

LOCAL LAW NUMBER _____ OF 2008

OF THE TOWN OF PHILIPSTOWN

A LOCAL LAW AMENDING THE ZONING LAW TO CREATE A MINING OVERLAY

DISTRICT AND ASSOCIATED REGULATIONS

A local law amending Chapter 175 of the Code of the Town of Philipstown, known as the Zoning Law of the Town of Philipstown ("Zoning Law"), Putnam County, New York, by creating a Mining Overlay District and amending existing Article X, Excavation and Grading: Soil Extraction, to regulate mining activities in the Mining Overlay District.

Section 1. Purpose and Legislative Intent.

The Town Board of the Town of Philipstown (the "Town Board") wishes to allow mining activities and limit their location so as to protect the significant visual, historic, economic and cultural resources of the Town, and to minimize any adverse impacts by protecting residential areas and land uses from potential physical damage and undue exposure to environmental impacts associated with mining activities.

Consistent with the foregoing, the Town Board hereby amends the Zoning Law by creating a "Mining Overlay District" with appropriate regulatory mechanisms to protect the health, safety and welfare of Town residents and property. This Local Law will regulate the location, design, and operation of mining activities in order to:

1. Protect the health, safety, and general welfare of residents of the Town of Philipstown.
2. Establish predictable and balanced regulations for mining activities.
3. Avoid potential damage to adjacent properties from a mining facility by imposing mining standards and setback requirements.
4. Ensure harmony and compatibility with surrounding land use patterns.
5. Limit mining activities to the "Mining Overlay District" as depicted in the Town of Philipstown Zoning Map.

Section 2. Title.

This Law may be known and cited as the "A Local Law Amending the Zoning Law for the Town of Philipstown to Create a Mining Overlay District and Associated Regulations".

Section 3. Amendments to Existing Zoning Law

Chapter 175 of the Code of the Town of Philipstown, known as the Zoning Law of the Town of Philipstown ("Zoning Law"), is hereby amended as follows:

- (1) Article V., Definitions, Section 175-20. Terms defined, is hereby amended to add the following definition:

"Mining Activity - The extraction of overburden and minerals from the earth; the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, stockpiling or other processing of minerals at the mine location so as to make them suitable for commercial, industrial, or construction use; exclusive of manufacturing processes, at the mine location; the removal of such materials through sale or exchange, or for commercial, industrial or municipal use; and the disposition of overburden, tailings and waste at the mine location. Mining shall not include the excavation, removal and disposition of minerals from construction projects, exclusive of the creation of water bodies, or excavations in aid of agricultural activities."

- (2) Section 175-21. Districts established, is hereby amended to add the following:

<u>District</u>	<u>Map Code</u>
"Mining Overlay District"	"MO"

- (3) Section 175-22. Zoning Map, is hereby amended to add the Mining Overlay District as shown on Attachment A to this Local Law.
- (4) Section 175-24. Extension of use into an adjoining district, is hereby amended to add the following sentence at the end of the paragraph: "The Zoning Board of Appeals is not authorized to grant a special use permit for the extension of uses allowed in the Mining Overlay District. Mining activities are a permitted use in the MO district only."
- (5) The title of §175-28.1, is hereby repealed and in its place the following is enacted: "Excavation and grading; mining activities."

- (6) The paragraph in §175-28.1, is hereby repealed and in its place the following paragraph is enacted: "The excavation or grading on any lot, or removal from any lot, of earth, loam, topsoil, sand, gravel clay or stone, if permitted in the district, shall be conducted only in accordance with the provisions of Article X and, as applicable, the provisions of Chapters 90, 93 and 112 of the Philipstown Town Code. Mining activities shall be permitted only in the Mining Overlay District."
- (7) Section 175-39.S is hereby amended to add a note at the end of the chart contained in this section as follows: "The total ground coverage limitations applicable to the Mining Overlay District shall be equivalent to the limitations set forth in the underlying R-40 and I zoning districts."
- (8) Section 175-42.A. is hereby repealed and in its place the following paragraph is enacted: "The excavation or grading on any lot, or removal from any lot, of earth, loam, topsoil, sand, gravel, clay or stone are permitted uses and operations in the cases hereinafter listed when conducted in accordance with the standards and requirements specified. All other excavation, grading or removal activities shall be deemed to be mining activities and shall be allowed only in the Mining Overlay District." The numbered paragraphs (1), (2), (3), (4), (5), (6), and B. shall follow and are not amended by this local law.
- (9) Section 175-43 hereby is repealed in its entirety.
- (10) Section 175-44 hereby is repealed in its entirety.
- (11) Sections 175-45.A, B, C, D & E hereby are repealed in their entirety.
- (12) The first paragraph of the Zoning Law, §175-45, Section F. including subparagraphs (1), (2), and (3) are hereby repealed and in their place the following new Section 175-45 is enacted:
 - "A. Mining Permits: Mining activities are uses requiring a special permit and allowed solely in the Mining Overlay District. For mining activities, the New York State Mined Land Reclamation Law (MLRL) establishes that the NYSDEC is responsible for the regulation and permitting of mining activities and reclamation of same for operations that extract 1,000 tons, or 750 cubic yards or more, of a mineral during 12 successive calendar months. State regulation begins at 100 cubic yards for mining from a water body. The NYSDEC is the entity responsible for administering a MLRL permit for mining applications of this magnitude. A mining activity, regardless of whether the operation is regulated by NYSDEC, requires special use permit and site plan approval by the Philipstown Zoning Board of Appeals.

- B. The Zoning Board of Appeals is hereby authorized to review and consider applications for special use permits for mining permits pursuant to this section. In addition to the standards set forth in § 175-47(A)(8) below, the Zoning Board of Appeals shall apply the standards and procedures set forth in Article XI in determining whether to issue a special use permit pursuant to this section.
- C. The following requirements are applicable to special use permit and site plan submissions for mining activities in the Mining Overlay District that require a MLRL permit:
- (1) If the mining activity is subject to a NYSDEC MLRL permit, the applicant for such permit shall simultaneously apply to both the NYSDEC and the Town Zoning Board of Appeals, and shall provide the Town Zoning Board of Appeals with simultaneous copies of any subsequent submissions to the NYSDEC. The Zoning Board of Appeals shall advise the NYSDEC on the following issues:
 - (a) Whether mining activity is permitted in the location indicated on the MLRL permit application;
 - (b) The appropriate setbacks from roads and property boundaries;
 - (c) The location and design of barriers to restrict access to the mine;
 - (d) Dust control measures;
 - (e) Hours of operation; and
 - (f) Any other issue as may be referenced in and appropriate under the MLRL.
 - (2) Upon the receipt of a complete special use permit and site plan application, including all materials submitted to the NYSDEC required for a complete MLRL permit application, the Zoning Board of Appeals will schedule and hold a public hearing on the application for special use permit and site plan application. The public hearing shall remain open until the NYSDEC concludes its SEQR review of the MLRL permit application.
 - (3) Within 62 days following the Zoning Board of Appeals's receipt of the NYSDEC's SEQR negative declaration or SEQR findings statement, the Zoning Board of Appeals close the public hearing and take action on the application for a special use permit and site plan approval. The site plan/mined reclamation plan approved by the NYSDEC shall constitute the site plan to be approved by the Zoning Board of Appeals.

- (4) If a special use permit is granted by the Zoning Board of Appeals, the term for such special use permit shall be coterminous with the NYSDEC MLRL permit. Any application for renewal or modification of the NYSDEC MLRL permit must be submitted simultaneously to the Town Zoning Board of Appeals.
 - (5) An application shall be submitted to the Zoning Administrative Officer for a certificate of occupancy under this chapter and pay to the Town an inspection fee as determined under §174-14. The Zoning Administrative Officer shall issue the certificate of occupancy upon special use permit and site plan approval by the Zoning Board of Appeals. Said certificate shall confirm that the mining activity is a permitted use under the regulations of this chapter, if such officer finds that the NYSDEC-approved operation is consistent with the determination of a permitted use.
 - (6) Any mining activity that obtains a MLRL permit and site plan approval by the Zoning Board of Appeals is subject to inspections and other requirements set forth in Section 175-49.
 - (7) If the mining activity is not subject to a NYSDEC MLRL permit, the applicant shall make application for a Local Mining Permit as specified in §175-47 in order to undertake the mining activity. Issuance of a Local Mining Permit shall require special use permit and site plan approval by the Philipstown Zoning Board of Appeals."
- (13) Section 175-46. Criteria for determination., the introductory sentence is hereby repealed and in its place the following sentence is enacted: "In determining whether to approve a site plan subject to a Local Mining Permit, the Zoning Board of Appeals shall be guided by the following criteria:".
 - (14) Section 175-46. Criteria for determination., all references to "extractive operation" shall be repealed and replaced by the term "mining activity". All references to "soil extraction permit" shall be repealed and replaced by the term "Local Mining Permit".
 - (15) Section 175-47 of the Zoning Law is repealed in its entirety and in its place the following new section is enacted:
 "§175-47. Regulations Applicable to the Mining Overlay District":

- A. Mining activities are a special permit use in the Mining Overlay District only. If the mining activity is subject to a MLRL permit, the procedures set forth in Section 175-45.A. shall apply. If the mining activity is not subject to a NYSDEC MLRL permit, the applicant proposing the mining activity shall submit an application for a special use permit and site plan approval for a local mining permit to the Zoning Administrative Officer, together with an application for a certificate of occupancy, which applications shall be accompanied by an application fee as determined in accordance with §175-14 and 10 copies of the following information:
- (1) The name, address and telephone number of the owner of the tract, parcel or lot and the proposed operator or person to be responsible for administration of the operation.
 - (2) A completed environmental assessment form, long form, and other materials intended to assist the Zoning Board of Appeals in making a determination of significance pursuant to the State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations.
 - (3) Maps and plans, prepared by and bearing the seal of a land surveyor or engineer licensed to practice in the State of New York, showing the following:
 - (a) The location of the tract and all streets and Tax Map parcels within 500 feet of the tract, the name and address of the owner of each parcel as shown on current Tax Assessor's records, the current use of each parcel and the location of existing zoning district boundaries and district codes.
 - (b) The location and limits of the area on the tract to be subject to the mining activity and any lines delimiting areas not to be disturbed.
 - (c) Existing contour lines that are on the tract within and within 500 feet of the area to be subject to the soil extraction operation, and proposed contour lines resulting from the intended soil extraction operation, drawn to a scale of not less than 100 feet equals one inch and with a contour interval not to exceed two feet.
 - (d) Existing and proposed drainage on the tract within and within 500 feet of the area to be subject to the soil extraction operation, the principal measures proposed for soil erosion and sediment control and water pollution control and elements of a reclamation plan for the area of the tract to be subject to the mining activity.

- (e) Existing wetlands and watercourses on the tract within and within 500 feet of the area to be subject to the soil extraction operation and within 200 feet of the tract.
 - (f) Proposed truck access to the tract, including roadway and access improvements proposed.
 - (g) The location of wooded areas, existing buildings and structures and the location of any proposed buildings and structures on the tract within and within 500 feet of the area to be subject to the soil extraction operation.
 - (h) Any proposed temporary or permanent screening of the soil extraction operation, such as by berms, fences and landscaping.
- (4) Ten (10) copies of a report addressing the following and such additional information deemed appropriate by the Zoning Board of Appeals:
- (a) An evaluation of the proposed mining activity relative to surrounding land uses, including an evaluation of potential environmental impacts including but not limited to noise, dust, and visual impacts on surrounding land uses.
 - (b) The duration of the operation through to site restoration, proposed hours and days of operation and the program for staging the site preparation, excavation and restoration in time and geographic sections.
 - (c) The program of measures to be undertaken for control of noise, dust, soil erosion and sedimentation, water pollution, and the mitigation of visual impacts including outdoor illumination, and elements of a reclamation plan for the area of the tract to be subject to the mining activity.
 - (d) An estimate of the number of vehicles expected to enter and exit the tract on a daily basis and at peak hours, and description of any roadway capacity and safety improvement proposed on the streets giving access to the tract.
 - (e) Description of the nature and capacity of any processing equipment proposed to be established on the tract.
5. Any other information that would be required for special use permit and site plan approval as per Article IX of this Chapter unless waived by the Zoning Board of Appeals.

6. The Zoning Board of Appeals shall process the application for special use permit and site plan approval for a Local Mining Permit application in accordance with the procedures set forth in Article IX, except that a public hearing shall be required. The public hearing shall be conducted within 62 days from the meeting date on which the Zoning Board of Appeals determines it has received a complete application. The Zoning Board of Appeals shall mail notice of said public hearing to the applicant and shall give public notice of said hearing in a newspaper of general circulation in the Town at least ten (10) days prior to the date of the hearing and shall make a decision within 62 days of the close of the public hearing. The decision of the Zoning Board of Appeals 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.
7. The Zoning Board of Appeals shall comply with the provisions of the New York State Environmental Quality Review Act and its implementing regulations.
8. Standards and Conditions. The Zoning Board of Appeals may approve the application for special use permit and site plan and issue a Local Mining Permit under this Article for a limited period of time not exceeding five years, if it shall find that the mining activities conform to the following standards and conditions:
 - (a) That the mining activity conforms to the information, report, maps and plans approved by the Zoning Board of Appeals.
 - (b) That the tract will be excavated and graded within the limits shown on the approved plans and in conformity with the proposed contour plan as approved.
 - (c) That measures for noise, visual, soil erosion and sediment control will be installed, maintained and completed in accordance with NYSDEC best management practices.
 - (d) That slopes will not exceed one foot of rise for two feet of horizontal distance or such lesser slope that the Board may specify as necessary for the public health and safety, soil stability or for the reasonable use of the property after completion of the operation.
 - (e) There will be no excavation or grading, or removal, within 50 feet of any property or street line, except excavation or removal that would result in finished grades at or above the elevation of the adjoining street or property.

- (f) That after excavation or grading, or removal, the lot will be cleared of all debris within the period for which the soil extraction permit is granted.
 - (g) Except in the location of wetlands and watercourses, and exposed ledge rock, that the top layer of arable soil for a depth of four inches will be set aside and retained on the lot and will be respread over the excavated or graded area as the work progresses, that a suitable ground cover will be planted and grown to an erosion-resistant condition upon the completion of the excavation or removal in accordance with the approved contour lines and that such work be completed within the period for which the Local Mining Permit is granted.
 - (h) If required by the Zoning Board of Appeals, that the area to be excavated or a portion thereof be enclosed within a fence of such type, height, and location as the Board approves.
 - (i) The establishment of a schedule setting forth the following:
 - (a) Limitations on the day of the week and the hours of the day during which any work, including blasting, may be performed on the lot.
 - (b) The place and manner of disposal on the lot of excavated material.
 - (c) Requirements as to the control of dust, noise and lighting.
 - (j) The submission by the applicant of periodic reports, prepared by and bearing the seal of an engineer, showing the status and progress of the mining activity.
- (16) The first sentence of §175-49.A of the Zoning Law hereby is amended to delete the word "under a soil extraction permit" and replace it with "for a mining activity".
- (17) The first sentence of §175-49.B of the Zoning Law hereby is amended to delete the word "under a soil extraction permit" and replace it with "for a mining activity". All references to "extraction operation" in Section 175-49.B. are repealed and replaced with "mining activity".
- (18) §175, Attachment 3, Permitted Uses 42, Soil extraction operations, is deleted. A new Use 42 shall be added as follows: "42. Mining activities are a use permitted in the MO district only, subject to submission and approval of a site plan by the Philipstown Zoning Board of Appeals in accordance with the provisions of Articles IX and X."

Section 4. Conflict with Other Laws.

Where this Law differs or conflicts with other Laws, rules and regulations, unless the right to do so is preempted or prohibited by the County, State or federal government, the more restrictive or protective of the Town and the public shall apply.

Section 5. Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Law or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed Application thereof, shall be severable, and the remaining provisions of this Law, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

Section 6. Effective Date.

This Law shall be effective immediately upon filing with the New York State Department of State, pursuant to applicable legal and procedural requirements.

Section 7. Authority.

This Local Law is enacted pursuant to the Town's authority under the Municipal Home Rule Law.