundary shall be construed as being parallel thereto and at such distance as indicated on the Zoning Map or as shall be determined by use of the scale shown on the Zoning Map.
- (4) In all cases where a district boundary line is located not farther than fifteen (15) feet away from a lot line of record, such boundary line shall be construed to coincide with such lot line.
- (5) In all other cases where dimensions are not shown on the map, the location of boundaries shown on the map shall be determined by the use of the scale appearing thereon.

**§ 98-8. Effect of establishment of districts; adoption of law.**

- A. No building shall be erected, moved, altered, rebuilt or enlarged, nor shall any land or building be used, designed or arranged to be used, for any purpose or in any manner except in conformity with all regulations, requirements and restrictions specified in this Zoning Chapter for the district in which such building or land is located.
- B. No yard or open space required in connection with any building or use shall be considered as providing a required open space for any other building on the same or any other lot.
- C. No lot shall be formed from part of a lot already occupied by a building unless such building, all yards and open spaces connected therewith and the remaining lot comply with all requirements prescribed by this Zoning Chapter for the district in which said lot is located. No building permit shall be issued for the erection of a building on any new lot thus created unless such building and lot comply with all provisions of this Zoning Chapter or required variances obtained.
- D. Nothing contained in this Zoning Chapter shall require any change in the plans, construction or designated use of a building complying with local laws in force prior to this Zoning Chapter, if the following is found to exist:
  - (1) A building permit or certificate of occupancy shall have been duly issued before the effective date of this Zoning Chapter; and
  - (2) Where construction is involved, construction shall have commenced prior to the effective date of this Zoning Chapter, and construction shall be completed in accordance with the plans filed with the Code Enforcement Officer within one (1) year from the date on which a building permit was issued.
- E. Prohibited uses. Any use not allowed by this Zoning Chapter as a permitted use, special use, or accessory use, shall be deemed to be prohibited. Any list of prohibited uses contained in any section of this Zoning Chapter shall not be deemed to be an exhaustive list but has been included for the purposes of clarity and emphasis and to illustrate, by example, some of the uses that are deemed undesirable and incompatible and are thus prohibited.

## ARTICLE IV. USE REGULATIONS

### § 98-9. Table of general use regulations.

- A. Use requirements. No building or premises shall be erected, altered or used in any zoning district except in accordance with Table I, Schedule of Use and Bulk Requirements. The general regulations affecting the use of buildings, structures and land for each of the zoning districts established in Article III are set forth in Table I, entitled "Table of General Use and Bulk Requirements".

The notations shown on the Table of General Use and Bulk Requirements shall have the following meaning:

P = Permitted Use

SUP = Special Use

Y = Yes

N = No

Min = Minimum

Max = Maximum

- B. Effect of use regulations. Where this Zoning Chapter imposes a greater restriction on the use of building or land or on the height of buildings or requires larger open spaces or imposes any higher standards than are imposed or required by any other statute, law, ordinance, rule or regulation, or by any easement, covenant, or agreement, the provisions of this Zoning Chapter shall control.
- C. Accessory uses and structures. Accessory uses and structures shall be compatible with the principal use of the lot on which same may be situated, and an accessory use or structure shall not be established prior to the establishment of a principal use on the same lot.
- D. Railroad use. A railroad line, right-of-way, and its accessory structures in existence on the effective date of this Zoning Chapter is deemed to be a special use allowed in any district in which the railroad line is presently located. Nothing herein shall be construed to allow any expansion of a railroad line or use without a special use permit and site plan approval by the Planning Board unless said review and approval is preempted by applicable federal law or federal regulations.
- E. Prohibited uses. The following uses are deemed to be prohibited uses in any zoning district in the Town of Tuxedo:
- (1) Manufacturing uses involving primary production of the following products from raw materials:
    - (a) Asphalt, cement, charcoal and fuel briquettes.
    - (b) Chemicals such as: aniline dyes; ammonia; carbide; caustic soda; cellulose; chlorine; carbon black and bone black; creosote; hydrogen and oxygen; industrial alcohol nitrates; potash; plastic materials and synthetic resins; pyroxylin; rayon yarn; and hydrochloric, nitric, phosphoric, picric, and sulfuric acids.
    - (c) Coal, coke and tar products, including gas manufacturing; explosives; fertilizers; gelatin, glue and size, or other animal rendering.
    - (d) Linoleum and oilcloth, matches, paints, varnishes and turpentine.
    - (e) Rubber (natural and synthetic); soaps, including fat rendering; starch.

- (2) Uses involving the following processes: nitrating of cotton or other materials; milling or processing of flour, feed or grain; magnesium foundry; reduction, refining, smelting and alloying of metal or metal ores; refining secondary aluminum; refining petroleum products, such as gasoline, kerosene, naphtha, lubricating oil; distillation of wood or bones; reduction and processing of wood pulp and fiber, including paper mill operations.
- (3) Operation of stockyards and slaughterhouses, grain elevators and slag piles.
- (4) Above ground bulk or wholesale storage of gasoline.
- (5) Dumps and junkyards.
- (6) Incineration of waste materials.
- (7) Any disposal of septic or sewage wastes on any property, whether or not owned by the disposer unless pursuant to a system of facility that has been approved by the Orange County Department of Health such as an inground septic system.
- (8) Amusement parks, circuses, outdoor concerts or entertainment events, carnivals and related activities, except for a temporary period by approval of the Town Board. Said uses are allowed by special use permit in the Tourism Business district, and in other locations explicitly approved by the Town Board.
- (9) Aggregate processing, except in connection with a clearing, filling and grading permit, site plan or subdivision approval granted by the Planning Board or Town Board related to on-site construction of uses and development otherwise allowed by the Zoning Chapter and approved by either board.
- (10) Temporary or permanent outdoor storage, unless related to an active construction project for which the CEO has granted a building permit or a clearing, filling and grading permit, or accessory to a principal use allowed in the applicable zoning district and approved in accordance with the regulations of this Zoning Chapter.
- (11) Any other use, whether specified above or not, that does not conform to the performance standards contained in Section 98-42 of this Zoning Chapter, that is of such a nature as to be detrimental to neighboring properties by reason of emission of odor, dust, refuse matter, garbage, smoke vibration, gas, noise, or any other factor that is dangerous to the comfort, peace, enjoyment, health or safety of the area or the community.

**§ 98-10. Mixed Use (MU) Floating Zone.**

A. Establishment and purpose.

- (1) The Town hereby establishes a Mixed Use zoning district which is a floating zone that must be established through submission of a zone petition to the Town Board which may, in its sole discretion, approve said petition. The Town Board shall find that a MU district shall result in one or more of the following benefits to the Town:
  - (a) Offer diversity in housing.
  - (b) Create usable open space and recreation areas and preserving natural areas.
  - (c) Conveniently locate businesses and services that can serve the proposed housing and offer conveniences to other neighborhoods in the Town.
  - (d) Promote economic development and encourage commerce in well-designed planned

environs where uses within the MU zone are compatible with each other and with adjoining uses.

- (e) Provide for the efficient use of land and the placement of utilities and streets in ways that lower development costs and impacts.
- (f) Implement the Town of Tuxedo Comprehensive Plan.
- (g) Encouraging innovation not possible under strict application of subdivision and zoning regulations.
- (h) Create a physically attractive and cohesive neighborhood by adhering to neotraditional design standards. The Town Board may require the creation of a Form-Based Code and/or design guidelines to regulate development within the proposed MU zone.

B. Location standards.

- (1) Location. The property for which a MU zone petition is submitted shall be located within the GB District.
- (2) Minimum site size. The property shall be no less than 10 contiguous gross acres of land and shall have no less than 200 feet of direct frontage on NYS Route 17 and direct vehicular access thereto. The Applicant can aggregate parcels provided they are in the GB zone and are contiguous. For purposes of this zone, properties that are across the street from each other may be considered contiguous.

C. Procedures. The Town Board, in its discretion, may establish a MU zoning district in the following manner:

- (1) An applicant shall submit a zone petition and application to the Town Board to establish a MU zone. The application shall be in writing and include a concept plan drawn at a scale which adequately identifies the data required below. The application and concept plan shall include the following information:
  - (a) A conceptual layout showing the location of buildings and types of the various uses and their areas in acres and proposed open space and recreational areas. The mix of dwellings by size of dwelling unit, number of bedrooms, and dwelling unit type, and total gross floor area of same. The mix of nonresidential uses proposed on the concept plan and gross floor area of all nonresidential uses.
  - (b) Floor plans and elevations of the proposed buildings.
  - (c) A depiction of the proposed interior road and driveway system and proposed design of same. The Town Board may require submission of a traffic study to evaluate the impacts associated with development of the MU zone.
  - (d) Location, area and proposed ownership and use of open space.
  - (e) Description and concept plan for the provision of sewer service, water supply, stormwater management and other required utilities. The Town Board may require the submission of engineering studies and may require a hydrogeologic analysis to ensure adequate water supply is available to serve the project and that there shall not be any adverse impact on surrounding individual wells.
  - (f) Uses and ownership of abutting lands.

- (g) A proposed phasing plan.
  - (h) A SEQRA analysis of the proposed district.
  - (i) Evidence the proposal is compatible with the goals of the Town of Tuxedo Comprehensive Plan and this Zoning Chapter.
  - (j) A market and fiscal impact study, if required by the Town Board.
  - (k) Any other analyses, data or plans that the Town Board determines is necessary to assess the merits of the zone petition.
- (2) Upon submission of all the data set forth above, the Town Board shall forward the zone petition and concept plan to the Planning Board for its review. The Planning Board shall review the concept plan and related documents and render a report to the Town Board regarding the concept plan including any proposed revisions. An unfavorable report shall state clearly the reasons thereof and, if appropriate, advise the applicant what revisions would be required for the Planning Board to render a favorable report. A favorable report shall include any recommendations for changes or conditions with respect to the proposed concept plan. The Planning Board shall issue its report within sixty-two (62) days of receipt of a complete concept plan and application, except that the timeframe for issuing a report may be extended upon consent of the Town Board. The Town Board upon receipt and review of the report may continue its review.
- (3) The Town Board shall make such other referrals necessary including review by the Orange County Planning Department and any other referrals as may be necessary pursuant to the regulations implementing the New York State Environmental Quality Review Act.
- (4) Prior to approving the zone petition and concept plan, the Town Board shall hold a public hearing in accordance with the notice requirements and other procedures for the adoption of a zoning amendment. No public hearing shall be required if the Town Board determined to not approve the petition.
- (5) Mitigation measures and conditions may be imposed by the Town Board as part of any MU zoning amendment.
- (6) Plan approval.
- (a) The Town Board shall proceed to review the zone petition in accordance with the Section 264 of New York State Town Law and Article XVI of this Zoning chapter and shall conduct a hearing within sixty-two (62) days of the meeting at which the Planning Board's report and/or application is received, or within sixty-two (62) days after said timeframe for Planning Board review has expired. No approval decision shall be made until the Town Board has issued a Negative Declaration, or adopted a Findings Statement, in accordance with the regulations implementing SEQRA. The Town Board, in its discretion, may approve the concept plan if it meets the benefits set forth above, and where it finds that:
    - [1] The proposed uses will not be detrimental to present and potential uses in the area surrounding the proposed MU district.
    - [2] Existing road and highways are suitable and adequate to carry anticipated traffic associated with the proposed development.
    - [3] Existing and future utilities are or will be adequate for the proposed development.



- [4] The concept plan complies with the requirements of this chapter and is consistent with the Town of Tuxedo Comprehensive Plan.
- [5] The concept plan will not have a significant adverse impact on the Town's natural resources including the quantity and quality of groundwater and any aquifer systems.
- [6] The Town Board shall consider the scale of the proposed buildings associated with the uses, their potential impact on community services, environmental resources, the visual environment and community character, and may limit the size of any buildings associated with a development within the MU zone.
- (b) If a site plan or subdivision plan is not submitted to the Planning Board as required herein within one (1) year of receiving a MU zone change approval, the lands on which the MU zone was granted shall automatically revert back to the zoning district prior to the MU zone change. The Town Board, in its discretion, may extend such timeframe by up to one (1) year.
- Should the Town Board approve the proposed amendment creating a MU district, it may attach conditions to such approval. If the MU district has been approved by the Town Board and has received site plan and/or subdivision approval from the Planning Board and is not substantially developed in accordance with the approved concept plan and site/subdivision plan within five (5) years of the effective date of the zoning amendment, and provided that it shall then appear that rights vested in persons acting in good faith in reliance on such zoning classification will not be prejudiced thereby, the Town Board, upon resolution and no earlier than sixty-two (62) days following written notice to the applicant and general publication in a newspaper of general circulation, may revoke the MU zone, and the property shall revert back to the zoning district prior to the zone change.
- (7) Upon adoption of the MU zone by the Town Board, the applicant shall submit a site plan and/or subdivision plan to the Planning Board for all or a phase of the development, in accordance with any phasing plan approved by the Town Board. Said plans shall include all data required as per Chapter 85, Subdivision of Land, and the special use and site plan review requirements set forth in this Zoning Chapter. The Planning Board shall review and render a decision on any subdivision plan, site plan, and or special use permit in accordance with the standards regulating same. The Planning Board, upon receipt of an application, shall forward same to the Town Board for its review. The Town Board, as set forth in (5) below, may comment on the consistency of the plan with the approved MU zone, any conditions thereto, or the concept plan.
- (8) Any plans submitted to the Planning Board shall conform substantially to the concept plan approved by the Town Board and any conditions established as part of the approval of the MU zone. The Town Board or the Planning Board may require that any application not substantially in conformance with the concept plan and MU zone approval be referred back to the Town Board for review, and if required, approval of the Town Board. The Town Board may rescind the MU zone for any application which is not substantially in compliance with the concept plan, unless the revised concept plan is approved by the Town Board upon further review in accordance with this section.
- (9) No building permits shall be issued for construction within a MU zone until all required improvements are installed or financial guarantees are posted in accordance with the procedures provided by the Town Subdivision chapter and this Zoning Chapter.

- D. Design standards. These design standards shall be met as part of the concept plan and the site and/or subdivision plan.
- (1) Maximum residential density. The maximum density shall be as follows, and there shall be no more than 200 dwelling units as part of any MU zone. The residential density shall be determined on the gross acreage of the entire site:
    - (a) Single-family detached dwellings: Two (2) dwelling units per one (1) acre of gross lot area.
    - (b) Two family dwellings: Two (2) dwelling units per one (1) acre of gross lot area.
    - (c) Single family attached (townhomes): Three (3) dwelling units per one (1) acre of gross lot area.
    - (d) Multifamily development: Four (4) dwelling unit per one (1) acre of gross lot area.
    - (e) Multifamily dwellings above ground floor nonresidential uses: Four (4) dwelling units per one (1) acre of gross lot area.
    - (f) The Town Board, in its discretion, may approve the mix of dwelling units as part of the MU zone, provided the ratio of residential to nonresidential uses meets the requirement of (4) below, and that in no case shall the maximum dwellings exceed 200 dwelling units.
  - (2) Nonresidential development. The MU zone shall require the construction of nonresidential development as part of the MU zone. Restaurants, boutique retail shops, and similar uses would be appropriate nonresidential uses. The total gross floor area of areas dedicate to nonresidential use shall be no less than fifty percent (50%) of the total gross floor area of all residential and nonresidential uses on the site. The Town Board shall establish the allowable nonresidential uses as part of the MU zone.
  - (3) Phasing. Development within the MU zone shall be phased so that an equivalent amount of residential to nonresidential gross floor area is constructed during any phase. Phases shall not advance until the 1:1 ratio of residential to nonresidential area is met. Residential and nonresidential development shall be constructed concurrently.
  - (4) Maximum lot coverage and land disturbance. The total development coverage for the entire property shall not exceed fifty percent (50%). The concept plan shall show the proposed locations for buildings, and the Town Board shall establish the bulk standards for the MU zone. The Town Board may allow an increase in development coverage and decrease in open space, and upon a finding that there is sufficient open space and recreational areas available to serve residents of the MU zone. In no case shall development coverage exceed 65 percent.
  - (5) Utilities. All electric, telephone, telecommunications, and other service lines shall be underground. A MU zone shall be served by central water and sewerage systems.
  - (6) Parking. On-street parking on public highways or access roads within the MU zone shall not be permitted. The minimum required parking shall be established as part of the MU zone petition and shall be approved by the Town Board.
  - (7) Open space and recreation. No less than forty percent (40%) of the gross acreage of the site shall be preserved as open space. All areas of the site shall be amply landscaped by preserving existing vegetation, or by installing a combination of decorative and native plant materials. A recreational area no less than ten (10%) of the total gross lot area, exclusive of the area required for open space, shall be established, except that the Town Board may waive such

requirement where the Applicant commits to provide a fee in lieu of recreation in accordance with § 98-56 of the Zoning Chapter. A landscaping plan shall be submitted as part of the site-specific site and/or subdivision plan submitted to the Planning Board. The open space area may include the visual screening area set forth in subsection (6) below.

- (8) Landscape and design requirements. Landscape and facade design requirements to be incorporated in project covenants and restrictions shall be developed and submitted for approval. A landscaped planting screen of no less than 75 feet in width shall be required along the border of the MU zone with any public road. Such screen shall be in place prior to the issuance of a certificate of occupancy and substantially screen proposed buildings in the MU zone from view within five years of planting. Existing trees and vegetation shall be maintained wherever possible in such areas and supplemented with additional vegetation as may be necessary to accomplish screening objectives. All buildings, structures and land disturbances shall be set back a minimum of 100 feet from the exterior property lines, which distance may be increased by the Town Board as may be necessary to protect adjoining properties and preserve neighborhood character when rezoning land to a MU zone.
- (9) Building heights. Structures within the MU zone shall not exceed a height of 30 feet, or two and one-half (2.5) stories.
- (10) MU zone uses. The Town Board shall approve the allowable uses in the MU zone, which are limited to the following: any uses allowed as permitted uses or by special use permit within the R-4 zoning district and the NB zoning district.
- (11) Ownership. The land proposed for a MU zone may be owned, leased or controlled either by an individual, corporation (or other legal entity) or by a group of individuals or corporations. MU zone applications shall be filed by the owner or jointly by all owners of the property included in the application. In the case of multiple ownership, the approved plan shall be binding on all owners.
- (12) The buildings and structures shall be compatible with the character exhibited within the surrounding environs, the character of the community and the natural surroundings. The Planning Board shall review the architectural style of all buildings at the concept plan stage and shall review and approve the architectural style of the buildings and structures, taking into consideration the objectives set forth herein. Floor plans and elevations shall be submitted for review as part of the concept plan.
- (13) The applicant shall demonstrate that adequate emergency service facilities and access are provided for the proposed use.
- (14) The number of off-street parking spaces required to serve the development shall be calculated utilizing the applicable parking generation rates set forth in the most recent edition of the Institute of Traffic Engineers' publication, "*Parking Generation.*" Parking areas shall be broken up and amply landscaped to avoid the creation and appearance of significant expanses of impervious surfaces.
- (15) On-site lighting shall be designed and installed in a manner that minimizes visual impacts to the night sky. A lighting plan depicting the level and intensity of illumination within the site and at the property boundary shall be submitted to the Planning Board as part of the site plan. Decorative lighting fixtures appropriate to a rural and rustic setting shall be incorporated into the overall design of the development.

- (16) Transit. As part of the concept plan, the Town Board can require that a bus or transit stop be provided on-site to service the proposed residents within the MU zone.
- (17) As part of the concept plan, the Town Board may require the inclusion of solar facilities, charging stations, or other green and/or renewable energy systems.

## ARTICLE V. AREA AND BULK REQUIREMENTS

### § 98-11. Schedule of bulk requirements.

- A. Purpose. In order to provide adequate space for access of light and circulation of air, to facilitate the prevention and fighting of fires, to prevent undue concentration of population, and to lessen congestion on streets, no building or premise shall be erected, altered, or used except in accordance with the standards set forth herein.
- B. Bulk requirements. Table I, "General Use and Bulk Requirements", contains regulations affecting the bulk and arrangement of buildings and structures, the density of residential and nonresidential development and of materials and equipment occupying land in connection with non-building uses thereof for each of the districts established by Article III.
- C. Existing lots of record. For the purposes of this Zoning Chapter:
  - (1) Two (2) or more contiguous noncomplying vacant parcels of land in common ownership on or after the effective date of this Zoning Chapter shall be deemed to be merged to form one (1) or more lots complying so far as possible to the bulk standards of the district in which the parcels are located. The lots shall be merged so as to reduce the degree of noncompliance and to create lots that comply with the use and bulk requirements of the applicable zoning district.
  - (2) One or more vacant parcels of land that adjoin a noncomplying lot in common ownership on or after the effective date of this Zoning Chapter and containing a building or structure shall be deemed to be merged with said improved lot to the extent necessary to bring the improved lot into compliance so far as possible. If any remaining vacant parcel(s) constitutes a complying lot, said parcel(s) shall remain a separate lot. Otherwise, the merged lots shall constitute one lot.
  - (3) No lot so merged, or portion thereof, may be subdivided in any manner that will create or increase the degree of noncompliance.
- D. Grandfathering of lots to be used for the construction of single-family detached dwellings. Any lot in existence prior to the effective date of this Zoning Chapter, which did not adjoin another lot in common ownership and does not presently adjoin a lot in common ownership, and whose lot area, lot width, and/or lot depth are less than the minimum lot requirements for the district in which it is located, may be considered as complying with the minimum lot area requirements, and no variance shall be required, and a single-family detached dwelling only may be constructed, provided that:
  - (1) Single-family detached dwellings are a permitted use in the zoning district in which the dwelling would be located.
  - (2) The lot has a minimum lot area of 10,000 square feet and a minimum lot width of seventy-five (75) feet.
  - (3) Any such single-family detached dwelling shall conform with all yard, floor area ratio, impervious coverage and building height requirements of the district with a minimum lot area requirement in which the lot would conform in descending order from the largest to smallest lot area.
  - (4) The dwelling can be served by water supply and wastewater facilities which meet health department standards for said facilities.

- E. Existing average density (cluster) developments. Any lot located within a residential subdivision that was approved prior to the effective date of this Zoning Chapter and platted in accordance with Section 278 of the New York State Town Law shall be developed in accordance with the bulk requirements set forth on the residential subdivision plat. The bulk requirements on the cluster subdivision plat shall supersede the bulk requirements applicable to the zoning district within which said lot is located.
- F. Planned integrated development (PID) bulk standards. Any PID which receives special use permit approval from the Town Board and which special use permit has not expired shall be subject to the bulk requirements and design standards contained in the special use permit. Unless regulated therein, the provisions of this Zoning Chapter shall govern.

**§ 98-12. Minimum lot area.**

- A. Net lot area. Whenever the phrase lot area, minimum lot area, or minimum lot size or similar term appears in this Zoning Chapter, such phrase shall be deemed to be based upon net acreage or net square footage following the exclusion of the following lands:
  - (1) The 100-year floodplain as defined by and illustrated on the Federal Emergency Management Agency (FEMA) Flood Hazard Boundary maps as those maps now exist or as they may be amended from time to time;
  - (2) Wetlands, including New York State designated wetlands but excluding the 100-foot regulated adjacent area, and federally regulated wetlands, as those wetlands now exist or may be found to exist;
  - (3) Lands under water, and lands covered by natural or constructed water bodies including, without limitation, retention and detention basins.
  - (4) For slopes equal to or greater than 25 percent but less than 35 percent, fifty percent (50%) of said acreage shall be excluded.
  - (5) For slopes equal to or greater than 35 percent, one hundred percent (100%) of said acreage shall be excluded.
  - (6) Land encumbered by easements or other restrictions, including utility easements, preventing use of such land for construction of buildings, uses, and/or development.
- B. The net lot area, after exclusion of the features set forth in subsection A above, shall be calculated, and any permissible residential density or nonresidential development of land shall be calculated utilizing the net lot area. Any fractional dwelling unit shall be rounded to the nearest whole number.
- C. Area variance required. A lot shall be deemed conforming as to lot area only if it meets the minimum lot area set forth in Table I or as otherwise required in this Zoning Chapter, after subtracting those areas listed in § 98-12.A above. Any lot area not meeting the minimum requirement shall require an area variance.

**§ 98-13. Accessory buildings and yards.**

- A. Accessory buildings in required yards.
  - (1) Except as may be otherwise allowed herein, accessory buildings or structures are not permitted in any front yard except that decorative light poles, pillars at the entrance to a driveway with lights or mailboxes installed therein, signs, mailboxes, landscaping elements, and fences and

walls as regulated in Subsection E below, are permitted in a required front yard.

- (2) An accessory building may be located in any required side yard or required rear yard, provided that:
  - (a) it shall not exceed fifteen (15) feet in height.
  - (b) it shall be set back no less than ten (10) feet from any lot line.
  - (c) all buildings in the aggregate shall not occupy more than ten percent (10%) of the area of the required side yard or required rear yard.

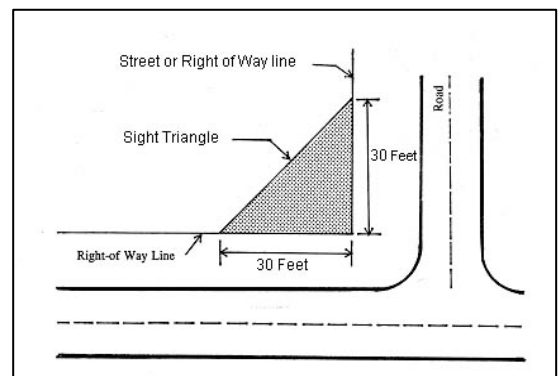
An accessory building not meeting these requirements shall not be located in a required side yard or required rear yard.

- (2) An accessory building located on that portion of a lot not included in any required yard shall conform to the height regulations for principal buildings in the zoning district in which said lot is located.
- B. Detached garage accessory to a single-family detached dwelling. Where the natural slope exceeds thirty percent (30%) within twenty-five (25) feet of a front lot line, the Planning Board may authorize the construction of a garage within a front yard, provided the garage is setback a minimum distance of twenty-five (25) feet from the front lot line, and where it is determined that exiting the garage and driveway shall not cause a traffic safety hazard. Said exception shall be permitted only where the front lot line is on a Town road and shall not be permitted on a County or State highway. An application shall be submitted to the Planning Board and said application shall include a narrative and map which demonstrates approval of the garage will not cause a traffic safety or other hazard. The Planning Board, during review of a subdivision plan, may also allow this arrangement as part of the design of individual lots.
  - C. Roof projections. Cornices or cantilevered roofs on a principal building may project not more than three (3) feet into a required yard.
  - D. Ornamental features. Belt courses, windowsills and other ornamental features on a principal building may project not more than six (6) inches into a required yard.
  - E. Fences and walls. A fence or wall is permitted in a front yard provided it does not exceed four (4) feet in height. Within a side or rear yard, a fence or wall shall not exceed six (6) feet in height. A fence shall be set back no less than six (6) inches from a lot line or such distance required to allow for maintenance, or may be located on the property upon mutual consent of both property owners. The decorative or finished side of a fence or wall shall face the exterior of the lot, i.e., facing the street or adjoining lots. Any fence ten (10) feet or more in height which is required specifically in connection with a use set forth in the Zoning Chapter and which requires screening may be allowed only upon review and approval by the Planning Board. Barbed wire fencing is not permitted.
  - F. Impervious or paved surfaces. Except for sidewalks and a driveway giving access to a street, all other impervious or paved areas shall be set back no less than fifteen (15) feet from the street line. A driveway and all other impervious or paved areas shall be set back from any rear or side lot line a distance equal to one-half (1/2) the width of the required yard for the district in which the use is located, or a minimum width of five (5) feet, whichever is greater.
  - G. Porches. An unenclosed and roofed porch or portico may extend into a required front yard, provided it projects no more than eight (8) feet in width and six (6) feet in depth.

- H. Front yard exception for single-family detached and two-family dwelling in an existing residential neighborhood. Upon approval by the Planning Board, a single-family detached, single-family semi-attached, or two-family dwelling may be erected nearer to the front lot line than otherwise permitted by these regulations, provided the dwelling is set back no less than the average front setback of existing dwellings sharing the same street frontage located within two hundred (200) feet of either side of the proposed dwelling. The Planning Board, in its findings, shall have determined that the setback will not have a detrimental impact on any adjoining properties. The Planning Board may impose conditions on the approval of such modification.
- I. Yards on narrow streets. On streets with a right-of-way width less than fifty (50) feet, the street line from which any required yard is measured shall be established twenty-five (25) feet from the center line of the right-of-way of the existing street. Where a lot is located on a road and the lot line is located in the traveled way, the street line from which any required yard is measured shall be established twenty-five (25) feet from the center line of the road.
- J. Storage in yards. No materials may be stored temporarily or permanently within any portion of a front yard, or within a required side yard if access into the property is reduced to less than fifteen (15) feet or the required side yard is within twenty-five (25) feet of the street line in any property. Materials shall include, but not be limited to wood, metal, masonry, or other such materials.
- K. Yard requirements involving irregular buildings and lot lines. Where buildings or lot lines are irregular in configuration, all points on the structure shall satisfy the minimum yard requirements from the point on the lot line which is the shortest distance and perpendicular to the building.
- L. Side or rear yard abutting an existing railroad right-of-way. A yard is not required along a lot line which directly abuts an existing railroad right-of-way, provided the use being conducted on said lot requires direct access to the right-of-way to load or unload goods from trains on the rail right-of-way. Otherwise, a lot containing a use or building that does not require use of the rail right-of-way shall meet the minimum yard requirements applicable to the use and zoning district wherein the lot is located.

**§ 98-14. Lots.**

- A. Minimum lot area required for septic system and individual wells. Any minimum lot area set forth in the Table of General Use and Bulk Requirements shall be enlarged so as to comply with Orange County Department of Health and New York State Department of Health Standards applicable to lots that are served by individual wells and/or septic systems, and to ensure the minimum separation distances between individual wells and/or septic systems on-site and on adjoining lots are met. The Code Enforcement Officer may request and direct a property owner to conduct percolation test pits to be witnessed by the Town Engineer. The cost of any said tests and observation shall be borne by the applicant.
- B. Obstruction to sight at street intersections. At all street intersections in all districts, no obstructions, including but not limited to parking stalls, walls, fences, signs, structures or any plant growth other than grasses, shall be placed or maintained within the sight distance area so as to impede vision. No obstructions exceeding two and one-half feet (2.5) feet in height measured from the street pavement level shall be erected or maintained on any lot within the sight triangle formed by the street lines





of such lot and a line drawn between points along such street line thirty (30) feet from their point of intersection, except that a greater distance may be required if imposed by the Orange County Department of Public Works or the New York State Department of Transportation in connection with any permit issued by said agencies.

- C. Corner lot. On a corner lot, a front yard is required on both street frontages, and one (1) yard other than the front yard shall be deemed to be a rear yard and the other(s) side yards. For lots subject to site plan or subdivision review and approval, the Planning Board shall designate which yard shall be the rear yard after consideration of the street to which the lot fronts, anticipated traffic volume on each street, and the arrangement of buildings on adjoining properties. For corner lots not involving site or subdivision plan review, the Code Enforcement Officer shall make such determination in consultation with the property owner.
- D. Flag lot. Flag lots are not permitted in the Town of Tuxedo. For flag lots in existence on the effective date of this Zoning Chapter, the interior portion of the flag lot (i.e., the portion of the lot excluding the flagpole portion of the lot and where the lot complies with the minimum lot width requirement) shall meet the bulk requirements applicable to the use and zoning district in which said lot is located or otherwise shall require an area variance from the Zoning Board of Appeals.
- E. Through lots. Through lots are not permitted in the Town of Tuxedo. For through lots in existence on the effective date of this Zoning Chapter, each yard that fronts to a street shall be deemed to be a front yard and any other yard shall be deemed to be a side yard. As part of any site plan application involving a through lot, the Planning Board may require that the front yard, other than the front yard to which the building faces, be screened from view of the adjoining street. The Planning Board shall have the authority to require and specify screening materials that may be required to screen the rear yard of a lot which faces to a street.
- F. Access to buildings and lots. Every building shall have access to a public road, or access to an approved private road, and all structures shall be so located on lots as to provide safe and convenient access for emergency vehicles as required by Section 280-a of the New York State Town Law. The design of all new road intersections and driveway accesses on local streets shall be designed in accordance with the Town Highway Specifications, as may be amended from time to time, and approved by the Town Highway Superintendent who may consult with the Town Engineer as to the adequacy of the design of same.
- G. Street frontage.
  - (1) Minimum street frontage. It is a policy of the Town of Tuxedo to minimize the number of new curb cuts established on streets that carry high volumes of vehicular trips, thereby improving traffic safety. Except for properties located in the S-HB, S-HR and T-TC zoning districts, any lot with street frontage on a state or county road shall have a minimum street frontage on said road that is no less than two times the minimum lot frontage otherwise required for the use and zoning district within which said lot is located, or a minimum of 200 feet, whichever is greater. For properties containing nonresidential uses, these provisions may be waived by the Planning Board where it is determined that shared driveway access will be provided, and the combined street frontage of all lots sharing said access is two hundred (200) feet or greater. The Planning Board shall condition said waiver on the property owners entering into a legal agreement reserving the driveway permanently for shared use with adequate maintenance provisions in the opinion of the Planning Board attorney. The Planning Board, in its discretion, may also waive this requirement where a lot maintains street frontage on a road not regulated by this

requirement and can obtain vehicular access from the street not regulated herein, provided the property owner restricts future access to said other location by means of a deed restriction, map note, or other legal device.

- (2) Street frontage on cul-de-sacs. The minimum street frontage for a lot that is located at the end of a cul-de-sac road on a Town owned or maintained road may be reduced to no less than 75% of the minimum street frontage applicable to the use and district within which the lot is located.

**§ 98-15. Nonresidential buildings and uses.**

A. Height regulations.

- (1) Structures such as chimneys, flues, towers, spires and similar minor accessory appurtenances situated on or attached to a principal building may exceed the maximum building height listed in § 98-9, Table of Bulk Requirements, by no more than thirty percent (30%) of said maximum, provided that such structures shall not exceed the elevation of any ridgeline by more than one (1) foot for each two hundred (200) feet from the ridgeline. These provisions shall apply whether the ridgeline is on the actual site under application or adjacent to the site.
- (2) The regulations contained in § 98-15.A(1) shall not apply to wireless communication facilities which are regulated in accordance with § 98-21.
- (3) Barns and silos accessory to an agricultural use shall be exempt from the height regulations of this Zoning Chapter.

B. Screening requirements. All nonresidential uses and structures accessory thereto adjoining, abutting or within one hundred (100) feet of a residential zoning district or a residential use in a residential zoning district shall provide and maintain adequate screening along any lot line facing said residential use or district. The Planning Board may, as a condition of special use, site plan or subdivision approval, require a fence, berm, vegetative screen, or combination thereof, as will sufficiently screen and buffer the residential use from the non-residential use.

C. Utility lines. Unless waived by the Planning Board, all new utility lines serving new residential subdivisions shall be placed underground. Any on-site utilities serving new nonresidential development shall be placed underground. Utilities shall be deemed to include distribution and transmission lines for sewer, water, storm drainage, telephone, cable, electricity, and gas.

**§ 98-16 through 19. Reserved.**

## ARTICLE VI. SUPPLEMENTARY USE REGULATIONS

### § 98-20. Private swimming pools.

- A. Private swimming pools, where allowed, are subject to the following:
- (1) Swimming pools shall be maintained in a clean and sanitary condition, and in good repair.
  - (2) Such pool shall not be located in any required front or side yard.
  - (3) Such pool shall be constructed, operated, and maintained in compliance with the New York State Residential Code, Appendix G, and the New York State Uniform Fire Prevention and Building Code.
    - (a) The entire portion of the premises upon which such pool is located shall be entirely enclosed with a barrier not less than four (4) feet in height so that such pools are inaccessible to children.
    - (b) Every gate and other opening in the fence enclosing such pool must be self-closing and self-latching. Each gate must be kept securely closed and locked at all times.
  - (4) Such pool shall not occupy more than 35% of the balance of the rear yard area, after deducting the area of all private garages and other accessory buildings and structures.
  - (5) If the water for such pool is supplied from the public water supply system, the inlet shall be above the overflow level of said pool.
  - (6) No loudspeaker or amplifying device shall be permitted which can be heard beyond the boundaries of the property or lot where said pool is located.
  - (7) Adjacent to every side and rear lot line within the rear yard area, there shall be a protective planting strip designed and laid out to provide an effective natural visual barrier between the swimming area and the adjacent residential areas. Such screen shall be of suitable plant materials which will attain and be maintained at a height of six feet above the water level of the pool; however, no screen need be greater than twelve (12) feet in height from the ground level.
  - (8) No swimming pool shall be filled or used until the foregoing requirements shall have been certified as met by the Building Inspector. At such time of certification, the applicant shall present evidence of liability insurance of not less than \$50,000.

### § 98-21. Wireless communications facilities.

- A. Legislative intent.
- (1) The Telecommunications Act (TCA) of 1996 affirms the Town of Tuxedo's authority concerning the placement, construction, and modification of wireless telecommunications facilities. The Town Board finds that wireless telecommunications facilities can, if not properly regulated, pose a unique hazard to the health, safety, public welfare and environment of the Town and its inhabitants. The Town also recognizes that wireless service technology can be a communication asset to the Town and its residents. To ensure that the placement, construction, or modification of wireless telecommunications facilities is consistent with the Town's land use policies, the Town shall regulate these facilities in accordance with this section. These regulations are intended to minimize the potential negative impact of wireless telecommunications facilities, establish an efficient process for review of applications, assure an integrated comprehensive review of environmental and aesthetic effects of such facilities, and protect the health, safety

and welfare of the Town of Tuxedo.

- (2) Further, in 2009, the Federal Communications Commission (FCC) adopted Declaratory Ruling (WT Docket No. 08-165), which sets forth timeframes in which a municipality must act upon a wireless telecommunications facility application (“Shot Clock”). In 2012, Congress enacted the Middle Class Tax Relief and Job Creation Act (“TRA”), which imposes additional limitations on State and local laws and regulations pertaining to the siting and modification of wireless telecommunications facilities. The FCC’s October 21, 2014, Wireless Infrastructure Report and Order defines substantial and non-substantial modifications to existing cell sites and provides information on small cells and DAS and work in the public ROW. A September 26, 2018, Declaratory Ruling and Third Report and Order (FCC 18-133) describes FCC-identified regulatory “barriers” that inhibit the deployment of infrastructure including small cells necessary for network densification, 5G, and other advanced wireless services. In recognition of changes in wireless technology and an evolving regulatory framework, this Article establishes regulations to review and process wireless telecommunications facilities consistent with federal regulations.
- B. Facilities subject to this article. This Article regulates the review of applications for proposed modifications and changes to existing wireless telecommunication facilities, and small cell technology within the Town and the public rights-of-way within same.
  - C. Exempt activities. These regulations shall not apply to wireless telecommunication services facilities installed wholly within a principal or accessory building, such as but not limited to indoor distributed antenna systems, direct-to-home satellite services or direct broadcast service (DBS), signal repeaters, baby monitors, heart monitors, garage door openers and burglar alarm transmitters.
  - D. Purpose.
    - (1) To establish clear standards for the siting of wireless communication facilities, buildings and structures, equipment, communication towers, antenna towers and monopoles.
    - (2) To promote the health, safety, and general welfare of the residents of Tuxedo through the establishment of minimum standards to reduce the adverse visual effects of communication facilities, including but not limited to transmission towers and antennas, through the use of advanced technology, careful design, siting and screening and buffering.
    - (3) To protect residential areas and land uses and property values from potential adverse impacts of towers and antennas.
    - (4) To encourage the location of communication facilities and communication towers in areas suitably screened, buffered and adequately separated from residential uses.
    - (5) To minimize the total number of communication facilities and communication towers throughout the community by requiring, wherever feasible, the sharing and co-location of wireless telecommunications facilities among service providers.
    - (6) To encourage the joint use of new and existing communication tower sites as a primary option rather than construction of additional single-use communication towers while recognizing that collocation on higher towers is not always preferable to two less visible, less obtrusive shorter towers; thereby maximizing the use of existing communication towers or alternative antenna host sites, while not unreasonably limiting competition among communication providers or unreasonably limiting reception of receive-only antenna.
    - (7) To require users of communication towers and antennas to locate them, to the extent possible,

in areas where the adverse impact on the community is shown to be minimal.

- (8) To require users of communication towers and antennas to configure them in a way that minimizes adverse visual, aesthetic and community character intrusion impacts caused by the installation and view of communication towers and antennas, through careful design, siting, landscape screening and buffering, sufficient setbacks to reduce visual impacts to adjacent properties and innovative camouflaging techniques such as alternative tower structures, thereby protecting the physical appearance of the community and preserving its scenic and natural beauty.
- (9) To avoid potential damage to adjacent properties from communication towers through careful engineering and appropriate siting of communication towers.

E. Definitions. As used in this article, the following terms shall apply. Any term not defined herein shall be as set forth § 98-4 of this Zoning Chapter:

**ABANDONED** - Any wireless telecommunication facility, which has not been operational for six consecutive months.

**ADEQUATE COVERAGE** - Coverage is considered to be adequate within the service area of the Town of Tuxedo if the minimum standards set forth by the Federal Communications Commission to permit the applicant to operate a personal wireless communication service within the area are met.

**AESTHETICS** - Outward appearance: the way something looks, especially when considered in terms of style, color, texture, finish, and material; including but not limited to towers or other support structures, antennas, antenna mounts and cabling, equipment shelters, fencing, and landscaping. Aesthetic standards and samples of wireless facility aesthetic designs will be kept on file with the Town Building Department.

**ALTERNATIVE TOWER STRUCTURE** - Man-made trees, clock towers, bell steeples, light poles and similar alternative designs, including structures that camouflage or conceal the presence of antennas or towers.

**ANCILLARY EQUIPMENT** - Equipment and structures associated with a wireless telecommunication facility, including, but not limited to equipment buildings/shelters, equipment cabinets, emergency back-up power generators, and other ancillary equipment.

**ANTENNAS** - A system of electrical conductors that transmit or receive radio frequency waves. Such waves shall include but not be limited to radio navigation, radio, television, wireless and microwave communications.

**ANTENNA ARRAY** - A set or group of antennas aligned at the same height for use by a particular carrier of telecommunications wireless services.

**ANTENNA SUPPORT STRUCTURE** - Any building or structure, other than a freestanding tower, used to support antennas used in personal wireless services.

**CAMOUFLAGE** - The construction of facilities to house or support a wireless telecommunications facility so that the towers and/or antennas blend readily with the landscape, neighborhood, and adjacent architectural features. Camouflaging is when a facility is disguised or hidden or is completely or partially placed within or behind an existing or proposed enclosure or structure or completely hidden by surrounding vegetation, such that it is essentially screened from public views and adequately disguised as part of a building or other structure. Aesthetic standards and samples of wireless facility aesthetic designs – including camouflaging - will be kept on file with the Town

Building Department. Camouflaging also pertains to the stealth tree monopole configuration, in terms of pole color / texture; branch style, taper, and density; and antennas and other pole-mounted equipment.

**CLASS OF SERVICE** - The class type of station as organized and defined by the FCC.

**CO-LOCATION** - The use of an existing telecommunications tower or structure (buildings, utility poles, water towers, etc.) to accommodate additional antenna systems (single antenna or arrays) and/or appurtenances for the provision of wireless services by two or more persons or entities.

**DIRECT-TO-HOME SATELLITE SERVICES** or **DIRECT BROADCAST SERVICE** or DBS- Only programming transmitted or broadcast by satellite directly to subscribers' premises without the use of ground-receiving equipment, except at the subscribers' premises or in the uplink process to the satellite.

**DISTRIBUTED ANTENNA SYSTEM (DAS)** - A wireless technology consisting of a network of antenna nodes (typically affixed to existing utility poles or on other lower-elevation structures and installed lower to the ground than conventional panel antennas on towers) and supporting equipment to provide wireless services within a specific geographic area or structure, and subject to this Article. DAS may be used to provide wireless services for more than one provider. A single DAS installation (e.g., one antenna and supporting equipment on a given utility pole or other structure) is referred to as a DAS node. Any new support structures for DAS will be 50 feet or less in height above ground level.

**EQUIPMENT** - Computers, batteries, generators, transmission equipment and cabinets, etc., which are utilized to power and/or operate a wireless telecommunications facility.

**FACILITY** - A wireless telecommunications facility.

**FALL ZONE** - The area on the ground within a prescribed radius from the base of a wireless telecommunications facility, tower, or small cell. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material (such as the tower or structure).

**FEDERAL AVIATION ADMINISTRATION (FAA)** - The Federal Aviation Administration, or its duly designated and authorized successor agency, that is responsible for the safety of civil aviation.

**FEDERAL COMMUNICATIONS COMMISSION (FCC)** - The Federal Communications Commission, or its duly designated and authorized successor agency, that regulates telecommunications.

**FREESTANDING WIRELESS TELECOMMUNICATIONS FACILITY** - A structure, such as a monopole or lattice tower, greater than 50 feet in height, constructed or existing specifically for the purposes of supporting an antenna(s) and/or equipment used in conjunction with the operation of one or more wireless telecommunications facilities. Freestanding towers may include below-grade foundations and a platform or mounts for one or more panel antenna arrays at the top and/or at alternate lower heights.

**FREQUENCY** - The number of complete oscillations per second of energy (as sound or electromagnetic radiation) in the form of waves.

**GUYED TOWER** - A monopole or lattice tower greater than 50 feet in height that is tied to the ground or other surface by diagonal cables. Guyed towers may include below-grade foundations and a platform or mounts for one or more panel antenna arrays at the top and/or at alternate lower heights.

**LATTICE TOWER** -A self-supporting structure greater than 50 feet in height constructed of vertical metal struts and cross braces forming a triangular or square structure which often tapers from the foundation to the top. Lattice towers may include below-grade foundations and a platform or mounts for one or more panel antenna arrays at the top and/or at alternate lower setbacks.

**MINOR WIRELESS COMMUNICATIONS FACILITY** - Any wireless communications facility situated on the same property as an existing wireless communications facility designed for collocation and previously approved under this article or on or in an existing building or other structure; and where the equipment consists of a combination of antennas, or other receiving device, necessary in number to facilitate the provision of wireless communication services from such location, provided that such minor installation:

- (1) Comprises antennas, or transmitting and receiving devices which are no more than six feet in height, which are mounted on supports affixed to an existing structure; and
- (2) operates with all significant equipment accessory thereto (other than the aforementioned antennas and transmitting or receiving devices, supports and connecting cables), installed in interior space appurtenant to such existing building, tower or structure, or located upon a structure, the total combined height of which is less than 100 feet from the preconstruction average-finished grades.

**MAJOR WIRELESS COMMUNICATIONS FACILITY** - Any wireless communications facility that is not a minor wireless communications facility, including but not limited to any facilities including any wireless communications towers, as hereinafter defined.

**MODIFICATION, MAJOR** - Modification or upgrade to an existing wireless telecommunications facility that substantially changes (defined below) the physical dimensions or visual impact of any aspect of the facility. Major Modifications may include, but are not necessarily limited to: replacement of existing antennas with new models resulting in an increase to the number and/or height of the existing antennas in the array or on a utility pole; an increase of the overall tower height by more than 10% of the originally approved and/or constructed tower or support structure height (whichever is less); or an increase to the dimensions of the existing ground-based, rooftop, pole-mounted, or other equipment area (as determined by existing perimeter fencing, existing heights of equipment shelters, aggregate cubic feet of utility pole mounted equipment, or other criteria).

**MODIFICATION, MINOR** - Modification or upgrade to an existing wireless telecommunications facility that does not Substantially Change (see definition) the physical dimensions or visual impact of any aspect of the facility. Minor Modifications may include, but are not necessarily limited to: replacement of existing antennas with new models that results in equal or lesser number and/or equal or lesser height of the existing antennas in the array or on the utility pole; no increase to the overall tower height (or an increase in tower height of less than 10% of the originally approved and/or constructed tower height (whichever is less)); or no changes to the existing dimensions of the ground-based, rooftop, pole-mounted, or other equipment area (as determined by existing perimeter fencing, existing heights of equipment shelters, aggregate cubic feet of utility pole mounted equipment or other criteria). A modification shall not include the replacement of any components of a wireless telecommunications facility where the replacement is identical to the component being replaced or for any matter, that involve the normal repair and maintenance of a wireless telecommunications facility without adding, removing, changing, or altering the wireless telecommunications facility in any respect.

**MODULATION** - The variance of the amplitude, frequency, or phase of an electromagnetic wave for the transmission of information.

**MONOPOLE** - A self-supporting structure greater than 50 feet in height constructed of wood, steel or concrete with below-grade foundations and a platform or mounts for one or more panel antenna arrays at the top and/or at alternate lower heights. The monopole design without guy wires is the preferred configuration in the Town.

**MOUNT** - The structure or surface upon which antennas and ancillary equipment are mounted and likely to be visible to the general public including the following four types of mounts:

- (1) ROOF-MOUNTED - Mounted on the roof of a building.
- (2) SIDE-MOUNTED - Mounted on the side of a building.
- (3) STRUCTURE-MOUNTED - Mounted on a telecommunication tower structure or structure other than a building. This includes antenna array frame systems and antennas mounted flush to the structure surface for tower systems and small cells.
- (4) GROUND-MOUNTED - Mounted on the ground.

**NONIONIZING ELECTROMAGNETIC RADIATION (NIER)** - Nonionizing electromagnetic radiation as described and defined by the FCC.

**PREEXISTING TOWERS AND PREEXISTING ANTENNAS** - Any tower, structure, or antenna which was installed legally and prior to the effective date of this Article, or for which building permits were legally issued prior to the effective date of this Article but have not yet been constructed, so long as such permits are current and not expired.

**RADIO FREQUENCY (RF)** - A frequency of electromagnetic spectrum referred to as "radio frequency" as defined by the FCC. Hereinafter also referred to as "RF."

**RADIO FREQUENCY (RF) TECHNICAL EXPERT** - A certified or licensed radio frequency (RF) engineer specializing in electrical or microwave engineering, specifically the study of radio frequencies.

**REPEATER** - A small, supplementary, and accessory bidirectional amplifier facility designed and limited in height and transmission power to provide service only where there is a failure of coverage and to minimize visual impacts and the need for the primary base stations, which may be attached to a structure or pole.

**SECURITY BARRIER** - A locked, impenetrable wall, fence, or berm that completely seals an area from unauthorized entry or trespass.

**SENSITIVE RECEPTOR** - A place/land use (e.g., historic property, scenic overlook) that may have an increased sensitivity to views of a telecommunications facility, including those on towers or other structures and small cells.

**SEPARATION** - The distance between one carrier's antenna or array of antennas and another carrier's antenna or array of antennas.

**SMALL CELL TELECOMMUNICATION FACILITY** - Low-powered wireless base stations that function like cells in a mobile wireless network, typically covering localized outdoor areas such as traffic and transit corridors, commercial or shopping districts, and other places of congregation, and in areas where additional network coverage and capacity may be required to supplement existing wireless service. Small cell antennas and supporting equipment are typically affixed to existing utility poles or



other structures and installed lower to the ground than conventional panel antennas on telecommunications towers to provide wireless services within a specific geographic area. Small cells are typically used to provide wireless services for one provider. A single small cell installation (e.g., one antenna and supporting equipment on a given utility pole or other structure) is referred to as a node. A small cell telecommunication facility meets the following:

- (1) Less than 50 feet in height.
- (2) Each antenna is located inside an enclosure of not more than six (6) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an enclosure of not more than six (6) cubic feet in volume.
- (3) All other wireless equipment associated with the facility is cumulatively not more than twenty-eight cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunication demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

**STEALTH TECHNOLOGY/STEALTH STRUCTURE** - A method of installing/constructing wireless telecommunications facilities, which conceals, hides or camouflages their presence. This may include but is not limited to the use of color-matching, antenna concealment systems for small cells and rooftop proposal, artificial tree limbs for new telecommunications towers, landscaping around ground-based equipment areas, and installing ancillary equipment underground.

**SUBSTANTIAL CHANGE** - An increase in the size of an existing tower or ground-based ancillary equipment consisting of one or more of the following:

- (1) Height / Antenna Placement: the mounting of antennas on a tower greater than 50 feet tall or structure that would (a) increase tower height by more than 10% of the tower height originally approved or constructed (whichever is less), or (b) the mounting of one additional antenna array with separation from the nearest existing antenna of up to 20 feet, if resulting tower height is increased by more than 10% of the tower height originally approved or constructed. The mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas. For modification to permitted DAS or small cell sites, the pole shall not be increase above 50 feet in height and the aggregate volume of all antennas and ancillary equipment shall be a maximum of 4 cubic feet at any node;
- (2) Ground-Based and Ancillary Equipment: the installation of additional equipment cabinets or shelters that would increase the overall dimension of the existing ground-based, rooftop, or other equipment compound, including but not limited to the perimeter of existing security fencing or the height of the tallest existing element (e.g., top of ice bridge or shelter) as measured from surrounding grade or other markers. New equipment proposed at a small cell site that exceeds the aggregate volume noted above may be proposed to be placed below grade;
- (3) Ground-Based Equipment: the excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site. For small cell sites, no equipment shall be installed at grade;
- (4) Ancillary Equipment: the installation of new or additional generators, resulting in increases

to noise at the property line by more than 10% above existing conditions. Also pursuant to Chapter 157, Noise;

- (5) Lighting: the installation of new FCC-required or other lighting on the tower structure, or an increase in ground-based, rooftop, or other lighting that increases impacts by more than 10%. Strobe or flashing lighting will not be permitted without documentation of FAA or other applicable requirements; or
- (6) Tower Structure: the addition of an appurtenance to the body of the tower that would protrude horizontally from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable.

**TELECOMMUNICATIONS** - The transmission and reception of audio, video, data and other information by wire, radio frequency, light and other electronic or electromagnetic systems.

**TELECOMMUNICATIONS STRUCTURE** - Any structure used in, associated with or necessary for the provision of wireless services as described in the definition of "wireless telecommunications facility."

**WIRELESS COMMUNICATIONS FACILITY** - Any site containing equipment used in connection with the commercial operation of wireless communications services, as defined herein, and as the term "personal wireless services facility" is defined in the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7)(C), or as hereafter amended, to transmit and/or receive frequencies, including but not limited to antennas, monopoles, equipment, appurtenances and structures.

The provision of personal wireless communications services, including but not limited to those more commonly referred to as "cellular telephone service," regulated by the Federal Communications Commission in accordance with the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7)(C), or as hereafter amended.

**WIRELESS COMMUNICATIONS TOWERS** - Any freestanding structure, including lattice structures or framework and freestanding self-supported vertical pole (commonly known as "monopole"), on which any equipment is located in connection with the provision of wireless communications services.

**WIRELESS CARRIER/SERVICE PROVIDER** - Any company which is licensed by the FCC to operate wireless telecommunications facilities.

F. Conditions applicable to all facilities.

- (1) No wireless communications facilities shall be used, located, constructed or maintained on any lot, structure or land area unless in conformity with these regulations. No wireless communications facilities may hereafter be erected, moved, reconstructed, changed or altered unless in conformity with these regulations. No existing structure shall be modified to serve as a wireless communications facility unless in conformity with these regulations.
- (2) All communication facilities shall comply with the rules and regulations of any governmental entity having jurisdiction over such communication facilities and uses, antenna and/or supporting structures and towers, including, without limitation, the Federal Communications Commission (FCC) and Federal Aviation Administration (FAA).
- (3) All communication facilities shall be operated and maintained by an FCC licensee only.
- (4) All communication facilities shall be shown to be necessary to provide coverage to an area of Town which currently lacks adequate coverage and that any related communication tower or antenna is proposed at the minimum height and aesthetic intrusion possible to provide adequate coverage. The applicant seeking to locate a communication facility in the Town of Tuxedo shall demonstrate the need for new or additional antennas or communication towers.
- (5) All communication facilities, if proposed for placement on a lot that is within or abuts a residential district, shall prove that adequate coverage cannot be achieved by siting the facility on a lot which is not or does not abut a residential district.
- (6) All communication facilities shall be constructed and maintained in conformance with all building, electrical, fire prevention and other applicable codes.

G. Major (and new) wireless communications facilities and major modifications.

- (1) The Planning Board shall review all new wireless communications facility applications and major modifications, or co-locations resulting in a substantial change (as defined above) which require site plan approval and a special use permit or modification thereto. The Planning Board may approve the application, impose reasonable conditions, or deny the application. The applicant must demonstrate to the Planning Board that the proposed facility is the least intrusive means for closing a significant gap in service.
- (2) At all times, the shared use within existing tall structures (e.g., multistory buildings, church steeples, farm silos, etc.) or upon existing approved towers shall be preferred to the construction of new wireless communications towers and/or monopoles. Major modifications as a result of a substantial change of wireless communications facilities are a permitted use in all zoning districts within the Town of Tuxedo.
- (3) Approved zoning districts.
  - (a) Major wireless communications facilities shall be allowed by special use permit and site plan approval in the SR, NB, GB, RO and LIO zoning districts.
  - (b) Where it is demonstrated by evidence that no site exists in the zoning districts set forth in (a) that can provide coverage consistent with federal regulations, the Planning Board may allow a major wireless communications facility by special use and site plan approval in a C, R-1, R-2, R-3, R-4, T-TC, TB, S-HB or S-HR District in accordance with these regulations.
- (4) Conditions precedent for site plan or special use permit approval.

- (a) A service coverage map and report shall be provided. The service coverage map shall show and describe all existing and proposed areas of service coverage relating to the proposed communications facility. The service coverage map shall locate all existing sites in the Town and in bordering communities which contain communications towers or related facilities. A detailed report shall accompany the service coverage map and shall indicate why the proposed communications tower, equipment and facility are necessary. The Report shall identify locations within the proposed project site service coverage area which are not, and could not be, served by either existing facilities, by collocation, utilization of alternative technology or an alternative tower structure.
- (b) A long-range communications facilities plan shall be provided, evidencing that the proposed location of the communication facility and supporting buildings and equipment has been planned to result in the fewest number of communications transmission tower locations within the Town. The plan shall indicate how the applicant intends to provide service throughout the Town, and how the applicant plans to coordinate with all other providers of wireless communication services in the Town. The plan shall address the applicant's planned and possible location of additional tower sites, additional antennas, related service area coverage and alternative long-range plan scenarios that illustrate the potential effects of multiple towers and tower height, community intrusion impacts and visual and aesthetic impacts.
- (c) Documentation, sufficient to demonstrate that the proposed communication tower height and bulk are the minimum height and bulk necessary to provide licensed communication services to locations within the Town which the applicant is not able to serve with existing facilities in the project site area, shall be provided, including evidence that visual, aesthetic and community character intrusion impacts have been minimized to the greatest extent practicable.
- (d) Demonstration that shared use is impracticable. The Planning Board may issue a permit for a major wireless communications facility only when the applicant demonstrates that shared use of an existing structure or site is impractical. An applicant shall be required to present a report inventorying all existing structures within one-half (1/2) mile of the proposed site which are at an elevation which renders them potential sites. The report shall describe opportunities for shared use of these existing facilities as an alternative to a proposed new tower. The report shall demonstrate that the applicant used its best efforts to secure permission for shared use from the owner of each existing facility as well as documentation of the physical, technical and/or financial reasons why shared usage is not practical in each case. The applicant's written request and the property owner's written responses for shared use shall be provided.
- (e) Commitment for future shared use. New wireless communications towers shall be designed to accommodate future shared demand for reception and transmitting facilities. The applicant shall submit to the Town Board and Planning Board an irrevocable letter of intent committing the owner of the proposed new tower, and its successors in interest, to permit shared uses of the proposed tower by other telecommunications providers in the future. This letter shall also 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 site plan approval following a hearing and opportunity to be heard. The letter shall commit the new tower owner and its successors in interest to the following:

- [1] To notify all carriers licensed to provide telecommunication services within the Town of its application and that it will entertain requests for collocation.
  - [2] To respond within 90 days to a request for information from a potential shared-use applicant.
  - [3] To use best efforts and negotiate in good faith concerning future requests for shared use of the tower by other telecommunications providers.
  - [4] To allow shared use of the tower if another telecommunications provider agrees in writing to pay reasonable charges. The charge may include but is not limited to a pro rata 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.
- (f) A written certification shall be submitted, prepared by a qualified engineer and/or health physicist, which calculates the maximum amount of nonionizing electromagnetic radiation (NIER) which will be emitted from the proposed wireless communications facility and demonstrates that any such emissions from the facility will be within the threshold levels adopted by the Federal Communications Commission, as of the day of application and as part of the certification required as part of § 98-21.Q of this article. The certification shall include a statement or explanation of how compliance was determined, an explanation as to what, if any, restrictions on access will be maintained to ensure compliance and a statement as to whether other significant transmitting sources are located at or near the transmitting site and, if so, whether their emissions were considered in determining compliance.
- (5) Application.
- (a) A special use permit and site plan application shall include a written statement:
    - [1] That the applicant's proposed wireless communication facility shall be maintained in a safe manner and in compliance with all conditions of the special use permit.
    - [2] That the construction of the wireless communication facility will conform with all applicable local, county, State and federal laws, rules and regulations.
    - [3] That the applicant is authorized to do business in the State of New York.
  - (b) An application for a new wireless communication facility must include the following information. The Planning Board may waive one or more of the following and may require additional reports or data that it deems necessary relevant to the application:
    - [1] The name, address and telephone number of the person preparing the report.
    - [2] The name, address and telephone number of the property owner, lessee, operator and applicant, including the legal basis for the applicant's authority. For small cells and DAS, the utility pole owner / ROW manager shall also be defined.
    - [3] The legal description, postal address, and tax map designation of the property. For small cells and DAS, address information shall include appropriate right-of-way information such as utility pole number and coordinates.
    - [4] The zoning district in which the property is situated.

- [5] The size of the property, stated both in square feet and lot line dimensions. For sites proposed within the right-of-way, the dimensions of the right-of-way and locations of existing and proposed overhead / subsurface utilities and adjoining property lines shall be indicated.
- [6] Approximate location of the nearest day-care center, school, camp or recreational park.
- [7] A survey of the property indicating the dimensions of the property, the location and height of all structures, the location, size and height of all proposed and existing towers, antennas and accessory structures, and the type, size and location of all proposed and existing fencing.
- [8] Type, locations, and dimensions of all proposed and existing landscaping and fencing. If vegetation or trees are proposed to be removed, a tree removal and preservation plan shall be developed.
- [9] A map showing the location of all residential structures within 500 feet, in the case of a freestanding tower, and within 250 feet in the case of all other WTF applications. Location of the nearest residential structure, location of nearest habitable structure, and for site outside of a right-of-way, location, size and height of all existing structures on the property which is the subject of the application.
- [10]The names, addresses and telephone numbers of all owners of other freestanding towers or existing antenna support structures located within a one-half-mile radius of the proposed wireless communication facility. The address and location of each such freestanding tower or antenna support structure shall be indicated.
- [11] The number, type and design of the wireless communication facilities proposed antenna(s) and the basis for the calculations of the wireless communication facilities capacity to accommodate multiple users.
- [12]The make, model and manufacturer of the facility, antenna(s) and all ancillary equipment (including but not limited to remote radiohead units, tower-mounted amplifiers, over-voltage protectors, electric meters, pole-mounted shrouds, and stealth tree features such as branching)
- [13]A description of the proposed facility and antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above preexisting grade, materials, color and lighting.
- [14]The frequency, modulation and class of service of radio or other transmitting equipment.
- [15]The transmission and maximum effective radiated power of the antenna(s).
- [16]The direction of maximum lobes and associated radiation of the antenna(s).
- [17]The applicant must identify its utilization of the most recent technological design.
- [18]The applicant's proposed facility maintenance and inspection procedures and related system of records.
- [19]All applications, communications and permits submitted to and issued by the Federal Aviation Administration.

- [20] Certification, including such documentation as the Planning Board shall require, that NIER levels at the proposed site are within the threshold levels adopted by the FCC.
- [21] A certification that the construction and placement of the proposed freestanding tower and the proposed antenna(s) will not interfere with public safety communications, the usual and customary transmission or reception of radio, television or other communications services enjoyed by adjacent residential and nonresidential properties, or other existing telecommunications devices.
- [22] A copy of the FCC license applicable for the use of the wireless communication facility.
- [23] Certification that a topographic and geomorphologic study and analysis has been conducted, taking into account the subsurface and substrata and the proposed drainage plan, and that the site is adequate to assure the stability of the proposed wireless telecommunications tower on the proposed site.
- [24] Propagation studies of the proposed site and all adjoining proposed or in-service or existing sites. The propagation study shall identify that a gap in coverage exists and shall demonstrate how the addition of a wireless communication facility will address this gap in service.
- [25] A map depicting and listing all existing sites in the Town and bordering communities containing transmitting antenna(s) used by the operator, owner or applicant.
- [26] The applicant shall disclose, in writing, any agreement in existence prior to submission of the application that would limit or preclude the ability of the applicant to share any wireless communication facility that it constructs.
- [27] Certification that the wireless communication facility, foundation and attachments are designed and will be constructed to meet all local, county, state and federal structural requirements for loads, including wind and ice loads. If the wireless communication facility is subsequently approved and constructed, similar "as-built" certification indicating that the wireless communication facility has been constructed in accordance with all standards shall be furnished prior to the Town issuance of a special use permit.
- [28] Certification that the proposed site of the wireless communication facility does not pose a risk of explosion, fire or other danger to life or property due to its proximity to volatile, flammable, explosive or hazardous materials such as LP gas, propane, gasoline, natural gas, or corrosive or other dangerous chemicals.
- [29] An engineering report prepared by a New York State licensed professional engineer specializing in electrical engineering with expertise in radio communication facilities and, if a monopole or tower is proposed, a professional engineer specializing in structural engineering. The report shall contain the following information:
- [a] Name(s) and address(es) of person(s) preparing the report.
  - [b] Approximate location of the nearest residential structure.
  - [c] Approximate location of the nearest occupiable structure.
  - [d] Approximate location, size and height of all proposed and existing antennas and all appurtenant structures.
  - [e] The number, type and design of the antenna(s) proposed and the basis for the

calculations of capacity.

- [f] The make, model and manufacturer of the antenna(s).
  - [g] A description of the proposed antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above grade, materials, color, grounding and lighting.
  - [h] The frequency, modulation and class of service of radio equipment.
  - [i] Transmission and maximum effective radiated power of the antenna(s).
  - [j] Certification that the proposed antenna(s) will not cause interference with existing communication devices.
  - [k] Elevation drawings depicting the front, side and rear of the property, illustrating the proposed antenna, mounting device and structure, if any, on which the antenna(s) is mounted.
- (c) Additional information which may be required at the discretion of the Planning Board.

[1] Visual impact assessment.

- [a] A viewshed analysis or "zone of visibility" map in order to determine locations where the tower and appurtenant facilities may be visible.
- [b] Graphic representations of before and after views from key viewpoints located 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, residential developments and from any other location where the site is visible. A balloon test or similar test may be required to visualize the height of the proposed facility and photosimulations from various scenic vantage points may be required by the Planning Board.
- [c] Assessment of alternative tower designs and color schemes, as described in Subsection [2], Tower design, and (c) Coloring and marking, below.
- [d] Assessment of the visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.

[2] Tower design. A report regarding alternative tower designs which includes lattice and monopole structures and other designs to minimize visual impacts. The Board may request a review of the tower design by a qualified engineer in order to evaluate the need for, and the design of, any new tower and potential alternatives. All designs to be considered shall be required to include, at a minimum, the following characteristics:

- [a] Towers shall be designed to accommodate future shared use by other wireless communications 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] 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.



- [d] Any new tower shall be securely mounted to withstand damage from earthquakes and the wind and ice loads for the place of installation in accordance with the New York State Uniform Fire Prevention and Building Code.
  - [e] The height of any new tower shall be the minimum height necessary, considering shared use, to meet the minimum requirements of the Federal Communications Commission for coverage of the service area encompassing the Town of Tuxedo.
- (d) Intermunicipal notification. In order to facilitate the shared use of existing wireless telecommunication sites and structures, the applicant shall provide the following additional notice of the application:
- [1] Notification in writing to the Municipal Clerk of any adjoining municipality within one mile of a proposed site or a greater distance, at the discretion of the Planning Board, which may be affected by the proposed major wireless telecommunication facility.
  - [2] Notification in writing by certified mail of all landowners within 1,000 feet of the property line of the parcel on which a major wireless telecommunication facility is proposed.
- (6) Design standards.
- (a) Location, lot size and setbacks. Any proposed wireless communications towers and its accessory structures shall be located on a single parcel and shall comply with following:
- [1] Distance from public facilities. In order to protect the health, safety and welfare of children who may be injured by falling ice or debris, all wireless communication towers shall be a distance of not less than 350 feet from the nearest property line of a school, day-care center, camp, public park or playground.
  - [2] Lot size of major wireless communications facilities sites 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.
  - [3] Wireless communications towers shall be located with a minimum setback from any property line equal to the height of the tower in any zoning district, except, however, if the applicant can demonstrate that the fall zone for the structure can be safely accommodated on a smaller size parcel or with reduced setbacks to no less than the minimum bulk requirements in the underlying zoning district, the Planning Board shall have the discretion to reduce the size accordingly. The applicant must demonstrate that there is adequate protection to adjoining properties from the dangers of falling ice or debris through either an easement or other safeguards. The Planning Board shall make findings of fact justifying a reduction and shall impose such additional conditions that the Board may deem appropriate to protect the health, safety and welfare. Accessory structures shall comply with the minimum setback requirements in the underlying zoning district.
  - [4] Additional setbacks may be required by the Planning Board to contain on-site substantially all ice fall or debris from tower failure and preserve the privacy of any adjoining residential and public properties. Setbacks for antennas and accessory structures associated with wireless telecommunications facilities located on existing rooftops shall be setback at least 10 feet from the building edge or flush-mounted to the sides of the building.

- (b) Security and safety fencing. Security and safety fencing shall be located around all communication towers, equipment and related facilities to restrict unauthorized access. Access to all structures shall be through a locked gate or principal building. Fencing shall be designed to minimize visual and aesthetic impacts and shall be equipped with appropriate anticlimbing devices. Failure to maintain said security and safety fencing in an appropriate manner shall be grounds for immediate revocation of all permits and certificates of use by the Building Inspector. In addition:
- [1] All communication towers, antenna towers or monopoles and other supporting structures shall be made inaccessible to nonauthorized persons, particularly children, and shall be constructed or shielded in such a manner that they cannot be climbed.
  - [2] All transmitter controls that could cause the transmitter to deviate from its authorized operating parameters shall be designed and installed in such a manner that they are readily accessible only to persons authorized by the licensee to operate or service them.
  - [3] All transmitters used with in-building radiation systems shall be designed in such a manner that, in the event that an unauthorized person does gain access, that person cannot cause the transmitter to deviate from its authorized operating parameters in such a way as to cause interference to other stations.
  - [4] All transmitters (other than hand-carried or pack-carried mobile transmitters) and control points shall be equipped with a visual means of indicating when the control circuitry has been put in a condition that should cause the transmitter to radiate.
  - [5] All transmitters shall be designed in such a manner that they can be turned off independently of any remote-control circuits.
- (c) Coloring and marking. Unless otherwise required by the FAA or FCC, all communication facilities, including antenna and communication towers, shall be colored, camouflaged and/or shielded to blend with surrounding areas, provided that such coloring, camouflage and/or shielding do not inhibit their effectiveness. The painting or marking of such facilities shall have a finish or coloring which will minimize visual and aesthetic impacts. Towers and all appendages shall generally have a galvanized finish and shall be painted gray or blue gray or some other finish or color that is shown to be visually unobtrusive.
- (d) Signals and lights. No communication tower, antenna tower or monopole shall include any signals, lights or illumination unless required by the FAA or other applicable authority. The applicant shall provide evidence mandating any requirement for lighting. If lighting is required, said lighting shall be shown to cause the least disturbance to surrounding properties and views. Any lighting necessary for accessory structures or buildings shall be minimized and shall be properly shielded to prevent light emission and glare onto adjacent properties.
- (e) Signage. No signs, including advertising signs, shall be permitted on any antenna, communication tower, antenna tower or monopole or antenna support structure, except as follows:
- [1] Signs specifically required by a federal, state or local agency.
  - [2] Each site shall include a sign containing the name of the owner and operator of any antenna present, including an emergency phone number. In addition, any door having access to a roof-mounted antenna and all entrances to the fenced enclosure shall be

similarly signed. Wireless telecommunications facilities shall contain a sign no larger than four square feet to provide adequate notification to persons in the immediate area of the presence of an antenna that has transmission capabilities. The sign shall contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be located so as to be visible from the access point of the site. Smaller signage for small cell and DAS nodes shall be affixed to the subject pole or pole-mounted equipment, or otherwise as determined by the Board or Building Inspector in accordance with FCC regulations. The sign shall not be lighted unless the Board shall have allowed such lighting or unless such lighting is required by applicable provisions of law. The sign shall be approved by the Board before installation. No other signage, including advertising, shall be permitted on any facilities, antennas, antenna supporting structures or antenna towers, unless required by law.

[3] Any signage permitted above shall comply with the sign regulations of the Town Code.

(f) Access and parking.

[1] 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 the 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.

[2] Parking. Parking shall be provided on-site in an amount determined by the Board based upon recommendation from the applicant. No parking shall be located in any required front yard.

[3] No access road or parking shall be proposed for DAS or small cell sites located in a right-of-way.

(g) Vegetative screening. All communication facilities shall be screened from view as follows:

[1] All communications towers shall be located and designed to have the least possible adverse visual and aesthetic effect on the environment.

[2] The area surrounding the installation, other than the area necessary to maintain a clear line of site to the signal source, shall be landscaped and maintained with trees, shrubs and ground cover to maximize screening and visual buffering. An existing natural vegetative buffer which meets or exceeds the above requirements may be substituted or enhanced for said requirements.

[3] Screening and buffering utilizing trees of a height and density established by the Planning Board that will, over time, reduce visual impacts resulting from the installation of said facility shall be provided.

[4] The outside of security fencing shall be screened with evergreen shrubs, trees or climbing evergreen material on the fencing.

[5] The base of any communication tower and any accessory structure shall be effectively screened using primarily vegetative screening, including a continuous evergreen screen planted in a natural setting and consisting of native plant species. Existing vegetation shall be preserved to the maximum extent practicable. Additional planting shall be

required, as necessary, to screen and buffer all structures from nearby properties or important view sheds of scenic areas. All landscaping shall be properly maintained to ensure continued screening and buffering.

- (h) Undergrounding of electrical power and noise suppression. All electrical power supply to service the on-site buildings and appurtenances supporting the tower antenna operations shall be installed underground. Noise suppression shall be utilized in the structural design and construction of the tower support buildings and appurtenances.
- H. Minor modification to wireless communications facilities, co-location on existing wireless telecommunication facilities (not resulting in substantial change) and Small Cell/DAS. At all times, the shared use within existing tall structures (for example, multistory buildings, church steeples, farm silos, etc.) and upon existing buildings shall be pursued. The Building Inspector may issue building permits for minor modifications and co-locations at existing, permitted wireless telecommunications facilities; for co-locations at other structures (e.g., rooftops, water tanks) after the first such co-location; and applications for DAS and small cell nodes in public rights-of-way, provided that all of the requirements set forth herein are met. A building permit may be issued for minor modifications, co-locations, and DAS/small cell nodes set forth below. The Building Inspector shall issue a building permit for the following:
- (1) A minor modification to an existing wireless facility, as defined in this section, and where it is demonstrated that:
    - (a) transmit power, frequency / class of service, and NIER levels remain within FCC MPE criteria; and
    - (b) the proposed modification equipment and installation would not exceed the structural capacity of the existing facility or structure, including but not limited to foundations, supports, and existing antenna mounts; and
    - (c) additional local, County, or State reviews/approvals/permits are not required (e.g., FAA, NYS DOT, NYS DEC), other than a building permit; and
    - (d) the existing wireless telecommunications facility or structure complies with the provisions of section and all other provisions of law outside of this section, including but not limited to all applicable zoning restrictions, height restrictions, and building permit requirements, if any.
  - (2) Co-location of new wireless equipment at an existing wireless telecommunications facility:
    - (a) For proposed co-locations at an existing wireless telecommunications facility where the proposed co-location is on a tower / pole which contains one or more telecommunication facilities that have been approved in accordance with this section, provided that: the height of the existing structure is not increased by more than 10% of the originally approved tower height at time of construction (provided that it does not increase the overall tower height to over 200 feet); there is no change to the lighting scheme at the site or noise at the nearest property line; and all height, setback and design requirements as set forth in this Article or in the original site plan approval are met. All accessory structures, including, but not limited to, equipment, equipment cabinets, equipment sheds/shelters, generators, etc., must also comply with the standards set forth in this Article; and
    - (b) For proposed co-locations on a rooftop or other structure (including, but not limited to,

water tanks, and utility poles within the Town or rights-of-way) where one or more wireless telecommunications facility exists at the time of application and where no increase in height is proposed (as determined by the existing rooftop element with the highest elevation or the existing antenna height on the support structure), provided that there is no change to the lighting scheme at the site or noise at the nearest property line, and provided that all height, setback, and design requirements as set forth in this Article or in the original site plan approval are met. Antennas and all accessory structures, including, but not limited to, equipment, cables, equipment cabinets, equipment sheds/shelters, generators, etc., must also comply with the standards set forth in this Article, and all other provisions of law in this Article and outside of this Article of the Town Code. It is noted that co-location of small cells / DAS on a common utility pole may be entertained to reduce the proliferation and consolidate these cell sites; however, the height of any utility pole may not be increased above 50 feet, and the aggregate volume of the antenna and visible ancillary equipment at each node location shall not increase above that which was approved by more than 25%. The Building Inspector will determine if additional bulk, height, or other potential visual impacts will necessitate referral of such co-location applications to the Planning Board. No ground-based equipment shall be permitted at small cell sites located in rights-of-way unless it shall be demonstrated that:

- [1] transmit power, frequency / class of service, and NIER levels remain within FCC MPE criteria; and
  - [2] the proposed co-location equipment and installation would not exceed the structural capacity of the existing wireless facility or other support structure, including but not limited to foundations, supports, and existing antenna mounts; and
  - [3] additional local, County, or State reviews approvals/permits are not required (e.g., FAA, NYSDOT, NYSDEC), other than a building permit; and
  - [4] The existing wireless telecommunications facility or structure complies with the provisions of this section and all other provisions of law in this Article.
- (c) The construction of a new small cell or DAS facility in county or state rights-of-way, and:
- [1] The facility will not exceed 50 feet in height (on an existing or on a new utility pole);
  - [2] The style, materials, colors, and other aesthetics features will match the character of the surrounding area and right-of-way features, to be reviewed by the Code Enforcement Officer;
  - [3] The aggregate volume of the antenna at each node, including antenna enclosure and mount, will not exceed 3 cubic feet.
  - [4] The aggregate volume of all other visible equipment, including but not limited to meter boxes, radio shrouds, and conduits affixed to the utility pole, will not exceed 28 cubic feet at each node, and no at-grade equipment shall be permitted;
  - [5] The minimum height of any pole-mounted equipment is not less than 8 feet above surrounding grade;
  - [6] The following information will be furnished for Building Department review: supporting information on agreements between the applicant and pole owner (structural analysis, communication zone where small cell equipment is allowed);

coverage and/or capacity need documentation and other technical information; samples of specifications, cut sheets, and equipment details with dimensions and volumes; heights of all mounted equipment; and color/texture options for such DAS and small cell antennas and ancillary equipment. It shall be demonstrated that:

- [a] transmit power, frequency / class of service, and NIER levels are within FCC MPE criteria;
  - [b] the proposed small cell equipment and installation would not exceed the structural capacity of the pole or other support structure, including but not limited to foundations, supports, and existing equipment affixed to the pole / structure;
  - [c] additional local, County, or State reviews/approvals/permits are not required (e.g. FAA, NYSDOT, NYSDEC), aside from the building permit; and
  - [d] the existing wireless telecommunications facility or structure complies with the provisions of this Section and all other provisions of law in this Article and outside of this Article, including but not limited to all applicable zoning restrictions, height restrictions, and building permit requirements, if any; and
  - [e] No more than five (5) small cell nodes located in County or State rights-of-way shall be submitted in a single application to the Building Department.
- (3) Building permit application requirements. An application shall be submitted to the Building Inspector which shall certify that the application is complete before the application is reviewed. Waivers from certain application items may be proposed in writing to the Building Inspector at the time of the application.
- (4) The Building Department may refer any minor modification, co-location, and DAS/small cell applications to the Planning Board for review of and recommendation on visual impacts, proximity to sensitive receptors, safety considerations, or other reasons in accordance with this Article. The Planning Board may recommend that an application be considered a major modification (requiring a special permit) provided that it finds and states that the facility for which the permit is requested would, if erected, constructed, or altered as proposed, cause one or more harmful visual effects under guideline herein. Prior to recommendation that an application be considered as a major modification, the Planning Board shall afford the applicant an opportunity to meet with it and discuss suggestions for changes in the application. The Planning Board may determine the application to be a minor modification upon finding that the facility or structure for which the permit is requested, if erected or altered in accordance with the submitted plan would meet the requirements of this Article. If the Building Department determines that a minor modification, co-location, or DAS/small cell application is a major modification or Planning Board review is requested, then the applicant will be notified within 30 business days of receipt of the application, notwithstanding all other provisions of law.

I. Requirements imposed on all approvals.

(1) Removal.

- (a) Any antenna, communication facility, communication tower, antenna tower or monopole, including any supporting structure and related appurtenances, or part thereof, that is not used for a period of six months in any twelve-month period, shall be removed and the site restored by, and at the expense of, the owner of the property or the operator of said

facility.

- (b) An extension of an additional six months may be granted by the Building Inspector upon a written request, including proof as determined reasonable by the Building Inspector that the owner is actively engaged in the marketing of the property for sale or rent.
- (c) In the event that the tower is not removed and the site restored as herein required, the Town, after notice and opportunity to be heard, may cause the same to be removed and the site restored at the expense of the property owner collectible in the same manner as a real property tax.
- (d) Where it is determined that a wireless telecommunications facility is abandoned or has become unsafe or that there recurring, repeated or continuing violations of any of the provisions of this article, the Building Inspector may revoke the special use permit. Further, the Building Inspector may determine that any hazards to the health, safety, and welfare interests of the Town warrant removal of a wireless telecommunications facility:
  - [1] Wireless telecommunications facilities, with a permit, have been abandoned (i.e., not used as wireless telecommunications facility) for a period exceeding 90 consecutive days or a total of 180 days in any three-hundred-sixty-five-day period, except for periods caused by force majeure or acts of God, in which case, repair or removal shall commence within 90 days;
  - [2] Permitted wireless telecommunications facilities fall into such a state of disrepair that a health or safety hazard is created, or that the mitigation measures of the permit are no longer effective or functioning as intended;
  - [3] Wireless telecommunications facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required special permit, building permit, or any other necessary authorization.
- (e) If the Board or Building Inspector makes such a determination as set forth in subsection l(1) above, the Building Inspector shall notify the holder of the special use permit or building permit for the wireless telecommunications facilities within 48 hours that said wireless telecommunications facilities are to be removed. The Building Inspector may approve an interim temporary use agreement/permit, such as to enable the sale of the wireless telecommunications facilities.
- (f) The holder of the permit, or its successors or assigns, shall dismantle and remove such wireless telecommunications facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the Building Inspector. However, if the owner of the property upon which the wireless telecommunications facilities are located wishes to retain any access roadway to the wireless telecommunications facilities, the owner may do so with the approval of the Board or Building Inspector.
- (g) If wireless telecommunications facilities are not removed or substantial progress has not been made to remove the wireless telecommunications facilities within 90 days after the permit holder has received notice, then the Building Inspector may order officials or representatives of the Town to remove the wireless telecommunications facilities.

- (h) If the Town removes or causes to be removed wireless telecommunications facilities, and the owner of the wireless telecommunications facility does not claim them and remove them from the site to a lawful location within 10 days, then the Town may take steps to declare the wireless telecommunications facilities abandoned and sell them and their components.
  - (i) Notwithstanding anything in this section to the contrary, the Board or Building Inspector may approve a temporary use permit/agreement for the wireless telecommunications facilities, for no more than 90 days, during which time a suitable plan for removal, conversion or relocation of the affected wireless telecommunications facilities shall be developed by the holder of the permit, subject to the approval of the Board or Building Inspector, and an agreement to such plan shall be executed by the holder of the permit and the Town. If such a plan is not developed, approved and executed within the ninety-day time period, then the Town may take possession of and dispose of the affected wireless telecommunications facilities in the manner provided in this section.
  - (j) Upon written notice to the former holder of the revoked permit, the wireless telecommunications facility shall be removed.
  - (k) The Town shall have the right to remove any abandoned or unsafe wireless telecommunications facilities and shall utilize the performance bond provided for under this article to cover the costs related thereto.
- J. Operational certification. Within 45 days of initial operation or modification of a wireless communication facility, the owner or operator shall submit to the Building Inspector a written certification by a professional engineer that the operation facility is in compliance with the application submitted, any conditions imposed and all other provisions of this Article as a condition to continue operating past the 45-day period. The Town may confirm and periodically reconfirm compliance as necessary to ensure that the provisions of this Article, including NIER level thresholds, as set forth by the FCC are in compliance. The owner/operator of the facility shall supply all necessary documentation to permit the Town to make such a determination regarding compliance. If found not to be in compliance, the facility shall cease operation until compliance is restored.
- K. Reimbursement of review expenses.
  - (1) The Planning Board and/or Building Inspector may hire any consultant and/or expert necessary to assist in reviewing and evaluating the application and any requests for recertification.
  - (2) An applicant shall deposit with the Town funds sufficient to reimburse the Town/Planning Board and Building Inspector for all reasonable costs of consultant and expert evaluation in connection with the review of any application and in accordance with the Town of Tuxedo Fee Schedule.
- L. Existing wireless telecommunications facilities.
  - (1) The current operator of any wireless telecommunications facility existing at the time that these regulations take effect, shall be permitted to remain in operation, provided that the operator submits proof within six months of the enactment of these regulations that a valid building permit was issued for the facility and that the facility complies with current emission standards as recommended by the FCC.
  - (2) Any legal nonconforming wireless telecommunication facility shall be permitted to remain until such time as said use and facility is altered, at which time the compliance herein shall be



brought in.

- (3) Any facility for which emission and security compliance documentation is not received shall cease operation within six months of the enactment of these regulations and shall be immediately removed thereafter.

M. Ongoing obligations applicable to permits; responsibilities of owners and operators.

- (1) Any permit may, following a hearing upon prior notice of at least 30 days to the applicant, be revoked, canceled terminated for a violation of the conditions and provisions of the permit for the wireless telecommunications facility, or for a material violation of this Article after prior written notice to the applicant and the holder of the permit.
- (2) A holder of a permit granted under this article shall obtain, at its own expense, all permits and licenses required by applicable law, rule or regulation and must maintain the same, in full force and effect, for as long as required by the Town or other governmental entity or agency having jurisdiction over the applicant.
- (3) Applicants shall submit information on the proposed radio frequency emissions of their proposed wireless telecommunications facility and demonstrate how this meets FCC standards. An applicant shall submit evidence of compliance with FCC standards on a yearly basis to the Town. If new, more restrictive standards are adopted, the antennas shall be made to comply, or continued operations may be restricted by the Town Board. The cost of verification of compliance shall be borne by the owner and operator of the tower.
- (4) All wireless telecommunication facilities shall be certified by an engineer to be structurally sound and in conformance with the requirements of the Building Code and all other construction standards set forth by the Town's Code and federal and State law. Such certification shall be submitted with an application pursuant to this article. The owner of the wireless telecommunications facility may be required by the Town to submit more frequent certifications should there be reason to believe that the structural and electrical integrity of the wireless telecommunications facility is jeopardized.
- (5) Owners of a wireless telecommunications facility and owners of an antenna support structure shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.
- (6) Owners of a wireless telecommunications facility shall install and maintain towers, antennas, antenna attachments, accessory structures, wires, cables, fixtures and all other equipment of the wireless telecommunications facility in substantial compliance with the requirements of the National Electric Safety Code and all FCC, State and local regulations, and in such manner that will not interfere with the use of other property.
- (7) All wireless telecommunications facilities, antennas, antenna support structures, and ancillary equipment shall at all times be kept and maintained in good condition, order and repair so that the same shall not menace or endanger the life, health, safety, welfare or property of any person.
- (8) All maintenance or construction of wireless telecommunications facilities, antennas, antenna support structures, and ancillary equipment shall be performed by licensed maintenance and construction personnel.

- (9) All wireless telecommunications facilities shall maintain compliance with current RF emission standards of the FCC.
- (10) In the event that the use of a wireless telecommunications facility is discontinued by the facility owner, the facility owner shall provide written notice to the Town of its intent to discontinue use and the date when the use shall be discontinued. Subsequent to the notice, the tower shall be removed in accordance with this Article.
- (11) Owners of a wireless telecommunications facility shall provide the Building Inspector annually with a certification by a New York State licensed professional engineer stating that the wireless telecommunications facility is in compliance with all applicable regulations and does not pose any threat which shall endanger the health, safety and general welfare of the community.
- (12) A cash deposit, letter of credit or bond from a surety company shall be submitted that is both an admitted carrier in the State of New York and has an A.M. Best's Rating of B- or better, or a Best's rating of 4 or better.
  - (a) The cash deposit, letter of credit or bond must be in an amount equal to 125% of the estimated cost of removing any proposed wireless telecommunications facility equipment, in the case it is abandoned, and of restoring the site.
  - (b) In the event that a penalty, fine or financial obligation is assessed pursuant to the provisions of this Article, the Building Inspector or the Town Clerk/Treasurer may deduct the amount of such penalty from the cash deposit.
  - (c) The applicant must maintain the required cash deposit, letter of credit or bond at all times to assure the faithful performance of the terms and conditions of this Article and the conditions of any permit issued pursuant to this Article. The full amount of the bond or security as determined when the permit is issued or as adjusted thereafter shall remain in full force and effect throughout the term of the permit and/or until the removal of the wireless telecommunications facility and any necessary site restoration is completed. The failure to pay any annual premium for the renewal of any such security shall be a violation of the provisions of the permit and shall entitle the Planning Board or Building Inspector to revoke the permit after prior written notice to the applicant and holder of the permit and after a hearing upon due prior notice to the applicant and holder of the permit.

N. State and/or federal rules and regulations.

- (1) To the extent that the holder of a permit for a wireless telecommunication facility has not received relief or is otherwise exempt from appropriate state and/or federal agency rules or regulations, then the holder of such a permit shall adhere to, and comply with, all applicable rules, regulations, standards and provisions of any state or federal agency, including but not limited to the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- (2) To the extent that applicable rules, regulations, standards and provisions of any state or federal agency, including but not limited to the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting and security, are changed and/or are modified during the duration of a permit for a WTF, then the holder of such a permit shall conform the permitted WTF to the applicable changed and/or modified rule, regulation, standard or provision within a maximum of 24 months of the effective date of the applicable changed and/or modified rule, regulation, standard or provision, or sooner as may be required by the

issuing entity.

- O. Security against unauthorized access. All wireless telecommunications facilities, antennas, and ancillary equipment shall be located, fenced or otherwise secured in a manner which prevents unauthorized access. All small cell/DAS equipment shall be locked/secured. Specifically:
- (1) All antennas, towers and accessory structures shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or run into.
  - (2) Transmitters and telecommunications control shall be installed such that they are readily accessible only to persons authorized to operate or service them.
- P. Authority to inspect.
- (1) In order to verify that the holder of a permit for a wireless telecommunications facility and any and all lessees, renters, and/or licensees of wireless telecommunications facilities place, construct and maintain such facilities, including towers, antennas, antenna attachments and accessory structures, in accordance with all applicable technical, safety, fire, building and zoning codes, laws, ordinances and regulations and other applicable requirements, the Town shall have authority to enter onto the property upon which the wireless telecommunications facility is located to inspect all facets of said permit holder's, renter's, lessee's, licensee's or owners placement, construction, modification and maintenance of such facilities, including but not limited to towers, antennas, mitigation features such as stealth tree branching or stealthing, small cell / DAS nodes, antenna attachments, accessory structures, buildings or other accessory structures constructed or located on the permitted site.
  - (2) The Town reserves the right to conduct such inspections at any time, upon reasonable notice to the property owner and operator of the wireless telecommunications facility. All expenses related to such inspections by the Town shall be borne by the owner of the premises on which the wireless telecommunications facility is located, and also the owner of the wireless telecommunications facility.
  - (3) The owner/permit holder agrees to an inspection of the telecommunications facility by an RF consultant of the Town's choosing on the one-year anniversary of the permit issuance and every five years thereafter, to ensure the structural integrity of the facility and that RF emissions are within acceptable limits. Concurrent with the five-year review the RF consultant shall also review the amount of security (cash deposit, letter of credit or bond) being held by the Town and determine whether that bond amount should be increased or decreased based upon fluctuations in the material or labor costs to remove such facilities as well as based upon any other relevant changes to the facility. Costs of such inspection shall be reimbursed by the permit holder.
  - (4) The holder of a wireless telecommunications facility permit shall, at all times, keep on file with the Building Department the name, address, and telephone number of the owner or operator of the permitted facility to arrange for Town inspections and required maintenance, reporting, etc.
- Q. Annual NIER and structural certifications. The holder of the permit shall certify, in writing, annually, to the Town that (a) NIER levels at the site are within the threshold levels adopted by the FCC and (b) that the tower, utility pole, or other structure and all mounts for antennas and ancillary equipment are adequate for code compliance and public safety. The certifying engineer must be licensed to practice engineering in the State of New York. Such a certification shall also be provided

should any alterations to the wireless telecommunications facility be made that could reasonably be anticipated to change the NIER levels at the site.

R. Renewal.

- (1) Every special permit for a wireless telecommunications facility shall be recertified at least every five years, commencing on the date a certificate of occupancy is issued, and reoccurring certifications required on every December 31 fifth-year anniversary thereafter. For tower, rooftop, small cell or DAS node, or other permitted sites that accommodate equipment of more than one FCC-licensed commercial carrier, a single re-certification for the site – encompassing all carrier information – shall be submitted to the Planning Board. A signed, written request to the Board for recertification shall be made at any time between 12 months and six months prior to the expiration of the recertification. Any permit holders whose recertification is due prior to December 31, 2019, may extend the time to recertify until June 1, 2020, unless advised by the Building Department otherwise because of safety issues. Any permit holder whose prior five-year certification/recertification occurred less than five years prior to June 1, 2020, must nonetheless be recertified by June 1, 2020. For any wireless telecommunications facility whose initial certification occurs less than one year prior to a December 31 recertification date, the Board may, upon request by the permit holder, and recommendation of the Town Engineer and Building Inspector, allow the recertification to occur on the next-following recertification date. Each small cell or DAS node shall be recertified individually by the Building Department. The Board may reserve the right to assign recertification reviews to the Building Inspector.
- (2) For wireless telecommunication facilities that did not require a special use permit and were issued a building permit from the Building Inspector, the Building Inspector will issue recertifications.
- (3) A recertification request shall be accompanied by the following:
  - (a) The name of the holder of the permit for the wireless telecommunications facilities.
  - (b) If applicable, the number or title of the permit.
  - (c) The issuance of the special use permit and issuance of a certificate of occupancy.
  - (d) Whether the wireless telecommunications facilities or support structure have been moved, relocated, rebuilt or otherwise modified since the issuance of the permit and, if so, in what manner.
  - (e) If the wireless telecommunications facilities or support structure have been moved, relocated, rebuilt or otherwise modified, then whether the Board or Building Department approved such action, under what terms and conditions, and whether there has been compliance with the terms and conditions.
  - (f) Any requests for waivers or relief of any kind from the requirements of this section and any requirements for a permit.
  - (g) That the wireless telecommunications facilities are in compliance with the special permit / building permit and in compliance with all applicable federal, state, county and local codes, laws, rules and regulations.
  - (h) Recertification that the telecommunications tower or support structure and attachments are designed and constructed "as built" and continue to meet all local, federal, state, and county structural requirements for loads, including wind and ice loads. Such recertification

shall be by a New York State licensed professional engineer acceptable to the Town, the cost of which shall be borne by the applicant.

- (i) RF emissions compliance statement (cumulative, including all co-locators, if applicable).
  - (j) The facility is subject to an annual inspection by the Building Inspector to make certain that the facility conforms to all safety and building codes.
- (4) If, after such review, the Building Inspector determines that the wireless telecommunications facility is in compliance with any building permit and/or special use permit and all applicable statutes, laws, local laws, ordinances, codes, rules and regulations, then the Building Inspector shall issue a recertification permit for the wireless telecommunications facility, which may include any new provisions or conditions that are mutually agreed upon or required by applicable statutes, laws, local laws, ordinances, codes, rules and regulations. If, after such review, the Building Inspector determines that the wireless telecommunications facility is not in compliance with the special use permit, building permit, and all applicable statutes, local laws, ordinances, codes, rules and regulations, then the Building Inspector may refuse to issue a recertification special permit for the wireless telecommunications facility, and, in such event, such wireless telecommunications facility shall not be used after the date that the applicant receives written notice of such decision from the Town. Any such decision shall be in writing and supported by substantial evidence contained in a written record.
- (5) If the applicant has submitted all of the information requested by the Building Inspector and required by this section, and if the Building Inspector does not complete its review, then the applicant for the permitted wireless telecommunications facilities shall receive an automatic extension of the special permit for up to six months in order for the Town to complete its review.
- (6) If the holder of a special permit for wireless telecommunications facility does not submit a request for recertification of such special permit within the time frame set forth herein, then such special use permit or building permit or certificate of occupancy and any authorizations granted thereunder shall expire unless the holder of the permit adequately demonstrates to the Building Inspector that extenuating circumstances prevented a timely recertification request. If the Building Inspector agrees that there were legitimately extenuating circumstances, then the holder of the permit may submit a late recertification request or application for a new permit.
- (7) Fee. The Town of Tuxedo may charge a fee for recertification review and which shall be in an amount set forth in the Town of Tuxedo Fee Schedule.
- S. Liability insurance required for a wireless telecommunication facility.
- (1) A holder of a permit for a wireless telecommunications facility shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, in the amount of \$5,000,000 for the duration of the permit in amounts as set forth below:
- (a) Commercial general liability covering personal injuries, death and property damage: \$2,000,000 per occurrence/\$3,000,000 aggregate.
  - (b) Automobile coverage: \$1,000,000 per occurrence/\$2,000,000 aggregate.
  - (c) Workers' compensation and disability: statutory amounts.
- (2) The commercial general liability insurance policy shall specifically include the Town as an

additional named insured.

- (3) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State of New York and with an A.M. Best's rating of at least B-.
- (4) The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least 30 days' prior written notice in advance of the cancellation of the insurance. The holder of the special use permit shall also be required to inform the Town with at least 30 days' prior notice written in advance of the cancellation of the insurance. Such notification shall be by certified mail, return receipt requested.
- (5) Renewal or replacement policies or certificates shall be delivered to the Town at least 15 days before the expiration of the insurance which such policies are to renew or replace.
- (6) Before construction of a permitted wireless telecommunications facility is initiated, but in no case later than 15 days after the grant of the special permit or building permit, the holder of the permit shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.

T. Indemnification.

- (1) Any application for a wireless telecommunications facility that is proposed for Town property shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless and exempt the Town, and its officers, boards, employees, committee members, tax attorneys, agents and consultants, from any and all penalties, damages, costs or charges arising out of any and all claims, suits, demands, causes of action or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of or are caused by the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal or restoration of said wireless telecommunications facility. With respect to the penalties, damages or charges referenced herein, reasonable attorney fees, consultant fees and expert witness fees are included in those costs that are recoverable by the Town.
- (2) Notwithstanding the requirements noted above, an indemnification provision will not be required in those instances where the Town itself applies for and secures a permit for a wireless telecommunications facility.

U. Automatic disconnect in event of failure of a wireless telecommunications facility.

- (1) All carriers shall have installed at their wireless telecommunications facility the ability to disable the use of the wireless telecommunications facility at an off-site monitoring location.
- (2) In the event of a malfunction, the carrier shall have the ability to discontinue the use.
- (3) There shall be placed at the entrance to the wireless telecommunications facility a sign indicating the owner, address and telephone number for emergency contacts.
- (4) Any malfunction of a wireless telecommunications facility, which shall endanger the health, safety and general welfare of the community, shall cause the carrier to notify the Building Department in writing within 24 hours of the event. Such notification shall be made by electronic communication and certified mail, return receipt requested, at addresses to be provided by the Building Inspector.

- (5) Failure on the part of the carrier to provide the Building Department of this notification shall be grounds to suspend the operating license for a period no less than 30 days. The carrier shall present to the Town Board the reason for failure to notify the Town.

**§ 98-22. Agricultural operations.**

A. Purpose. The Town Board recognizes agriculture as an essential and integral industry in Orange County that enhances the economic base, stabilizes the tax base, and perpetuates the rural character of a community. The Town Board further declares that it shall be the policy of Tuxedo to encourage agriculture within the Town, particularly in the Conservation zoning district.

B. Agricultural data statement.

(1) Any application for a special use permit, site plan approval, area variance, use variance, or subdivision approval that would occur on property within an agricultural district created in accordance with Article 25AA of the New York State Agriculture and Markets Law and containing an agricultural operation or on property with boundaries within 500 feet of an agricultural operation within an agricultural district shall include an agricultural data statement as required by Section 305-a of the New York State Agriculture and Markets Law. The agricultural data statement shall be reviewed by the board having jurisdiction to determine the possible impacts of a proposed action upon the functioning of agricultural operations within such agricultural district. A copy of the agricultural data statement shall be sent to the Orange County Agriculture and Farmland Protection Board or other similarly designated agency for review and comment.

(2) Written notice of an application for which an agricultural data statement has been submitted shall be mailed the applicant, with proof of mailing submitted to the Building Department, to the owners of land as identified by the applicant in the agricultural data statement. Such notice shall include a description of the proposed project and its location and may be sent in conjunction with any other notice required by state or local law, ordinance, rule or regulation for the said project. The cost of mailing the notice shall be borne by the applicant. The agricultural data statement shall include the following information: the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district, which land contains agricultural operations and is located within 500 feet of the boundary of the property upon which the project is proposed; and a tax map or other map showing the site of the proposed project relative to the location of agricultural operations identified in the agricultural data statement.

C. Required disclosure. The following disclosure statement shall be included on any site plan or subdivision plat involving property located partially or wholly within an agricultural district established pursuant to the provisions of Article 25AA of the New York State Agriculture and Markets Law:

"It is the policy of New York State and the Town of Tuxedo to conserve, protect and encourage the development and improvement of agricultural land for the production of food, and other products, and also for its natural and ecological value. This disclosure notice is to inform prospective owners or occupants of this property that it lies partially or wholly within an agricultural district and that agricultural activities occur within the district. Such activities may include, but not be limited to, activities that cause noise, dust and odors."

D. Agricultural operation, exceptions. The following shall apply to any agricultural operation situated on a property located within an agricultural district as defined in Article 25AA of the New York State

Agriculture and Markets Law:

- (1) The following agricultural buildings and structures shall not be subject to the height limitations of this Zoning Chapter: barns, silos, and grain bins.
  - (2) Agricultural buildings and structures shall not be subject to maximum lot coverage requirements of this Zoning Chapter.
  - (3) Agricultural operations shall not be subject to site plan or special use permit review and approval except site plan approval is required for any building which the general public may occupy, or which otherwise requires a certificate of occupancy.
- E. A farm stand display for selling agricultural products may be permitted as an accessory use on the same lot on which said products have been harvested, provided that:
- (1) No processed products shall be offered for sale unless processed and produced on site such as honey.
  - (2) The display stand shall be located not closer than fifty (50) feet to any rear or side lot line; nor shall the storage of any such products outside a structure be located closer than fifty (50) feet to any rear or side lot line.
  - (3) The sale of any such products shall not have a deleterious effect on adjoining properties by reason of nuisance or health hazard.
  - (4) A suitable area for off street parking and loading shall be provided.
- F. The storage and use of manure, dust-producing substances or any uses producing odor or dust associated with an agricultural operation permitted herein shall be located not less than two hundred (200) feet from any property line.

**§ 98-23. Adaptive reuse of historic buildings.**

- A. Purpose. Adaptive reuse of a historic building shall be subject to Planning Board special use permit and site plan approval. The objectives and individual standards set forth in Sections 98-50 and 98-51 shall also apply. These uses shall be in addition to any use which is otherwise allowed in the zoning district in which the building is located.
- B. The historic building shall be listed on the National Register of Historic Places, the State Register of Historic Places, or shall be eligible for listing. Evidence of said eligibility shall be made by submission of a Historic Resource Survey conducted in accordance with guidelines promulgated by the New York State Office of Parks, Recreation and Historic Preservation (OPRHP). The historic survey shall be submitted to the OPRHP and that agency shall determine "eligibility".
- C. The minimum lot area shall be one (1) acre unless the Planning Board finds that the use can be conducted on a smaller lot and meet the standards set forth herein.
- D. In addition to the uses otherwise allowed in the zoning district in which the subject property is located, the following additional uses are allowed by special use permit:
  - (1) Professional office.
  - (2) Arts and crafts studio and retail use expressly related to the sales of crafts made therein.
  - (3) Bed and breakfast with no more than four (4) guest rooms and as otherwise regulated in Article X of this Zoning Chapter.



(4) Museum or art gallery.

(5) Antique sales.

- E. There shall be no exterior alteration of the structure except where said alteration makes the building or property consistent with its original historic character as determined by the Planning Board. The Planning Board may require that the building be improved to the Secretary of the U.S. Department of the Interior Standards for Rehabilitation as a condition of approval or standards promulgated by the NYS Office of Parks, Recreation and Historic Preservation. Continuing maintenance of the building to protect its historic character shall be a condition of any special use permit.
- F. The Applicant shall demonstrate to the satisfaction of the Planning Board that the use does not create or introduce traffic at levels that will significantly impact local roads giving access thereto and does not introduce lighting or noise levels inconsistent with the neighborhood environs, create parking demand, or operate in a manner that would impact adjoining properties, especially those in residential use. The Applicant shall also demonstrate that the use can be furnished adequately with water supply and that adequate wastewater treatment facilities are available.
- G. The Planning Board may impose conditions on the adaptive reuse of a building in order to protect the adjoining neighborhood and the historic character of the structure.

**§ 98-24. Municipal uses and facilities.**

- A. Town Board determination. The Town Board shall determine whether a proposed use is a “municipal use or facility” and the extent to which same will be subject to the regulations set forth in this Zoning Chapter, based on the following nine (9) factors:
  - (1) the nature and scope of the instrumentality seeking immunity;
  - (2) the encroaching government’s legislative grant of authority;
  - (3) the kind of function or land use involved;
  - (4) the effect local land use regulation would have upon the use concerned;
  - (5) alternative locations for the facility in less restrictive zoning areas;
  - (6) the impact upon legitimate local interests;
  - (7) alternative methods of providing the proposed improvement;
  - (8) the extent of the public interest to be served by the improvements; and
  - (9) intergovernmental participation in the project development process and an opportunity to be heard.
- B. Planning Board approval. Any such proposed municipal use or facility determined by the Town Board to be subject to the provisions of this Zoning Chapter, other than a Town of Tuxedo municipal use or facility, shall be subject to site plan review and approval, and the Planning Board shall be bound by any determination issued by the Town Board relative to the municipal use or facility.

**§ 98-25. Community benefit facility uses.**

- A. Purpose. Community benefit facilities are those nonresidential uses that, by their nature, are beneficial to society and the communities they locate in. Because these facilities serve the public, they have a greater impact on neighborhoods, properties, transportation systems, emergency

services and the environment.

- B. Definitions. For the purpose of this section, “structure” shall also include temporary structures such as tents.
- C. For the purpose of this Zoning Chapter, Community Benefit Facilities shall include the following uses:
  - (1) Library.
  - (2) Private School.
  - (3) Place of Worship.
  - (4) Child day-care center; nursery school.
- D. The Code Enforcement Officer shall determine whether a particular use meets the intent and definition of a “Community Benefit Facility” use for the purpose of this section. In making a determination, the Code Enforcement Officer shall rely upon the similarity or dissimilarity of the proposed use to the Community Benefit Facility uses enumerated in this section. A disputed determination may be appealed to the Zoning Board of Appeals.
- E. Location of community benefit facilities. A community benefit facility use shall be permitted in the Special Recreation zoning district, and/or any residential or mixed use zoning district as set forth in Section 98-5 of this Zoning Chapter.
- F. Bulk requirements. Community benefit facilities shall be subject to the Schedule of Bulk Requirements applicable to a single-family detached dwelling for the zoning district in which the community benefit facility is to be located, except that the minimum lot area for said use shall be no less than two times the lot area required for a single-family detached dwelling after taking into account those exclusions set forth in Section 98-12.A. Where the standards in subsection “J” below vary from a bulk requirement as set forth above, the more restrictive requirement shall apply. In addition to the bulk requirements as set forth above, a community benefit facility shall also meet any standard applicable to a nonresidential use as may be set forth in this Zoning Chapter.
- G. Waiver from bulk requirements for places of worship. Upon good cause shown, the Planning Board may waive applicable bulk standards for places of worship if it is shown that said standards will impermissibly impede the applicant’s exercise of religion. The Planning Board may not waive bulk standards for other community benefit facilities.
- H. Approvals. A community benefit facility shall require a Special Use Permit issued pursuant to this section and site plan approval, both issued by the Planning Board. The Planning Board shall follow the procedures set forth in Article X of this Zoning Chapter.
- I. Procedure.
  - (1) The applicant for a community benefit facility use shall submit an application to the Planning Board. Said application shall conform to the submission requirements for special use permit and site plan approval as set forth in this Zoning Chapter.
  - (2) Nothing herein shall permit any board to render a decision on the special use permit or site plan until the SEQRA review process is complete.
- J. Special use permit standards for a community benefit facility other than a place of worship. Community benefit facilities are allowed subject to special use permit and site plan approval. In

addition to the standards set forth elsewhere in this Zoning Chapter including the general standards and determinations required for the issuance of a special use permit and site plan approval, the following special use standards shall be met, which standards are the minimum necessary for the protection for the public health, welfare and safety. The below provisions shall not be waivable by the Planning Board for community benefit facilities other than places of worship:

- (1) A maximum floor area ratio (FAR) of 0.25 shall not be exceeded. The FAR shall apply to all principal and accessory buildings and structures applicable to the use.
- (2) The maximum development coverage shall not exceed 45 percent.
- (3) The use shall be located on a lot with no less than one (1) acre after having met the requirements of Section 98-12.A of the Zoning Chapter.
- (4) All structures and parking shall be screened from adjacent properties by evergreen plantings of sufficient height and diameter to substantially eliminate noise and traffic. The width of the planting screen shall not be less than twenty-five (25) feet, and the Planning Board may require a wider buffer to meet this objective.
- (5) Parking requirements shall be determined based upon peak attendance, membership, notwithstanding the frequency of any peak attendance event, and the number and layout designed in accordance with Article VIII of the Zoning Chapter. All queuing of vehicles shall occur on-site.

**§ 98-26. Solar facilities.**

- A. Intent. Solar energy is a renewable and non-polluting energy resource that reduces fossil fuel emissions and reduces a municipality's energy load. Energy generated from Solar Energy Systems can be used to offset energy demand on the grid when excess solar power is generated. The use of Solar Energy Systems for the purpose of providing electricity and energy for heating and/or cooling, or any other use needing electric power is a necessary component of the Town of Tuxedo's current and long-term sustainability agenda. This section is intended to permit and regulate Solar Energy Systems and equipment, including the efficacy of siting to provide for adequate sunlight and convenience of access; to balance the potential impact on neighbors when Solar Collectors and/or Solar Energy Systems may be installed near their property, while preserving the rights of property owners to install Solar Energy Systems in accordance with applicable laws and regulations; and to recognize solar energy as a source for current and long term energy sustainability.
- B. The requirements of this section shall apply to all Solar Energy Systems and equipment installed or modified after the effective date of this section. No Solar Energy System equipment shall be installed, operated or modified except in compliance with this section.
- C. A pre-existing Solar Energy System for which a valid permit has been issued and complies with all applicable New York State laws, rules and regulations is not required to comply with this section, provided that such systems complied with all applicable laws, rules and regulations when installed.
- D. All Solar Energy System installations must be performed by a Qualified Solar Installer.
- E. Prior to operation, electrical connections must be inspected by the Town Code Enforcement Officer and by a qualified electrical inspector acceptable to the Town. Any connection to a public utility grid must meet all applicable Town, State, Federal and public utility laws, rules and regulations.
- F. All Solar Energy Systems shall be maintained to be safe and in good working order.

- G. All Solar Energy Systems shall comply with all applicable New York Uniform Fire Prevention and Building Code standards.
- H. If solar storage batteries are included as part of the system, they must be placed in secure containers or enclosures meeting the requirements of the New York State Building Code when in use, and when no longer used, such batteries shall be disposed of in accordance with the laws and regulations of the Town and other applicable laws and regulations.
- I. All Solar Energy Systems and equipment shall be marked in order to provide emergency responders with appropriate warning and guidance with respect to isolating the solar electric system. Materials used for marking shall be weather resistant. The markings shall be placed adjacent to the main service disconnect in a location clearly visible from the location where the lever is operated. If any of the standards for markings in this subsection are more stringent than applicable provisions of the New York State Uniform Fire Prevention and Building Code, the more stringent provisions shall apply.
- J. All Solar Panels and equipment shall be designed and sited so as to not reflect glare onto other properties, public or private roads, rights-of-way, or aircrafts in flight; and shall not interfere with traffic or create a safety hazard.
- K. Prior to issuance of any permit for a Solar Energy System, the applicant shall submit to the Town Building Department a letter stating that the issuance of said permit shall not and does not create in the property owner, or its successors and assigns in title, or create in the property itself:
  - (1) The right to remain free of shadows and/or obstructions to solar energy caused by development of adjoining or neighboring property or the growth of any trees or vegetation on adjoining or neighboring property; or
  - (2) The right to restrict or prohibit development or the growth of any trees or vegetation on adjoining or neighboring property.
- L. Roof-mounted Solar Energy Systems.
  - (1) A roof-mounted Solar Energy System may be mounted on any legal principal or accessory building or structure, subject to the Code Enforcement Officer and Town Engineer's review for structural integrity. It is not subject to site plan review and approval by the Planning Board.
  - (2) A roof-mounted Solar Energy System is permitted to serve only the building(s) or structure(s) on the lot upon which the system is located except that a solar energy system that is connected to the utility grid may push back excess electricity back into said grid.
  - (3) The applicant shall file a New York State Unified Solar Permit (USP) application with the Town Building Department and pay all fees to obtain a building permit.
  - (4) Solar Panels facing the front yard must be mounted at the same angle as the roof's surface, with a maximum distance of 18 inches between the roof and the highest edge of the panels.
  - (5) Roof-mounted Solar Collectors which are flush-mounted shall not be included in the height of the building, nor subject to height limitations governing principal or accessory buildings or structures to which it is mounted, if, in the opinion of the Town Code Enforcement Officer, after consultation with the Town Engineer, such collectors are installed no more than a height reasonably necessary to accomplish the intended purpose and do not obstruct Solar Access of neighboring properties.

- (6) A suitable perimeter area around the edge of the roof shall be provided, where in the panels shall be setback a minimum of 18 inches from the perimeter, except that along one side of the roof panels shall be set back three (3) feet for emergency access.

M. Ground-Mounted Solar Energy System.

- (1) A Ground-Mounted Solar Energy System is permitted to serve only the building(s) or structure(s) on the lot upon which the system is located except that a solar energy system that is connected to the utility grid may push back excess electricity back into said grid. Site plan review and approval by the Planning Board is required for all properties except a lot containing a single-family detached, single-family semi-attached, or two-family dwelling.
- (2) A Ground-Mounted Solar Energy System shall not be placed in a front yard. The required rear yard and side yard setback for a Ground-Mounted Solar Energy System shall be at least fifty (50) feet from the property line.
- (3) The height of ground-mounted Solar Collectors and mounts shall not exceed twelve (12) feet when oriented at a maximum tilt.
- (4) The Ground-Mounted Solar Energy System and related equipment shall be substantially screened from view from adjoining and neighboring properties and public and private roadways architectural features, earth berms, landscaping or other screening which will harmonize with the character of the property and surrounding area. If landscape screening is proposed, a landscape design, signed and stamped by a licensed landscape architect shall be submitted with all solar system site plan applications. Such screening shall be designed and installed so as not to substantially interfere with normal operation of the Solar Collectors.
- (5) Ground-Mounted Solar Energy System equipment shall not be sited within any required buffer area.
- (6) Lot coverage limitations. The total surface area of all Solar Collectors on a lot shall not exceed the area of the ground covered by the principal building on the lot measured from the exterior walls, excluding patios, decks, balconies, screened and open porches and attached garages. The area beneath all Solar Collectors shall be included in calculating maximum permitted development coverage limitations. If the Solar Collectors are mounted above an existing impervious surface, they shall not be calculated as part of the lot surface coverage limitations for the applicable zoning district.
- (7) The area beneath Solar Collectors shall not be used for storage of any equipment or material.
- (8) The applicant, property owner, system owner and system operator must agree, in writing satisfactory to the Town Attorney, to remove the solar energy system and all associated equipment and structures, if the solar energy system ceases to be used for its intended purpose for twelve consecutive months. Removal of such unused system, equipment and structures shall be completed within six months thereafter.

**§98-27. Adaptive reuse of nonresidential buildings in R-2 zoning district.**

- A. Purpose. The purpose of this section is to allow the adaptive reuse of buildings presently or previously in nonresidential use, and to allow them to be converted to residential use in order to bring the building in conformity with the otherwise residential character of an existing neighborhood. Adaptive reuse of a nonresidential building in the R-2 zoning district shall be subject

to Planning Board special use permit and site plan approval. The objectives set forth in Sections 98-50 and the individual standards set forth in 98-51M shall generally apply, but shall be applied in a manner to permit and encourage the adaptive reuse of existing structures, in addition to the requirements set forth herein.

- B. For purposes of this section, nonresidential building shall mean any building not presently or previously in residential use.
- C. The minimum lot area shall be three (3) gross acres.
- D. A nonresidential building may be converted to the following uses, subject to the bulk standards established for the use within the R-3 zoning district:
  - (1) Single-family semi-attached dwellings;
  - (2) Single-family attached dwellings (townhouses).
- E. The Applicant shall be permitted to construct the uses set forth in D above, provided the proposed uses are constructed within, and not significantly larger than (no more than five percent), the existing building footprint of the principal nonresidential buildings located on the lot. Variations that the Planning Board determines to be minor are permitted.
- F. The maximum building height shall not exceed the height limitations of the zoning district.
- F. The Applicant shall demonstrate to the satisfaction of the Planning Board that the use does not create or introduce traffic at levels that will significantly and adversely impact local roads giving access thereto and does not introduce lighting or noise levels inconsistent with the neighborhood environs, create parking demand, or operate in a manner that would significantly and negatively impact adjoining properties, especially those in residential use. The Applicant shall also demonstrate that the use can be furnished adequately with water supply and that adequate wastewater treatment facilities are available.

**§98-28 to 29. Reserved.**

## ARTICLE VII. SIGNS

### § 98-30. Signs.

- A. Purpose. The purpose of this chapter is to preserve, protect, promote, and advance the public health, welfare, and safety by regulating and establishing standards for the erection of signs within the Town of Tuxedo. These regulations and standards are content-neutral, which means that they are to be construed to promote no distinction between the topic discussed or the idea or message expressed on any signage. The Town's ability to attract economic development is accomplished in part by the enforcement of regulations that maintain an attractive community and streetscape, of which signs are a contributing element. A multiplicity of signs clutters the overall appearance of the Town, detracts from its visual quality, and is discouraged. The objective of promoting a visually attractive streetscape shall be balanced with the objective of ensuring that a property owner or tenant is afforded ample and adequate means of identifying the occupancy or use of a property or establishment and/or conveying information in accordance with these sign regulations.
- B. Sign permit required.
- (1) Unless otherwise permitted by this section, no person shall hereafter install, structurally alter, enlarge, or relocate a sign without a sign permit. No sign permit shall be issued except as shown on an approved site development plan or sign plan. The Planning Board may approve any sign shown on a site development plan in accordance with the procedures set forth in Article XI, Site plan review, of this Zoning Chapter. All signs requiring a sign permit and not reviewed by the Planning Board as part of a site plan application shall be reviewed and approved by the Building Inspector. A sign permit shall be issued only following submission, review and approval of a sign application and sign plan in accordance with the requirements set forth below, and payment of the required fee in accordance with the fee schedule established by the Town Board.
  - (2) A sign permit shall not be issued for a sign if any other sign on the same premises and in the same ownership has been determined to be in violation of this section.
  - (3) A sign permit shall not be required for the repainting or refurbishing of an existing sign when using similar colors, letters and signs. The determination of similarity shall be made by the Building Inspector.
  - (4) Sign permits for temporary signs, greater than eight (8) square feet in size and limited to one (1) sign per property per street frontage, shall be issued without a permit fee for a period of one (1) year; thereafter the required fee must be paid in accordance with the fee schedule established by the Town Board. All such signs shall be removed within seven (7) calendar days of expiration of permit and must adhere to the maintenance requirements set forth in § 98-30.I.
- C. Sign application. A sign permit application shall be submitted to the Code Enforcement Officer and shall include the following:
- (1) A scale drawing of the sign which shows the content, colors, and proposed location of the sign.
  - (2) A drawing with appropriate notes, describing the construction of the sign and the method of attachment to a building or the ground.
  - (3) A description or sample of the materials of which the proposed sign will be made.
  - (4) A description of the proposed method of sign illumination, if any.

- (5) Any other information deemed necessary by the Code Enforcement Officer to determine whether the sign is consistent with the regulations set forth herein.

D. Review.

- (1) Time period for decision. At such time that the Code Enforcement Officer deems that a complete application has been submitted with the information set forth in subsection C above, the Code Enforcement Officer shall review all sign applications and approve, disapprove, or approve with modifications the application within thirty (30) days of receipt of a complete application. Where a sign is being approved in conjunction with a site plan, the Planning Board shall review and approve signs in accordance with the time frames established for site plan review and approval. The applicant shall submit to the Planning Board the sign information set forth in subsection C above.
- (2) Criteria for sign plan approval. The Planning Board shall exercise discretion in approving signs in accordance with its powers and duties. The Code Enforcement Officer shall approve signs which clearly and convincingly meet the criteria and regulations of this section. If such sign or signs do not clearly and convincingly conform to the criteria of this section, the Code Enforcement Officer shall deny the application and the applicant may pursue its remedies provided in this Chapter. Where design standards for signs are set forth for individual special uses, the design standards in Article X and any associated Sign Design Standard Guidebook, if in existence, shall prevail.
  - (a) Accessory use. Signs must be clearly accessory to the uses on the lot on which they are located and are not permitted to be principal uses.
  - (b) Proportion and scale. The size and content of the sign shall be the minimum essential for legibility and for the provision of information. The scale of signs should be appropriate for the building on which they are placed and the area in which they are located. The size and shape of a sign should be proportional with the scale of the structure. For example, small storefronts should have smaller signs than larger storefronts.
  - (c) Quality. Signs shall be durable and weather resistant.
  - (d) Coordination with other signs. Signs located on a multi-tenant building shall be coordinated in design to avoid sign clutter. For buildings with multiple storefronts, signs located on individual businesses' storefronts should relate well to each other in terms of locations, height, proportion, color, and illumination. Maintaining continuity reinforces the building's facade composition while still retaining each business's identity.
  - (e) Colors. Colors shall not be garish. Contrast is an important influence on the legibility of signs. A substantial contrast should be provided between the color and material of the background and the letters or symbols to make the sign easier to read in both day and night. Light letters on a dark background or dark letters on a light background are most legible. Light letters on a dark background work best for both day and nighttime use. Neon and day-glo colors are not permitted except in association with neon signs approved by the Code Enforcement Officer.
  - (f) Coordination with building. Sign materials and colors should complement the materials and colors of the building on which the sign is situated or associated.
  - (g) Architectural elements and details, including historic building details. Many of the buildings in Tuxedo, particularly the hamlet, exhibit architectural elements and details. Signs should



not cover or otherwise interfere with design elements that contribute to the building's character. Signs should not cover over architectural elements such as transom windows or vertical piers. Signs should fit into the building facade just as if they were one of the architectural elements. The building or storefront should be reviewed for its architectural elements that suggest a location, size, or shape for the sign. These could include the lintel band above transom windows, an entranceway that needs signage to provide direction, or display windows.

- (i) Typeface. A multiplicity of different typefaces on an individual sign is discouraged. The number of lettering styles that are used on a sign should be limited to improve legibility. As a general rule, limit the number of different letter types to no more than two for small signs and three for larger signs. Intricate typefaces and symbols that are difficult to read reduce the sign's ability to communicate and effectiveness.

E. Permitted signs not requiring a sign permit. The following signs are allowed and may be erected and maintained without a permit, provided that they comply with the regulations of this subsection E.

(1) Permanent signs:

(a) In all districts, three signs not exceeding two square feet in area.

(b) Governmental signs.

(c) In any commercial district, any sign more than three (3) square feet in area and with a maximum height not more than three (3) feet above grade.

(2) Temporary signs in all districts, not to exceed eight (8) square feet in area:

(a) On-premise garage sale signs, provided the sign is erected on the property on which the sale is conducted and for a period not to exceed seven (7) days.

(b) Non-illuminated temporary "For Sale" or "For Rent" residential or commercial real estate sign concerning the premises upon which the sign is located. All such signs shall be removed within seven (7) calendar days after the sale, lease, or rental of the premises and must adhere to the maintenance requirements set forth in § 98-30.I.

(c) Temporary, seasonal displays generally recognized or associated with national, state or religious holidays, except when displayed in connection with commercial promotion. Such displays include the outlining of a perimeter of a building or display window with lights, as long as the display lasts no longer than 60 days.

(d) Political campaign signs pertaining to candidates for public office, political parties, public referenda, or other public issues. The Town of Tuxedo encourages, but does not require, that said signs be displayed no earlier than 30 days prior to the relevant election or referendum and that they be removed no later than 7 days after such election or referendum. The Town encourages, but does not require, the candidate or his/her representative to designate a contact name of the person(s) responsible for erecting and removing the sign(s) and supply same to the Town Clerk.

(e) Public notices. Notices posted by public officers or employees in the performance of their duties.

(f) Temporary banners, pennants, and related signs will be allowed in conjunction with an

open house or model home demonstration not to exceed a total of 15 days.

- (g) Temporary banners or flags (concerning the premises upon which the banner or flag is located) promoting grand openings, seasonal messages when displayed in connection with commercial promotion, or special events hung on buildings or extended across sidewalks and/or streets (only approved by the Town Board), or parking lots, subject to Building Inspector notification. Said temporary signs shall be installed for a period not exceeding thirty (30) days. Pursuant to § 98-30(F)(7), no temporary banner or flag as defined above, which is leased or rented for economic gain (including billboards), shall be erected, maintained, or displayed on a lot other than upon the premises whereon such sign is located.

F. Prohibited signs. Prohibited signs are signs that are not permitted in the Town of Tuxedo. Prohibited signs are as follows:

- (1) Signs that revolve or otherwise move or which utilize flashing or blinking lights or multiple illuminating units which operate alternately.
- (2) Signs which emit noise, sounds or smoke, including audio signs.
- (3) Signs of a prurient or sexual nature or advertising businesses, commodities or services of a prurient nature, which are offensive to the community.
- (4) Signs made of cardboard, paper or similar impermanent material, except temporary signs displayed within a window area of a commercial use which shall not cover more than forty percent (40%) of any window area or placed so as to obstruct the view inside the building.
- (5) No sign shall be placed, painted or drawn on utility poles, bridges or on other road, utility structures or signposts; or on trees, rocks or other natural features. No signs shall be placed on municipal property without the permission of the Town Board.
- (6) No sign shall be erected, maintained or displayed which shall create a public hazard to health or safety by reason of the manner of its construction or placement or the nature of the materials used therein.
- (7) No sign which is leased or rented for economic gain, including a sign commonly known as a billboard, shall be erected, maintained, or displayed, including those which advertise or promote any business, profession, interest or product on a lot other than upon the premises whereon such sign is situated. The Town of Tuxedo does not control or regulate billboards situated within any state highway right-of-way, provided a copy of the state approval is filed in the Code Enforcement Officer's office.

**G. Standards for signs accessory to nonresidential uses requiring site plan or sign permit approval.**

- (1) Number and Type of Permanent Signs. Schedule A regulates the number, size and types of signs allowed on properties within each zoning district in the Town of Tuxedo. A "P" indicates that the type of sign is permitted in the applicable zoning district. A "NP" indicates that the sign type is not permitted in the applicable zoning district.

**SCHEDULE A  
PERMITTED NUMBER AND TYPE OF SIGNS BY ZONING DISTRICT**

Zoning District ►	SR, C, R-1, R-2, R-3, R-4, S-HR	S-HB, T-TC, NB, GB	LIO, RO
Permitted Number of Permanent Signs per Lot* ►	2	2	2
Sign Type ▼			
<b>WALL SIGN</b> – A façade sign attached parallel to a wall and not projecting more than 6 inches from same, painted on the wall surface of, or erected and confined within the limits of an outside wall of any building or structure, which is supported by such wall and building, and which displays only one sign face.	P	P	P
<b>PROJECTING SIGN</b> – Any sign other than a wall sign affixed to any building, structure or wall that is wholly or partly dependent upon such building, structure or wall for support whose leading edge extends beyond such building, structure or wall more than 6 inches or is constructed perpendicular to said building, structure or wall.	NP	P	NP
<b>ICONIC SIGN</b> – A façade sign projecting perpendicular from the wall of a building that is a pictorial symbol conveying the nature of a business, e.g., a barber pole, eyeglasses, boots, mortar and pestle. They are normally constructed in heavy relief or are three dimensional.	NP	P	NP
<b>FREESTANDING SIGN</b> – A sign supported by structures or supports that are placed on, or anchored in, the ground independent of any building and which may display up to two faces. A freestanding sign may be installed on one post, two posts on either side of the sign, or may be installed directly on the ground, i.e., a monument sign.	P	P*	P
<b>FREESTANDING DIRECTORY SIGN</b> – A type of freestanding sign that includes panels listing tenants in a multi-tenant building.	NP	P*	NP
<b>WINDOW SIGN</b> - A sign visible from a sidewalk, street or other public place, painted or affixed on glass or other window material, but not including graphics in connection with customary window display of products.	NP	P	NP
<b>AWNING SIGN</b> – A retractable or fixed shade-producing or weather-protection device made of flexible material, which is attached to a building or extends over a window or door identifying or advertising the business on premise.	NP	P	NP
Notes: *For any lot with a multi-use or multi-tenant building, one freestanding sign or freestanding directory sign is permitted for the building, and two signs (other than a freestanding or freestanding directory sign) shall be permitted for each tenant or use.			

(2) Design standards applicable to all signs.

(a) Illumination.

- [1] Sign lighting shall be designed and arranged so as to minimize glare and reflection on adjacent properties. Lighting shall be cast downward.
- [2] Externally illuminated signs that project light onto the sign shall be permitted. The light source shall be shielded from direct view.
- [3] Lighting shall be extinguished during times when the business is not in operation. Lights may be required to be placed on timers to ensure this requirement is met.
- [4] Internally illuminated box lit signs existing on the effective date of the enactment of the local law amending this section may be continued, but any new box sign shall be prohibited.
- [5] In the LIO and RO zone only, buildings with light industrial and office uses are permitted back-lighted signs with opaque, reverse channel letters or back-lighted signs with dimensional Plexiglas letters. Where said use is situated adjacent to a residential use, timers shall be installed to control the hours of operation.

(b) Materials.

- [1] Paper and injection molded plastic signs are not permitted.
- [2] Raised surface-mounted letters of wood, steel, brass, stainless steel, bronze or PVC resin is preferred; sheet metal, finished plywood is permitted.
- [3] Flat framed wooden signboards or synthetic resin boards with carved raised or recessed lettering or professionally-printed letters are permitted.
- [4] Signs with gold-leaf lettering are encouraged.

(3) Wall sign design standards.

- (a) Except in the RO and LIO district, one wall sign per building or tenant is allowed on the façade facing a public street. The sign shall not conceal any part of a window and shall not extend above the roofline.
- (b) Except in the RO and LIO district, the maximum length of a wall sign shall not exceed 70 percent of the length of the building façade fronting to the street or tenant's front façade, whichever is less. The maximum height shall not exceed two (2) feet.
- (c) In the RO and LIO district, one wall sign per building is allowed on the façade facing the public street. The maximum length of a wall sign shall not exceed 70 percent of the length of the building façade fronting to the street, except that no wall sign shall exceed twenty (20) feet in length, nor shall the sign area exceed ten percent (10%) of the total wall area of the building space to which the sign is associated.

(4) Projecting sign and iconic sign design standards.

- (a) One projecting or iconic sign per building or tenant is allowed on the façade facing a public street. No projecting sign shall overhang the public way beyond a line four (4) feet from the building face, and its bottom shall not be mounted above the level of the second story windowsill. The sign shall maintain a minimum clearance of eight (8) feet from the ground.

- (b) The maximum length shall not exceed four (4) feet. The maximum height shall not exceed four (4) feet.
  - (c) The maximum sign area shall not exceed twelve (12) square feet.
  - d) Projecting signs shall be securely installed. Where a projecting sign projects into the public right-of-way, approval may be conditioned upon the applicant holding appropriate liability coverage to hold the Town of Tuxedo harmless for any action associated with the sign.
- (5) Freestanding sign and freestanding directory sign design standards.
- (a) One freestanding sign or one freestanding directory sign is allowed per principal building. A freestanding sign in the 100-year floodplain is subject to Planning Board site plan review and approval.
  - (b) A freestanding sign is permitted in the front yard setback but shall not overhang a property line, driveway or walkway. The Code Enforcement Officer or Planning Board may consult with the Highway Superintendent or Town Engineer with regard to the placement of the sign to ensure adequate sight distance is maintained. No sign may interfere with required sight distances.
  - (c) The maximum height of the sign shall not exceed ten (10) feet from ground level to the top of the sign. The maximum length shall not exceed five (5) feet.
  - (d) The maximum sign area shall not exceed twenty-five (25) square feet per side.
  - (e) For a freestanding directory sign, each panel shall be the same dimension, no less than eight (8) inches, nor more than one (1) foot in height. The colors used for background and lettering shall be the same on each panel, and no more than three colors may be used. One panel may be larger than the remainder, but in no case shall the total of all panels exceed the maximum sign area.
  - (f) The posts to which a freestanding sign is mounted shall be stone or other masonry, metal, aluminum, wood, or resin with a minimum diameter of four (4) inches. Treated wood posts shall not be used unless painted, stained, or finished with clear polyurethane. Metal, including aluminum, posts shall only be permitted if said posts are constructed to appear like wood or other similarly natural materials, as reviewed according to the Planning Board and Code Enforcement Officer's discretion under this section. The top of the posts shall be decorative, either through an appropriate wood cut or use of finials.
  - (g) Signs shall be installed in a landscaped bed or box unless the Code Enforcement Officer determines that installation of the landscaped bed or box would interfere with traffic maneuvering or sight distance.
- (6) Window sign design standards.
- (a) One window sign is permitted per building or per tenant.
  - (b) In addition to a window sign, up to two (2) neon or LED signs may be permitted in the HB and NB districts only. The total sign area of the two neon/LED signs shall not exceed eight (8) square feet, and no individual neon/LED sign shall exceed five (5) square feet. Neon signs shall not outline the shape or form of any window to which it is attached.
  - (c) All signs within a window – permanent, neon, LED, and/or temporary - shall not exceed 40 percent of the total area of the window in which the signs are located.

(7) Awning sign design standards.

- (a) An awning sign may be located above an entrance or window. The height of the skirt on the extension shall not exceed eight (8) inches. An awning sign may be permitted in addition to a wall or projecting sign.
- (b) Awnings shall be constructed of a material which shall be rot, weather, and abrasion resistant.
- (c) Awnings with a single, solid color are permitted. Awning colors should complement the colors of the building. Colors that call more attention to the awning than the building are inappropriate. Preferred colors include forest green, maroon, dark blue or black.
- (d) Where awnings have been installed previously on a building, the Code Enforcement Officer may require that the same shape or color of awning be installed. (e) Awnings should be designed to project over individual window and door openings (i.e., mounted in the reveals of openings). Awnings that are a continuous feature, extending over several windows, doors, masonry piers, or arches, are not permitted.
- (f) Where an awning projects into the public right-of-way, approval may be conditioned upon the applicant holding appropriate liability coverage and holding the Town of Tuxedo harmless.

(8) Miscellaneous sign requirements.

- (a) Wall murals. A wall mural may be permitted at the discretion of the Town Board and is not subject to the maximum sign requirements set forth in Schedule A.
- (b) Banners in public rights-of-way. Banners, flags, and other temporary signs advertising seasonal events, e.g., a farmer market, are subject to approval of the Town Board.

H. Temporary signs. Unless exempt under subsection E, signs to be erected for short duration require sign permits which indicate the dates during which the signs may be displayed.

- (1) Such signage shall not consist of a sign prohibited by subsection F.
- (2) Such signage shall not exceed 16 square feet in total area.
- (3) Such signage shall not be displayed by an activity or business for more than 60 days total in any one calendar year on any one property. A new permit may be issued after expiration of a prior permit with Town Board approval, which will include new dates during which the sign may be displayed.
- (4) Portable signs may be allowed with a permit but are not to exceed placement for longer than 60 days total per year.
- (4) No lighting of temporary signs is permitted.
- (5) No more than one temporary sign permit may be granted to or be in effect for an applicant at any one time.
- (6) Permits for temporary signs pursuant to a site development plan will be reviewed and approved by the Planning Board pursuant to subsection B of this section and § 98-55.
- (7) Permits for temporary signs, outside of a site development plan, will be approved and issued by the Town Board, provided that the guidelines and requirements of this section are followed.

- (8) Any sign not removed in the time provided for above is a violation of this law. Each day such violation continues is deemed a separate and distinct violation.
- I. Maintenance and repair required. As required by § 98-30(I), all signs must be maintained in a safe, presentable, and structurally sound condition at all times. This includes keeping the sign clean, neatly painted, and free from all hazards, such as, but not limited to, faulty wiring or loose fastenings, and must be maintained at all times in such safe condition so as not to be detrimental to the public health or safety. In the event of violation of any of the foregoing provisions, the Code Enforcement Officer shall require its removal in accordance with § 98-30(J) below.
- J. Enforcement; Removal and Disposal of Signs.
- (1) The Code Enforcement Officer of the Town of Tuxedo is hereby designated as the officer for the enforcement of the provisions of this section and is authorized to bring such criminal or civil proceedings at law in the Town Justice Court or otherwise on behalf of the Town of Tuxedo as may be necessary to compel compliance, or to pursue any other remedies available under this chapter or the laws of the State of New York.
- (2) Removal and disposal of signs. In addition to and not in lieu of other remedies and penalties for Zoning Chapter violations, unlawful, dangerous, or ill-maintained signs may be removed by the Town pursuant to the provisions below.
- (a) The Code Enforcement Officer shall cause to be removed any sign that endangers the public safety. If the Code Enforcement Officer shall find that any sign regulated by this section is unsafe or not properly secured, or is a menace to the public, he shall give written notice to the named owner of the sign and the named owner of the land upon which the sign is erected, who shall remove or repair said sign within ten (10) days from the date of said notice. If the sign is not removed or repaired, the Code Enforcement Officer shall revoke the permit issued for such sign, as herein provided, and may, subject to procedures that must comply with due process, remove or repair said sign and shall assess all costs and expenses incurred in said removal or repair against the land or building on which such sign was located pursuant to Chapter 5 of the Town Code. The Code Enforcement Officer may cause any sign which is a source of immediate peril to persons or property to be removed summarily and without notice.
- (b) Any sign (other than a sign along primary, National Highway System, or Interstate Highways controlled by the United States Department of Transportation, or a billboard in an area zoned industrial or manufacturing) existing on or after the effective date of this section which is no longer accessory to an existing activity on the premises shall be removed within sixty (60) days after the use has ceased operation or upon written notice of the Code Enforcement Officer as set forth in subsection (a) above. The Code Enforcement Officer, upon determining that any such sign exists, shall notify the owner of the premises in writing to remove said sign within thirty (30) days from the date of such notice. Upon failure to comply with such notice within the prescribed time period, the Code Enforcement Officer is hereby authorized, subject to procedures that must comply with due process, to remove or cause removal of such sign, and shall assess all costs and expenses incurred in said removal against the land or building on which such sign is located pursuant to Chapter 5 of the Town Code.
- (3) Civil penalties. Civil penalties for any violation of this section may be pursued pursuant to Chapter 37 of the Town Code.

(4) Injunctive relief. An action or proceeding in equity may be instituted in the name of the Town, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of this Article or any term or condition of any building permit, certificate of occupancy, temporary certificate, stop-work order, operating permit, order to remedy, or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this Article, pursuant to Chapter 37 of the Town Code. In particular, but not by way of limitation, where the construction or use of a sign or sign structure is in violation of any provision of this Article, or any stop-work order, order to remedy or other order obtained under the Code or this chapter, an action or proceeding may be commenced in the name of the Town, in the Supreme Court or in any other court having jurisdiction, to obtain an order compelling the removal of the sign or sign structure or an abatement of the violations of such provisions. No action or proceeding described in this subsection shall be commenced without authorization by the Town Board.

K. Nonconforming signs. It is the express intent of this section to supersede General Municipal Law § 74-C pursuant to § 10(d)(3) of the Municipal Home Rule Law. Permanent signs that do not conform to this chapter and that were legally in existence prior to the effective date of this chapter or any amendment thereof that makes the sign noncompliant shall be permitted to continue as set forth below:

- (1) Any nonconforming sign, lawfully existing on the effective date of this section, may continue indefinitely, except if such nonconforming sign is discontinued, removed, not maintained or structurally altered for any reason, or is deemed by the Code Enforcement Officer to be irreparably dangerous or defective, such exemption period shall terminate and shall result in the immediate removal of the nonconforming sign.
- (2) Billboards and box signs. Billboards and box signs in existence on the effective date of this section shall be allowed to continue. Once removed, box signs and billboards shall not be re-established. The installation of new billboards and box signs is prohibited.

L. Appeals. Appeal to ZBA. The Code Enforcement Officer shall deny any application for a sign which is not in conformity with this Article. Any person desiring to erect, maintain or display a sign not in conformity with this Article, but not a prohibited sign pursuant to this section, may apply to the Zoning Board of Appeals for relief and shall supply any and all information and specifications as shall be required by the ZBA regarding the manner of construction, materials, dimension, shape, colors, illumination and proposed location.

M. Penalties for offenses.

- (1) Any person committing an offense against any provision of this Article shall, upon conviction, be guilty of a violation pursuant to the Penal Law of the section of New York, punishable by a fine not exceeding \$250. Each day that such violation is permitted to continue shall constitute a separate and distinct violation.
- (2) In addition to the penalties imposed by subsection (1) of this subsection, the Town of Tuxedo shall be entitled to recover a civil penalty in the sum of \$100 per day for each day during which the violation continues. Written notice to correct such violation shall be a prerequisite to the recovery of this penalty, which shall be recoverable commencing five days after service of the notice required hereunder.
- (3) The imposition of penalties herein prescribed shall not preclude the Town or any other person from instituting appropriate legal action or a proceeding to prevent the unlawful erection,



construction, reconstruction, alteration, repair, conversion or maintenance or use or to restrain, correct or abate a violation or to prevent the illegal occupancy of a building, land or premises.

- N. Substitution. A protected non-commercial message of any type may be substituted, in whole or in part, for a commercial message displayed on any sign permitted by this code. Such substitution of message may be made without additional approval, permitting, registration, or notice to the Town.
- O. Severability. If any clause, sentence, paragraph, section or part of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remaining portions hereof, but shall be confined to the clause sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

**§ 98-31. Reserved.**

## ARTICLE VIII. PARKING AND LOADING

### § 98-32. Parking.

- A. Off-street parking requirements. Off-street parking spaces, open or enclosed, are permitted accessory to any principal use, subject to the following provisions:
- (1) Schedule of parking requirements. Accessory off-street parking spaces, open or enclosed, shall be provided for uses as specified herein. Any land developed as an integrated project under common ownership and control shall be considered a single lot for the purpose of these parking regulations. Documentary proof of parking cross-easements is required. Reasonable and appropriate off-street parking requirements for structures and uses which do not fall within the categories listed in this section shall be determined by the Planning Board upon consideration of all factors related to the parking needs of each such use.
  - (2) Areas computed as parking spaces. A private garage, carport, or other area available for parking, other than a street or driveway, may be computed as an open or enclosed off-street parking space. A driveway within a required front yard for a single-family detached, single-family attached, or single-family semi-attached, or two-family dwelling may count as one (1) parking space, provided a minimum driveway length of twenty-five (25) feet is available for said space. No parking space shall be located on that portion of a corner lot within the sight triangle.
  - (3) Size of spaces. The minimum parking stall width for a perpendicular parking space shall be nine (9) feet and the minimum length shall be eighteen (18) feet. No parking space shall result in a vehicle overhanging a sidewalk or walkway. Entrance and exit lanes shall not be computed as parking spaces except for driveways for residences as set forth in Subsection A(2) herein. In the event an existing commercial property within the T-TC zoning district cannot conform to these standards because of lot size, configuration and/or topography, owners of such properties may apply to the Building Inspector for the waiver of requirements of this subsection (3) and subsection A(1), provided that such waiver does not jeopardize public health, safety, and general welfare, and provided that such waiver does not violate Building Code, Fire Code, or any other building or safety regulation that may apply.
  - (4) Access. Unobstructed access to and from a street with an internal on-site turnaround area shall be provided. Such access shall consist of at least one, 15-foot wide lane for parking areas consisting of twenty (20) parking spaces or less, and two, twelve-foot lanes for parking areas of over twenty (20) parking spaces. No entrance or exit for any off-street parking area shall be located within seventy-five (75) feet of any street intersection. The Planning Board may waive this requirement as part of site plan or subdivision review and approval, provided that it is demonstrated to the satisfaction of the Planning Board that vehicles can safely exit a parking space due to low volumes of traffic on the road to which the driveway shall obtain primary access.
  - (5) Drainage and surfacing. All parking areas and driveways shall be properly drained and paved, except that parking spaces or driveways accessory to single-family dwellings served by individual driveways may be constructed of properly compacted gravel or crushed stone where any portion of said area does not exceed five percent (5%) slope. The Planning Board may require alternative dustless surfaces for other uses based on the characteristics of the use and the character of anticipated parking usage, e.g., regular versus overflow parking.

- (6) Joint facilities. Required parking spaces, open or enclosed, may be provided in parking areas designed to serve jointly two (2) or more uses whether or not located on the same lot, if the number of required spaces in such joint facilities is not less than the total required for all such uses.
  - (7) Shared spaces. The Planning Board, during site plan review, may approve the elimination of a portion of the required parking and allow for the shared use of parking spaces, provided that the Planning Board finds that the number of spaces to be provided will substantially meet the intent of this section by reason of variation in the probable time of maximum use by patrons and employees of the separate uses and provided the total number of spaces that would be required is reduced by no more than fifty percent (50%). In such event, hours of operation may be imposed by the Planning Board as a condition of site plan approval and may be so noted by map note and by reference to Planning Board resolution on the certificate of occupancy issued with respect to the premises. The Planning Board may require that an unimproved reserve area be set aside to meet the full requirement for parking as per subsection "C" below.
  - (8) Location and ownership. Required accessory parking spaces, open or enclosed, shall be provided upon the same lot as the use to which they are accessory, unless considered a joint facility under subsection (6), provided that all spaces therein are located within five hundred (500) feet of the nearest lot line of the lot that the parking serves. In all cases, parking spaces shall conform to all the regulations of the district in which they are located and in no event shall such parking spaces be located in any residential district unless the use to which the spaces are accessory is permitted in such residence district. Such spaces shall be in the same ownership as the use(s) to which they are accessory and shall be subject to an easement or deed restriction, approved by the Planning Board, and binding upon the owner and his heirs and assigns who shall maintain the required number of spaces so long as the use to which they are accessory exist, or until such spaces are provided elsewhere in conformity with the provisions of this section.
- B. Parking on lots divided by district boundaries. Where a parking lot is located partly in one district and partly in another district, the regulations for the district requiring the greater number of parking spaces shall apply to the entire lot. Parking spaces on such lot may be located without regard to district lines, provided that no such parking spaces shall be located in any residence district unless the use to which they are accessory is permitted in such district.
  - C. Postponement of full improvement of off-street parking. The Planning Board may allow an applicant to postpone the construction of parking facilities where the Board determines that there is some uncertainty as to the parking demand for a particular use, or that the immediate provision of parking would require the significant alteration of natural topography or disturbance to wooded sites. Where the Planning Board determines that the immediate use of any property may not require the full initial improvement of all off-street parking or loading facilities, it may waive the initial improvement of not more than fifty percent (50%) of the required number of spaces. The unimproved area shall be shown on the approved plan to be reserved for future parking facilities. The Planning Board may require that the reserve area be graded for parking in accordance with the approved plan. All reserved parking areas, if graded, shall be landscaped in accordance with an approved landscaping plan. Reserved spaces shall be improved within six (6) months of the date of a written notice from the Code Enforcement Officer that such spaces have been determined to be necessary. Appropriate written guarantees to the above shall be provided by the applicant and approved by the Town Attorney. The Planning Board may require that a performance guarantee or

other surety be posted to ensure the completion of said reserve parking, if so required.

- D. Number of parking spaces required. The number of off-street parking spaces required shall be as set forth in Schedule B as follows:

<b>Schedule B Schedule of Parking Requirements</b>	
<b>Use</b>	<b>Required Parking Spaces</b>
Single-family detached; two family dwelling; single family semi-attached and attached dwelling	2 per dwelling unit
Dwelling, multifamily	1 per studio unit; 1.5 per 1 bedroom unit; 2 per 2 or more bedroom, plus an additional 15% of the total required number of spaces for visitor parking
Dwellings above non-residential uses	1 per studio unit; 1.5 per 1 bedroom unit; 2 per 2 or more bedroom, plus an additional 15% of the required number of spaces for visitor parking
Automotive gas station	1 per 100 sf gfa of the principal building area
Automotive repair	2 per working bay plus one space for each 300 sf gfa of building area
Bank	1 per 300 sf gfa of the principal building or 3 per teller, whichever is greater
Bowling alley	3 per lane
Conference center; cultural and performing arts center; visitor center	1 per 4 seats in major assembly hall or meeting area, plus 1 per 4 seats in classroom facilities; or 1 per 150 square feet of gross floor area, whichever is less
Day-care center; nursery school	1 per staff member, plus 1 per 300 sf gfa, plus an additional 5 for buildings of 5,000 sf gfa or less
Distribution facility	2 per each 3 employees on largest shift.
Funeral home	1 per 3 seats, or 1 per 75 sf gfa, whichever is greater
Golf course	1 per 3 members or per 3 players at maximum capacity, whichever is greater
Hotels; resort lodge	1 space per guest sleeping room plus one space for each 2 employees on the largest employee shift.
Home occupation; professional office	2 in addition to the required parking for the residential use

<b>Schedule B Schedule of Parking Requirements</b>	
<b>Use</b>	<b>Required Parking Spaces</b>
Kennel; animal hospital	1.25 per employee or 1 for each 200 sf gfa of building area, whichever is greater, plus an additional 5 for buildings of 5,000 sf gfa or larger
Laundromat	1 space per 4 machines installed.
Laboratory or research facility	1 per 2 employees on the largest shift or 1 per 400 sf gfa, whichever is greater
Manufacturing, light industry, tourist-related food processing	1 per 500 sf gfa of building area
Membership club; clubhouse	1 per 5 members or 1 per 4 seats in the major assembly hall or meeting area, or per 200 sf gfa, whichever is greater plus an additional 5 for buildings of 5,000 sf gfa or less
Museum, art gallery, library; craft workshop	1 per 200 sf gfa
Wholesale and retail trade of landscape materials and products	1 per 200 sf gfa
Senior care facility	1 per each 2 beds or units.
Office use, other than medical and dental; sustainable business park	1 per 200 sf gfa
Office use, medical and dental	4 per doctor or dentist, plus one space for each examining room or treatment room
Place of worship	1 per 4 seats in an auditorium, or 1 per 300 sf gfa, whichever is greater
Public utilities	1 plus 1 per each on-site employee
Restaurant, including takeout	1 per 3 seats or 1 per 75 sf gfa, whichever is greater.
Retail sales; service commercial; tourist related retail sales; health fitness facility; dayspa; antique shop; grocery store	1 per 200 sf gfa
Senior care	1 per 2 residential units plus one space for each employee on the largest employee shift
Wholesale; warehouse	1 per 1,000 sf gfa, or 2 per each 3 employees on the largest shift, whichever is greater
All other uses not specifically listed herein	As determined by the Planning Board using parking standards promulgated by the Institute of Transportation Engineers,

<b>Schedule B</b>	
<b>Schedule of Parking Requirements</b>	
<b>Use</b>	<b>Required Parking Spaces</b>
	American Planning Association or similar industry standards.
Note: gfa - gross floor area sf - square foot. Gross floor area shall refer to building area, unless otherwise noted herein, but shall not apply to accessory buildings less than 250 square feet.	

- E. Off-street loading berths. Open or enclosed off street loading berths are permitted as set forth in Table I, Table of General Use and Bulk Requirements, subject to the following:
- (1) Location and access. Unobstructed access at least twelve (12) feet wide per lane, to and from a street, shall be provided. Such access may be combined with access to a parking lot. All permitted or required loading berths shall be on the same lot as the use to which they are accessory. No entrance or exit for any off-street loading area shall be located within seventy-five (75) feet of any street intersection. No off-street loading berth shall be located in any front yard or within a required side yard or required rear yard. Loading berths shall be screened from view of adjoining public streets.
  - (2) Joint facilities. Permitted or required loading berths, open or enclosed, may be provided in spaces designed to serve jointly two (2) or more adjacent establishments, provided that the number of required berths in such joint facilities shall not be less than the aggregate of all such requirements.
- F. On lots divided by district boundaries. When a lot is located partly in one district and partly in another district, the regulations for the district requiring the greater number of loading berths shall apply to the entire lot. Loading berths on such lot may not be located in any residence district unless the use to which they are accessory is permitted in such district.
- G. Where required by these regulations, off-street loading berths shall be a minimum twelve (12) feet in width and forty-four (44) feet in length, and a minimum ground to ceiling clearance of fifteen (15) feet, with sufficient turning and backing areas. Berths shall be paved and screened in a manner precluding view from any public street or residential use or residential district.
- H. Regulations for parking spaces adjacent to lots in a residence district or residential use.
- (1) Wherever a parking area consisting of five (5) or more parking spaces abuts a lot in a residence district or a lot in residential use, the parking area shall be screened by a substantial wall, solid fence or thick hedge approved by the Planning Board. Generally, such screen shall be not less than three (3) feet in height and fences and walls shall meet maximum height requirements set forth in this Zoning Chapter. The hedge or planting material shall provide year-round screening of the parking lot.
  - (2) Wherever a parking area of five (5) or more parking spaces is located across the street from property located in a residence district or in residential use, the parking area shall be screened from view by a thick hedge, wall or fence approved by the Planning Board, located along a line drawn parallel to the street and within a distance of twenty (20) feet therefrom. Said screening shall be interrupted only at points of ingress and egress and the opening shall be minimized to the width of the driveway and to maintain adequate sight distance only. Generally, no such

screening shall be less than three (3) feet and all fences and walls shall meet maximum height requirements set forth in this Zoning Chapter. The open area between such screening and the street shall be landscaped in harmony with the landscaping prevailing on neighboring properties fronting on the same street.

- I. Driveways. No driveway shall provide access to a lot located in another district, which lot is used for any use prohibited, except residential, in the district in which such driveway is located. This provision shall not apply to driveways which pre-existed the Zoning Chapter, except that the planning board may condition any approval of a use served by such driveway upon reasonable mitigation measures designed to protect the uses in the district wherein the access begins. A single-family residential use may be permitted without planning board approval when served by such pre-existing driveway. The maximum gradient of parking areas serving five (5) or more vehicles shall not exceed five percent (5%). The maximum gradient of driveways serving a residential use shall not exceed fourteen percent (14%). A driveway shall have a platform with a gradient not exceeding two percent (2%) within twenty-five (25) feet of the edge of the pavement of the street on which the driveway is accessed. The driveway shall have a negative gradient where it meets the street pavement sufficient to prevent flow of drainage onto the street.
- J. Commercial vehicles.
  - (1) One (1) commercial vehicle not exceeding twenty-five (25) feet in length may be parked on a lot already occupied by a dwelling in any residential district, but not within the required yards of such lot and in no case between the street line and the principal building.
  - (2) One (1) commercial vehicle not exceeding twenty-five (25) feet in length may be parked within a private garage in any residential district.
  - (3) The use of commercial farm vehicles is permitted as an accessory use to an agricultural operation.
  - (4) A commercial vehicle shall be registered to the owner who shall be the occupant of the dwelling or a company vehicle used solely by the occupant of the dwelling.
  - (5) The parking of more than one (1) commercial vehicle on any lot shall not be allowed except as otherwise permitted in this Zoning Chapter.
  - (6) Heavy construction equipment, i.e., bulldozers, loaders, cranes, and similar equipment shall not be parked or stored on any residential lot except in conjunction with construction occurring on-site. The storage of heavy construction equipment shall not be allowed except as otherwise permitted in this Zoning Chapter.
  - (7) Tractor trailers, garbage trucks, dump trucks, tow trucks, and similar vehicles shall not be parked or stored on any residential lot within the Town of Tuxedo.
- K. Trailers, boats, RVs, and campers.
  - (1) The storage or parking and use of a trailer by any person or persons is hereby prohibited in all districts, except that:
    - (a) One (1) camping trailer, motor home, RV, or camper, not exceeding thirty-five (35) feet in length, may be stored on an occupied lot in any residential district provided that such vehicle is not stored within a required yard or between the street line and the principal building. Said trailer or motor home shall be stored on-site only, and shall not be occupied.

- (b) Where a building permit has been issued for the construction or alteration of a building, the Code Enforcement Officer may issue a temporary permit for one (1) trailer for a period not to exceed six (6) months. Said temporary permit may be extended for additional periods of six (6) months where the Code Enforcement Officer finds that construction has been diligently pursued and that justifiable circumstances require such an extension. In no event shall the total period of the permit and extensions exceed three (3) years. Said trailer may be occupied during the term of the temporary permit and shall be situated upon the lot for which the building permit has been issued.
- (2) Not more than one (1) boat per dwelling unit may be stored on an occupied lot in any residential district, provided that such boat is not stored within any required yard or between the street line and the principal building.

**§ 98-33 and 34. Reserved.**



## ARTICLE IX. ENVIRONMENTAL CONTROLS AND DESIGN STANDARDS

### § 98-35. Federal flood hazard areas.

- A. Statement of purpose. Within the Town of Tuxedo there exist certain flood hazard areas subject to periodic inundation which, when inundated, may result in loss of life and property, present health and safety hazards, disrupt commerce and government services, induce extraordinary public expenditures for flood protection and relief, and impair the tax base, all of which adversely affect the public health, safety, and general welfare of Tuxedo. It is the purpose of flood hazard regulations to promote the public health, safety, and general welfare and to minimize those losses described above by provisions designed to:
- (1) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or that cause increased flood heights or velocities.
  - (2) Require that uses vulnerable to floods, including public facilities that serve such uses, be provided with flood protection at the time of initial construction.
  - (3) Inform existing and prospective property owners with regard to the presence of flood hazard areas affecting certain lands within the Town of Tuxedo.
- B. Flood hazard areas. The areas of special flood hazard are shown on Flood Insurance Rate Maps on file in the office of the Town of Tuxedo Building Department, with an effective date of August 3, 2009, and which shall include any subsequent revisions to these map panels. Flood hazard areas are regulated in accordance with Chapter 53, Flood Damage Prevention, of the Code of the Town of Tuxedo. No development shall be undertaken in any area of special flood hazard without first securing a floodplain development permit. Any application for site plan, subdivision, special use permit, building permit, or any application for a variance which proposes disturbance that is regulated by Chapter 53 shall be conditioned upon the applicant securing a floodplain development permit if required.
- C. Floodplain to be mapped. Any site plan, subdivision, special use permit or any variance application that is submitted to a board for approval, or to the Code Enforcement Officer in support of a building permit application, shall clearly show the limits of the floodplain and floodway and all improvements proposed therein.
- D. 100-year floodplain. After the effective date of this Zoning Chapter, no new residential dwelling or new nonresidential building designed for occupancy by residents or employees shall be constructed within the 100-year floodplain. Any new dwelling or nonresidential building proposed to be located in the 100-year floodplain and proposed for occupancy by employees or residents shall require a use variance from the Zoning Board of Appeals.
- E. Relocation of proposed improvements. Any Town agency that is responsible for reviewing and deciding upon any variance, site plan, special permit or subdivision plan may, as a condition of approval, require that a proposed improvement(s) be relocated outside the floodplain or not placed within a floodplain to protect the health, safety and general welfare of the community.

**§ 98-36. Wetlands; watercourses and waterbodies; Ramapo River.**

A. Wetlands.

- (1) Any building permit application involving an activity located on a lot with freshwater wetlands regulated by the ACOE or the NYSDEC shall comply with the U.S. Clean Water Act and New York State Environmental Conservation Law, and all regulations set forth therein.
- (2) The boundary of any wetland, and, in the case of NYSDEC-regulated wetlands, the 100-foot adjacent area, shall be illustrated on any site plan or subdivision plat involving property on which a wetland is situated. For NYSDEC-regulated wetlands, the plan showing the wetland boundary shall bear the signature of a NYSDEC officer that has approved the delineation of the wetland boundary. The reviewing entity may require submission of a wetland report which includes data sheets, photos, secondary resource maps, soil data and a wetland survey for review. The reviewing entity may retain a wetland scientist or professional to review the delineation, unless the delineation has already been approved by the NYSDEC or the ACOE. Evidence of said approval shall be furnished to the reviewing entity. The applicant shall bear the cost of any review conducted by a Town wetland scientist or professional pursuant to Chapter 48, Fees, of the Code of the Town of Tuxedo.
- (3) No building permit shall be issued until such time that an applicant has provided proof that the regulated activity has received applicable NYSDEC and/or ACOE permits and approvals or that the activity authorized by the building permit will occur in a location that will not impact a wetland.

B. Watercourses and waterbodies.

- (1) Streams, lakes and ponds, and areas that adjoin same, are critical for water quality protection, erosion control, and as a living environment for many species of birds and wildlife. To protect water quality, disturbances shall be limited within close proximity to a stream or a waterbody, through regulation of DEC's mandated "buffer area". To preserve water quality, the following shall apply, except that activities occurring within 100 feet of the banks of the Ramapo River are subject to the provisions of subsection C below:
  - (a) No building, structure or impervious surfaces shall be situated, nor clear-cutting of natural vegetation be permitted, in a buffer area located within 50 feet of a streambank of a stream with a NYSDEC water quality designation of A or B or any trout spawning (TS) or trout production (T) waters.
  - (b) No building, structure or impervious surfaces shall be situated, nor clear-cutting of natural vegetation be permitted, in a buffer area located within 25 feet of a streambank of a stream with a NYSDEC water quality designation of C or D, or within 25 feet of a waterbody.
- (2) Any disturbances to a watercourse, waterbody or buffer area shall require a clearing, filling, and grading permit from the Planning Board pursuant to § 98-43. In determining the appropriateness of a request to disturb a watercourse, waterbody, or buffer area, the Planning Board shall consider:
  - (a) Alternative locations for said structures or buildings.
  - (b) The necessity of the activity to serve the principal use, e.g., no other location for a septic system or well.

- (3) The Planning Board may allow vegetation to be disturbed adjoining a watercourse or waterbody limited to that area necessary to gain access to same for fishing, boating, swimming or ice skating or similar recreational activity.
- (4) The Planning Board shall establish such conditions as may be necessary to minimize disturbance to the buffer, including a delineation of the area to be disturbed prior to work being conducted on the site, and installation of soil erosion control measures.
- (5) Where an activity also requires a permit from the NYSDEC and/or ACOE, approval of a site plan, subdivision, and/or special use permit shall be conditioned on that agency's approval.
- (6) No building permit shall be issued for any activity that would result in disturbances to a stream regulated by this section until such time that the applicant receives an applicable permit or approval from the Planning Board, NYSDEC, and/or ACOE.

C. Ramapo River.

(1) The Ramapo River is a source of drinking water for the Ramapo River sole source aquifer and a natural ecosystem worthy of protection, consistent with the purposes of the Comprehensive Plan and this Zoning Chapter. The Town Board recognizes that improperly managed activities and land disturbances adjacent to the river have had and continue to have the potential to impact the riverine water quality, and thus the sole source aquifer. Water quality can be degraded by various pollutants, including excessive sedimentation. To protect the Ramapo River, the following regulations shall apply:

- (a) On any parcel with a nonresidential use, or proposed for such a use, which parcel immediately adjoins the river, no land disturbance shall be permitted within 100 feet of the nearest bank of the river. This area is deemed the "nondisturbance setback". The storage of materials, equipment or other supplies are considered a "land disturbance" and are not permitted within the 100-foot nondisturbance setback.
  - (b) On any parcel with a multifamily residential use, or proposed for said use, which parcel immediately adjoins the river, no land disturbances shall be permitted within 100 feet of the nearest bank of the river.
  - (c) On any other parcel, any land disturbance activities shall comply with subsection B above.
- (2) Planning Board review and approval. The Planning Board may waive the requirements in Subsection C(1) and reduce the required 100-foot nondisturbance setback from the Ramapo River to no less than 50 feet, provided that:
- (a) The applicant shall submit a site plan for approval. The site plan shall include soil erosion and sediment control measures, water quality measures, material handling measures, and other permanent measures, to limit encroachment into the nondisturbance setback.
  - (b) The Planning Board shall take into consideration the existing undisturbed slope of the land to be disturbed, and the likelihood that soil, pollutants or other materials will migrate as a result of the slope characteristics.
  - (c) The Planning Board shall take into consideration any man-made existing features which may effectively block the property from the Ramapo River within the 100-foot nondisturbance setback, including existing rail rights-of-way. To the extent that any such man-made feature is an effective barrier to soil, pollutant or other materials migrating into the river, the

Planning Board may waive the nondisturbance setback in part or in its entirety for that portion of the property which is blocked from the river by said barrier.

(3) Clearing, filling and grading permit. This section shall also apply to any activity which requires a clearing, filling and grading permit regardless of whether or not a specific use is proposed in conjunction with the permit.

D. NYSDEC. Certain activities which occur within 50 feet of the banks of a stream regulated by the NYSDEC may require a Protection of Waters permit. Where a conflict exists between these regulations and any NYSDEC regulations or permit, the more restrictive requirements shall apply.

**§ 98-37. Greenway compact; Town Center Study and Plan.**

A. Greenway compact. The Town of Tuxedo is a designated Greenway Compact Community. During review of any subdivision, site plan, special permit, zone petition or use variance application, the reviewing entity shall consider an application's consistency with the principles set forth in "Greenway Connections" in its deliberations.

B. Town Center Study and Plan. During review of any subdivision, site plan, special permit, zone petition or use variance application affecting land located within the Tuxedo Town Center zoning district, the reviewing entity shall consider an application's consistency with the goals, objectives, and design guidelines set forth in the Town Center Study and Plan, appended to the Town of Tuxedo Comprehensive Plan.

**§ 98-38. Landscaping and screening.**

A. General. Landscape materials shall be utilized in a positive manner in all developments for purposes of architectural enhancement, space articulation, screening, privacy control, erosion control, noise control, atmospheric purification, traffic control, glare and reflection control, solar radiation control, wind control, precipitation control and temperature control. All areas of a lot not left in a natural state and not developed with buildings, driveways or other impervious surfaces shall be maintained continuously in a dust-free condition by installing suitable landscaping, including trees, shrubs, grass or other ground cover, or by providing a stable pervious surface, such as pervious pavers, gravel, crushed rock or similar material. Yards shall be landscaped and maintained in a manner consistent with the general character of the neighborhood in which the property is situated. Landscape treatments shall minimize soil erosion and stormwater runoff and provide necessary screening as set forth herein.

B. Landscaping standards. A landscape plan shall be submitted in conjunction with any site plan or special use permit application. The following standards shall be met:

- (1) Landscaping shall be appropriate to the project, and the natural vegetative cover shall be preserved to the maximum extent practicable. Natural areas shall be protected during construction. A concerted effort shall be made during the design stage to integrate natural features of the site into the proposed site plan.
- (2) A landscape plan shall be prepared by a New York State licensed and/or registered landscape architect or similarly qualified NYS-licensed qualified professional. The Planning Board, as a condition of approval, may require that the landscape consultant periodically inspect the construction and installation of landscape materials.
- (3) A landscape plan shall include plant selection suitable to the conditions of the site. Plant specimens native to the region are to be used to the greatest extent practicable.

- (4) Within the area of proposed disturbance, the location of trees with a diameter of twelve (12) inches or greater measured at chest height (“dbh”) shall be indicated on the plan. The tree specimen and its conditions shall be noted on the plan. Healthy trees twelve (12) inch dbh shall be preserved to the maximum extent practicable.
- (5) For areas near roads, plants shall be selected according to their hardiness and ability to withstand highway salt conditions or snow “throw” compaction.
- (6) In parking lots, landscape medians to receive plant materials shall have a minimum inside width of five (5) feet, except that, where vehicle overhang is permitted, an inside width of ten (10) feet shall be required.
- (7) Approved mulch shall be spread within a landscaped space at a level not to exceed one and one-half (1½) inches below top-of-curb, and at a depth of not less than three (3) inches. Mulch shall be placed in all planting beds to a minimum three-inch depth. Mulch may consist of clean wood chips, pine bark, peat moss, stone aggregate, or other approved material. As a general guideline, mulch shall be clean, homogeneous, attractive, and self-matting so that it does not blow in the wind.
- (8) Areas that will receive continued pedestrian movement shall be paved. Paving can be cast-in-place concrete, impressed concrete, or precast concrete unit pavers set in an approved setting bed. Bituminous concrete or asphalt walks are not acceptable.
- (9) The landscape design shall incorporate plantings that enhance the visual appearance of the property. Plantings to be selected should include those that blend well visually with the surrounding natural environment and provide year-round seasonal visual interest.
- (10) Attention to environmental objectives and energy conservation, as well as design value, should be evident in the landscape plan. Environmental applications for plantings can include, among others, air filtration, temperature modification, natural slope stabilization, provision of edible fruit bearing plants, the use of NYSDEC recommended wetland plants in wetland buffer areas, etc.
- (11) Plantings of all types shall be completed only at such times as weather and soil conditions are favorable for seed germination, plant establishment and subsequent growth. Generally, such conditions occur between April 1 and June 1 and between August 20<sup>th</sup> and October 15<sup>th</sup>. However, conditions vary for different plants and different years. Accepted horticultural practices shall be followed in this regard.
- (12) Extreme care and caution shall be exercised in grading operations around existing trees scheduled for preservation. Protective tree fencing shall be placed around the tree(s) at or beyond the dripline(s). Cuts within the dripline, or the addition of 12 inches or more of fill, can result in tree mortality and shall be avoided to the maximum extent practical.
- (13) Tree wells are encouraged where grading necessarily comes in close proximity to trees. In areas of fill, the tree well should be concentric to the dripline, and of a diameter at least half that of the dripline. In areas of cut, the tree well should also be concentric to the dripline but should be of a diameter at least equal to that of the dripline. In cases where grade changes affect only one side of the tree, partial tree wells are acceptable.
- (14) The use of earth berms and other grading techniques is allowed, especially on flat sites or in locations where screening is warranted or necessary. The height, size and width of the berm shall be suitable for the intended plantings and shall fit with the character of the overall

proposed design of the site.

- (15) The use of flowering annuals and perennials is encouraged in areas close to pedestrian movement and shall receive frequent maintenance.
- (16) A mix of plant materials, sizes, habits and textures shall be selected for each planting plan. Over-planting of any one species shall be avoided. The use of indigenous species is encouraged. The use of exotic species shall be avoided to the maximum extent practical.
- (17) Construction practice and planting specifications should follow ANSI Z60.1 American Standards for Nursery Stock or equivalent.
- (18) All plantings shown on an approved landscape plan shall be maintained throughout the duration of the use, and plants not so maintained shall be replaced in accordance with the specifications of the approved plan.
- (19) Erosion and sedimentation controls shall be provided and designed in accordance with the New York State Department of Environmental Conservation Best Management Practices.

C. Screening. As a condition of approval, the Planning Board may require that a screen be established to minimize views of facilities, buildings and parking areas associated with nonresidential uses from adjoining residences and the public right-of-way. Transformers, gas meters, dumpsters and similar appurtenances shall also be screened. Plantings shall be indicated on the site plan or subdivision plat and shall meet the following standards:

- (1) Coniferous trees and shrubs shall be installed to provide year-round screening at a height and spacing appropriate to the species, and which will adequately screen views within five (5) years of installation. In general, coniferous trees should be installed at a planting height no less than six (6) feet, and for shrubs planting height should be no less than four (4) feet. The plant spacing shall be specific to the plant materials being installed.
- (2) A wall, fence (finished side out), or earthen berm may be substituted for, or required in conjunction with, planting materials, upon approval of the Planning Board. The Planning Board shall establish conditions on the location, height and design of same.

D. Waivers. Where existing topography or vegetation or other circumstance provides adequate landscaping or screening which warrants an exception to the strict application of standards in this section, the Planning Board may waive the landscaping or screening requirements set forth in this section.

#### **§ 98-39. Outdoor lighting standards.**

A. Purpose. It is the purpose of this section to regulate the installation of outdoor lighting in order to minimize light pollution in the Town of Tuxedo by:

- (1) Providing standards for outdoor lighting;
- (2) Promoting energy efficient and sustainable lighting practices and luminaires by using fixtures with optical controls that distribute light in the most effective and efficient manner;
- (3) Minimizing adverse off-site impacts from new and existing lighting installations by using shielded outdoor light fixtures where required and wherever feasible;
- (4) Further assuring that the light generated by outdoor fixtures does not extend beyond the

property line of the property from which it emanates at levels exceeding the requirements of this section;

- (5) Permitting reasonable uses of outdoor lighting for safety, utility, security, productivity, commerce, and enjoyment;
- (6) Minimizing glare;
- (7) Avoiding impacts on nearby residential properties;
- (8) Reducing atmospheric light pollution; and
- (9) Requiring that certain outdoor fixtures be extinguished during nighttime hours as shall be determined by the Planning Board during site plan, special use permit, and subdivision plan review.

B. Applicability.

- (1) Existing installations. All existing outdoor lighting on a structure shall comply with the provisions of this section. All existing outdoor lighting on a structure which is replaced, modified, refurbished, retrofitted, and/or installed after the effective date of this Zoning Chapter, shall be the minimum necessary, in both number of luminaires and intensity of light, to achieve the intended purpose of the lighting, and shall conform to the standards as further provided in this section.
- (2) Additions, improvements, alterations and additions of new fixtures. All outdoor lighting, including lighting and/or light fixtures as part of an addition, modification, alteration, or otherwise, installed after the effective date of this Zoning Chapter, shall conform to the standards as further provided in this section.
- (3) Within one (1) year of the effective date of this Zoning Chapter, all lighting fixtures shall be brought into compliance with the provisions of this article.

C. Lighting plan. As part of any site plan, special permit, or subdivision plan, the Planning Board may require submission of a lighting plan and supporting data. In addition, the Code Enforcement Officer, in his or her sole discretion, may refer an applicant for any work involving outdoor lighting fixtures governed by this article to the Planning Board for site plan approval with respect to said lighting. The lighting plan shall include the following, unless waived by the Planning Board:

- (1) Proposed fixture locations;
- (2) Lighting levels measured in foot-candles;
- (3) Details and illustrations of proposed fixtures including photometric data, such as that furnished by manufacturers, or similar, showing the angle of cutoff of light emissions;
- (4) glare control devices, lamps;
- (5) mounting heights;

(6) Additional information that the Planning Board or Code Enforcement Officer determines is necessary, including, but not limited to, an iso-lux plan indicating levels of illumination in foot-candles, at ground level, and a statement of the proposed hours and days of the week when the luminaires will be on and when they will be extinguished maintenance, the location and use of adjacent properties, and a list of nearby properties that may be affected by the proposed lighting plan.

Prior to issuance of a certificate of occupancy, the developer or builder must be able to verify to the Town Code Enforcement Officer, in writing, that all outdoor lights were installed as described on the approved lighting plan.

- C. Lamp or fixture substitution. Should any outdoor lighting fixture or the type of light source therein be changed to a greater intensity after a lighting permit has been issued or a plan approved, a change request must be submitted to the Code Enforcement Officer for revised approval. The Code Enforcement Officer shall review the change request to assure compliance with this article. If the change request is not substantial, the Code Enforcement Officer may approve it. If the change request is substantial, the Code Enforcement Officer shall forward such request to the Planning Board for an amended approval, which must be received prior to substitution.
- D. Approved materials and methods of construction or installation/operation. The provisions of this article are not intended to prevent the use of any design, material, or methods of installation or operation not specifically prescribed by this article, provided any such alternate has been approved. The Planning Board or Code Enforcement Officer may approve such proposed alternative provided it:
- (1) Provides at least approximate equivalence to the applicable specific requirement of this article; and
  - (2) Is otherwise satisfactory and complies with the purpose of this article.
- E. General standards. All outdoor lights and externally illuminated signs shall be designed, located, installed, and directed in such manner as to prevent light trespass at and across the property lines, and to prevent direct glare at any location off the property, and to be shielded to the extent possible so as to confine the light within the property. The Town may require that the minimum lighting levels be used to attain efficient and effective use of outdoor lighting. The latest recommended levels for outdoor lighting set by the Illuminating Engineering Society of North America (IESNA) shall be observed for reference levels.
- F. Prohibitions.
- (1) Uplighting that is unshielded is prohibited. Externally lit signs, displays, buildings, structures, streets, parking areas, recreational areas, landscaping, and other objects lit for aesthetic or other purposes shall be illuminated only with steady, stationary, fully shielded light sources without causing glare or light trespass beyond the property line.
  - (2) Roof-mounted area lighting is prohibited.
  - (3) The use of laser lighting for outdoor advertising or entertainment and the operation of search lights for advertising purposes are prohibited unless specifically approved by the Town Board.



(4) Mercury vapor lights and quartz lamps are prohibited light sources, except to the extent that the local utility provider utilizes same for street lighting.

(5) Unshielded wall pack-type fixtures are prohibited.

G. Standards. Lighting shall conform to the following standards:

(1) All lighting, including sign lighting, shall be designed and arranged so as to be “night sky compliant” by minimizing glare, light trespass, and reflection on adjacent properties.

(2) The style of the light, light standard, pole and fixture shall be consistent with the architectural style of the building and its surroundings.

(3) Unless specified elsewhere herein or except for outdoor recreational facilities, such as baseball and other field sports, the maximum height of a freestanding luminaire shall not exceed fifteen (15) feet above the average finished grade. The maximum allowable height of a building or structure-mounted luminaire shall be twenty (20) feet.

(4) The source of the light shall be fully shielded with full 90 degree cut-off luminaires or located such that it shall not be visible beyond the property boundary on which it is situated. The lighting shall also be shielded to prevent direct glare and/or light trespass and shall be, as much as physically practical, contained to the target area. Floodlighting is discouraged and, if used, must be (1) shielded to prevent direct glare for drivers and pedestrians; (2) must not permit light trespass past the property line; and (3) must not emit light above a ninety-degree, horizontal plane.

(5) All outdoor lighting shall be of such type and location to provide a minimum illumination of one (1) foot-candle in publicly-accessible areas and shall be shielded so as to prevent the source of the light from being a visual nuisance to any adjoining residential property.

(6) Light trespass. Illumination from light fixtures shall not exceed 0.1 foot-candle on adjacent residential property, or 0.1 foot-candle on adjacent business property, as measured along the shared property boundary at ground level. A maximum Uniformity Ratio (average to minimum) of 4:1 shall be achieved. Mitigation to avoid or minimize light trespass may include landscaping and berming.

(7) The Planning Board may impose limits on the hours of lighting operations. The Planning Board may require that lights be controlled by automatic timing devices. The Planning Board shall consider the need to provide security in determining the hours of lighting operations. Except for single and two-family dwellings, all nonessential lighting shall be turned off not later than one hour after, and not sooner than one hour before, normal business hours, leaving only the necessary lighting for site security and signage, which shall be reduced to the minimum level necessary, but in no event shall exceed one foot-candle. Nonessential lighting applies to display, aesthetic, parking and sign lighting. Motion-sensor security lighting is recommended to promote safety and reduce the amount of night lighting in the Town. Single and two-family dwellings are encouraged to reduce the illuminance of their structures to the minimum levels necessary, such that lighting not exceed one foot-candle. Motion-sensor security lighting is recommended to promote safety and to reduce the amount of night lighting in the Town.

(8) Auto/truck filling stations. Island canopy ceiling fixtures shall be recessed so that the bottom of the fixture is flush with the ceiling.

(9) Recreational facilities, public or private. Lighting for outdoor recreational facilities shall be fully

shielded, as defined in this Zoning Chapter.

- (10) Light control shall be accomplished primarily through the proper selection and layout of lighting fixtures. The installation of landscaping, fences, walls or similar screening devices may also be considered by the Planning Board.
- (11) Energy-efficient light sources are encouraged. LED color shall not exceed 3,000K.
- (12) Luminance and uniformity. Light levels shall be designed not to exceed the latest recommended levels for outdoor lighting set by the Illuminating Engineering Society of North America (IESNA) for the type of activity/area being lighted, except light levels for ATM machines shall be in accordance with the New York State ATM Safety Act. Where no standard is available from the IESNA, the applicable standard shall be determined taking into account the levels for the closest IESNA activity, as determined by the approving board or person. Where said standard is inconsistent with the foot-candle requirements set forth herein, the more stringent shall govern.
- (13) Outdoor lighting in and around the ponds, lakes, rivers, and other waters of the Town shall not be installed or maintained so as to create a hazard or nuisance to other property owners and shall comply with the following restrictions.
  - (a) Lights on docks shall be no more than three (3) feet above the dock, shall be directed downward and be full cutoff fixtures.
  - (b) Lights illuminating paths, stairs, decks, etc., shall not be directed towards the public bodies of water and shall not direct light upwards.
  - (c) All outdoor lighting shall be located, mounted and shielded, so that direct illumination is not focused towards the public bodies of water surface more than twenty (20) feet from shore.
- (14) Exemptions. The following uses/activities shall be exempt from the provisions of this section:
  - (a) Roadway lighting;
  - (b) Temporary lighting for circus, fair, carnival, religious, historic, or civic use;
  - (c) Construction or emergency lighting, provided such lighting is temporary and is discontinued immediately upon completion of the construction work or abatement of the emergency necessitating said lighting;
  - (d) Temporary lighting, including holiday lighting for no more than two months per year;
  - (e) Lighting associated with agricultural pursuits, including harvest activities, unless such lighting is permanent and/or creates a safety hazard;
  - (f) Lighting, preferably low voltage, that is considered a landscape or building design element and is integral to the aesthetic value of the design, as determined by the Planning Board or Code Enforcement Officer;
  - (g) All outdoor light fixtures producing light directly by the combustion of natural gas or other fossil fuels;
  - (h) Outdoor light fixtures installed on, and in connection with, those facilities and land owned or operated by the federal government, the State of New York, the County of Orange, the Town of Tuxedo, the Palisades Interstate Park Commission or any department, division, agency or instrumentality thereof, or installed on facilities owned by a religious institution,

or eleemosynary organization. Voluntary compliance with the intent of this article at those facilities is encouraged; and

(i) Flag up lighting, provided any such flag is not used for advertising purposes.

(15) Lamp or fixture substitution. Should any outdoor lighting fixture or the type of light source therein be changed to a greater intensity after a lighting plan has been approved or the site plan or subdivision plan approved, a change request must be submitted to the Code Enforcement Officer for revised approval. The Code Enforcement Officer shall review the change request to ensure compliance with this section. If the change request is not substantial, the Code Enforcement Officer may approve it. If the change request is substantial, the Code Enforcement Officer shall forward such request to the Planning Board for an amended approval, which must be received prior to substitution.

(16) Should any owner of a property containing ten (10) or more lights or lighting fixtures believe that they will suffer an unnecessary financial hardship due to the enactment and application of this section, that property owner may apply to the Zoning Board of Appeals, or where compliance with this article would require an amended site plan approval, to the Planning Board, for a variance from strict compliance with this section. Such an application shall be in writing and shall contain competent financial evidence demonstrating that an unnecessary financial hardship exists. In addition, the applicant must submit a written phased plan to the Zoning Board of Appeals or Planning Board, as applicable, and to the Code Enforcement Officer, identifying the number of existing fixtures, a proposed plan of fixtures to be replaced, and when replacement work will occur and be completed.

(17) Waivers. Where site conditions warrant exceptions to the strict application of standards in this section, the Planning Board may waive the requirements set forth in this section provided that the intent of section is met.

#### **§ 98-40. Cluster development.**

- A. To enable and encourage flexibility of design and development so as to preserve the natural and scenic qualities of open lands, the Town Board hereby authorizes the Planning Board to approve a cluster development in any district that permits residential uses, simultaneously with the approval of a plat and pursuant to the conditions set forth in Town Law § 278 and herein.
- B. Where the Planning Board determines that a specific cluster development application would be appropriate and would benefit the Town, the Planning Board may require that the applicant pursue a cluster development only.
- C. A cluster development shall result in a permitted number of building lots or dwelling units which in no case shall exceed the number which could be permitted, in the Planning Board's judgment, if the land were subdivided into lots conforming to the minimum lot size and density requirements of the applicable zoning district or districts in which the land is situated, all zoning regulations, and conforming to all other applicable requirements including but not limited to the permitting and regulatory requirements of other agencies, based on consultation with same as necessary. Provided, however, that where the plat falls within two or more contiguous zoning districts, the Planning Board may approve a cluster development representing the cumulative density as derived from the total acreage of all lots or dwelling units allowed in all such districts and may authorize actual construction to take place in all or any portion of one or more of such districts.

- D. The Planning Board may establish such conditions on the ownership, use and maintenance of such open lands shown on the plat as it deems necessary to assure the preservation of the natural and scenic qualities of such open lands. Nothing herein shall be deemed to authorize a change in the permitted uses applicable to the zoning district.
- E. The plat showing such cluster development shall provide all information and data required for subdivision approval, including areas within which structures may be located, the height and spacing of buildings, open spaces, landscaping, off-street parking spaces, streets, driveways and any other features required by the Planning Board. The dwelling units permitted shall be single-family detached or single-family attached units at the discretion of the Planning Board, provided, however, that the height of the structure shall not exceed the maximum height for residential units in that district.
- F. Subdivision approval. Approval of a cluster subdivision plat shall follow all other procedures set forth in the Town's subdivision regulations and New York State Town Law.

**§ 98-41. Open space; homeowners association.**

- A. Open space. Open space land created as part of a cluster subdivision, planned integrated development, single-family attached housing development, or multifamily dwelling development to preserve the natural and scenic qualities of the land, and not dedicated in fee simple to the Town of Tuxedo, shall be in one of the following forms of ownership: a homeowners association approved by the Town Board; a recognized conservation organization or trust; or any other arrangement approved by the Town Board as satisfying the intent of this Zoning Chapter. Regardless of the ownership of open space land, a conservation easement assuring that such land shall remain open in perpetuity shall be applied to such land. Said conservation easement shall be filed with the Orange County Clerk's office.
- B. Homeowners association. Whenever a homeowners association is proposed, the Town Board shall retain the right to review and approve the articles of incorporation and charter of said homeowners association and to require whatever conditions it shall deem necessary to ensure that the intent and purpose of this section are carried out prior to its formation. If the Town Board determines to exercise its right of review, the Town Board may require the development to meet the following conditions:
  - (1) The homeowners association shall be established as an incorporated, nonprofit organization operating under recorded land agreements through which each lot owner and any succeeding owner is automatically a member, and each lot is automatically subject to a charge for a proportionate share of the expenses for the organization's activities.
  - (2) Title to all common property shall be placed in the homeowners association.
  - (3) Each lot owner shall have equal voting rights in the association and shall have the right to use and enjoy the common property.
  - (4) All responsibility for operation and maintenance of the common land and facilities shall lie with the homeowners association.
  - (5) Dedication of all common areas shall be recorded directly on the subdivision plat and by reference on the plat to a dedication in a separately recorded document. The dedication shall:
    - (a) Reserve the title of the common property for the homeowners association.
    - (b) Commit the developer to convey the areas to the homeowners association at an approved

time.

- (6) Covenants shall be established limiting all lots to uses as stipulated on the approved site plan and/or subdivision plat. No structures may be erected on such common lands except as shown on the approved plans.
- (7) Each deed to each lot sold shall include by reference all recorded declarations, such as covenants, dedications and other restrictions, including assessments and the provision for liens for nonpayment of such.
- (8) The homeowners association shall be perpetual and shall purchase insurance, pay taxes, specify in its charter and bylaws an annual homeowner's fee, provide for assessments and establish mechanisms for payment delinquencies.
- (9) The developer shall assume all responsibilities previously outlined for the homeowners association until a majority of the dwelling sites are sold, at which time the homeowners association shall be established.
- (10) Prior to subdivision or site plan approval, the developer shall file with the Town Board a performance bond to ensure the proper installation of all recreation and park improvements shown on the site plan and a maintenance bond to ensure the proper maintenance of all common lands until the homeowners association is established. The amount and period of said bonds shall be determined by the Planning Board, and the form, sufficiency, manner of execution and surety shall be approved by the Town Board.

**§ 98-42. Dangerous and objectionable elements; performance standards.**

Any proposed non-residential use shall be subject to the following performance standards and shall conform to the restrictions set forth herein. Owners and/or applicants shall also be required to meet all other requirements and regulations promulgated by the New York State Department of Environmental Conservation, New York State Department of Health, or any other state or federal agency which may also regulate the use.

- A. Measurement at the point of emission. The existence of the following dangerous and objectionable elements shall be determined at the location of the use creating same or at any point beyond, and these shall be limited as follows:
  - (1) Explosives. As defined in 29 of the Code of Federal Regulations Section 1910.109, any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, i.e., with substantially instantaneous release of gas and heat, unless such compound, mixture, or device is otherwise specifically classified by the U.S. Department of Transportation; see 49 CFR Chapter I. The term "explosives" shall include all material which is classified as Class A, Class B, and Class C explosives by the U.S. Department of Transportation, and includes, but is not limited to dynamite, black powder, pellet powders, initiating explosives, blasting caps, electric blasting caps, safety fuse, fuse lighters, fuse igniters, squibs, cordeau detonant fuse, instantaneous fuse, igniter cord, igniters, small arms ammunition, small arms ammunition primers, smokeless propellant, cartridges for propellant-actuated power devices, and cartridges for industrial guns. Commercial explosives are those explosives which are intended to be used in commercial or industrial operations.
  - (2) Fire hazards. All activities involving the use or storage of flammable or explosive materials require adequate safety, firefighting, and fire-suppression equipment in accordance with the most stringent applicable local, state or federal regulations. The burning of waste materials in

open fires is prohibited.

- (3) Radioactivity or electrical disturbance. No activities shall be permitted which emit dangerous levels of radioactivity. No activities shall be permitted which produce electrical and/or electromagnetic disturbance (except from domestic household appliances and from communications equipment subject to control of the Federal Communications Commission or appropriate federal agencies) adversely affecting the operation at any point of any equipment other than that of the creator of such disturbance.
  - (4) Smoke. No emission shall be permitted at any point from any chimney, or otherwise, of visible grey smoke of a shade darker than No. 1 on the Ringelmann Smoke Chart, as published by the United States Bureau of Mines. (Power's Micro-Ringelmann Chart, McGraw-Hill Publishing Company, 1954, may be used.) This provision, applicable to visible grey smoke, shall also apply to visible smoke of a different color but with an equivalent apparent opacity.
  - (5) Other forms of air pollution. No emission of fly ash, dust, fumes, vapors, gases and other forms of air pollution shall be permitted which can cause any damage to health, animals or vegetation or to other forms of property, or which can cause any excessive soiling of any paint. In no event shall any emission of any solid or liquid particles in concentrations exceeding three-tenths (0.3) grains per cubic foot of the conveying gas or air at any point be permitted. For measurement of the amount of particles in gases resulting from combustion, standard corrections shall be applied to a stack temperature of five hundred degrees Fahrenheit (500° F.) and fifty percent (50%) excess air.
  - (6) Liquid or solid wastes. No discharge shall be permitted into any private sewage disposal system or street or into the ground, of any materials in such a way or of such nature or temperature as can contaminate any water supply or otherwise cause the emission of dangerous or objectionable elements, except in accordance with standards promulgated by the New York State Department of Environmental Conservation, New York State Department of Health or the Orange County Department of Health. No accumulation of solid wastes conducive to the breeding of rodents or insects shall be permitted.
- B. Measurement at the lot line. The existence of the following dangerous and objectionable elements shall be determined at the lot line of the use creating the same, or at any point beyond said lot line:
- (1) Noise. In addition to the performance standards established in Chapter 68, Noise, of the Code of the Town of Tuxedo, the following additional requirements shall apply. The maximum permissible sound pressure level of any continuous, regular or frequent source of sound produced by any activity regulated by these regulations shall be established by the time period and zoning district as shown below. Sound pressure levels shall be measured at all accessible lot lines, at a height of at least four feet above the ground surface. The levels specified may be exceeded by 10 decibels for a single period, no longer than 15 minutes, in any one day. The dB(A) scale shall be used. Noise shall be measured with a sound level meter meeting the standards of the American National Standards Institute (ANSI S1.401961), *American Standard Specification for General Purpose Sound Level Meters*. The instrument shall be set to the appropriate weight response scales and the meter to the slow response. Measurements shall be conducted in accordance with ANSI S1.2-1962, *American Standard Method for the Physical Measurement of Sound*.

<b>Table III Sound Pressure Levels</b>		
<b>Zoning Districts</b>	<b>Sound Pressure Level Limits (decibels - dBA)</b>	
	7 AM to 10 PM	10:01 PM to 6:59 AM
LIO, GB, NB	60	50
All other districts	55	45

- (2) Vibration. No vibration which is discernible to the human sense of feeling at the property line shall be permitted for a duration of three (3) minutes or more in any one (1) hour of the day between the hours of 7:00 a.m. and 7:00 p.m., or for a duration of thirty (30) seconds or more in any one (1) hour between the hours of 7:00 p.m. and 7:00 a.m. No vibration at any time shall produce an acceleration of more than one-tenth G (0.1 G) or shall result in any combination of amplitudes and frequencies beyond the safe range of Table 7, United States Bureau of Mines Bulletin No. 442, Seismic Effects of Quarry Blasting, on any nearby structure. The methods and equations of said Bulletin No. 442 shall be used to compute all values for the enforcement of this section.
- (3) Odors. No emission of odorous gases or other odorous matter shall be permitted in such quantities as to be perceptible at the property lot line. Any process which may involve the creation or emission of any odors shall be provided with a secondary safeguard system, so that control will be maintained if the primary safeguard system should fail. There is hereby established, as the guide in determining such quantities of offensive odors, Table III, Odor Thresholds, in Chapter 5, Air Pollution Abatement Manual, Copyright 1951 by Manufacturing Chemists' Association, Inc., Washington, D.C.
- (4) Glare. No direct or sky-reflected glare shall be permitted, whether from floodlights or from high-temperature processes such as combustion or welding or otherwise, so as to be visible beyond the property line.

**§ 98-43. Clearing, filling and grading.**

- A. Purpose. In order to promote the public health, safety and general welfare, and protect adjoining lands and water bodies from potential soil erosion and sedimentation impacts, the clearing, filling and grading of property is hereby regulated and requires issuance of a clearing, filling and grading permit ("CFG" permit). A CFG permit is not required for any activity which is conducted in accordance with a site plan or subdivision plan approved by the Planning Board, provided that the plan illustrates the limits of disturbance, the activity conforms to the plan, and soil erosion and sediment control measures have been approved as set forth in the plan. A CFG permit is specifically required for commercial forestry activities as defined within this Zoning Chapter.
- B. Activities regulated.
- (1) Activities involving less than 400 square feet of area. Any activity that disturbs less than four

hundred (400) square feet of gross lot area shall not require a CFG permit. The Code Enforcement Officer, in issuing a building permit, can require that soil erosion control measures be installed to reduce impacts to adjoining properties, watercourses, and waterbodies.

- (2) Activities associated with the construction or expansion of a single-family detached or two-family dwelling. Whenever disturbances are proposed on a lot being used for a single-family detached or two-family dwelling, or proposing construction or expansion of same, which proposes land disturbances between 400 square feet and 2,400 square feet of gross lot area, a CFG permit from the Code Enforcement Officer shall be required. The Code Enforcement Officer may refer any application for a CFG permit to the Town Engineer. The cost of said review, which is reasonable and necessary to the decision-making function, shall be borne by the applicant. The Code Enforcement Officer, in issuing a CFG permit, can require that soil erosion control measures be installed to reduce impacts to adjoining properties, watercourses, or waterbodies.
- (3) All other activities. Any activity not regulated in subsection (1) and (2) above shall require approval of a land disturbance plan from the Planning Board and a CFG permit from the Code Enforcement Officer.

C. Exemptions. A CFG permit shall not be required for the following:

- (1) planting of landscaping;
- (2) grading existing lawn areas;
- (3) normal repairs of occupied property;
- (4) correcting hazards representing an imminent threat to life or property;
- (5) removal of dead wood;
- (6) clearing, filling or grading for land development pursuant to, but not prior to, an approved site plan or final subdivision plat, provided said plans clearly illustrate the limits and extent of clearing, filling and grading activities to be conducted on the site or lot, and soil erosion and sediment control measures have been approved to mitigate potential impacts associated with said activities;
- (7) The removal of not more than two (2) live trees with a diameter of up to twelve (12) inches diameter breast height (dbh) in any given year. The applicant shall be required to notify the Code Enforcement Officer of said removal prior to its occurrence.
- (8) Commercial forestry which shall be regulated in accordance with Article X of this Zoning Chapter.

D. Application where Code Enforcement Officer issues the CFG permit. The following information shall be submitted, in addition to what is otherwise required for a building permit:

- (1) Scaled drawing showing the tax lot upon which the activity will be conducted.
- (2) A sketch indicating the location of the proposed land disturbances and a narrative indicating the types of disturbances to be conducted, materials to be removed from the site or to be brought and used on-site.
- (3) Erosion control measures, if required by the Code Enforcement Officer.
- (4) Any other data or information required for the Code Enforcement Officer to issue a CFG permit.



- E. Where Planning Board approval of a land disturbance plan is required, the following information shall be submitted, in addition to the data set forth in (1) through (4) above:
- (1) The names, addresses and section, block and lot numbers of all contiguous property owners and the names, addresses and section, block and lot numbers of all property owners located within five hundred (500) feet of the property.
  - (2) A plan, with engineering scale provided thereon, showing all existing and proposed contour lines, the amount of fill to be placed or displaced, the location of trees over eight (8) inches in diameter measured four feet from the ground, and road and driveway access to the site.
  - (3) An erosion control plan. Where required by state regulations, a Stormwater Pollution Prevention Plan shall be submitted.
  - (4) Preliminary copies of any contracts to perform such clearing, filling and grading, which contract shall state that it is subject to this subsection of the Zoning Chapter and that a copy of this section of the Zoning Chapter shall be attached to and become a part of such contract.
  - (5) Insurance. If required by the Planning Board, the applicant shall submit proof of insurance adequate to cover the intended work pursuant to the terms of the permit. The Town shall be named as an additional insured on the applicant's policy. The applicant shall, by a separate instrument, agree to indemnify and hold harmless the Town from any claims arising out of the intended activity.
  - (6) The completion date of the activity and any other information which the Planning Board deems reasonable in reviewing the application.
- F. Procedure for Planning Board approval.
- (1) The Planning Board shall hold a public hearing following receipt of a complete application. Notice shall be given to all property owners whose property is located within five hundred (500) feet of the subject property no less than ten (10) days prior to the public hearing. The public hearing shall be noticed as required for public hearings for special use permits.
  - (2) The application and supporting documentation shall also be reviewed by the Code Enforcement Officer for comments regarding potential impacts, and measures that would reduce or eliminate any impacts.
  - (3) The Planning Board may approve, approve with conditions or modifications, or disapprove the application for a CFG permit. The applicant shall bear the cost of such review, which is reasonable and necessary to the decision-making function of the Planning Board and its consultants.
  - (4) A New York State Department of Environmental Conservation approval or permit, if required, shall be secured prior to the issuance of the CFG permit.
- G. Standards and conditions.
- (1) Clearing, filling and grading shall be done in such manner as not to result in an increase of surface water runoff onto any other properties and shall not result in any condition which increases erosion or results in any unstable conditions upon the site or adjacent properties, wetlands, watercourses or water bodies.
  - (2) Operations shall be conducted from 8:00 a.m. to 5:00 p.m only. No operations shall be conducted on Sundays or holidays.

- (3) The Planning Board may condition its approval on appropriate inspections of the site on a twenty-four (24) hour, seven-day-week basis, until the activity is completed. The applicant shall be required as a condition of the permit to authorize Town employees or agents to enter onto the applicant's property to conduct the appropriate surveillance. Any and all costs for this service will be estimated by the Board prior to the issuance of a permit, with advice from the Town Engineer, and the applicant will then be required to post a certified check to cover such costs.
  - (4) The Planning Board may impose any other reasonable conditions on the permit, such as screening, access controls, dust controls, soil testing, provision of manifests documenting the location from which any fill to be brought on-site emanates, site security or other conditions which the Planning Board deems necessary in order to adequately maintain the site.
- H. Performance bond. The applicant may be required to post a performance bond or money security deposit to guarantee the satisfactory restoration of any State, County or Town road or other public property which might be damaged as a result of the clearing, filling and grading activities. The form of the bond or money security deposit shall be approved by the Town Attorney, and the amount of the performance bond or money security deposit shall be determined and approved by the Town Board upon the advice of the Town Engineer and Planning Board. In the event that the applicant fails or refuses to make the necessary repairs, the Town Board shall use the performance bond or money security deposit funds in order to pay the expense of making such repairs.
- I. Penalties. The Town Board may impose a fine of \$5,000 or in an amount not to exceed 150% of the Town's actual costs incurred in correcting the conditions caused by noncompliance with this section, including consequential damages paid by the Town, whichever is higher. This fine shall be imposed in place of the penalties provided for in § 98-88 of this Zoning Chapter. The fine of 150% shall be of the total costs to the Town, less of any and all reimbursement to the Town.
- J. The CFG permit shall expire twelve (12) months after the date of issuance. The Planning Board may grant an extension of up to twelve (12) months duration following a public hearing as specified in Subsection E above, provided that the applicant is in compliance of all terms and conditions of the original approval.

**§ 98-44. Storage and disposal of solid waste.**

All uses listed in Table I, General Use and Bulk Requirements, shall be provided with facilities for storage and disposal of solid waste. Common waste storage areas for single-family attached dwellings, multifamily dwellings and nonresidential uses shall be enclosed on all sides to screen said disposal area from view of any public street or residential area, and a screened gate shall provide access to said area. No front-end loaded refuse container(s) shall be located in a front yard unless the Planning Board determines that there is no alternative location to reasonably situate the container during site plan or special use permit review. Solid waste receptacles for a single-family detached, single-family semi-attached, and two-family dwellings may be placed at roadside during periods of solid waste pickup authorized by the Town Board. The Planning Board, at its discretion, may waive the specific design requirements for screening set forth above, where it determines an alternative design would provide an equivalent protection.

**§ 98-45. Accessory mechanical equipment.**

All mechanical rooftop equipment associated with any use other than a single-family detached, single-family semi-attached, single-family attached or two-family dwelling shall be screened from view and shall not exceed ten percent (10%) of the rooftop on which it is located except that the use of solar

panels that are affixed flat to a roof shall be permitted to exceed this requirement. To the maximum extent, the rooftop equipment shall be situated on the roof in a manner which limits views from adjoining properties. Mechanical equipment or other utility hardware located at ground level shall be harmonious with the building and shall be located and/or screened so as not to be visible from public rights-of-way.

**§ 98-46 through 49. Reserved.**

## ARTICLE X. SPECIAL USE PERMITS

### § 98-50. Special uses.

- A. Approval of special use permits. The Town Board of the Town of Tuxedo authorizes the Planning Board to review and decide upon special use permit applications as set forth in this Zoning Chapter. The Town Board retains authority to review and decide upon special use permit applications for certain special uses, including community benefit facility uses, as set forth in the Table of General Use and Bulk Requirements. For purposes of this Article X, the Town Board and the Planning Board are referred to as the “authorized board”.
  
- B. Based upon a legislative finding of the Town Board, the Planning Board is also hereby empowered to resolve land use issues involving special uses, including without limitation, vested rights and RLUIPA claims, in a manner which is expeditious, cost effective, and fair in order to lessen the burdens on property owners and on the Town while conserving judicial resources. Planning Board decisions are judicially reviewable on a full record developed before the Planning Board.
  - (1) Nevertheless, when an applicant demonstrates that application of a law, rule, or regulation violates its rights in some cognizable manner and/or imposes a substantial burden on its religious practice, it shall seek relief from the Planning Board, which relief shall be granted unless it is found that the law, rule, or regulation is in furtherance of a compelling public interest. In the event there is a compelling public interest for the law, rule, or regulation, the Planning Board shall, if possible, grant relief which is the least restrictive means of furthering that compelling public interest.
  
  - (2) In determining vested rights, RLUIPA, or any other cognizable claim, the Planning Board shall consider the guidance and precedents of the courts, both state and federal, in determining such claim.
  
  - (3) No action or proceeding for judicial relief against the Town, its officers, agents, or employees, shall be ripe for review unless the applicant has sought relief from the Planning Board pursuant to these provisions. The Planning Board shall develop a record of its proceedings. All Planning Board decisions are reviewable by the court pursuant to CPLR 217 or other applicable law.
  
- C. Objectives. On application and after public notice and hearing, the authorized board may approve by resolution, the issuance of a special use permit exclusively for uses that require a permit under this Zoning Chapter. In authorizing a special use permit, the authorized board shall take into consideration the expressed intent of this Zoning Chapter, the general public health, safety, and welfare, and shall prescribe appropriate conditions and safeguards to ensure accomplishment of the following objectives:
  - (1) The proposed use shall be deemed to be compatible with adjoining properties, and with the natural and built environment of its surrounds.
  
  - (2) The site is accessible to fire, police, and other emergency vehicles.
  
  - (3) The use is suitable to its site upon consideration of its scale and intensity in relation to environmentally-sensitive features, including but not limited to steep slopes, floodplains, wetlands, and watercourses.

- (4) Adequate screening and separation distances are provided to buffer the use from adjacent properties where the authorized board deems it necessary.
  - (5) The use will not negatively impact ambient noise levels, generate excess dust or odors, release pollutants, generate glare, or cause any other nuisances.
  - (6) Parking shall be sufficient so as to not create a nuisance or traffic hazard on adjacent properties or roads.
  - (7) Vehicular, pedestrian and bicycle circulation, including levels of service and roadway geometry, shall be safe and adequate to serve the use.
  - (8) The location, arrangement, size, operation including hours of operation, and design of the use, including all principal and accessory structures associated with same, shall be compatible with the character of the neighborhood in which it is situated and shall not hinder or negatively impact the use, enjoyment or operation of adjacent properties and uses.
  - (9) Utilities, including stormwater, wastewater, water supply, solid waste disposal and snow removal storage areas, shall be adequate to serve the use.
  - (10) The use shall not negatively impact the visual character of the town or neighborhood.
  - (11) The use shall not negatively impact historic, scenic or natural environmental features on-site or within the adjacent neighborhood.
- D. Waiver of standards. As stated within this article, the authorized board, when reasonable, may waive any requirement for the approval, approval with modifications or disapproval of special use permits except where said waiver is specifically not authorized herein. Any such waiver of the standards may be exercised in the event they are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular special use permit. No waiver can be granted by implication and any waiver must be granted by specific affirmative vote of the majority of the full membership of the Board based upon findings required herein.
- E. Area variance. Where a proposed special use contains one or more features which do not comply with this Zoning Chapter, application may be made to the Zoning Board of Appeals for an area variance pursuant to Article XIII of this Zoning Chapter, without the necessity of a decision or determination of the Code Enforcement Officer charged with the enforcement of this Zoning Chapter.
- F. Procedure. Any application for a special use permit shall require site plan approval by the Planning Board in accordance with the site plan regulations contained in this Zoning Chapter. The authorized board shall deem that a special use permit application is complete prior to the conduct of a public hearing on the application. Whenever possible, a hearing on a special use permit should be held concurrently with any hearing held on the site plan.
- G. Public hearing. The authorized Board shall conduct a public hearing within sixty-two (62) days from the date a complete special use permit application is received. Public notice of the hearing shall be printed in a newspaper of general circulation in the Town at least five (5) days prior to the date thereof. The authorized board shall cause the applicant to post notice on the subject property indicating the date, time, and location of the public hearing, and a brief description of the action being considered, at least ten (10) days prior the public hearing date. One (1) notice shall be posted along each property line adjoining a road and shall be clearly visible from said road. Notices shall be affixed in a manner prescribed by the authorized board. Said notice shall be removed following the

close of the public hearing.

- H. Notice to the applicant. At least ten (10) days before the public hearing, the authorized board shall mail notices thereof to the applicant.
- I. Notice to the Orange County Planning Department. At least ten (10) days before the public hearing, the authorized board shall mail notices thereof to the Orange County Planning Department, as required by §239-m of the New York State General Municipal Law, which shall be accompanied by a full statement of the matter under consideration, as defined therein.
- J. Decision. The authorized board shall decide upon the application within sixty-two (62) days following the close of the public hearing. The time within which the authorized board must render its decision may be extended by mutual consent of the applicant and the authorized board.
- K. Filing. The decision of the authorized board on the application shall be filed in the office of the Town Clerk within five (5) business days after such decision is rendered, and a copy thereof mailed to the applicant.
- L. Existing violation. No special use permit shall be issued for a property known to be in violation of this Zoning Chapter unless the granting of a special use permit and site plan approval will result in the correction of said violation.
- M. Deemed to be a conforming use. Any use for which a special use permit has been granted shall be deemed to be a conforming use in the district in which it is located, provided that such permit shall be deemed to affect only the lot or portion thereof for which such permit shall have been granted. The expansion of any special use shall require an amendment of the special use permit by the authorized board in accordance with the special use permit application and approval procedures contained herein. For purposes of this section, expansion shall be interpreted to mean an increase in the area allocated to the special use, an increase in development coverage, or an increase in the intensity of use, e.g., an increase in traffic or need for on-site parking.
- N. Expiration of special use permit; extension of special use permit for good cause. A special use permit shall be deemed to have expired if it ceases operation for a time period equal to or greater than twelve (12) consecutive months for any reason, or if construction is not completed within eighteen (18) months from the date of issuance. The authorized board may consider two (2) extensions of up to six (6) months from the date of issuance for good cause, as determined solely by the authorized board.
- O. Inspections. In connection with the issuance of a special use permit, the authorized board may provide for inspections to be conducted by the Code Enforcement Officer to ensure continued compliance with this Zoning Chapter and any conditions of the special use permit.
- P. Renewal. The authorized board may require that a special use permit be renewed periodically as a condition of special use permit approval. Sixty (60) days prior to the expiration of a special use permit, the applicant shall apply to the Code Enforcement Officer for renewal of the special use permit. The Code Enforcement Officer shall inspect the premises to verify that the conditions of the permit have been met within fifteen (15) days following a request for renewal. Upon a finding that there are no violations or noncompliance of the conditions of the special use permit, the Code Enforcement Officer shall so advise the Planning Board and the special use permit shall be renewed by the Planning Board for a time period to be set at its next regular meeting. However, where the Code Enforcement Officer finds that the applicant is not in compliance with the special use permit or that violations exist, then such renewal shall require Board approval and may be granted only

following a public hearing. Renewal may be withheld upon a determination by the authorized board that such conditions as may have been prescribed by the authorized board in conjunction with the issuance of the original permit have not been or are being no longer complied with. In such cases, a period of sixty (60) days shall be granted the applicant for full compliance prior to the revocation of said permit.

- Q. SEQRA. In its review and decisionmaking, the authorized board shall comply with the regulations implementing the New York State Environmental Quality Review Act.
- R. Fees. An application fee shall accompany the special use permit application in an amount established in the fee schedule duly adopted by the Tuxedo Town Board.

**§ 98-51. Individual standards for special uses.**

In addition to the general objectives set forth above, the following requirements shall apply to special permit uses and shall supersede any conflicting requirement of this Chapter. Special permit uses shall meet all other regulations established in this Zoning Chapter unless superseded by any standards set forth below in this section.

A. Animal kennels, subject to the following regulations:

- (1) The minimum lot area required shall be two (2) acres plus an additional 5,000 square feet for every one hundred pounds of adult animal body weight characteristic of the species so harbored. The Planning Board can require a larger lot area based on the type of animals to be harbored and the minimum area necessary to board said animals to the extent that such larger area is necessary to protect the health and safety of the animals and the neighborhood within which the kennel is located.
- (2) The special use permit for animal kennels shall stipulate the maximum number and type of animals to be boarded, harbored or trained. The special use permit shall not allow any greater number of animals than allowed as per the calculation of minimum lot area above.
- (3) The Board shall consider the number, species, size, breed and temperament of animals to be sheltered and impose reasonable conditions regarding same to protect proximate uses, aesthetic impact, and safety of the animals sheltered in order to ensure the health, safety and general welfare of the community.
- (4) Animal waste shall be disposed in a manner acceptable to the Orange County Department of Health.
- (5) Crematoria or land burial of animals onsite in association with a kennel shall be prohibited.
- (6) All facilities associated directly with the kennel, whether indoors or outdoors, shall be set back a minimum of two hundred (200) feet from any property line.
- (7) The Planning Board shall evaluate potential noise impacts and shall minimize negative impacts on adjacent uses which may include the use of sound proofing or limitations on whether outdoor boarding shall be allowed in conjunction with the special use permit.
- (8) The Planning Board may require screening of outdoor runs from view.
- (9) The Planning Board is authorized to waive any of the above standards in appropriate circumstances, upon demonstrated need by the applicant. Each waiver must be fully supported with sound reasoning on the record.

- B. Animal hospitals, including veterinary clinics, subject to the following regulations:
- (1) All facilities shall be maintained in enclosed buildings which shall be of soundproof construction and so maintained as to produce no dust or odors at the property line.
  - (2) Exercise pens and runways shall not be permitted within two hundred (200) feet of any property line.
  - (3) Where an animal hospital contains kennels and/or stables for housing animals, said animal hospital shall adhere to all requirements for kennels and/or stables.
- C. Animal sanctuary, subject to the following regulations:
- (1) All facilities must be enclosed securely by fencing or other means, taking into consideration the types of animals to be housed, and in a manner deemed acceptable to the Planning Board.
  - (2) The facility shall maintain its accreditation with the American Sanctuary Association throughout its operation. A facility which loses its accreditation shall be deemed to be in violation of any special use permit granted to it.
  - (3) Security lighting may be provided at the facility. Lighting shall be sufficient to secure the site and shall be designed with full cutoff and other design measures which eliminate light spillover or impacts to the night sky.
  - (4) The facility shall be required to secure all applicable permits and approvals from county and state health and environmental agencies.
- D. Automotive gas station, subject to the following regulations:
- (1) Existing automotive gas stations; expansion prohibited. An automotive gas station in existence on the effective date of this Zoning Chapter shall be permitted to continue operating as a pre-existing nonconforming use and shall be deemed to have been issued a special use permit. No further capacity expansion is permitted. However, with approval from the Planning Board, an existing automotive gas station may make necessary alterations to the existing layout of the gas station, or any increase in parking, change in a building's footprint, or alteration in utilities located onsite if said alterations are safety and regulatory related improvements and/or are required by the New York State Department of Environmental Conservation. All such alterations shall require an amendment to the special use permit and approval of a revised site plan. Nothing herein shall allow any increase in the amount of fuel stored on-site.
  - (2) Prohibition on new automotive gas stations. Because of the Town's location within a federally designated sole source aquifer and the need to protect groundwater and surface water supplies from the potential impacts of large capacity fuel storage tanks and additives entering same if not maintained properly, the Town has determined that the construction of new automotive gas stations is prohibited.
  - (3) Discontinued use. Where the Code Enforcement Officer determines that an automotive gas station has been discontinued, the owner, lessee or motor fuel supplier of said station shall remove the tanks, gasoline pumps, all identification signs and lighting poles and paint the exterior, if other than brick, a neutral color within a maximum of three (3) months from the date of the determination. The owner and/or lessee shall also provide adequate protection against unlawful entry into any building and the property and shall close all vehicular entrances to the property to prevent the storage of abandoned vehicles thereon. The owner shall comply with all New York State Department of Environmental Conservation standards for its closure.



(4) Accessory uses. Other than a convenience store, the following accessory uses shall be permitted in connection with a pre-existing automotive gas station:

(a) Rental trailers. An additional one hundred (100) square feet of area shall be provided for each rental trailer. Not more than ten (10) rental trailers shall be stored on site at one time. Storage shall be behind the front building line.

(b) Rental trucks. An additional two hundred (200) square feet of area shall be provided for each rental truck. Not more than eight (8) trucks shall be stored on a site at any one time. Storage shall be to the rear of the front building line.

(c) Rental combination. Where both trailers and trucks are offered for rent, not more than twelve (12) total trailers or trucks shall be located on a site at any one time.

E. Bed-and-breakfast, subject to the following regulations:

(1) A bed-and-breakfast shall be owner-occupied and conducted in a single-family detached dwelling. A maximum of four (4) guest sleeping rooms shall be permitted.

(2) Off-street parking shall not be located in a required front yard and shall be screened from the street right-of-way and adjacent properties so as to provide no variation from the residential character of the site. Off-street parking spaces for the bed-and-breakfast shall be in addition to the number of spaces required for a single-family detached dwelling and one (1) parking space per guest sleeping room shall be provided.

(3) Each bed-and-breakfast shall be maintained and operated so as to preserve and complement the residential character of the surrounding area.

(4) No transient guest shall stay for a period of time in excess of fifteen (15) consecutive days.

(5) Each guest sleeping room shall maintain such safety features as required by the New York State Fire Code.

(6) The owner/operator shall give reasonable access for inspections to be conducted on an annual basis to ensure compliance with this Zoning Chapter and the Uniform Code. Approval of the special use permit shall be conditioned upon consent of the owner to permit said inspections.

(7) One (1) identification sign is permitted. Said sign or display shall not exceed sixteen (16) square feet in area per face. No sign shall be located less than fifteen (15) feet from the street line. The sign may be illuminated upon approval by the Planning Board.

(8) Employees shall not be allowed to reside in the bed-and-breakfast, and only one nonresident employee is allowed. In its discretion, the Planning Board may allow more than one nonresident employee, provided it determines that said increase will not impact adjoining property owners or the character of an existing residential neighborhood within which the use may be located.

F. Building contractor establishment, with exterior storage, subject to the following regulations:

(1) The outside storage of goods, supplies, parts, materials, or equipment shall not be located in a front yard. The Planning Board may allow storage within a front yard, provided it is not within the required front yard, and only with approval by the Planning Board as part of the special use permit. The applicant must demonstrate there is no other place on the property to locate outdoor storage and all outdoor storage must be completely screened from view of a public road and all adjacent properties. No storage shall be permitted in the required rear yard unless said storage does not adjoin a residential use or a residential district.

- (2) Parking shall not be permitted in a required front yard.
- (3) Outdoor storage areas and parking areas shall be completely screened from view of a public road and all adjacent properties with the exception of rear yards that abut other contractor's establishments or industrial uses. For the purpose of this section, "screening" shall be evergreen trees that are no less than 4-inches in diameter measured 4.5 feet from the ground. A maintenance bond in an amount acceptable to the Planning Board shall be required to maintain the evergreen plantings for a period of no less than three (3) years from the date of the approval. Where evergreen plantings are not possible because of unique characteristics of the site, the Planning Board shall require alternative screening in a form that completely blocks public view.
- (4) The applicant shall demonstrate that the use shall not have significant adverse impacts related to noise, traffic, hours of operation, and lighting requirements and shall minimize to the greatest extent practicable any negative impacts on adjacent properties and uses.
- (5) Stockpiling of outdoor materials shall not exceed fifteen (15) feet in height, as measured from the ground surface elevation and shall be screened as set forth in this section.

G. Child day care or adult day care center, nursery school, subject to the following regulations:

- (1) The licensed day care provider shall submit a copy of said license and other pertinent documents from New York State Department of Social Services and, if applicable, the New York State Department of Education. Where a license has expired or been revoked, operation of the day care center shall cease.
- (2) State licensing requirements shall be met, including those pertaining to building, fire safety, and health codes and that such state license copy shall be on file with the Code Enforcement Officer.
- (3) An area dedicated to the off-street drop-off/pick-up of attendees which minimizes conflicts between vehicles and pedestrians shall be provided.
- (4) For child day care centers or nursery schools, outdoor play equipment is not permitted in any front yard and is not permitted in a required side or required rear yard. Equipment shall be located in a manner that limits noise levels adjacent to adjoining residential uses. Such area shall be at least one-quarter (1/4) of the square footage of the floor area of the child day care center or nursery school, screened from the road, either by the center itself, appropriate landscaping or other methods, and contained, by fence or other means, to prevent conflicts between adjacent properties and the facility's activities.

H. Commercial recreational use, outdoor, subject to the following regulations:

- (1) All outdoor commercial recreation activity areas shall be set back 100 feet from any property line.
- (2) Lighting. If outdoor lighting is provided for any of the recreational facilities, including swimming pools, which permit the use of the facilities after 10 PM, the applicable setback requirements for such facility shall be doubled. A lighting plan shall be provided in accordance with § 98-39 of this Zoning chapter.
- (3) Noise. Public address systems or any other amplified noises shall not be audible beyond the property line.
- (4) Use of pool. The maximum number of persons permitted to use any swimming pool shall be in

accordance with NYS Department of Health and NYS Department of State standards, or as otherwise determined by the Planning Board in the absence of capacity standards.

- (5) Hours of operation. The Planning Board may limit the hours of operation of said uses where it determines said limits are necessary to protect the peace and serenity of adjoining residential uses and conform to the noise requirements set forth in this Zoning Chapter.

I. Conference center, subject to the following regulations:

- (1) The building shall be compatible with the rural character of the surrounding environs, the character of the community and the natural surroundings. The Planning Board shall review and approve the architectural style of the building and structures, taking into consideration the objective set forth herein.
- (2) A traffic study shall be submitted in conjunction with the special use permit application. The applicant shall confer with the Planning Board regarding the scope of the traffic analysis prior to the study being conducted. The Planning Board shall evaluate the use's impact on the surrounding road network and may limit the size of the facility to mitigate significant adverse traffic impacts among other mitigation measures determined appropriate by the Planning Board.
- (3) Restaurants and dining rooms are permitted accessory to the conference center. Said facilities shall not constitute more than ten percent (10%) of the total gross floor area of the conference center building.
- (4) All parking areas shall be set back no less than fifty (50) feet to any property line.
- (5) All areas of the site shall be amply landscaped by preserving existing vegetation, or by installing a combination of decorative and native plant materials. A landscaping plan shall be submitted and approved as part of the site plan application pursuant to § 98-38 hereof.

J. Cultural or performing arts center, subject to the following regulations:

- (1) The buildings and structures shall be compatible with the rural character exhibited within the surrounding environs, the character of the community and the natural surroundings. The Planning Board shall review and approve the architectural style of the buildings and structures, taking into consideration the objectives set forth herein.
- (2) The applicant shall demonstrate that adequate emergency service facilities are provided for the proposed use. The applicant shall prepare a safety management plan that demonstrates that adequate emergency access is provided to the site. Police, fire, ambulance and other agencies that are required to service the proposed development shall be provided with a copy of the application for review and comment, and the Planning Board shall take said comments into consideration in its deliberations. The Town Board shall approve the safety management plan, and a copy thereof in final form shall be filed by the applicant with the Town Clerk and County and local emergency service organizations.
- (3) In order to minimize visual and noise impacts on adjoining parcels, no building, parking area or road shall be permitted within 100 feet of any property line. A combination of fencing, natural, undisturbed areas, supplemental plantings or landscaping shall be provided to create a separation between surrounding existing and prospective uses and the proposed development.
- (4) A traffic study shall be submitted in conjunction with the special use permit application. The applicant shall confer with the Planning Board regarding the scope of the traffic analysis prior to

the study being conducted. The Planning Board shall evaluate the use's impact on the surrounding road network and may limit the size of the facility to mitigate significant adverse traffic impacts.

- (5) Parking areas shall be broken up and amply landscaped to avoid the appearance of significant expanses of impervious surfaces. Truck-loading facilities shall be provided as required in Article VIII of this Zoning Chapter.
  - (6) All areas of the site shall be amply landscaped by preserving existing vegetation, or by installing a combination of decorative and native plant materials. A landscaping plan shall be submitted and approved as part of the site plan application pursuant to § 98-38 of this Zoning Chapter.
  - (7) On-site lighting shall be designed and installed in a manner that minimizes visual impacts to the night sky. A lighting plan shall be submitted and shall meet the standards set forth in § 98-39 of this Zoning chapter. Decorative lighting fixtures appropriate to a rural and rustic setting shall be incorporated into the overall design of the development.
  - (8) The applicant shall furnish a master signage plan illustrating the location and design of on-site signs, which shall be approved as part of the site plan. Signs shall be uniform and attractive in appearance. The Planning Board is authorized to modify the sign standards to accommodate this master signage plan, provided that the signage is part of a consistent theme that blends into the natural environment, makes maximum use of ground signs as contrasted with pole signs, mostly utilizes natural materials such as wood and stone for sign construction, and employs landscaping of such signs to enhance appearances. The Planning Board may waive the requirements set forth in Article VII to achieve the design objectives set forth herein for signs.
  - (9) The application shall include an overall development plan for consideration by the Planning Board. The overall development plan may be prepared at conceptual level but, at a minimum, must depict those uses proposed for development or that may reasonably be anticipated for development by the applicant, including, but not limited to, pavilions, amphitheaters, concert halls and other musical and performing arts performance areas, together with major administrative, food service, interpretive, lodging, parking, residential structures and seating facilities to accommodate performing arts patrons. The overall development plan must also depict off-site parking areas to service the proposed uses and the means of traffic circulation, both automotive and pedestrian, between and among the uses. The overall development plan must also demonstrate on a conceptual level that the development design standards listed above will be met or the extent to which any modifications will be necessary. The plan need not encompass all the details required for a site plan but shall set forth in reasonable detail the anticipated locations within the development and sizes of all major improvements anticipated such that the Planning Board can evaluate the overall plan for environmental, traffic and other impacts on the community with a view toward attaching any conditions of approval which must be met at the time a detailed site plan is submitted for approval for any section of the development.
  - (10) Concurrent with its overall development plan submission, an applicant may also submit a detailed site plan application for one or more phases of its overall development. That site plan must comply with the requirements of this section and of Article V of this Zoning Chapter.
- K. Dwellings in buildings with non-residential uses (dwellings above ground floor retail, personal service, office, or restaurant uses), subject to the following regulations:
- (1) No dwelling shall be permitted on the ground floor of the building unless it is at the rear of the

building and does not front to a public street.

- (2) The maximum residential density shall be determined by multiplying the maximum residential density for the applicable zoning district by the lot area.
- (3) There shall be a separate entrance provided to the dwelling unit or residential portion of the structure which entrance shall not permit access to the nonresidential portion of the structure.
- (4) The building shall meet all other requirements of the New York State Uniform Fire Prevention and Building Code that apply to dwellings in structures with nonresidential uses.
- (5) Nonresidential uses shall be only those uses allowed as permitted uses or special uses within the zoning district in which the project is located. A separate special use permit shall be applied for and obtained, for any nonresidential use that so requires a permit.
- (6) To continue to be a valid special permit use, residential uses shall not be continued in any building not fully occupied by nonresidential uses on the ground floor. The special use shall expire where the ground floor has not been fully occupied by a nonresidential use for a period of one (1) year or longer, and the residential uses shall be vacated.

L. Dwelling, two family, subject to the following regulations:

- (1) A two-family dwelling shall be served by central sewer or water.
- (2) Adequate parking facilities shall be provided to accommodate the parking demand of both units. Parking shall not be permitted within the required front yard. The Planning Board, in its discretion, shall approve the location of said parking facilities to ensure that the parking is reasonably located in relation to adjoining residential uses and may require that same be screened from view of a public right-of-way.

M. Dwellings, single-family attached (townhomes); dwellings, single-family semi-attached, subject to the following regulations:

- (1) Each single-family attached dwelling and semi-attached dwelling shall be situated on its own lot. Common facilities serving an overall development may be located on one or more lots to be controlled by a homeowners association.
- (2) The maximum number of dwellings in any single-family attached residential building shall not exceed six (6) dwellings. No building shall exceed 180 feet in length.
- (3) Each single-family attached building shall be separated from every other residential building a distance not less than twenty-five (25) feet. Accessory structures shall be situated at least twenty (20) feet from the nearest residential building.
- (4) Each single-family semi-attached dwelling shall be separated from any lot line a minimum distance of 25 feet except where attached to an adjoining dwelling, where the minimum side yard requirement is zero (0) feet.
- (5) For single family attached buildings, common parking areas and drives shall be located no closer than twenty-five (25) feet to a residential building. A minimum of 50 percent of all required parking spaces, not including visitor spaces, shall be provided in an enclosed garage within the principal residential dwelling. Each single-family attached dwelling shall be provided with an attached garage.
- (6) Each dwelling shall be provided a balcony or patio at least fifty (50) square feet which shall be

situated on the individual lot. An additional one hundred (100) square feet per dwelling shall be set aside for active recreational facilities, which may consist of tennis courts, swimming pools, clubhouse and/or other similar amenities. These recreational facilities shall be commonly owned and maintained by the owner of the development.

- (7) Sidewalks shall connect the residential buildings with parking areas, public streets, recreation facilities and other amenities.
  - (8) A landscaping plan, lighting plan, building elevation and floor plan for each dwelling unit type shall be submitted for review.
  - (9) Where the Planning Board deems appropriate to the design of the development, centralized locations shall be provided on-site for solid waste storage and recycling receptacles. Said locations shall be screened from view by a combination of fencing and landscaping. Dumpster enclosures shall be designed to be compatible with the architecture of the buildings.
  - (10) Snow storage areas shall be indicated on any site and/or subdivision plan and shall not interfere with required parking or traffic circulation.
  - (11) Where a single-family attached or semi-detached development is to be served by an on-site private drive, the Planning Board shall establish the minimum number of access points to ensure adequate vehicular access in the event of an emergency.
  - (12) One (1) sign is permitted at each permanent non-emergency access and shall be compatible with the architecture of the development. The maximum height of the sign shall be six (6) feet and no face of a sign shall exceed sixteen (16) square feet. No sign shall be located closer than fifteen (15) feet to the street line. In addition, signs within the development shall be allowed, subject to Planning Board approval.
  - (13) Semi-attached and attached dwellings shall be subject to review and approval of the Architectural Review Board.
- N. Dwelling, single-family detached in the Conservation zoning district, subject to the following regulations:
- (1) The Conservation ("C") zoning district is intended to be a low density, low-intensity zoning district which allows residential uses that incorporate expanses of open space into the overall design. To that end, the subdivision of land for single-family detached dwellings is allowed by special use permit in accordance with the regulations set forth below.
  - (2) Exception - single-family dwelling on an existing lot. The construction of a single family detached dwelling on a lot in existence on the effective date of this Zoning Chapter shall be permitted and shall not require a special use permit. The dwelling shall meet applicable bulk requirements for this district and shall adhere to any other requirements set forth in this Zoning Chapter.
  - (3) Cluster subdivision authority. For purposes of this special use permit, the Town Board grants authority to the Planning Board to require the submission and approval of a cluster development in accordance with the requirements set forth in this section and the procedures set forth in section 278 of New York State Town Law. Where the Planning Board determines that a cluster development would be appropriate and would benefit the Town, the Planning Board may require that the applicant pursue a cluster development.
  - (4) Subdivision of land to accommodate single-family detached dwellings. Within the C district, any subdivision into two or more lots, exclusive of any lot line change that does not create a new

buildable lot, shall be designed in accordance with the following procedures:

- (a) Subdivision application. Every subdivision application for a property in the C district intended to be developed for single-family detached dwellings shall submit a baseline environmental map and a conceptual cluster subdivision plan concurrently with a conventional plan. The baseline environmental map shall depict the following information:
  - (i) Slopes over 35 percent.
  - (ii) Freshwater wetlands under the regulatory jurisdiction of the New York State Department of Environmental Conservation (DEC) and/or the U.S. Army Corps of Engineers, including the 100-foot adjacent area applicable to state wetlands.
  - (iii) 100-year floodway and floodplains as identified on Federal Emergency Management Agency (FEMA) maps.
  - (iv) Properties listed on the National and/or State Registers of Historic Places or eligible for listing by the New York State Office of Parks Recreation and Historic Preservation for inclusion on such registers. A cultural resource survey shall be submitted in conjunction with the subdivision application.
  - (v) Lands containing a farm operation within a New York State Agricultural District or within 500 feet of lands containing a farm operation within a New York State Agricultural District.
  - (vi) Significant viewsheds as determined by the Town Board and/or Planning Board..
  - (vii) Recreational resources including lakes, ponds, streams, or other potentially significant recreational resources both on the site and adjoining the property.
  - (viii) A demarcation of all habitats on the property, including known habitats containing endangered, threatened, or special concern wildlife species, protected native plants, endangered, threatened, or rare plants, or State identified significant habitats.
  - (ix) Unique or unusual landforms or geological formations.
  - (x) Existing or proposed trails including bikeways, hiking trails or multi-use, non-motorized routes of local, county, state or national significance.
- (b) The Planning Board shall require that an applicant for a residential subdivision present to the Planning Board a conceptual cluster plan simultaneously with the filing of a subdivision application. The Planning Board shall review the baseline environmental map, the cluster plan and the conventional plan and shall require such other and further details that the Planning Board reasonably believes necessary to evaluate the plan. Until all reasonably requested information is submitted, the application for preliminary approval shall be deemed incomplete.
- (c) For cluster subdivisions, the Planning Board shall make a determination as to the maximum number of residential lots that could be achieved based on a conventional plan. Upon evaluation of the baseline environmental map, the conceptual cluster plan shall be revised to ensure that the proposed cluster lots preserve sensitive environmental features to the maximum extent practicable.

(5) Standards for cluster subdivisions.

- (a) Minimum lot area. The minimum lot area for a subdivided lot in a cluster subdivision intended to be developed with a single-family detached dwelling shall be one (1) acre, provided that every lot must be sufficient size to accommodate an individual well and septic system, if such systems are used, in accordance with Orange County Health Department standards.
- (b) Front, side, and rear yards and lot widths. Appropriate minimum yards and lot widths in a cluster subdivision depend upon the lot sizes, the type of road frontage and the character of the subdivision. Accordingly, yard requirements for cluster lots shall be established at the time of plat approval and shall be shown in a chart on the plat.
- (c) Requirements for protected open space. All cluster subdivisions shall protect the greatest amount of open space that provides the largest amount of benefit to the Town. No less than fifty percent (50%) of the subdivision shall be set aside as protected open space.
- (d) Open space land. Protected open space may be included as a portion of one or more large building lots or may be contained in a separate open space lot. Such open space may be owned by a homeowners association, one or more private landowners, a non-profit organization, the Town or another governmental entity, or any other appropriate entity, as long as it is protected from development by a conservation easement. The required open space land may not include private yards located within 100 feet of a principal structure. To the maximum extent practicable, the open space to be set aside shall be contiguous.
- (e) Arrangement of lots and dwelling units. Lots shall be arranged in a manner that protects the land's conservation value.
- (f) Notations on plat or site plan. Protected open space land shall be clearly delineated and labeled on the subdivision plat as to its use, ownership, management, method of preservation, and the rights, if any, of the owners of other lots in the subdivision to such land.
- (g) Permanent protection by conservation easement. A perpetual conservation easement restricting development of the open space land and allowing use only for agriculture, recreation (including golf courses), protection of natural resources, or similar conservation purposes pursuant to Section 247 of the General Municipal Law and/or Sections 49-0301 through 49-0311 of the Environmental Conservation Law, shall be granted to the Town, with the approval of the Town Board, or to a qualified not-for-profit conservation organization acceptable to the Town Board. Such conservation easement shall be approved by the Town Board and shall be required as a condition of subdivision plat approval. The Town Board may require that the conservation easement be enforceable by the Town if the Town is not the holder of the conservation easement. The conservation easement shall be recorded in the County Clerk's office prior to or simultaneously with the filing of the final subdivision plat in the County Clerk's office. The terms of the conservation easement shall prohibit further development except if, in the discretion of the Town Board, such development is in furtherance of agricultural production or recreational uses all of which must be described within the conservation easement to the satisfaction of the Town Board.
- (h) Maintenance standards. Ongoing maintenance standards shall be established, enforceable by the Town against an owner of open space land as a condition of subdivision approval, to ensure that open space land is not used for storage or dumping of refuse, junk, or other



offensive or hazardous materials. In the event that the maintenance, preservation, and/or use of the open space area(s) ceases to be in compliance with any of the requirements of the Zoning Chapter or any other requirements specified by the Planning Board when approving the cluster subdivision plat, the Town shall be granted the right to perform such maintenance as may be necessary or to otherwise assure compliance and to relevel the cost to the responsible property owner or owners pursuant to Chapter 5 of the Town Code. Such charge, if unpaid for more than 60 days, shall become a lien on the open space area and on the lots of any lot owners who share ownership of the open space area. Notwithstanding, the Town is under no obligation to maintain such open space areas.

O. Fuel storage depot, pre-existing, subject to the following regulations:

- (1) Existing use allowed to continue as nonconforming use. A fuel storage depot that has previously received site plan approval from the Planning Board and has a valid certificate of occupancy shall be deemed to have been in existence on the effective date of this Zoning Chapter and allowed to continue operating as a nonconforming use and shall be deemed to have been issued a special use permit. The Planning Board is not authorized to waive this requirement.
- (2) Alterations. Any alteration to the existing layout, or any increase in parking, change in a building's footprint, or alteration in utilities located onsite shall require an amendment to the special use permit and approval of a revised site plan. All alterations must be related to the need for increased safety and/or regulatory measures pursuant to local law or New York State Department of Environmental Conservation requirements. Nothing herein shall allow any increase in the amount of fuel stored on-site.
- (3) Prohibition on new fuel storage depots. Because of the Town's location within a federally designated sole source aquifer and the need to protect groundwater and surface water supplies from the potential impacts of large capacity fuel storage tanks and additives entering same if not maintained properly, the Town has determined that the construction of new fuel storage depots is prohibited.
- (4) Emergency management plan. At such time that an applicant seeks an amended special use permit and revised site plan, the applicant shall also be required to submit to the Planning Board a copy of an emergency management plan which shall govern operations during an emergency event, which shall include but not be limited to severe rain and storm events. The emergency management plan shall be approved by the Town Board and the Emergency Management Officer. The Town Board, during its review of the plan, shall refer the plan to the fire district, emergency service providers or other agencies deemed appropriate. Compliance with the plan shall be a requirement of the continued operation of the fuel storage depot.
- (5) Fuel storage. The minimum distance between any tank storing fuel or other additives and any structure with a residential dwelling shall be 100 feet. Tanks are prohibited from being sited within the 100-year floodplain. The Planning Board is not authorized to waive these requirements.

P. Golf course, subject to the following regulations:

- (1) The following uses shall be permitted as accessory uses to a golf course: clubhouse (including dining rooms, common rooms, pro shop, social rooms, kitchen, recreation facilities and locker rooms), snack bar/refreshment stand, a groundskeeper residence, putting greens, practice range, parking, maintenance facility, garage, cart storage facility, water supply impoundments, and other uses and buildings that the authorized board determines are accessory to the golf

course use. The proposed golf course shall be integrated with any existing development and land uses adjacent to the site, including safe locations for golf holes (tees, holes and greens) and practice areas, as related to adjacent roads, residential development, and other neighboring improvements.

- (2) Where a golf course site is adjacent to, contains, or incorporates floodplains, open water, watercourses, trails, flyways, and conservation areas, the applicant may be required to provide and maintain an adequately-designed walking trail easement within the property open to the public in furtherance of the Town's goal of linking open spaces in the community. The pedestrian easement shall be located so it does not interfere with play and shall be appropriately isolated from the general operation of the golf course.
- (3) The applicant shall be required to provide the necessary infrastructure and utilities, including sanitary disposal system, potable water and irrigation water, either from on-site municipal or private systems. The provision of infrastructure and utilities shall not have a detrimental impact on groundwater or surface water resources.
- (4) The golf course shall have two safe and adequate access points from one or more public roads. One of the two accesses may be provided for emergency access only, if, in the determination of the Planning Board, said arrangement provides adequate access. The two means of access shall be connected internally and may be achieved by use of a stabilized surface sufficient to allow passage by emergency vehicles.
- (5) Ample provisions shall be made for solid waste collection and storage. All solid waste storage shall be adequately screened and buffered.
- (6) One monument sign not exceeding sixteen (16) square feet shall be permitted at the entrance to the golf course. All other signs shall be directional signs, and each shall not exceed four (4) square feet. All signs, including size, location, materials and design, shall be approved as part of site plan approval. The Planning Board may approve an additional monument sign at the second access.
- (7) Amplifier systems shall be designed so as not to be audible beyond the property lines. The Planning Board shall assess potential sources of noise, including maintenance-related noise, and may establish conditions to minimize noise impacts on sensitive noise receptors in the vicinity.
- (8) The number of parking spaces shall be as few as necessary to serve the golf course and accessory uses. The number shall be determined by a parking needs study to be conducted by the applicant and submitted at the same time as the special use permit application.
- (9) The site plan shall show minimum vegetative buffers to be maintained between any waterbody, watercourse or wetland and any turf area which is to be treated chemically. The Planning Board may retain an ecologist and/or other specialist(s) to review the plan and determine appropriate buffer sizes, which will depend on the specific nature of the watercourse or wetland to be protected, including whether the same contributes to any public water supply reservoir or impoundment. The buffer shall be of sufficient size and designed to protect the surface water from chemicals carried by stormwater runoff. The Planning Board may consider alternative methods of protecting waterbodies, wetlands and water courses (e.g., diversion of runoff via swales) where it determines that these methods are equally protective.
- (10) Special events open to the general public, such as tournaments, shall be approved by the Town Board by issuance of a special use permit for public outdoor amusement or outdoor

entertainment. Adequate provisions shall be made by the golf course operator to handle any crowd generated by such an event and to satisfactorily mitigate off-site impacts, including traffic management, parking, trash removal and waste disposal, security and safety, and utility demand. The golf course may be required to post a performance guarantee for these purposes. All local permissions and permits required for a special event shall be obtained prior to the event.

- (11) The course shall be designed, to the extent practicable, in a manner that preserves existing woodland and wooded corridors. Clearance of woodland shall not exceed 50 percent of the total acreage of the lot on which the golf course shall be situated.
- (12) Turf management and water quality. As part of the application for site plan approval, the applicant shall submit a turf management plan and an integrated pest management plan specific to the operation and maintenance of the proposed golf course. These plans shall be prepared in accordance with any guidelines established by the New York State Department of Environmental Conservation and shall also take into consideration guidelines established by the United States Golf Association. These plans must include best management practices to prevent adverse impacts of chemical applications on the groundwater and surface water resources to which the golf course contributes drainage.
- (13) Any adverse impacts on groundwater or surface water quality attributable to the golf course will be mitigated by the applicant. The applicant shall provide for the monitoring of water quality of groundwater and surface water resources. The monitoring program, including the timing and frequency of testing and the identification of chemical parameters to be tested, shall be established at the time the integrated turf management plan and integrated pest management plan are approved as part of the application. The applicant may be required to install permanent water-quality monitoring devices to monitor water quality on an ongoing basis. The applicant shall hire a consultant who shall be responsible for carrying out the monitoring program, and the cost of the monitoring shall be borne by the applicant/owner of the golf course facility. The results and findings of any water quality monitoring shall be submitted by the owner to the Town to ensure compliance with the conditions of special use permit approval.

Q. Hotels, subject to the following:

- (1) Use. Use of a hotel site and any buildings or structures thereon shall be limited to the usual hotel activities, as defined herein, and accessory uses incidental to the operation of a hotel, and of the same general character, including but not necessarily limited to the following, provided that all accessory uses shall be planned as an integral part of the hotel and located on the same site therewith.
- (2) Accessory uses. All space dedicated to accessory uses except for parking and landscaped areas, and including dining rooms, swimming pools and recreational areas whether indoors or outdoors or a combination thereof, shall not occupy more than thirty percent (30%) of the total gross floor area of the hotel. The following accessory uses are permitted, subject to approval by the Planning Board:
  - (a) Caretaker residence. One accessory dwelling attached to the hotel and with or without kitchen facilities for the use of the hotel manager.

- (b) Restaurant. Restaurants and kitchen areas, serving either hotel guests exclusively or to the general public, provided that no music or other sound shall be audible beyond the boundaries of the lot on which the use is constructed and further provided sufficient parking is made available to patrons.
  - (c) Recreation facilities. Indoor and outdoor amusement and sport facilities for the exclusive use of hotel guests, including swimming pools, children's playgrounds, tennis or other game courts and game or recreation rooms, and not including membership clubs. A swimming pool is permitted to be outdoors and shall not be open to the general public.
  - (d) Parking. Automobile parking lots for the exclusive use of hotel patrons and employees, and off-street parking spaces. The Planning Board, in its discretion, may allow dedicated spaces for the overnight parking of a recreational vehicle, or tractor trailer spaces.
  - (e) Office and lobby. Office and lobby, provision of which shall be mandatory for each hotel.
  - (f) Retail sales. A small retail area for the purchase of sundries and snacks by guests.
- (3) Guest sleeping rooms.
- (a) Occupancy. In no case are guest units to be used as apartments for nontransient tenants.
  - (b) Interconnections. Hotel sleeping rooms shall not be interconnected by interior doors in groups of more than two.
  - (c) Size. Each sleeping room shall have an area, inclusive of bathroom and closet space, of at least 225 square feet.
  - (d) The maximum number of guest sleeping rooms for any hotel site, inclusive of all buildings, shall be 200, which maximum is not waivable by the Planning Board.
  - (e) There shall be no kitchen facilities in a guest sleeping room. Each guest unit shall include a full bathroom, including sink, toilet facility, and shower/bath installation. The Planning Board, in its discretion, may allow up to 35 percent of the guest units to have a kitchen, which may include a sink, stove, refrigerator, and dishwasher, as determined by the Planning Board.
  - (f) There shall not be more than one guest sleeping room for every 1,000 square feet of lot area.
- (4) Dimensional regulations. The maximum length of any hotel building shall not exceed 300 feet.
- (5) Access and service roads. Access and service roads shall be properly related to public streets and highways so as to avoid unsafe conditions and traffic congestion. Points of ingress and egress shall not exceed a total of two on any street. No backing of cars onto any highway shall be permitted.
- (6) Off-street parking. Where a hotel includes a restaurant or other eating and drinking facilities open to the public, required parking space shall be provided for such facilities, in addition to required parking spaces for sleeping rooms and other floor space. No parking space shall be

located within twenty-five (25) feet from any hotel building ingress or egress, including emergency egress. All off-street parking areas shall be at least 25 feet from all property lines.

(7) Solid waste. There shall be a central facility for deliveries, management of solid waste and similar activities.

(8) There shall be no outdoor public-address or music system audible beyond the property line.

R. Light industry, subject to the following regulations:

(1) Light industrial uses shall meet the performance standards contained in § 98-42 of this Chapter. All applications shall describe in detail the procedures and equipment to be utilized and shall further indicate the anticipated characteristics of the light industrial process in the framework of measurements provided by § 98-42.

(2) All uses, processing and storage shall be within fully enclosed structures, and no tanks, cupolas, vents or other apparatus peculiar to the processing shall be visible outside the approved buildings. The facade of buildings and structures in a light industrial use shall be compatible with adjacent development and the site shall be fully landscaped. The landscaping standards of § 98-38 shall be met.

(3) A light industry use is prohibited on any parcel wherein sole access to the use is through a residential zoning district or neighborhood.

S. Major home occupation, subject to the following regulations:

(1) The lot on which a home occupation is situated shall be owner-occupied and shall be conducted in a single-family detached dwelling only, or an accessory structure as per subsection (3) below.

(2) No more than thirty percent (30%) of the total floor area (heated, habitable space) of the dwelling unit may be used for the home occupation.

(3) Accessory structures existing at the time of enactment of this law may be used for home occupation purposes.

(4) One non-illuminated identification sign not more than four (4) square feet shall be permitted. There shall be no other evidence of the home occupation such as additional lighting, display or storage exterior to the dwelling or accessory structure within which the home occupation is conducted.

(5) The Planning Board may impose conditions on the hours of operation, number of employees permitted, number of parking spaces, number of visitors and deliveries, associated with the operation of the home occupation to protect abutting properties.

T. Multifamily dwelling development, subject to the following regulations:

(1) Sewer and water. A multifamily development shall be serviced by approved central sewer and water supply facilities.

(2) Access. No less than two full access driveways shall be provided for a multifamily development consisting of 15 or more dwelling units.

(3) Multifamily development shall be screened from adjoining properties by a combination of landscaping and fencing materials approved by the Planning Board.

(4) Multifamily development design standards.

- (a) A multifamily development is permitted in more than one principal building on an individual lot. No building shall be longer than one hundred sixty (160) feet. No roofline of any structure shall exceed eighty (80) feet without a break of at least five percent (5%) of the building's width.
  - (b) Principal buildings shall be situated no closer than the height of the highest adjoining building wall but in no case closer than forty-five (45) feet, whichever is greater. Buildings may be required to be oriented in a manner that optimizes solar energy usage, consistent with other site plan elements.
  - (c) Centralized waste disposal facilities shall be provided and screened.
  - (d) An application for a multifamily development shall require submission of a landscaping plan which shall ensure a combination of trees, shrubs and other plantings to minimize and break-up significant expanses of impervious surfaces. Landscaping treatments shall be provided around the principal buildings, within parking lots, accentuating pedestrian ways and driveways, and shall be used to screen ancillary utility infrastructure within the development and as otherwise required by this Zoning Chapter.
  - (e) No parking lot area shall be situated closer than fifteen (15) feet to a principal building.
  - (f) Construction materials shall be of a color and texture characteristic of the community, and said color and texture shall be muted to blend with the natural landscape, which shall be subject to Planning Board approval.
  - (g) Exterior lighting along walks and near buildings shall be provided utilizing architectural grade equipment.
  - (h) Walks shall be provided throughout the development to ensure that driveways or streets shall not be required for pedestrian circulation.
- U. Stable, private, subject to the following regulations:
- (1) The minimum lot area required to stable one horse shall be two (2) acres, plus one (1) additional acre for each additional horse.
  - (2) There shall be no stabling of horses or storage or use of manure or other dust-producing substances within a distance of one hundred (100) feet of any lot line.
  - (3) Nothing herein shall permit operation of a commercial stable accessory to a single family detached dwelling.
  - (4) The Planning Board may impose reasonable conditions on the location of the stable to protect an individual on-site well or septic system from damage or to protect adjoining properties.
- V. Public outdoor amusement or outdoor entertainment, subject to the following regulations:
- (1) The Town Board, in its discretion, shall be responsible for the approval or disapproval of any proposed public outdoor amusement or entertainment activities. The Planning Board shall review and render a decision on any site plan required in conjunction with the special use permit. In addition to the Tourism Business District, the Town Board, in its discretion, may approve or disapprove an activity on a lot elsewhere in the Town subject to these special use permit conditions.

- (2) A safety management plan shall be submitted which details how accidents and emergencies will be handled by the local service providers. The plan shall be reviewed by the applicable emergency service providers, whose comments shall be considered. The Town Board shall be responsible for reviewing and approving the safety management plan, and a copy thereof in final form shall be filed by the applicant with the Town Clerk.
- (3) If required, a mass gathering permit as per 10 NYCRR Part 7.4 shall be obtained for the proposed activities and shall be made a condition of the special use permit.
- (4) In reviewing the proposed use, the Town Board may impose restrictions on lighting, noise levels, hours of operation, duration of the event, and other operations to protect the health, safety and welfare of the community.
- (5) Banners, pennants, and related signs pertaining to public outdoor amusement or outdoor entertainment requiring special permission of the Town Board pursuant to the requirements of this section shall be addressed within the purview of such Town Board approval pursuant to Article VII.

W. Public utilities, subject to the following regulations:

- (1) Access to such facilities shall be so located as to draw a minimum amount of vehicular traffic to and through residential streets.
- (2) The location, design and operation of such facility shall not adversely affect the character of the surrounding residential area.
- (3) Adequate fences, barriers and other safety devices and landscape screening shall be provided when required by the Planning Board to screen views of the utilities from adjoining properties.

X. Resort lodge, subject to the following regulations:

- (1) One or more principal buildings are permitted on a lot.
- (2) Retail, office, or personal service business uses are permitted and shall clearly be accessory and incidental to the resort lodge, shall be conducted in a principal building within which the guest sleeping rooms are situated, and shall not exceed 10 percent (10%) of the gross floor area of all principal buildings. Conference and meeting rooms are also permitted and shall occupy no more than fifty percent (50%) of the gross floor area of all principal building(s) of the resort lodge.
- (3) The minimum lot area shall be twenty-five (25) acres for the first guest sleeping room, and one guest sleeping room for every 10,000 square feet of lot area thereafter.
- (4) Accessory structures shall be set back 50 feet from any lot line. Outdoor recreation uses shall be set back 100 feet from any lot line, except that walking trails may be located no less than 50 feet from any property line unless said trail is connected to another trail located offsite, wherein no setback is required to achieve the connection.
- (5) Parking. The minimum parking requirements are as follows:
  - (a) For each guest sleeping room - 1.2 parking spaces
  - (b) For each 50 square feet of dining area - 1 parking space
  - (c) For each two seats in meeting rooms or group assembly areas - 1 parking space
  - (d) For each 300 square feet of retail, office, or personal-service use – 1 parking space

- (6) No loading, truck parking, trash containers or outdoor storage area shall be located within 100 feet of an adjacent residential zone. All such areas shall provide visual and noise screening to minimize impacts on adjacent residential property.
- (7) Signs.
- (a) One identification sign is permitted at each entrance to the resort. The maximum height shall be 6 feet and the maximum sign area 16 square feet per sign face.
  - (b) On entrances from all other streets, the maximum height shall be 4 feet and the maximum area 16 square feet, aggregate.
- (8) Recreational vehicles and camps. Recreational vehicles, which may include travel trailers, camper trailers, motor homes and tents, are permitted accessory to a resort lodge within a recreational vehicle park. The number of recreational vehicles shall not exceed 25% of the total number of guest rooms in the resort lodge, except that the Planning Board, in its discretion, may allow additional recreational vehicles where it finds the property is sufficiently large to accommodate same, and further provided that in no event shall the total exceed 45% of all guest rooms. The following additional standards shall apply:
- (a) The area shall be offered on a transient basis. Sites are rented on a daily or weekly basis or otherwise permitted by the owner to be used for camping on a temporary short-term basis.
  - (b) Individual plots where a recreational vehicle or tent is allowed shall be separated from buildings by a minimum distance of 100 feet. No recreational vehicle or tent platforms shall be located closer than 50 feet to the street right-of-way or any adjacent property line. Each recreational vehicle or tent shall have a dedicated area to accommodate same of 300 square feet.
  - (c) No less than one off-street parking space shall be provided on each lot, in addition to the site area provided on each lot for placement of the recreational vehicle or tent.
  - (d) All driveways shall be cleared, graded and improved to a twelve-foot-width for one-way traffic and twenty-foot-width for two-way traffic. Such driveways shall be improved to a year-round passable condition and include periodic speed bumps on each major tangent section to reduce speed.
  - (e) No individual on-site sewerage or water supply shall be permitted, and all community systems for the common use of campground occupants shall fully comply, as evidenced by approved plans, with standards imposed by the Orange County Department of Health.
  - (f) No less than 20% of the gross site area of the RV area shall be set aside and developed as common use areas for open and enclosed recreational facilities. No recreational vehicle site, required buffer strip, street right-of-way, cartway, storage area or utility site shall be counted as meeting this requirement.
  - (g) No parking, loading, or maneuvering incidental to parking or loading shall be permitted in connection with the RV area on any public street, sidewalk, required buffer, right-of-way or any public grounds.
  - (h) The RV area shall be used only for transient camping purposes. No improvement or living unit designed for permanent occupancy shall be erected. All recreational vehicles in the development shall be maintained in a transportable condition at all times, except for temporary removal of a hitch, and meet all requirements that may be imposed by the State



of New York. Any action toward removal of wheels or to attach the recreational vehicle to the ground for stabilization purposes is hereby prohibited. Camping space shall be rented by the day, week or season or may be leased or purchased. No campground or RV park lot, except as provided above, shall be the primary and principal residence of the occupant, each campground or RV park lot to be used and occupied (excepting for occasional guests) for camping and recreational purposes only by a single household.

- (i) The management of the resort shall be responsible for maintaining accurate records concerning the occupancy of all RV areas.
  - (j) Dumping or placement of any sanitary waste anywhere in the RV area is prohibited, except where the Planning Board has approved facilities for same. No outside toilets shall be erected or maintained. Plumbing fixtures within any recreational vehicles placed upon lots in the campground or RV park shall be connected to the sewage disposal system for the development. Sanitary facilities, including toilets and showers, shall be provided in separate buildings located in the resort lodge.
  - (k) No noxious or offensive activities or nuisances shall be permitted. Such nuisances shall include, but not be limited to, noise which exceeds the limitations set forth herein; uncontrolled fires or repeated burning (except for camp fires) which results in soot, cinders, smoke, noxious fumes, gases or unusual odors emanating beyond the property line of the development.
  - (l) No animals shall be kept or maintained in any RV area, except the usual household pets (cats, dogs and the like). Pets shall be kept confined so as not to become a nuisance.
  - (m) No person shall burn trash, garbage or other like refuse. All such refuse shall be placed and kept in airtight receptacles. No owner or occupant shall permit the accumulation of litter or refuse or junk vehicles.
  - (n) Picnic tables, benches, storage sheds, fireboxes or fireplaces and similar items of personal property may be placed within an RV area. All personal property on a campground or RV park lot shall be maintained in good condition so as not to become unsightly.
  - (o) No recreation vehicle shall be parked on any street or roadway within the development.
  - (p) Potable water drinking supplies shall be provided within 300 feet of each RV lot and be operational during any period of occupancy.
  - (q) Every RV area shall be accessible by fire and emergency equipment and shall be maintained in such condition, free of obstacles to access.
  - (r) No loudspeaker or amplifying device shall be permitted in connection with any camp, campground, RV park or other use which can be heard beyond the bounds of the property lot where the use is located.
- Y. Stables, commercial, and riding academies, subject to the following regulations:
- (1) The minimum lot area shall be ten (10) acres for the first horse stabled, plus an additional one-half (0.5) acre for each additional horse. One stable stall shall be provided for each horse housed on the site unless the applicant can demonstrate that a stable stall is not appropriate or necessary.
  - (2) There shall be no stabling of animals or storage or use of manure or other dust-producing

substances within a distance of two hundred (200) feet of any lot line.

- (3) Riding trails may be no closer than fifty (50) feet to any lot line, nor shall any riding trail cross a public way, road, street or highway unless by special resolution of the Town Board as set forth in the Vehicle and Traffic Code of the Town of Tuxedo.
  - (4) The Planning Board, in its discretion, may allow outdoor lighting. If outdoor lighting is provided for riding areas, the applicable setbacks shall be doubled. All lighting shall be located so as to not be visible at its source from any adjoining property. Screening of a type and in an amount specified by the Planning Board shall be provided to visually buffer the riding academy from any adjoining nonagricultural use.
  - (5) Public events, demonstrations, horse shows, rodeos, and competitive events held in connection with riding academies or stables shall require a special use permit from the Town Board as a public outdoor amusement or entertainment event. In addition to the conditions applicable to a public outdoor amusement or entertainment event, the Town Board shall take into consideration the duration of the event, the proximity of the riding academy to adjacent residential uses, the availability of off-street parking, and the ability of the road to accommodate additional traffic generated by the event. The Town Board may limit or prohibit said events where it determines that the events may have a negative traffic, visual, noise, or other detrimental effect on the surrounding neighborhood.
  - (6) In passing upon any application for a stable or riding academy, the Planning Board shall consider the drainage, percolation and topography of the proposed site, and its proximity to public or private water supplies.
  - (7) The use of outdoor public-address systems may be permitted, provided that the sound shall not be audible beyond the property line.
  - (8) The site plan shall illustrate a plan of manure storage and processing. Appropriate structures, such as concrete platforms or containers or similar devices, shall be required to store manure on-site to prevent its seepage into the ground.
  - (9) A riding academy is permitted in a principal building, which may have an indoor riding ring, lockers, snack bar, tack room, and similar uses clearly incidental to the function of the property as a riding academy. Said building shall not exceed the maximum building footprint established for the district in which the use is situated. Accessory structures are allowed, including but not limited to outdoor riding rings, trails, cross-country jumps, stables and equipment storage. No accessory building set forth in this paragraph shall be situated closer than fifty (50) feet to an adjoining lot line.
- Z. Tourism-related winery, brewery, distillery or similar food processing, subject to the following:
- (1) The principal building within which the food processing occurs shall not exceed 20,000 square feet. The maximum building height shall be two (2) stories or 25 feet.
  - (2) Adequate parking facilities shall be provided for employees and visitors. Visitor spaces shall be located so as not to create conflicts between pedestrian movements and food processing activities.
  - (3) All wastes shall be stored indoors or shall be screened and fenced in a location not visible to the public. No waste that emanates odors that are discernible at the property line shall be stored outdoors.

- (4) Outdoor storage of materials and products used in the food processing operation only is permitted and shall be screened from public view. No materials shall be stored at a height greater than 15 feet. A combination of fencing, supplemental plantings and/or landscaping shall be provided to screen storage areas from public viewing areas.
- (5) All parking facilities shall be located no closer than 50 feet to any property line.
- (6) A lighting plan shall be submitted in accordance with § 98-39 of the Zoning Chapter.
- (7) A landscaping plan shall be submitted in accordance with § 98-38 of the Zoning Chapter.

**§ 98-52 through 54. Reserved.**

## ARTICLE XI. SITE PLAN REVIEW

### § 98-55. Site plan review.

In all cases where this Zoning Chapter requires site plan approval, no building permit or certificate of occupancy shall be issued by the Code Enforcement Officer except upon authorization of, and in conformity with, a site plan approved by the Planning Board.

A. Objectives. In its decision-making, the Planning Board shall consider the public health, safety and welfare and the comfort and convenience of the public in general, the occupants of any proposed development, and the residents of the immediate neighborhood in particular. The Planning Board may prescribe such appropriate conditions and safeguards as may be required in order that the result of its action shall, to the maximum extent possible, further the expressed intent of this Zoning Chapter and accomplish the following objectives:

- (1) Location, arrangement, size, design of buildings, lighting and signs shall be compatible with the Town's community character as defined in the Town Comprehensive Plan and design standards set forth in this Zoning Chapter.
- (2) The development shall be consistent with the Town of Tuxedo Highway Specifications, where applicable, and the arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, sight distance and traffic controls, shall be deemed adequate.
- (3) Sufficient and adequately designed off street parking spaces and loading areas are provided, and the internal circulation system shall be adequate to provide safe accessibility within the site.
- (4) The arrangement and relationship of pedestrian access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience shall be adequate.
- (5) All entrance and exit driveways shall be located with due consideration for traffic flow so as to afford maximum safety to traffic on public streets and shall be reviewed and approved by the appropriate state, county, or local authority prior to the granting of site plan approval.
- (6) All lighting on premises shall comply with the outdoor lighting standards found in § 98-39.
- (7) Wherever practical, cross access between properties shall be provided to reduce the number of curb cuts and limit the amount of traffic on any arterial or collector road. The Planning Board may require a site layout, subject to appropriate agreements, that facilitates future cross access in anticipation of future adjoining development.
- (8) Wherever practical, shared joint access to arterial or collector roads shall be provided to limit conflicting turning movements, reduce traffic congestion, reduce potential points of conflict between through and turning traffic, and facilitate the control and separation of vehicles and pedestrian movement.
- (9) Any increase in the rate of stormwater runoff shall be mitigated in accordance with Town standards, NYSDEC regulations and best management practices.
- (10) Water supply and sewage disposal facilities shall be adequate to serve the development.
- (11) The type and arrangement of existing or proposed fences, walls, trees, shrubs and other

landscaping shall be adequate to constitute a visual screen and/or noise buffer.

- (12) Landscape plantings such as shrubs, ground cover, and shade trees, as well as perennials and annuals and other materials, such as rocks, water, sculpture, art, walls, fences, paving materials and street furniture, shall be encouraged to create pedestrian scale spaces and to maintain landscape continuity. All landscaping within the site shall be designed to facilitate conservation of the environment and preservation of a visually attractive community character through the use of native plant material and the retention of existing natural vegetation to the greatest extent practicable.
  - (13) All recreational, parking and service areas, during all seasons of the year, shall be reasonably screened from the view of adjacent residential lots, neighborhoods, and streets and the general landscaping of the site is in character with that generally prevailing in the neighborhood. Existing trees over twelve (12) inches diameter breast height (dbh) shall be retained to the maximum extent possible.
  - (14) The preservation of mature plant species, hedgerows and stone walls, wetlands, and water courses shall be in accordance with the purposes of this Zoning Chapter and disturbances shall be minimized.
  - (15) Solid waste facilities and containers, outdoor service areas, and loading docks shall be adequate to serve the proposed use and screened from public view and from adjacent residential properties.
  - (16) Utilities. Newly installed on-site utility service systems, and service revisions shall be installed underground to the maximum extent practicable. The Planning Board may require that on-site aboveground utility service systems be placed underground where upgrades are proposed to same as part of the development.
  - (17) Any application involving the renovation or reuse of existing buildings or structures shall require the retention of design elements that preserve historic character.
  - (18) Improvements shall be consistent with the Town of Tuxedo Comprehensive Plan.
  - (19) Development shall limit impacts to the Ramapo River sole source aquifer, groundwater and surface water resources to the maximum extent practicable through implementation of appropriate water quality protection measures.
  - (20) Where a sign is included on the site plan, the sign shall comply with the regulations of Article VII of this Zoning Chapter.
- B. Based upon a legislative finding of the Town Board, the Planning Board is also hereby empowered to resolve land use issues involving site plan approvals, including without limitation, vested rights and RLUIPA claims, in a manner which is expeditious, cost effective, and fair in order to lessen the burdens on property owners and on the Town while conserving judicial resources. Planning Board decisions are judicially reviewable on a full record developed before the Planning Board.
- (1) Nevertheless, when an applicant demonstrates that application of a law, rule, or regulation violates its rights in some cognizable manner and/or imposes a substantial burden on its religious practice, it shall seek relief from the Planning Board, which relief shall be granted unless it is found that the law, rule, or regulation is in furtherance of a compelling public interest. In the event there is a compelling public interest for the law, rule, or regulation, the Planning Board shall, if possible, grant relief which is the least restrictive means of furthering

that compelling public interest.

- (2) In determining vested rights, RLUIPA, or any other cognizable claim, the Planning Board shall consider the guidance and precedents of the courts, both state and federal, in determining such claim.
- (3) No action or proceeding for judicial relief against the Town, its officers, agents, or employees, shall be ripe for review unless the applicant has sought relief from the Planning Board pursuant to these provisions. The Planning Board shall develop a record of its proceedings. All Planning Board decisions are reviewable by the court pursuant to CPLR 217 or other applicable law.

C. Effect of site plan approval.

- (1) No building permit shall be issued prior to approval of the site plan by the Planning Board.
- (2) No certificate of occupancy or use will be issued for any structure or use of land regulated by this section unless the structure is complete or the land is developed or used in accordance with an approved site plan.

D. Procedure.

- (1) Pre-submission meeting. Prior to the submission of a site plan application, the applicant shall meet in person with the Planning Board or its designated representatives at a Technical Advisory Committee meeting. The Planning Board or its designated representatives will review a sketch plan or other materials that are submitted by the potential applicant and shall advise the applicant preliminarily of the merits of the proposal based on a review of the Zoning Chapter, its consistency with the Town Comprehensive Plan, and potential site plan issues and concerns. The Planning Board or its designated representatives will identify the data to be submitted in conjunction with the site plan application.
- (2) Within six (6) months following the pre-submission meeting, the requisite number of copies of the site plan and any related information shall be submitted to the Planning Board at least fifteen (15) days prior to the Board meeting at which the application shall be reviewed. If the site plan is not submitted within the six-month period, another Technical Advisory Committee meeting may be required.
- (3) Area variance. Where a proposed site plan contains one or more features which do not comply with this Zoning Chapter, application may be made to the Zoning Board of Appeals for an area variance pursuant to Article XIII, without the necessity of a decision or determination of the Code Enforcement Officer or a referral from the Planning Board.
- (4) Acceptance of site plan application. Upon receipt of an application for site plan approval, the Planning Board shall review the application and accompanying maps for completeness. Upon a determination that the application is complete, the Board shall accept the application at its next regular meeting. The date on which the Planning Board deems the application complete shall be considered to be the date an application for site plan approval is made. An application shall not be deemed complete unless a fee for site plan application has been paid in accordance with the Schedule of Fees of the Town of Tuxedo.
- (5) Fees. An application for a site plan approval shall be accompanied by an application fee as set by the Town Board. All application fees are in addition to any required escrow fees, and do not

cover the cost of environmental review. The applicant shall be responsible for the total cost of environmental reviews that are determined to be necessary to meet the requirements of the State Environmental Quality Review Act (SEQRA). If the Planning Board requires professional review of the application by the Town's planning, engineering, legal or other consultants, or if it incurs other expenses to review documents or conduct special studies in connection with the proposed application, the applicant shall be responsible for reimbursing the Town in accordance with Chapter 48, Fees, of the Code of the Town of Tuxedo.

- (6) Violations. No site plan approval shall be issued for any use or new construction where a violation exists on the subject property of any chapter of the Town of Tuxedo Code or the New York State Uniform Building Codes. Further, upon written report or receipt of a notice of violation or order to cease and desist from the Code Enforcement Officer, the Planning Board shall not review, hold public meetings or public hearings, or take action regarding an application for site plan approval until notified by the Code Enforcement Officer that such violation has been cured or ceased by the applicant. A site plan application shall not be deemed complete in the absence of such notification. However, the Planning Board may, upon written recommendation of the Code Enforcement Officer, review and act on an application involving property for which there is a violation where such application is a plan to cure the violation and bring the property or use of the property into compliance with the Town Code.
- (7) Referrals. Depending on the nature of the application, the Planning Board may require that additional copies of the site plan application be forwarded to one or more of the following reviewers:
  - (a) Town Highway Superintendent;
  - (b) Town Engineer, Town Planner or other department, official or agency of the Town;
  - (c) Emergency and community service providers, including the applicable fire and/or school district;
  - (d) Water, sewer, electric, gas, cable, phone, or other utility service providers;
  - (e) Orange County Highway Department or Orange County Health Department;
  - (f) The NYSDOT, the NYSDEC, NYSOPRHP;
  - (g) Palisades Interstate Park Commission;
  - (h) U.S. Army Corps of Engineers, Federal Emergency Management Agency;
  - (i) An expert consultant qualified to advise on the subject matter, e.g., a radiofrequency or traffic engineer.
  - (j) Any other agency that the Planning Board deems appropriate based on the nature of the application.
- (8) SEQRA. The Planning Board shall comply with the provisions of the New York State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations.
- (9) Public hearing. The Planning Board may hold a public hearing on the site plan. If a hearing is held, such hearing shall be held within sixty-two (62) days of the Planning Board's acceptance of a complete site plan application. The Planning Board shall give public notice of said hearing in a newspaper of general circulation in the Town at least five (5) days prior to the date thereof.

Notice of such hearing shall be given by the applicant to the owners of adjacent or surrounding properties within two hundred (200) feet of the subject property at least ten (10) days before said hearing and proof of such notice shall be filed with the Planning Board. Nothing herein shall preclude the holding of a public hearing on any matter on which a public hearing is not so required. Where a special use permit is required for the proposed action, the public hearing on the special use permit shall be coordinated with any hearing on the site plan application to the maximum extent possible.

- (10) Notice to Orange County Planning Department. At least ten (10) days before such hearing, the Planning Board shall mail notices thereof to the Orange County Planning Department as required by section 239-m of the General Municipal Law of the State of New York, which notice shall be accompanied by a full statement of such proposed action as defined therein. In the event a public hearing is not required, such proposed action shall be referred before the final action is taken thereon.
- (11) Site plan decision. The Planning Board shall render a decision within sixty-two (62) days of the close of a public hearing, or within sixty-two (62) days after receipt of a complete site plan application if no public hearing is held. The Planning Board may approve, conditionally approve, or disapprove a site plan. The time within which the Planning Board must render its decision may be extended by mutual consent of the applicant and the Planning Board. The date of the decision shall be the date on which the Planning Board meets and votes and renders the decision. The decision of the Planning Board shall be filed in the office of the Town Clerk within five (5) business days after such decision is rendered, and a copy thereof mailed to the applicant. A copy of the decision shall also be filed with the Code Enforcement Officer. The Planning Board may approve, approved with modifications or disapprove the site plan as follows:
  - (a) Approve. Upon approval of the site plan and payment by the applicant of all fees and reimbursable costs due to the town, the Planning Board Chairman shall endorse its approval on a copy of the site plan by affixing his signature thereto.
  - (b) Approve with modifications. The Planning Board may approve the site plan with modifications or conditions attached thereto. Upon a determination that the modifications and conditions have been met, and after payment by the applicant of all fees and reimbursable costs due the Town, the Planning Board Chairman shall endorse the site plan by affixing his signature thereto.
  - (c) Disapprove. The Planning Board shall set forth its findings of disapproval as part of the record of decision.
- (12) Conditions. The Planning Board shall have the authority to impose reasonable conditions and restrictions as are directly related and incidental to a site plan. The Planning Board may require that site plan approval be periodically reviewed if the intensity of the projected use and other impacts of the project are uncertain. Upon approval of the site plan, any conditions attached to said approval must be met prior to the signing and filing of the site plan map.
- (13) Site plan amendments. Amendments to a site plan shall be acted upon in the same manner as the approval of the original plan.
- (14) Signing and filing. Following approval by the Planning Board, the site plan shall be signed by the Planning Board Chairperson and filed with the Building Department. The maps may not be signed until all Planning Board conditions required prior to filing the signed map are satisfied.



One (1) copy shall also be filed with the Code Enforcement Officer, who may thereafter issue a building permit or certificate of occupancy in reliance thereon. No changes, erasures, modifications or revisions shall be made to any site plan after approval has been granted by the Board and endorsed, in writing, on the site plan, otherwise the site plan shall be deemed void.

(15) Site plan approval; maintenance a continuing obligation.

- (a) Expiration of approval. Site plan approval, with or without conditions, shall expire no later than six (6) months from the date of the approval, as per subsection 98-55.D(11) above, unless a building permit has been issued by the Code Enforcement Officer, or unless a certificate of occupancy has been issued by the Code Enforcement Officer in the event a building permit is not required. The Planning Board may, in its sole discretion, grant up to three (3) extensions of the site plan approval, each for a period not to exceed six (6) months. Each extension may only be granted upon written request of the applicant delivered to the Planning Board no less than ten (10) days prior to expiration of the site plan approval. No further extensions shall be granted.
- (b) If no certificate of occupancy has been issued, site plan approval shall be effective for a total period of three (3) years from the date the resolution of approval is adopted by the Board, notwithstanding any extension granted. If, at the end of the three-year period, the applicant has not completed construction, final site plan approval shall automatically expire and the applicant must reapply for site plan approval pursuant to this Zoning Chapter.
- (c) Site maintenance. It shall be a continuing obligation and requirement to maintain a property in conformity with the approved site plan. Failure to do so shall constitute a violation of this Zoning Chapter.

**§ 98-56. Reservation of parkland.**

- A. Before the Planning Board may approve a site plan containing residential units, such site plan shall also show, when required, a park or parks suitably located for playground or other recreational purposes.
- B. Land for parks, playgrounds, or other recreational purposes may not be required until the Planning Board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the Town. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the Town based on projected population growth to which the particular site plan will contribute.
- C. In the event the Planning Board makes a finding that the proposed site plan presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet the requirement cannot be located on the property, the Planning Board may require a sum of money in lieu thereof be provided in an amount established by the Town Board. In making such determination, the Planning Board shall assess the size and suitability of lands shown on the site plan which could be possible locations for parks or recreational facilities, as well as practical factors including whether or not there is a need for additional facilities in the immediate neighborhood. Any monies required by the Planning Board in lieu of land for park, playground or other recreational purposes shall be deposited into a fund to be used by the Town exclusively for park, playground or other recreational purposes, including the acquisition of property.
- D. Notwithstanding the foregoing, if the land included in a site plan under review is a portion of a

subdivision plat which has been reviewed and approved pursuant to the Town of Tuxedo subdivision regulations, the Planning Board shall credit the applicant for any land set aside or money donated in lieu thereof under such subdivision plat approval. In the event of resubdivision of such plat, nothing shall preclude the additional reservation of parkland or money donated in lieu thereof.

**§ 98-57. Performance bond or other surety.**

As an alternative to the installation of required infrastructure and improvements and prior to approval by the Planning Board, a performance bond or other sufficient surety to cover the full cost of the same, shall be furnished to the Town by the owner. The amount of the security shall be estimated by the Town Engineer or a designated representative of the Planning Board, and its form shall be approved by the Town Attorney. Such security shall be provided to the Town pursuant to the provisions of §277 of the New York State Town Law.

**§ 98-58. Site plan data.**

- A. Application form. An application for site plan approval shall be submitted to the Building Department on forms provided by the Department for such purpose. The application form shall be completed by the applicant and the owner and shall be accompanied by a site plan as provided herein. A site plan application form must be completed and an owner consent affidavit shall be completed in full with original signature(s) and submitted with the application. An Environmental Assessment Form shall accompany the site plan application unless the Planning Board determines that the action is an exempt action (Type II action) as that term is defined in the regulations implementing the New York State Environmental Quality Review Act.
- B. Site plan. The site plan shall use as a base map an accurate boundary and topographic survey of the property depicting all existing improvements and site topography, and shall be prepared by a licensed land surveyor, a professional engineer, a landscape architect, or an architect licensed by the State of New York. The site plan shall have a maximum size of 34 inches x 44 inches and shall contain the data below, unless waived by the Planning Board:
- (1) Section, block and lot number of the property as identified on the most current tax records, and Tuxedo project ID number.
  - (2) Name and address of the owner of record and name and address of the applicant, if different than the owner.
  - (3) Name, address and telephone number of the person, firm or organization preparing the map.
  - (4) Date, north arrow and written and graphic scale.
  - (5) Sufficient description or information to define precisely the boundaries of the property. All distances shall be in feet and tenths and hundredths of a foot. All angles shall be given to the nearest ten (10) seconds or closer or equivalent in decimal degrees. The error of closure shall not exceed one (1) in ten thousand (10,000).
  - (6) The location, name and existing right-of-way width and pavement width of adjacent streets and curb locations.
  - (7) Locations and owners of adjoining property as identified on the most current tax records within 200 feet of the property boundary.
  - (8) Location, width and purpose of all existing and proposed easements, setbacks, reservations and

other restricted areas, whether private or dedicated to public use, within or adjoining the property.

- (9) A complete description and references to existing deed restrictions or covenants applicable to the subject property. The Planning Board may require submission of a copy of a title report prepared for the subject property to be reviewed by the Planning Board attorney.
- (10) Existing zoning and bulk requirements applicable to the subject property.
- (11) Area map taken from, and at the same scale as, the Town of Tuxedo zoning map. Existing zoning district boundaries within 500 feet of the property lines shall be shown.
- (12) A map showing all contiguous property held in the same ownership or controlled by the same applicant on the area map.
- (13) A 3.5-inch blank square, in the lower right-hand corner, situated above the title block, to be used for the signatures of the Planning Board Chairperson.
- (14) A reference to NYS Public Service Law Part 753 requirements (Dig Safely New York).
- (15) Standard site plan notes described in the application for site plan approval.

D. Natural features.

- (1) Existing contours at intervals of two (2) feet or less, referring to a datum satisfactory to the Town Engineer.
- (2) Approximate boundaries of any areas subject to flooding or storm water overflows, including the 100-year and 500-year floodplain as shown on the most recent maps prepared by the Federal Emergency Management Agency.
- (3) Delineated and surveyed boundaries of all freshwater wetlands in accordance with the methodology promulgated by the Town, the U.S. Army Corps of Engineers, or the NYSDEC, as applicable. In the case of a NYSDEC-regulated wetland, the 100-foot adjacent area shall be shown.
- (4) Location of existing watercourses, marshes, wooded areas, rock outcrops, isolated trees with a diameter at breast height (dbh) of 12 inches or more, measured three (3) feet above the base of the trunk, and other significant existing natural features as may be required by the Planning Board. For water courses, the water quality classification shall be included, and any area subject to a NYSDEC Protection of Waters Permit shall be delineated on the plan.

E. Existing structures and utilities.

- (1) Location of uses and outline of structures on the subject property and adjacent properties, drawn to scale, within one hundred feet of the lot lines.
- (2) Streets, paved areas, sidewalks and vehicular driveways and access locations on the subject property and immediately adjacent thereto.
- (3) Locations, dimensions, grades and flow direction of existing sewers, culverts and waterlines as well as gas, electric, or other underground and aboveground utilities within and adjacent to the property. The potential for any use, activity, or operation to come in close proximity to electrical lines regulated under the High Voltage Proximity Act shall be identified.
- (4) Other existing structures, including fences, walls, landscaping and screening.

- F. Proposed development.
- (1) The footprint or location of proposed buildings and other structural improvements. Building footprints shall show the locations of regular and emergency access to any proposed building or use. Sufficient spot elevations shall be provided so that the elevations of any proposed improvements can be evaluated in comparison to surrounding grade.
  - (2) Proposed contours and grading of the site and limits of disturbance. A calculation of the total amount of disturbance shall be provided.
  - (3) All pertinent zoning setback and yard dimensions and parking computations. A bulk table shall be provided, identifying non-complying items or those that require a variance.
  - (4) Single line building floor plans and elevations.
  - (5) The location and design of all accessory uses and facilities, including but not limited to parking and loading areas, retaining walls, fences, benches, recreation facilities, garbage enclosures.
  - (6) The location of all open spaces, including but not limited to recreation areas, landscaped areas, and areas to remain in their natural state.
  - (7) A lighting plan, showing the location, height, direction, power and time of use for any proposed outdoor lighting or public address systems.
  - (8) Sign location and dimensions.
  - (9) The location and arrangement of proposed means of access and egress, including sidewalks, driveways or other paved areas; profiles indicating grading and cross sections showing width of roadway, location and width of sidewalks.
  - (10) The location and size of all proposed water, sewer, electric, gas, and drainage lines and facilities.
  - (11) Landscaping plan including labels for existing and proposed plants and plantings, including plant species, quantities and planting size.
  - (12) Soil erosion and sediment control measures.
  - (13) Stormwater Pollution Prevention Plan (SWPPP), if required by the Planning Board or as otherwise required in accordance with NYSDEC regulations.
  - (14) Detail sheets for the various improvements shown on the site plan.
  - (15) A description or outline of proposed easements, deed restrictions or covenants.
  - (16) Any contemplated public improvement on or adjoining the subject property.
  - (17) If the site plan indicates a first phase only, a supplementary plan shall indicate ultimate development.
  - (18) A list of all required federal, state, county or local permits and approvals.
- G. Additional data. The Planning Board may require submission of any additional data or information that it deems necessary to determine conformity of the proposed action with this Zoning Chapter.
- H. Stormwater management. The Planning Board shall require the applicant to submit a storm water management plan to mitigate impacts associated with increases in storm water runoff and changes in water quality. The Planning Board shall require an applicant to install adequate water quality

protection devices.

- I. Site plan revisions. All site plans that have been revised shall have a number noted in a triangle next to the revision, accompanied by the date and a brief descriptive summary of the revision.

**§ 98-59. Reserved.**

## ARTICLE XII. ARCHITECTURAL REVIEW

### § 98-60. Legislative Intent.

- A. The Town Board hereby finds and declares that it is desirable to take measures to provide for the preservation and enhancement of the commercial properties in the Town of Tuxedo, including, among others, those located on NYS Route 17, to provide for superior architectural design in certain residences and larger new subdivisions, and to coordinate the architectural review envisioned in the Planned Integrated Development (PID) regulations.
- B. The Town Board hereby further finds and declares that inappropriateness or poor quality of design in the exterior appearance of commercial buildings and certain residences and subdivisions adversely affect the desirability of the area for business uses and residential uses, and by so doing, impairs the value of both improved and unimproved real property in such areas, prevents the most appropriate development of such areas, and destroys a proper relationship between the taxable value of property in such areas and the cost of municipal services provided therefor.
- C. The Town Board is adopting this local law in furtherance of the following public purposes, which are found to promote the economic benefits, the cultural advantages and general welfare of the Town:
  - (1) To provide for the protection and enhancement of the commercial properties located on NYS Route 17 which are illustrative of the growth and development of our nation, our state and our Town and are of particular historic or aesthetic value.
  - (2) To recognize and ensure the preservation of those elements of the Town's past which represent various architectural, artistic, and cultural achievements which cannot be duplicated or otherwise replaced.
  - (3) To stabilize and improve property values within the commercial district.
  - (4) To foster civic pride in those elements of the Town's past that give the Town its unique character and set it apart from other communities.

### § 98-61. Grant of authority.

- A. The Planning Board shall administer this article.

### § 98-62. General restrictions.

- A. No commercial building or structure in the Town of Tuxedo shall be erected, built, maintained or altered and no exterior architectural feature of any commercial building or structure which involves a change in design, material, color, or outer appearance thereof shall be permitted and no building permit issued except upon authorization of and in conformity with plans approved by the Planning Board.
- B. A residential building used for or converted to a commercial use, except for a home office or occupation having no external evidence of such use, shall be subject to and in conformity with plans

approved by the Planning Board.

- C. A proposed residential building or structure in a subdivision of five (5) or more lots hereinafter approved by the Planning Board shall be subject to and in conformity with architectural plans approved by the Planning Board.
- D. A proposed two-family or multi-family residential building or structure shall be subject to and in conformity with plans approved by the Planning Board.
- E. No building or structure in a Planned Integrated Development (PID) shall be erected, built, maintained or altered and no exterior architectural feature of any structure in a PID which involves a change in design, material, color, or outer appearance thereof shall be permitted and no building permit issued except upon authorization of and in conformity with plans approved by the Planning Board.
- F. Nothing herein shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature of a structure which does not involve a change in design, material, color, or outer appearance thereof.

**§ 98-63. General purposes.**

The Town Board hereby finds that it is in the best interests of the citizens of the Town of Tuxedo and protective of their health, safety and economic and general welfare to ensure high standards for the visual environment of certain properties in the Town of Tuxedo which have been designated by the Town Board. It is the intent of the Town Board to prevent excessive uniformity of exterior building design where such uniformity shall be deemed inappropriate and detrimental to the visual environment. It is also the intent of the Town Board to prevent excessive dissimilarity of exterior building design where such dissimilarity shall be deemed inappropriate and detrimental to the visual environment. It is the intent of the Town Board to preserve the aesthetic value of natural and man-made features and structures and to prevent the harmful effects of potentially unattractive or inappropriate projects and the use of potentially unattractive or inappropriate building materials insofar as they may affect the visual environment.

**§ 98-64. Architectural models for dwellings in subdivisions.**

Applicants for subdivision approval may, at their discretion, submit model plans for approval by the Planning Board. Upon approval by the Planning Board, up to 20% of the residences in a subdivision may be built in conformity with an approved model without further approval by the Planning Board. Construction of more than 20% the residences in a subdivision according to any one model or according to any non pre-approved plans is subject to prior approval by the Planning Board.

**§ 98-65. Decisions.**

- A. The Planning Board may approve any application referred to it upon finding that the building or structure for which they requested the permit, if erected or altered in accordance with the submitted plan, would be in harmony with the purpose of this Chapter, would not be visually offensive or inappropriate because of poor quality of exterior design, would not have monotonous similarity or striking visual discord in relation to the sites or surroundings, would not mar the

appearance of the area, would not impair the use, enjoyment and desirability and reduce the values of properties in the area, would not be detrimental to the character of the neighborhood, would not prevent the most appropriate development and use of the site or of adjacent lands and would not adversely affect the functioning economic stability, prosperity, health, safety and general welfare of the entire community.

B. The Planning Board may disapprove an application due to excessive similarity or excessive dissimilarity or non-compliance with the rules and regulations under one (1) or more of the following conditions:

(1) Excessive similarity to any other structure existing or for which a building permit has been issued or to any other structure included in the same permit application, facing upon the same or intersecting street and within one thousand (1,000) feet of the proposed site as measured along the center line of Route 17, in respect to one (1) or more of the following features of exterior design or appearance: apparently identical front, side or other elevation visible from a street; substantially identical size and arrangement of either doors, windows, porticos or other openings or breaks in the elevation facing the street, including reverse arrangement; other significant identical features of design, including but not limited to material, routine, height or other design elements, provided that a finding of excessive similarity shall not only state that such similarity exists but that it is of such a nature as to be reasonably expected to provoke one (1) or more of the harmful effects as described in this chapter.

(2) Excessive dissimilarity or inappropriateness in relation to any other structures existing or for which a building permit has been issued or to any other structure included in the same permit application, facing upon the same or intersecting street within five hundred (500) feet of a proposed site, in respect to one (1) or more of the following features: cubical contents, gross floor area, height and other significant design features, including but not limited to materials or quality of architectural design, provided that a finding of excessive dissimilarity shall not only state that such dissimilarity exists but that it is of such a nature as to be reasonably expected to provoke one (1) or more of the harmful effects as described in this chapter.

C. The Planning Board shall try to avoid undue financial hardship on any applicant in support of the intent of this chapter. However, the factor of increased construction cost will not automatically be considered indicative of undue hardship or excessive standards. It is not the responsibility of the Planning Board to provide design services to applicants.

D. Any substantial change in siting or in the exterior appearance of an approved structure shall be subject to approval by the Planning Board. The Code Enforcement Officer shall notify the Planning Board of any previously approved structure that is undergoing substantial changes in exterior appearance.

**§ 98-66 through 69. Reserved.**



### ARTICLE XIII. ZONING BOARD OF APPEALS

#### § 98-70. Rules and regulations.

The ZBA is hereby authorized to establish rules and regulations not inconsistent with this Zoning Chapter or the statutes authorizing the same, and may modify, amend or repeal such rules related to its functions and duties, including the preparation of forms, resolutions, etc. Any rule, regulation, amendment or repeal thereof shall be filed in the office of the Town Clerk and shall be a public record.

#### § 98-71. Powers and duties.

The ZBA shall have all the powers and duties prescribed by New York State Town Law and by this Zoning Chapter, which are more particularly specified herein, provided that none of the following provisions shall be deemed to limit any power of the ZBA that is otherwise conferred by law.

- A. Orders, requirements, decisions, interpretations, determinations. The ZBA may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by an administrative official charged with the enforcement of such ordinance or local law. To that end, the ZBA shall have all the powers of the administrative official from whose order, requirement, decision, interpretation, or determination the appeal is taken.
- B. Use variances.
  - (1) The Zoning Board of Appeals, on appeal from the decision or determination of the Code Enforcement Officer, shall have the power to grant use variances.
  - (2) No such use variance shall be granted by the ZBA without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the ZBA that for each and every permitted use under the zoning regulations for the particular district where the property is located:
    - (a) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
    - (b) 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) The requested use variance, if granted, will not alter the essential character of the neighborhood; and
    - (d) The alleged hardship has not been self-created.
  - (3) The ZBA, in the granting a use variance, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.
  - (4) Issuance of a use variance shall be conditioned upon the applicant obtaining site plan approval from the Planning Board.
- C. Area variances.
  - (1) The ZBA shall have the power, upon an appeal from a decision of the Code Enforcement Officer,

to grant area variances.

- (2) In making its determination, the ZBA shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the ZBA shall also consider:
  - (a) Whether an undesirable change will be produced in the character of the neighborhood or whether a detriment will be created to nearby properties by granting the area variance;
  - (b) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
  - (c) Whether the requested area variance is substantial;
  - (d) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
  - (e) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA, but shall not necessarily preclude the granting of the area variance.
- (3) The ZBA, in the granting of an area variance, shall grant the minimum variance that it shall deem necessary and adequate, and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.
- (4) For an area variance where said variance is part of a subdivision, site plan, or special permit review that is currently, or will be, before the Planning Board, the ZBA shall submit said variance request and all associated documentation to the Planning Board for their review and comment. If the Planning Board does not provide comment upon the area variance application within thirty (30) days of receipt of said application from the ZBA, the Planning Board shall be deemed to have waived its right to comment upon the variance.

D. Imposition of conditions. The ZBA shall, in the granting of use variances, area variances, and any other discretionary relief, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this Zoning Chapter and shall be imposed for the purpose of minimizing any adverse impact such variance or relief may have on the neighborhood or community.

**§ 98-72. Procedure.**

- A. Chairperson duties. All meetings of the ZBA shall be held at the call of the chairperson and at such other times as such ZBA may determine, and a quorum of the ZBA's membership is required for any meeting. The chairperson or, in the chairperson's absence, the acting chairperson may administer oaths and compel the attendance of witnesses.
- B. Meetings. Meetings of the ZBA shall be open to the public to the extent provided in Article 7 of the New York State Public Officers Law.
- C. Minutes. The ZBA shall keep minutes of its proceedings, showing the vote of each member upon every question or, if absent or failing to vote, indicating such fact, and shall also keep records of its examination and other official actions.
- D. Filing requirements. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the ZBA shall be filed in the office of the Town Clerk

within five business days and shall be a public record.

- E. Assistance to Zoning Board of Appeals. The ZBA shall have the authority to call upon any department, agency or employee of the Town for such assistance as shall be deemed necessary and as shall be authorized by the Town Board. Such department, agency or employee shall be reimbursed for any expenses incurred as a result of such assistance.
- F. Appellate jurisdiction. The jurisdiction of the ZBA shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation or determination made by an enforcement or administrative official. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the Town.
- G. Filing of administrative decision and time of appeals.
  - (1) Each order, requirement, decision, interpretation or determination of the administrative official charged with the enforcement of the Zoning Chapter shall be filed in the office of same within five (5) business days from the day it is rendered and shall be a public record. Any failure to so file shall not affect the validity or effective date of what is to be filed.
  - (2) An appeal shall be taken within sixty (60) days after the filing of any order, requirement decision, interpretation or determination of the administrative official, by filing with the administrative official and the ZBA a written notice of appeal, specifying the grounds thereof and the relief sought. The administrative official from whom the appeal is taken shall forthwith transmit to the ZBA all the papers constituting the record upon which the action appealed from was taken.
  - (3) Each appeal or application shall fully set forth the circumstances of the case, shall refer to the specific provision of the Zoning Chapter involved and shall exactly set forth, as the case may be, the interpretation that is claimed, the details of the variance or other relief that is applied for and the grounds on which it is claimed that the same should be granted.
  - (4) All appeals and applications made to the ZBA shall be accompanied by a fee in accordance with the Fee Schedule of the Town of Tuxedo.
- H. Stay upon appeal. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative official, from whom the appeal is taken, certifies to the Zoning Board of Appeals, after the notice of appeal shall have been filed with the administrative official, that by reason of facts stated in the certificate, a stay, would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals or by a court of record on application, on notice to the administrative official and on due cause shown.
- I. Hearing on appeal. 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 of such hearing by publication in a paper of general circulation in the Town at least five (5) days prior to the date thereof. The cost of sending or publishing any notices relating to such appeal, or a reasonable fee relating thereto, shall be borne by the appealing party and shall be paid to the ZBA prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney.
  - (1) In addition to such published notice, and in accordance with the following procedure, at least eight (8) days prior to the scheduled date of the public hearing, the applicant shall deliver copies of the notice in unsealed envelopes properly addressed to each property owner entitled to notice with pre-paid postage affixed. The return address on each envelope shall be "Building

Department Clerk, P.O. Box 725, Tuxedo, NY 10987". The Building Department Clerk shall cause the envelopes to be sealed and deposited with an official depository of the US Postal Service. The public hearing notice to be mailed by first class mail at least five (5) days before the hearing to all owners of properties which lie within four hundred (400) feet of any lot line of the property for which relief is sought and to such other owners as the ZBA may deem advisable. The names of said owners shall be taken as they appear on the last updated tax roll of the Town.

- (2) Provided that due notice shall have been published in the official paper of the Town, and that there shall have been substantial compliance with the additional applicant mailing requirements of this section, the failure to give notice in exact conformance herewith shall not be deemed to invalidate action taken by the ZBA in connection with the granting of any appeal or variance.
  - (3) Should any appeal involve either of the two (2) following conditions, the ZBA shall transmit to the designated office or official a copy of the official notice of the public hearing not later than ten (10) days prior to the date of the hearing. The designated official for counties shall be the Clerk of the County Legislature. In villages and towns, the designated official shall be the Clerk of the municipality.
    - (a) Any change in the boundaries of any district, which change would occur within a distance of five hundred (500) feet of the boundary of any village or Town, state or county road, park or other state-owned facility.
    - (b) Any change in the regulations prescribed for any district, any portion of which is located within five hundred (500) feet of the boundary of any village or Town, state or county road, park or other state-owned facility.
  - (4) At least five (5) days prior to the public hearing, the ZBA shall transmit to the Planning Board a copy of any appeal or application, together with a copy of the notice of such hearing, but only for applications or appeals which require Planning Board approval or a separate application, together with a copy of the notice of such hearing. The Planning Board may submit to the Board of Appeals an advisory opinion on said appeal or application at any time prior to the rendering of a decision by the ZBA. If the Planning Board does not provide comment upon the application or appeal within thirty (30) days of receipt of said application from the ZBA, the Planning Board shall be deemed to have waived its right to provide an advisory opinion.
- J. Time of decision. The Zoning Board of Appeals shall decide upon the appeal within sixty-two (62) days after the conduct of said hearing. The time within which the ZBA must render its decision may be extended by mutual consent of the applicant and the ZBA.
- K. Filing of decision and notice. The decision of the Zoning Board of Appeals on the appeal shall be filed in the office of the Town Clerk within five (5) business days after the day such decision is rendered, and a copy thereof mailed to the applicant.
- L. GML review. Notice to regional state park commission and Orange County Planning Department. At least five (5) days before such hearing, the ZBA shall mail notices thereof to the parties; to the regional state park commission having jurisdiction over any state park or parkway within five hundred (500) feet of the property affected by such appeal; and to the Orange County Planning Department, as required by section 239-m of the New York State General Municipal law, which notice shall be accompanied by a full statement of such proposed action, as defined in section 239-m of the General Municipal Law.

- M. SEQRA. The Zoning Board of Appeals shall comply with the provisions of the State Environmental Quality Review Act (SEQRA) and its implementing regulations.
- N. Rehearing. A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision, or determination of the ZBA not previously reheard may be made by any member of the ZBA. A unanimous vote of all members of the ZBA then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing the ZBA may reverse, modify, or annul its original order, decision, or determination upon the unanimous vote of all members then present, provided the board finds that the rights vested in persons acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.
- O. Voting requirements.
- (1) Decision of the ZBA. Except for a rehearing as set forth in subsection "N" above, every motion or resolution of the ZBA shall require for its adoption the affirmative vote of a majority of all members of the Zoning Board of Appeals as fully constituted regardless of vacancies or absences. When an action is the subject of a referral to the Orange County Planning Department, the voting provisions of section 239-m of the General Municipal Law shall apply.
  - (2) Default denial of appeal. In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the board is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision or determination of the enforcement official within the time allowed by subsection "J" above, the appeal is denied. The ZBA may amend the failed motion or resolution and vote on the amended motion or resolution within the time allowed without being subject to the rehearing process as set forth in subsection "N" above.
- P. Article 78 proceeding. Any person or persons, jointly or severally aggrieved by any decision of the Zoning Board of Appeals or any officer, department, board or bureau of the Town, may apply to the supreme court for review by a proceeding under Article 78 of the Civil Practice Law and Rules. Such proceeding shall be instituted within thirty (30) days after the filing of a decision of the ZBA in the office of the Town Clerk.
- Q. Expiration. Unless a building permit has been issued and construction commenced and diligently pursued within twelve (12) months of the date of the granting of a variance, such variance may be revoked after notice and an opportunity to be heard. Two extensions not to exceed six (6) months each) may be granted upon approval of the ZBA.

**§ 98-73 and 74. Reserved.**

## ARTICLE XIV. NONCONFORMITIES

### § 98-75. Policy.

- A. It is the policy of the Town of Tuxedo to allow the continuation of lawful nonconformities where, of themselves, such nonconformities do not endanger the public health, safety and welfare.
- B. Continuing existing uses and structures. Except as otherwise provided herein, the lawful uses, buildings, and structures in existence on the effective date of this Zoning Chapter that are made nonconforming may be continued subject to the conditions set forth in this Article.

### § 98-76. Nonconforming uses.

- A. The nonconforming use of land not involving the use of a building or structure may be continued, provided, however, it may not be physically enlarged or intensified, moved in whole or in part to any other portion of the lot or parcel of land, extended to occupy a greater area of land, nor shall external evidence of the use be increased by any means at all.
- B. A building or structure containing a nonconforming use shall not be enlarged, extended or altered structurally unless the use is changed to a conforming use, or except to conform to an order of the Code Enforcement Officer to either correct an unsafe condition or to conform to the requirements of applicable laws or regulations.
- C. No nonconforming use of a building or structure shall be enlarged or extended, except throughout any parts of the structure which were obviously or manifestly arranged or designed only for such use at the time of the adoption of this Zoning Chapter.
- D. No nonconforming use shall be changed to another nonconforming use, except as provided in § 98-79.
- E. Discontinuance. If a nonconforming use is discontinued or ceases operation for any reason for a total period of twelve (12) months during any thirteen (13) month period, or is changed to a conforming use, the right to continue the nonconforming use is eliminated and any future use shall be in conformity with this Zoning Chapter.
  - (1) A nonconforming use is deemed to be discontinued when either:
    - (a) Activities consistent with or required for the operation of the nonconforming use have ceased; or,
    - (b) The structure in which the nonconforming use was conducted is substantially vacated.
  - (2) A discontinuance within the meaning of this Zoning Chapter may occur regardless of whether an intent to abandon the nonconforming use exists and irrespective of the adaptation of the structure to that activity.
- F. If any nonconforming use is removed, any subsequent use must comply with the standards specified in this Zoning Chapter.

### § 98-77. Noncomplying bulk.

A building, structure, or activity that is conforming to use but situated on a lot in a manner that does not comply to applicable bulk requirements, including but not limited to lot area, yard dimensions, building height, development coverage, off street parking, loading, or other bulk requirements set forth in this Zoning Chapter shall be deemed to possess noncomplying bulk. Routine normal maintenance, repairs,

and alterations that decrease or diminish said noncompliance are permitted. No permit shall be issued that will increase the nonconformity of any bulk requirements without an area variance from the Zoning Board of Appeals.

**§ 98-78. Reconstruction.**

- A. A building, structure or activity that complies with applicable bulk requirements but which contains a nonconforming use which is destroyed or damaged by any means to an extent of more than fifty (50%) percent of the replacement cost of the entire building or structure, may not be reconstructed or used except in conformity with this Zoning Chapter.
- B. A building, structure, or activity that complies with applicable bulk requirements but which contains a nonconforming use that is destroyed or damaged by any means to an extent of fifty (50%) percent or less of the replacement cost of the entire structure may be reconstructed. The same nonconforming use may be continued if the reconstruction is completed within one (1) year of the date of such damage, and said reconstruction is completed according to a plan approved by the Planning Board that does not result in any greater level of nonconformity with this Zoning Chapter.

**§ 98-79. Improvements to a non-conforming use that diminish impacts.**

In order to bring a use that becomes nonconforming upon the adoption of this Zoning Chapter into greater conformity with this Zoning Chapter and reduce and diminish any impacts associated with the operation of said nonconforming use, the property owner may submit a site plan application to the Planning Board that demonstrates said impacts will be diminished. Impacts may be diminished through installation of screening materials, creation of buffer areas, application of noise attenuation measures, reduction of smoke or odors, installation of lighting controls, minor structural or architectural changes, changes to the location or layout of parking lots, loading areas or access drives, or other appropriate means. Such plan shall be presented to the Planning Board, and the Planning Board may approve, approve with modifications or conditions, or disapprove the site plan application in accordance with Article XI of this Zoning Chapter. Said improvements shall otherwise conform to the regulations and requirements of this Zoning Chapter.

**§ 98-80 through 84. Reserved.**

## ARTICLE XV. ENFORCEMENT

### § 98-85. Building permits.

No building in any zoning district shall be erected, reconstructed, restored or structurally altered without a building permit duly issued upon application to the Code Enforcement Officer. No building permit shall be issued unless the proposed construction or use is in full conformity with all the provisions of this Zoning Chapter. Any building permit issued in violation of the provisions of this Zoning Chapter shall be null and void and of no effect, without the necessity for any proceedings or revocations or nullification thereof; and any work undertaken or use established pursuant to any such permit shall be unlawful. These regulations are in addition to any regulations governing building permits, certificates of occupancy, duties of the Code Enforcement Officer, and/or violations and penalties set forth in Chapter 37, Building Construction Administration, of the Code of the Town of Tuxedo.

- A. Exemptions. No building permit shall be required for any work exempted by § 37-4, Building permits, of the Code of the Town of Tuxedo.
- B. Section 280-a of New York State Town Law. No building permit shall be issued for the construction or alteration of any building upon a lot without access to a street or highway as stipulated in §280-a of the Town Law.
- C. Site plan approval required. No building permit shall be issued for any use, activity, structure or building which requires site plan approval by the Planning Board, except in conformity with the plans approved by the Planning Board. All such plans shall bear the signature of the Chairman or Acting Chairman.
- D. Special use permit approval required. No building permit shall be issued for any special use in any zoning district which such use is subject to approval by the Planning Board or Town Board, unless and until such approval has been duly granted by said Board.
- E. Architectural review approval required. No building permit shall be issued for any building or structure in any zoning district which such use is subject to approval by the Architectural Review Board, unless and until such approval has been duly granted by said Board.
- F. Procedure. Every application for a building permit shall be submitted in accordance with the provisions of Chapter 37, Building Code Administration, of the Code of the Town of Tuxedo.

### § 98-86. Certificate of occupancy, certificate of compliance.

- A. Certificate required.
  - (1) The following shall be unlawful until an application for a certificate of occupancy and/or certificate of compliance shall have been issued by the Code Enforcement Officer:
    - (a) Occupancy and use of a building erected, reconstructed, restored, structurally altered, or moved or any change in use of an existing building.
    - (b) Occupancy or use or any change in the use of any land.
    - (c) Any change in use of a nonconforming use.
  - (2) No change shall be made in the use or type of occupancy of an existing building or structure or change in the use of land unless a certificate of occupancy authorizing such change in use shall have been issued by the Code Enforcement Officer. A change in use shall include, without limitation, a change in or of the type, class, nature or intensity of the use, or a change in the



scope of goods, services or operation.

- B. Special use permits. No certificate of occupancy or certificate of compliance shall be issued for any special use requiring a special use permit unless and until such special use permit and related site plan approval, has been duly granted by the authorized Board. Every certificate of occupancy for which a special use permit, site plan, and/or variance has been approved, shall contain a detailed statement of any conditions to which the same is subject.
- C. Procedure. Every application for a certificate of occupancy and/or certificate of compliance shall be submitted in accordance with the provisions of Chapter 37, Building Construction Administration, of the Code of the Town of Tuxedo.
- D. Compliance with performance standards. Uses which are subject to the performance standards set forth in Section 98-42 of this Zoning Chapter shall also be subject to the following procedure:
  - (1) After occupancy, if there occur continuous or frequent, even though intermittent, violations of the performance standards and other provisions for a period of five (5) days, without bona fide and immediate corrective work, the Code Enforcement Officer shall suspend or revoke the occupancy certificate or operating permit and the operation shall immediately cease until it is able to operate in accordance with these regulations, at which time the applicable certificate or permit shall be reinstated.
  - (2) The Code Enforcement Officer shall investigate any alleged violation of the performance standards and may employ qualified experts. A copy of any findings shall be forwarded to the Town Board. The services of any qualified experts employed by the Town to advise in establishing a violation shall be paid for by the violator, if a violation is proven, and otherwise by the Town. No new certificate of occupancy, certificate of compliance or operating permit shall be issued unless such fees have reimbursed by the violator, if the violator is liable for same.
- E. A certificate of occupancy or certificate of compliance shall be deemed to authorize and is required for both initial occupancy and the continuance and use of the building or land to which it applies.

**§ 98-87. Duties of the Code Enforcement Officer.**

The duties of the Code Enforcement Officer are those set forth in this Zoning Chapter, as well as those set forth in Chapter 37, Building Construction Administration, of the Code of the Town of Tuxedo.

**§ 98-88. Violations and penalties.**

Violations and penalties of this Zoning Chapter shall be processed in accordance with the provisions set forth in Chapter 37, Building Construction Administration, of the Code of the Town of Tuxedo.

**§ 98-89. Reserved.**

## ARTICLE XVI. AMENDMENTS

### § 98-90. Amendment procedures.

- A. This Zoning Chapter or any part thereof may be amended, supplemented or repealed, from time to time, by the Town Board on its own motion or upon petition or upon recommendation by the Planning Board. Prior to a public hearing, every such proposed amendment shall be referred by the Town Board to the Planning Board for a report. The Town Board shall not take action on any such amendment without such report from the Planning Board unless the Planning Board fails for any reason to render such report within forty-five (45) days following the date of such referral.
- B. Report of the Planning Board. In making such report on a proposed amendment, the Planning Board shall make inquiry and determination concerning the items specified below:
  - (1) Concerning a proposed amendment to or change in text of the Zoning Chapter:
    - (a) Whether such change is consistent with the aims and principles embodied in the Zoning Chapter as to the particular districts concerned.
    - (b) Which areas, land uses, buildings and establishments in the Town will be directly affected by such change and in what way they will be affected.
    - (c) The indirect implications of such change in its effect on other regulations.
    - (d) Whether such proposed amendment is consistent with the aims of the Comprehensive Plan of the Town.
  - (2) Concerning a proposed amendment involving a change in the Zoning Map:
    - (a) Whether the uses permitted by the proposed change would be appropriate in the area concerned.
    - (b) Whether adequate public school facilities and other public facilities and services, including roads, exist or can be created to serve the needs of any additional residences or other uses likely to be constructed as a result of such change.
    - (c) Whether the proposed change is in accord with any existing or proposed pending plans in the vicinity.
    - (d) The effect of the proposed amendment upon the growth of the Town as envisaged by the Comprehensive Plan.
    - (e) Whether the proposed amendment is likely to result in an increase or decrease in the total residential capacity of the Town and the probable effect thereof.
- C. On petition, duly signed and acknowledged, of the owners of 50% or more of the area requesting amendment, change or modification of the regulations, including to the Zoning Map, the Town Board shall hold a public hearing on such proposal in the manner set forth in this Article. Each petition for a zoning amendment shall be accompanied by a fee in accordance with the Standard Schedule of Fees of the Town of Tuxedo as may be adopted from time to time by the Town Board.
- D. By resolution adopted at a meeting of the Town Board, the Town Board shall fix the time and place of a public hearing on the proposed amendment and cause notice thereof to be given in accordance with provisions of § 264 of Article 16 of the Town Law. All notices of public hearings shall specify the nature of any proposed amendment, the land or district affected and the date when and the place

where the public hearing will be held. At least ten (10) days notice of the time and place of such hearing shall be published in the official newspaper.

- E. At least ten (10) days prior to the date of the public hearing, written notice of any proposed regulations, restrictions or boundaries of such districts, including any amendments thereto, affecting property within five hundred feet of the following shall be served personally or by mail by the town upon each person or persons listed below:
  - (1) The property of the housing authority erecting or owning a housing project authorized under the public housing law; upon the executive director of such housing authority and the chief executive officer of the municipality providing financial assistance thereto.
  - (2) The boundary of a city, village or town; upon the clerk thereof.
  - (3) The boundary of a county; upon the clerk of the board of supervisors or other person performing like duties.
  - (4) The boundary of a state park or parkway; upon the regional state park commission having jurisdiction over such state park or parkway.
- F. If any proposed amendment consists of or includes any of the following conditions, the Town Clerk shall, prior to final action, refer the proposed amendment to the Orange County Planning Department:
  - (1) Any change in the district classification of or the regulations applying to real property abutting:
    - (a) The boundary of any village or town.
    - (b) The boundary of any state or county park or other recreation area.
    - (c) The right-of-way of any state parkway, thruway, expressway or other controlled-access highway or county road or parkway.
    - (d) The right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines.
    - (e) The boundary of any county- or state-owned land on which a public building or institution is located.
- G. In the case of a protest against any amendment, such amendment shall not become effective except in accordance with the provisions of § 265 of Article 16 of the Town Law.
- H. Every Zoning Chapter and every amendment to the same (excluding any map incorporated therein) adopted pursuant to the provisions herein shall be entered in the minutes of the Town Board; such minutes shall describe and refer to any map adopted in connection with such zoning ordinance or amendment and a copy, summary or abstract thereof (exclusive of any map incorporated therein) shall be published once in the official newspaper of the Town, and affidavits of the publication thereof shall be filed with the Town Clerk. Such amendments to the law and Zoning Map shall take effect upon filing with the Secretary of State.
- I. The Town Clerk shall maintain a separate file or filing cabinet for each and every map adopted in connection with a zoning regulations or amendment and shall file therein every such map hereafter adopted; said file or filing cabinet to be available at any time during regular business hours for public inspection.

## ARTICLE XVII. GENERAL PROVISIONS

### **§ 98-91. Construal of provisions.**

Where this Zoning Chapter imposes a greater restriction upon the use of a building or premises or requires larger open spaces than are imposed or required by any other statute, ordinance, rule, regulation or permit or by any easement or agreement, the more stringent shall control.

### **§ 98-92. Earlier ordinance repealed.**

Local Law No. 2 of 1975 creating zoning regulations for the Town of Tuxedo, New York, and any and all amendments thereof are hereby repealed in their entirety. Such repeal shall not affect or impair any act done, offenses committed or right accruing, accrued or acquired or liability, penalty, forfeiture or punishment incurred prior to the time such repeal takes effect; but the same may be enjoyed, asserted, enforced, prosecuted or inflicted as fully and to the same extents as if such repeal had not been effected.

### **§ 98-93. Severability.**

Should any section or provision of this local law be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this local law as a whole or part thereof other than the part so decided to be unconstitutional or invalid. Should any provision pertaining to special use permits be declared unconstitutional or invalid, the Town Board declares that such uses would not be permitted in whole or in part, and that such uses are declared prohibited, absent the specific special use permit regulations.

### **§ 98-94. Effective date.**

Upon adoption, this local law shall become effective upon filing with the New York Secretary of State.







Table I - General Use and Bulk Requirements

<b>LOW-MEDIUM DENSITY RESIDENTIAL (R-2) DISTRICT</b>	Use Type	Site Plan Required	Min. Lot Area s.f. or ac.	Min. Lot Width ft.	Min. Front Yard ft.	Min. Side Yard, Each ft.	Min. Side Yard, Both ft.	Min. Rear Yard ft.	Max. Development Coverage Percent (%)	Min. Lot Depth ft.	Max. Building Height ft.	Max. Building Height Stories	Min. Street Frontage ft.
<b>Principal Use</b>													
Agriculture	P	N	1 ac.	125	25	25	50	25	15	150	30	2.5	100
Single-family detached dwelling	P	N	1 ac.	150	50	50	100	50	15	150	30	2.5	125
Two-family dwelling	SUP	Y	1.5 ac.	150	50	50	100	50	25	150	30	2.5	125
Cemetery in existence on the effective date of this Zoning Law	P	N	1 ac.	125	25	25	50	25	15	150	15	1	100
Public utilities	SUP	Y	1 ac.	125	25	25	50	25	15	150	15	1	100
<b>Accessory Uses and Structures</b>													
Parking	---	---											
Private stable	SUP	Y											
Swimming pool	---	---											
Detached or attached private garage	---	---											
Home occupation, minor	---	---											
Home occupation, major	SUP	Y											
Greenhouses, barns, toolsheds, tennis courts, recreational and other similar structures accessory to a single family detached dwelling	---	---											
Any accessory use customarily incidental to a principal use allowed in this zoning district	---	---											
Temporary structures for storage of equipment and materials used in connection with the construction of a development, not to exceed two years	P	Y											
Standalone caretaker cottage on a lot not less than five acres	---	---											
Signs	---	---											
<b>Notes:</b>													
P - Permitted use SUP - Special Use Permit													
Y - Yes N - No													
ft. - feet sf. - square feet ac. - acre DU - dwelling unit													
max. - maximum min. - minimum													



Table I - General Use and Bulk Requirements

	Use Type	Site Plan Required	Min. Lot Area	Min. Lot Width	Min. Front Yard	Min. Side Yard, Each	Min. Side Yard, Both	Min. Rear Yard	Max. Development Coverage	Min. Lot Depth	Max. Building Height	Max. Building Height	Min. Street Frontage	Max. Residential Density
			s.f. or ac.	ft.	ft.	ft.	ft.	ft.	Percent (%)	ft.	ft.	Stories	ft.	DU/Ac.
<b>MEDIUM DENSITY RESIDENTIAL (R-3) DISTRICT</b>														
<b>Principal Use</b>														
Single-family detached dwelling	P	N	20,000 sf	100	50	50	100	50	25	100	30	2.5	85	
Two-family dwelling	SUP	Y	30,000 sf	125	50	50	100	50	30	100	30	2.5	100	
Single-family semi-attached dwellings	SUP	Y	15,000 sf	75	35	0/25*	25	50	35	100	30	2.5	75	3
Single-family attached dwellings (townhouse)	SUP	Y	7,500 sf	50	35	0/25*	25	50	40	100	30	2.5	50	6
Public utilities	SUP	Y	1 ac.	150	25	25	50	25	15	100	15	1	100	
<b>Accessory Uses and Structures</b>														
Parking	---	---												
Swimming pool	---	---												
Detached or attached private garage	---	---												
Home occupation, minor	---	---												
Home occupation, major	SUP	Y												
Greenhouses, barns, toolsheds, tennis courts, recreational and other similar structures accessory to a single family detached dwelling	---	---												
Any accessory use customarily incidental to a principal use allowed in this zoning district	---	---												
Temporary structures for storage of equipment and materials used in connection with the construction of a development, not to exceed two years	P	Y												
Signs	---	---												
<b>Notes:</b>														
P - Permitted use SUP - Special Use Permit														
Y - Yes N - No														
ft. - feet sf. - square feet ac. - acre DU - dwelling unit														
max. - maximum min. - minimum														
* Along a lot line where the dwellings are attached, the minimum yard is 0 feet. Any other side yard shall be 25 feet.														

Table I - General Use and Bulk Requirements

	Use Type	Site Plan Required	Min. Lot Area	Min. Lot Width	Min. Front Yard	Min. Side Yard, Each	Min. Side Yard, Both	Min. Rear Yard	Max. Development Coverage	Min. Lot Depth	Max. Building Height	Max. Building Height	Min. Street Frontage	Max. Residential Density
			s.f. or ac.	ft.	ft.	ft.	ft.	ft.	Percent (%)	ft.	ft.	Stories	ft.	DU/Ac.
<b>MEDIUM-HIGH DENSITY RESIDENTIAL (R-4) DISTRICT</b>														
<b>Principal Use</b>														
Single-family detached dwelling	P	N	15,000 sf	100	50	50	100	50	35	100	30	2.5	80	
Two-family dwelling	SUP	Y	20,000 sf	125	50	50	100	50	30	100	30	2.5	100	2
Single-family semi-attached dwellings	SUP	Y	12,500 sf	75	35	0/25*	25	50	35	100	30	2.5	75	3
Single-family attached dwellings (townhouse)	SUP	Y	7,500 sf	50	35	0/25*	25	50	40	100	30	2.5	50	6
Multifamily dwellings**	SUP	Y	2 ac.	200	35	50	100	50	50	200	30	2.5	150	6
Senior care facility	SUP	Y	3 ac.	200	35	50	100	50	60	200	45	3.5	150	8
Public utilities	SUP	Y	1 ac.	150	25	25	50	25	15	100	15	1	100	
<b>Accessory Uses and Structures</b>														
Parking	---	---												
Swimming pool	---	---												
Detached or attached private garage	---	---												
Home occupation, minor	---	---												
Home occupation, major	SUP	Y												
Greenhouses, barns, toolsheds, tennis courts, recreational and other similar structures accessory to a single family detached dwelling	---	---												
Any accessory use customarily incidental to a principal use allowed in this zoning district	---	---												
Temporary structures for storage of equipment and materials used in connection with the construction of a development, not to exceed two years	P	Y												
Signs	---	---												
<b>Notes:</b>														
P - Permitted use SUP - Special Use Permit														
Y - Yes N - No														
ft. - feet sf. - square feet ac. - acre DU - dwelling unit														
max. - maximum min. - minimum														
* Along a lot line where the dwellings are attached, the minimum yard is 0 feet. Any other side yard shall be 25 feet.														
** Applies to the entire site. See also special use permit standards.														





Table I - General Use and Bulk Requirements

	Use Type	Site Plan Required	Min. Lot Area	Min. Lot Width	Min. Front Yard	Min. Side Yard, Each	Min. Side Yard, Both	Min. Rear Yard	Max. Development Coverage	Min Lot Depth	Max. Building Height	Max. Building Height	Min. Street Frontage	Max. Residential Density
			s.f. or ac.	ft.	ft.	ft.	ft.	ft.	Percent (%)	ft.	ft.	Stories	ft.	DU/Ac.
<b>SOUTHFIELDS - HAMLET BUSINESS (S-HB) DISTRICT</b>														
<b>Accessory Uses and Structures</b>														
Parking and loading areas	---	---												
Swimming pool	---	---												
Detached or attached private garage	---	---												
Accessory storage of materials, goods and supplies used in the conduct of a nonresidential principal use, within the same building within which the principal use is located	---	---												
Signs	---	---												
Any accessory use customarily incidental to a principal use allowed in this zoning district	---	---												
<b>Notes:</b>														
P - Permitted use SUP - Special Use Permit														
Y - Yes N - No														
ft. - feet sf. - square feet ac. - acre DU - dwelling unit														
max. - maximum min. - minimum														



Table I - General Use and Bulk Requirements

	Use Type	Site Plan Required	Min. Lot Area	Min. Lot Width	Min. Front Yard	Min. Side Yard, Each*	Min. Side Yard, Both*	Min. Rear Yard	Max. Development Coverage	Min Lot Depth	Max. Building Height	Max. Building Height	Min. Street Frontage	Maximum Residential Density
<b>TUXEDO - TOWN CENTER (T-TC) DISTRICT</b>														
<b>Accessory Uses and Structures</b>														
Parking and loading areas	---	---												
Accessory storage of materials, goods and supplies used in the conduct of a principal use, within the same building within which the principal use is located.	---	---												
Signs	---	---												
Any accessory use customarily incidental to a principal use allowed in this zoning district.	---	---												
<b>Notes:</b>														
P - Permitted use SUP - Special Use Permit														
Y - Yes N - No														
ft. - feet sf. - square feet ac. - acre DU - dwelling unit														
max. - maximum min. - minimum														





Table I - General Use and Bulk Requirements

	Use Type	Site Plan Required	Min. Lot Area	Min. Lot Width	Min. Front Yard	Min. Side Yard, Each	Min. Side Yard, Both	Min. Rear Yard	Max. Development Coverage	Min Lot Depth	Max. Building Height	Max. Building Height	Min. Street Frontage	Max. Residential Density
<b>NEIGHBORHOOD BUSINESS (NB) DISTRICT</b>														
<b>Accessory Uses and Structures</b>														
Parking	---	---												
Loading area	---	---												
Any accessory use customarily incidental to a principal use allowed in this zoning district.	---	---												
Accessory storage of materials, goods and supplies used in the conduct of a principal use, within the same building within which the principal use is located.	---	---												
Signs	---	---												
<b>Notes:</b>														
P - Permitted use SUP - Special Use Permit														
Y - Yes N - No														
ft. - feet sf. - square feet ac. - acre DU - dwelling unit														
max. - maximum min. - minimum														

Table I - General Use and Bulk Requirements

<b>GENERAL BUSINESS (GB) DISTRICT</b>	Use Type	Site Plan Required	Min. Lot Area	Min. Lot Width	Min. Front Yard	Min. Side Yard, Each	Min. Side Yard, Both	Min. Rear Yard	Max. Development Coverage	Min Lot Depth	Max. Building Height	Max. Building Height	Min. Street Frontage
			s.f. or ac.	ft.	ft.	ft.	ft.	ft.	Percent (%)	ft.	ft.	Stories	ft.
<b>Principal Use</b>													
Agriculture, industrial	SUP	Y	5 ac.	300	100	75	150	100	35	200	40	2	200
Animal hospital	SUP	Y	1 ac.	200	75	50	100	75	45	200	30	2.5	150
Animal kennel	SUP	Y	1 ac.	200	75	50	100	75	45	200	30	2.5	150
Antique shop	P	Y	1 ac.	200	75	50	100	75	45	150	30	2.5	150
Art gallery	P	Y	1 ac.	200	75	50	100	75	45	100	30	2.5	150
Assembly, light	SUP	Y	1 ac.	200	75	50	100	75	45	100	30	2.5	150
Bank	P	Y	1 ac.	200	75	50	100	75	45	100	40	2	150
Bar, tavern	P	Y	1 ac.	200	75	50	100	75	45	100	30	2.5	150
Building contractor establishment - exterior storage of equipment or materials	SUP	Y	2 ac.	200	75	50	100	75	10	200	30	2.5	150
Building contractor establishment- no exterior storage of equipment or materials	P	Y	2 ac.	200	75	50	100	75	10	200	30	2.5	150
Business or professional office	P	Y	1 ac.	200	75	50	100	75	45	100	30	2.5	150
Commercial recreational use, indoor	P	Y	1 ac.	200	75	50	100	75	45	100	30	2.5	150
Commercial recreational use, outdoor	SUP	Y	1 ac.	200	75	50	100	75	45	100	30	2.5	150
Drycleaning establishments for pick up and delivery of clothes only	P	Y	1 ac.	200	75	50	100	75	45	100	30	2.5	150
Entertainment production studio	P	Y	1 ac.	200	75	50	100	75	45	100	30	2.5	150
Farmstand	P	Y	1 ac.	200	75	50	100	75	45	100	15	1	150
Fuel storage depot, pre-existing (refer to 98-51.Q)	SUP	Y	10 ac.	300	100	75	150	100	35	200	30	2.5	250
Grocery store	P	Y	1 ac.	200	75	50	100	75	45	100	25	3	150
Health fitness facility	P	Y	1 ac.	200	75	50	100	75	45	150	30	2.5	150
Hospital	SUP	Y	15 ac	300	100	75	150	100	35	500	40	3	200
Hotel	SUP	Y	1 ac.	200	75	50	100	75	45	150	40	3	150
Laundromat	SUP	Y	1 ac.	200	75	50	100	75	45	150	30	2.5	150
Medical office	P	Y	1 ac.	200	75	50	100	75	45	100	30	2.5	150
Multiple use nonresidential development provided all uses are allowed in the GB district	SUP	Y	5 ac.	300	100	75	150	100	35	200	40	3	250
Personal service commercial	P	Y	1 ac.	200	75	50	100	75	45	100	30	2.5	150
Public utilities	SUP	Y	1 ac.	200	75	50	100	75	45	100	15	1	150
Resort lodge	SUP	Y	5 ac.	300	100	75	150	100	35	250	40	3	250
Restaurant, sit down	P	Y	1 ac.	200	75	50	100	75	45	150	30	2.5	150
Restaurant, take out	P	Y	1 ac.	200	75	50	100	75	45	150	30	2.5	150
Retail and wholesale trade in landscape materials	P	Y	2 ac.	200	75	50	100	75	40	200	30	2.5	150
Retail use	P	Y	1 ac.	200	75	50	100	75	45	100	30	2.5	150
Seasonal farm market	P	Y	1 ac.	200	75	50	100	75	45	100	30	2.5	150
Winery, brewery, distillery or food processing	SUP	Y	5 ac.	300	100	75	150	100	35	250	30	2.5	250

Table I - General Use and Bulk Requirements

	Use Type	Site Plan Required	Min. Lot Area	Min. Lot Width	Min. Front Yard	Min. Side Yard, Each	Min. Side Yard, Both	Min. Rear Yard	Max. Development Coverage	Min Lot Depth	Max. Building Height	Max. Building Height	Min. Street Frontage
<b>GENERAL BUSINESS (GB) DISTRICT</b>													
<b>Accessory Uses and Structures</b>													
Parking and loading areas	---	---											
Accessory storage of materials, goods and supplies used in the conduct of a principal use, within the same building within which the principal use is located.	---	---											
Signs	---	---											
Any accessory use customarily incidental to a principal use allowed in this zoning district.	---	---											
<b>Notes:</b>													
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ft. - feet sf. - square feet ac. - acre DU - dwelling unit													
max. - maximum min. - minimum													

TOURISM BUSINESS (TB) DISTRICT	Table I - General Use and Bulk Requirements												
	Use Type	Site Plan Required	Min. Lot Area s.f. or ac.	Min. Lot Width ft.	Min. Front Yard ft.	Min. Side Yard, Each ft.	Min. Side Yard, Both ft.	Min. Rear Yard ft.	Max. Development Coverage Percent (%)	Min. Lot Depth ft.	Max. Building Height ft.	Max. Building Height Stories	Min. Street Frontage ft.
<b>Principal Use</b>													
Agricultural use	P	Y	1 ac.	200	75	50	100	75	45	200	30	2.5	150
Animal sanctuary	SUP	Y	5 ac.	300	100	75	150	100	35	200	30	2.5	250
Antique shop	P	Y	1 ac.	200	75	50	100	75	45	200	30	2.5	150
Art gallery	P	Y	1 ac.	200	75	50	100	75	45	200	30	2.5	150
Bar, tavern	P	Y	1 ac.	200	75	50	100	75	45	200	30	2.5	150
Commercial recreational use, indoor	P	Y	2 ac.	200	50	50	100	50	10	150	30	2.5	150
Commercial recreational use, outdoor	SUP	Y	15 ac.	300	100	75	150	100	35	200	30	2.5	250
Conference center	SUP	Y	5 ac.	300	100	75	150	100	35	200	40	3	250
Cultural and performing arts center	SUP	Y	15 ac.	300	100	75	150	100	35	200	40	3	250
Farmstand	P	Y	1 ac.	200	75	50	100	75	45	200	1	15	150
Golf course	SUP	Y	50 ac.	300	100	75	150	100	35	200	30	2.5	250
Health fitness facility	P	Y	1 ac.	200	75	50	100	75	45	200	30	2.5	150
Hotel	SUP	Y	5 ac.	300	100	75	150	100	35	200	40	3	250
Multiple use nonresidential development provided all uses are allowed in the TB district	SUP	Y	5 ac.	300	100	75	150	100	35	200	40	3	250
Public outdoor amusement or entertainment	SUP - TB	Y	2 ac.	200	50	50	100	50	10	150	30	2.5	150
Public utilities	SUP	Y	1 ac.	200	75	50	100	75	45	200	15	1	150
Resort lodge	SUP	Y	5 ac.	300	100	75	150	100	35	200	40	3	250
Restaurant, sit down	P	Y	1 ac.	200	75	50	100	75	45	200	30	2.5	150
Seasonal farm market	P	Y	1 ac.	200	75	50	100	75	45	200	30	2.5	150
Stables, commercial and riding academies	SUP	Y	10 ac.	300	100	75	150	100	35	200	30	2.5	250
Tourism related retail sales	P	Y	1 ac.	200	75	50	100	75	45	200	30	2.5	150
Winery, Brewery, Distillery or Food Processing	SUP	Y	5 ac.	300	100	75	150	100	35	200	30	2.5	250
<i>SU-TB = Special Use Permit Approval of the Town Board</i>													
<b>Accessory Uses and Structures</b>													
Parking and loading areas	---	---											
Agritourism use	---	---											
Signs	---	---											
Any accessory use customarily incidental to a principal use allowed in this zoning district.	---	---											
<b>Notes:</b>													
P - Permitted use SUP - Special Use Permit													
Y - Yes N - No													
ft. - feet sf. - square feet ac. - acre DU - dwelling unit													
max. - maximum min. - minimum													



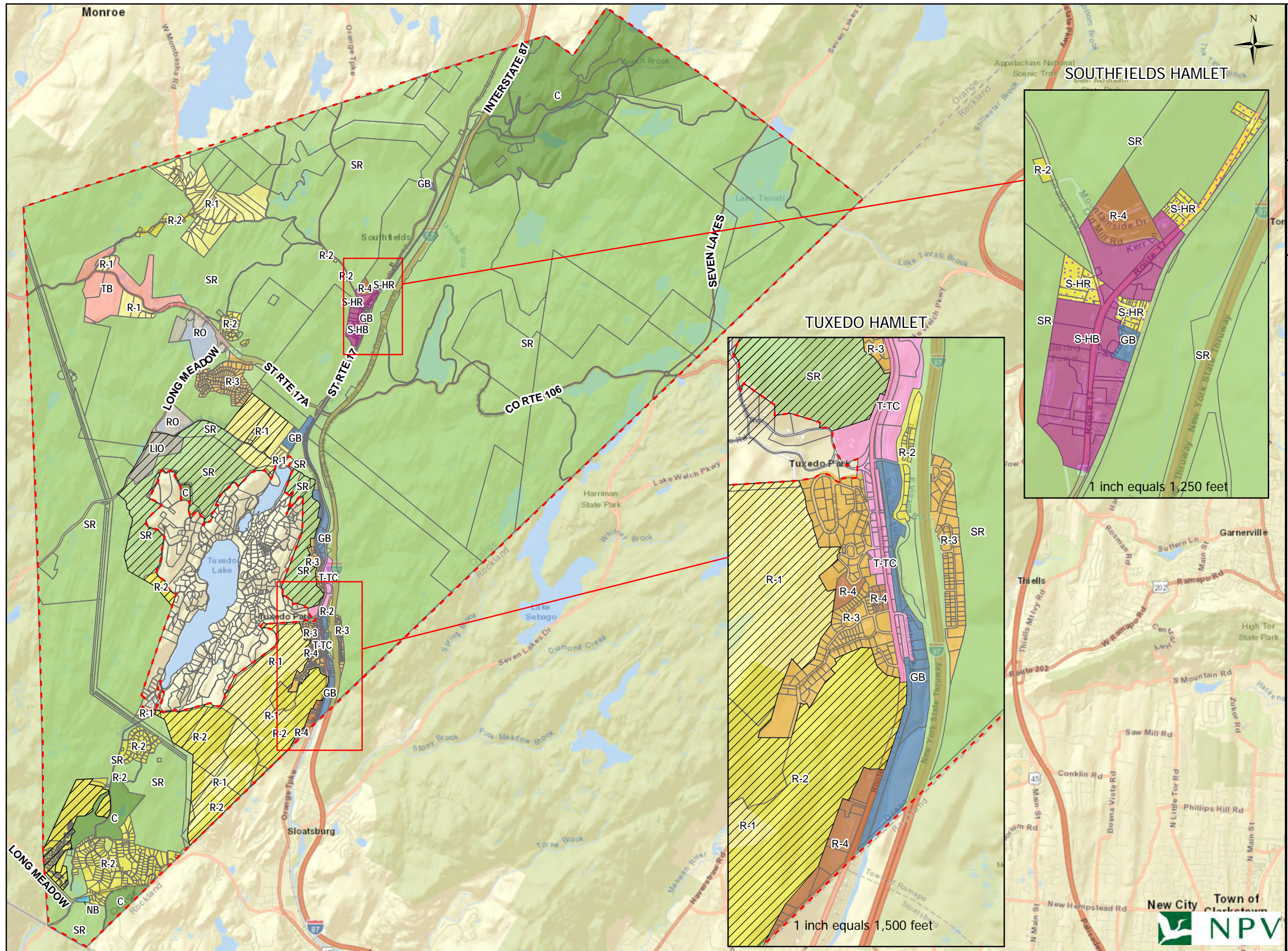




Table I - General Use and Bulk Requirements

	Use Type	Site Plan Required	Min. Lot Area	Min. Lot Width	Min. Front Yard	Min. Side Yard, Each	Min. Side Yard, Both	Min. Rear Yard	Max. Development Coverage	Min Lot Depth	Max. Building Height	Max. Building Height	Min. Street Frontage
<b>LIGHT INDUSTRIAL OFFICE (LIO) DISTRICT</b>													
<b>Accessory Uses and Structures</b>													
Parking and loading areas	---	---											
Accessory storage of materials, goods and supplies used in the conduct of a principal use, within the same building within which the principal	---	---											
Signs	---	---											
A single accessory dwelling on a lot that contains a principal use allowed within the LIO zoning district for use by a guard.	---	---											
Warehouse accessory to an office or research/laboratory use, provided the gross floor area (GFA) of the warehouse use shall not exceed 35% percent of the total GFA of the principal buildings.	---	---											
Distribution activities accessory to a principal use provided the storage of materials, which shall be deemed warehouse space, shall not exceed 35% of the total GFA of the principal buildings.	---	---											
Restaurant accessory to a principal use, provided the gross floor area of same shall not exceed twenty-five percent (15%) of the total gross floor area of the principal buildings on the lot.	---	---											
Retail accessory to a principal use, provided the gross floor area of same shall not exceed 15 percent (15%) of the total gross floor area of the principal buildings on the lot.	---	---											
Any accessory use customarily incidental to a principal use allowed in this zoning district.	---	---											
<b>Notes:</b>													
P - Permitted use SUP - Special Use Permit													
Y - Yes N - No													
ft. - feet sf. - square feet ac. - acre DU - dwelling unit													
max. - maximum min. - minimum													





**Consolidated  
Town-Village of Tuxedo  
("Town of Tuxedo")  
Orange County, NY**

**Zoning Map**

- Legend**
- Consolidated Town-Village of Tuxedo ("Town of Tuxedo")
  - District**
  - SR - Special Recreation
  - C - Conservation
  - R-1 - Low Density Residential
  - R-2 - Low-Medium Density Residential
  - R-3 - Medium Density Residential
  - R-4 - Medium-High Density Residential
  - S-HR - Southfields Hamlet Residential
  - S-HB - Southfields Hamlet Business
  - T-TC - Tuxedo Town Center
  - NB - Neighborhood Business
  - GB - General Business
  - TB - Tourism Business
  - RO - Research Office
  - LIO - Light Industrial Office
  - PID Overlay

Source: ESRI Web Mapping Service; Rockland County GIS

Scale: 1 inch equals 5,500 feet

**Adoption Date:  
December 13, 2021**

